The Children of Irregular Migrants and Statelessness

A study of limiting birthright citizenship of children born to irregular migrants of the United States

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Glossary

14th Amendment = The Fourteenth Amendment (Amendment XIV) to the United States Constitution

1961 Convention = Convention on the Reduction of Statelessness

CERD = Convention on the Elimination of Racial Discrimination

CIS = Center for Immigration Studies

CRC = International Convention on the Rights of the Child

GOP = The Republican Party

H.R. = House Resolution

IACHR = The Inter-American Commission on Human Rights

IACtHR = The Inter-American Court of Human Rights

ICCPR = International Covenant on Civil and Political Rights

NHLA = National Hispanic Leadership Agenda

UDHR = Universal Declaration on Human Rights

U.S. = the United States of America

U.S. Constitution = The Constitution of the United States of America
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1 Introduction

The Fourteenth Amendment of the United States Constitution provides that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”\textsuperscript{1} Until now, this clause, known as the Citizenship Clause has been granting any person born in the United States with U.S. citizenship. Citizenship is granted without regard to the citizenship or the immigration status of the person’s parents.\textsuperscript{2} The limited exceptions currently include the children of migrants and diplomats, who are accorded immunity from U.S. law.\textsuperscript{3} This system is known as, and will be referred to as ‘birthright citizenship’.

However, the scope of the Citizenship Clause has been the subject of many debates. Every few years, we see politicians and pundits on television and in newspapers encouraging the fact that birthright citizenship ought to be repealed for children born in the U.S. to irregular migrants.\textsuperscript{4}

Approximately 11 million irregular migrants currently reside in the U.S., and many are having children who are born there.\textsuperscript{5} The presence of such a large number of irregular migrants can be overwhelming. Irregular migration is causing countries like the U.S. to try and search for a balance between inclusion and exclusion, and is putting immigration and citizenship policies under pressure.\textsuperscript{6} Countries often lack the adequate policies to deal with these groups of people.\textsuperscript{1} These children usually grow up to have children of their own. This often also makes it hard for them to return to their parent’s country of origin, as their lives are here and it would mean being apart from their family.\textsuperscript{7} The Center for Immigration

\textsuperscript{1} U.S. Const. art. XIV, §1, cl. 1.
\textsuperscript{3} Ibid.
\textsuperscript{7} Constable, P., ‘For illegal immigrants with babies, the anchor pulls in many directions' The Washington Post (Washington, D.C., 20 September 2015)
Studies, a think tank that lobbies for stricter controls on immigration, estimated that between 300,000 and 400,000 children are born in the U.S. each year to irregular migrants.  

The meaning of the phrase “subject to the jurisdiction thereof” is at the center of the debates surrounding the Citizenship Clause. According to those seeking a narrow reinterpretation of the phrase claim that the term ‘jurisdiction’ can have several meanings. Therefore, the word ‘jurisdiction’ should be interpreted to mean ‘complete jurisdiction’ based on full allegiance and the mutual consent of the sovereign and his subject. On the opposite end of the spectrum, those who are proponents of the conventional view interpret the term ‘jurisdiction’ to mean territorial jurisdiction. This means that the sovereign has the authority to enforce laws within its boundaries. Based on this view of the Fourteenth Amendment, citizenship is granted on the basis of the geographic location of one’s birth.

Proponents of both sides of the debate on birthright citizenship use various sources and arguments to bring their point across. These two camps differ in their understanding of the legislative history of the U.S., the Citizenship Clause of the Fourteenth Amendment, as well as case law. Since the early 1990s, bills have been introduced to limit birthright citizenship to the children of lawful citizens of the U.S. These bills are either seeking constitutional amendment, or a change of birthright citizenship by statute.

Recently, 2016 Republican presidential campaign has blown new life into this unending debate on birthright citizenship. Part of President-elect Donald Trump’s plans for immigration reform along with building a wall between the U.S. and Mexico, include putting an end to the practice of birthright citizenship. One of the principal arguments being used to support placing limitations on birthright citizenship is that other countries don’t give everyone who is born on their soil automatic citizenship, so why should the U.S.? Many GOP Representatives are in favor of this, and are seeking either a Constitutional amendment or

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9 U.S. Const. art. XIV, §1, cl. 1.
11 Ibid.
12 Ibid.
13 Ibid.
14 Ibid.
reinterpretation of the Constitution. In their eyes, this reform would reduce the number of irregular immigrants coming into the U.S., as birthright citizenship “remains the biggest magnet for illegal immigration”.\textsuperscript{16}

In the context of the US election results and the rhetoric during the 2016 election campaign by now President-elect Trump, this issue has again gained much attention. The reason that this is interesting to explore is that now children that are yet to be born in the U.S. to irregular migrants are in danger of not obtaining the citizenship of the country in which they reside, and will have to live with the consequences thereof. The GOP now has the majority in the Congress, which should make it easier to present a bill to achieve their intended goal, but also, it is likely that any reinterpretation of the Citizenship Clause will be subject to judicial review by federal courts.\textsuperscript{17} This becomes a lot more interesting now, since President-elect Trump will have the power to appoint the Supreme Court justices and it is quite possible that his appointee will be someone who will champion the same notions of immigration that the president-elect has.

This makes looking into proposals to limit birthright citizenship especially relevant. This thesis will the situation of children born to parents who are irregular migrants in the U.S. from a statelessness and nationality law perspective, taking the broader political discussions, and practical considerations into account.

This sets the research question: To what extent is the U.S. an example of good practice of the prevention of statelessness at birth, given that children born to irregular migrants on U.S. territory acquire citizenship? Moreover, what are the consequences of changing nationality laws in the U.S., and are the proposals in line with international legal standards?

1.1 Relevance

The right to nationality is important, as it is a precursor to enjoying one’s fundamental rights as a citizen of a particular country. Still, there are approximately 12 million people


\textsuperscript{17} Wyatt A., Congressional Research Service, ‘Birthright Citizenship and Children Born in the United States to Alien Parents: An Overview of the Legal Debate’ (2015) 1
worldwide who do not possess a nationality, making them stateless.\textsuperscript{18} The 1954 Convention relating to the Status of stateless persons defines a ‘stateless person’ in Article 1 (1) as:

A person who is not considered as a national by any State under the operation of its law.\textsuperscript{19}

Over the years there have been various concerted international efforts to bring an end to statelessness. However, the threat of statelessness may be on the rise again due to the fact that displacement is on the rise, due to conflict or other difficulties. Therefore, it is a much debated issue in several countries, including the U.S., where historically there has been an influx of irregular migrants particularly from Mexico, who entered the U.S. illegally or legally but overstayed their approved period.

While residing in the U.S. families grow, and children are born to irregular migrant parents. Generally, being born in the territory of a host State does not always guarantee acquiring nationality of that State, nor is it always certain that one is eligible to acquire nationality of the State of origin. Due to the fact that nationality laws differ from state to state and might therefore conflict with each other, it puts people at risk of statelessness. Inconsistencies between legislations of two or more States can prevent people from obtaining or losing their nationality. This is because every State has the sovereign right to set the conditions for granting nationality to both newborns and immigrants.\textsuperscript{20}

This thesis aims to look at proposals to limit birthright citizenship from an international law perspective. The issue of birthright citizenship in the U.S. is certainly not a new issue, and has been debated by politicians and scholars alike since before the Fourteenth Amendment. However, this paper hopes to shed some new light on the topic by exploring the consequences of parents breaking laws and conflicting nationality laws weighed against the rights of children. It aims to look at the tension between both migration law and nationality law in an increasingly globalized world, but with particular focus on the situation of children born to irregular immigrants in the United States of America, hereinafter referred to as the U.S.

\textsuperscript{18} Adviescommissie voor Vreemdelingenzaken, ‘No Country of One’s Own’ (2014) 7
\textsuperscript{20} Adviescommissie voor Vreemdelingenzaken, ‘No Country of One’s Own’ (2014) 21
1.2 Methodology

This thesis will be entirely based on a review of literature; therefore, no data will be collected. The information used for this thesis will be collected from an array of sources, online, as well as in print. Additionally, various legal instruments will be utilized, including instruments of U.S. law and instruments of international law, including both hard and soft law. This thesis will also look at political discourse in the U.S., due to the fact that the topic has become highly politicized over the past few decades, making the rhetoric that is used important to look at. Journal articles, books, reports, and newspaper articles will also be heavily relied upon. Also of significant importance are reports by both organizations that are either for or against birthright reform. As well as works by experts in the field of birthright citizenship, nationality, and statelessness.

1.3 Definitions

This thesis makes reference to several general concepts such as nationality, citizenship, and irregular migrants. This section will provide the relevant definitions as laid out by international law, as well as literature.

**Nationality and citizenship**

Nationality is a legal bond between an individual and a state.\(^\text{21}\) Nationality represents membership and brings about both rights and duties between the individual and the state in question.\(^\text{22}\) Another word used to refer to nationality is ‘citizenship’.

States usually grant nationality on the basis of either *jus soli* or *jus sanguinis*.\(^\text{23}\) These two concepts form a legal bond between the individual and the State. This legal bond is important for numerous rights and protections. Without nationality, the individual is not able to enjoy these rights and protections. *Jus soli* is based on the notion that an individual has a legal bond to a State by virtue of the individual being born in said State, in other words, being born within the territory of the State provides the individual with the right to

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\(^{21}\) Inter-parliamentary union, *Nationality and Statelessness: A Handbook for Parlementarians* (Inter-Parliamentary Union edn, 2005) 9

\(^{22}\) Ibid.

citizenship. While *jus sanguinis* is based on descent, *jus sanguinis* allows parents to pass their nationality on to their children.

When there is a clash between the principles of *jus soli* and *jus sanguinis* and it becomes unclear which nationality a child should receive, there is a risk of statelessness at birth. If for example, a child is born in a State that only grants nationality by means of descent, to parents from a State where nationality is based on *jus soli*, statelessness can arise.

A majority of the literature that there is on the subject use the terms nationality and citizenship interchangeably. This thesis will do so as well.

**Irregular migrants**

The irregular migrant is more commonly known as the illegal immigrant. This is a term that carries a negative connotation but is still favored by both politicians and the mass media. However, due to the negative connotation of the term, in the international community the labels undocumented or non-documentated migrant and irregular migrant are more commonly used. An irregular migrant refers to the presence of a non-national on the territory of a State, in contravention of domestic immigration laws. This covers individuals who have entered the country unlawfully, persons who initially did have permission to cross into State territory, but have since overstayed, making their presence in the State irregular, as well as asylum seekers who have been rejected.

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24 Ibid.
25 Ibid.
26 Ibid.
29 Ibid.
2 The prevention of statelessness under international law

There are many international instruments that address the right to nationality. The U.S. has ratified, some, though not all of these international documents. First and foremost, there’s the Universal Declaration of Human Rights (UDHR). The UDHR is not binding, however, because it is the document establishing modern human rights law, it is seen as customary international law and should definitely be viewed as the guiding document to protecting human rights. In the treaty, the right to a nationality is recognized and articulated in Article 15.

The right to a nationality is also articulated in other international instruments, such as the International Covenant on Civil and Political rights, another fundamental human rights treaty. Article 24 of the International Covenant on Civil and Political Rights (ICCPR) states that “Every child has the right to acquire a nationality.” Another international instrument is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Article 5 of the CERD provides that “States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone... to nationality.” Due to the fact that the U.S. has ratified these international documents, it has also bound itself to the provisions articulated in the documents. By ratifying these documents, the U.S. has committed itself to the protection and the promotion of the rights set forth by these documents, including the right to a nationality.

The two key international conventions addressing statelessness are the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. These conventions prohibit states from allowing citizens to renounce their nationality if they would be rendered stateless by doing so. This prohibition

34 Ibid.
is in conflict with the U.S. legal tradition of voluntary renunciation of citizenship, which is why the U.S. is not a State party to either convention. The 1954 Convention establishes the legal definition of a stateless person and ensures that stateless persons get to enjoy a minimum set of rights. While the 1961 Convention aims to prevent and reduce statelessness. For the purposes of this thesis, only the 1961 Convention is relevant.

2.1 The 1961 Convention on the Reduction of Statelessness

The 1961 Convention on the Reduction of Statelessness provides an outline for the reduction of statelessness around the globe. The Convention represents a concerted effort by the international community to bring an end to statelessness, which affects the lives of approximately 12 million persons worldwide.

The 1961 Convention came into force 55 years ago. It has only been ratified by a small number of countries. Still, the importance of this convention cannot be overlooked. It is an international solution to what can be referred to as an international problem. No state is able to resolve statelessness on its own. Determining whether or not a person is stateless requires collaboration between states in order to verify if the person is a national of another state. The 1961 Convention provides a framework for the international community to collaborate on the reduction, and hopefully someday the eradication of statelessness, and is the only global instrument of its kind to do so.

So, what exactly is in this 1961 Convention? The 1961 Convention sets out mechanisms for the prevention and the reduction of statelessness. It is the principal legal

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39 UNHCR, ‘UN Conventions on Statelessness’ (UNHCR - The UN Refugee Agency, 2 March 2013) <http://www.unhcr.org/un-conventions-on-statelessness.html>
40 Ibid.
44 Ibid.
instrument that lays out measures in order to avoid future cases of statelessness.\textsuperscript{46} The 1961 Convention contains guidelines for states about the loss and acquisition of nationality, particularly in cases where the chance of statelessness is present. The 1961 Convention deals with a few core issues such as nationality for children who would otherwise be stateless, renunciation, loss, and deprivation of nationality, and the avoidance of statelessness if state succession occurs.\textsuperscript{47} The 1961 Convention tackles the causes of statelessness, both original and non-original.\textsuperscript{48} Original statelessness occurs as a consequence of a lack of birthright at the birth of the child, while non-original occurs later in life as a consequence of the loss of nationality.\textsuperscript{49} Van Waas (2008) distinguishes between various causes of statelessness: technical causes, arbitrary causes, state succession, and new causes.\textsuperscript{50} What’s important to note is that in practice it is not always as clear exactly what factors are involved, as a form of interplay is generally present.\textsuperscript{51}

The 1961 Convention lays out a series of policies that states should adopt to minimize the occurrence of statelessness among children.\textsuperscript{52} By doing so, it fills gaps in nationality laws around the world, as these nationality laws generally lack the guarantees to adequately minimize statelessness.\textsuperscript{53} By acceding to the convention, countries ensure that they are on the same line as other State parties, due to the fact that the same rules would apply to all of them. This highlights the importance of the 1961 Convention, regardless of the fact that parts of the convention are outdated.\textsuperscript{54} The reason why the 1961 Convention can be seen as outdated is because it fails to address the ‘new’ causes of statelessness, which are a deficient registration system and migration.\textsuperscript{55}

Of particular interest for the purposes of this paper, is the acquisition of nationality for children who would otherwise be stateless. The 1961 Convention leaves the issue of deciding who its nationals are to the state. However, it also obliges states to ensure that

\begin{itemize}
  \item \textsuperscript{46} Adviescommissie voor Vreemdelingenzaken, ‘No Country of One’s Own’ (2014) 29
  \item \textsuperscript{47} Ibid.
  \item \textsuperscript{48} Ibid.
  \item \textsuperscript{49} Ibid.
  \item \textsuperscript{50} Van Waas L., Nationality Matters, Statelessness Under International Law (Intersentia 2008) 49 - 145
  \item \textsuperscript{51} Ibid.
  \item \textsuperscript{52} UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, <http://www.refworld.org/docid/3ae6b39620.html>
  \item \textsuperscript{54} Ibid.
  \item \textsuperscript{55} Van Waas L., Nationality Matters, Statelessness Under International Law (Intersentia 2008) 151
\end{itemize}
Children who are born on their soil and who would otherwise be stateless, are able to acquire the nationality of the state in question. This is already set out in Article 1 of the Convention, which states that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law.” This guideline is an attempt from the international community to try to break the vicious cycle of statelessness. It ensures that children do not inherit statelessness from their parents and continue to pass this on to their children. While the 1961 Convention does not require states to automatically grant nationality, it allows states to add certain conditions to granting their nationality. These conditions are: a) setting a time and age limit during which the request for nationality should be made, b) requirements with reference to the length of the time that the applicant must have habitually resided, c) requirements on the behavior of the applicant, i.e. the applicant may have not committed any crimes against national security, d) if the alien has in the meantime acquired the nationality of a different State and lost it again.

States in the Americas have been praised for their important role in the fight against statelessness. As a matter of fact, it will likely soon become the first continent to eradicate statelessness and can therefore serve as an example to the world. The reason for is the principle of jus soli. Countries with jus soli provisions in their law grant nationality to all children born on their territory, with only a few exceptions. Due to this fact, jus soli is seen as an important tool in the fight against statelessness, as it ensures that no child is born stateless. This is in line with the 1961 Convention, which asks of states to provide nationality to children born on their territory if they would otherwise be stateless. The principles guaranteed under the Fourteenth Amendment apply in all cases, and are not specific to whether or not the child would otherwise be stateless.

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56 Ibid, 175
57 Adviescommissie voor Vreemdelingenzaken, ‘No Country of One’s Own’ (2014)
2.1.1 Practical obstacles

Due to gaps or issues with implementation, *jus soli* alone is not always enough to prevent statelessness. However, it is a step in the right direction, but should be supported by other safeguards and remedies. An important challenge when it comes to statelessness is birth registration.\(^{60}\) Children born to irregular migrants are not always registered at birth, for several reasons, including being born outside of a medical facility, and parents being afraid of their irregular status being revealed, among others. These children remain invisible in the eyes of the State and as a result can be deprived of some of their most basic human rights. While this does not always result in the children being stateless, it does make them especially vulnerable to several human rights violations and increases their risk of becoming statelessness. Without a proper registration of their birth there is no proof that they were born in the territory of the state in question. The lack of registration can have an impact on these children obtaining identity documents as well as accessing education, healthcare and legal protection.\(^{61}\) So, while *jus soli* is proving to be a promising solution to statelessness, in practice the situation is a little bit more complex.

Another problem in the case of the U.S. when it comes to the 1961 Convention is the initiative to limit the reach of the *jus soli*. Currently, the children of irregular migrants automatically acquire U.S. Citizenship. However, if several politicians and pundits have their way, this may soon no longer be the case since these individuals seek to establish the idea that the children of irregular migrants should not be eligible to acquire U.S. Citizenship and should instead inherit the illegal status of those who came before them. Due to the fact that the U.S. has not ratified the 1961 Convention on the Reduction of Statelessness, it is not bound by it. Which means that while its current interpretation of *jus soli* is in line with the convention, it is not legally obligated to comply with the guidelines set out by the convention.

\(^{60}\) Becker C., 'Jus Soli: A miraculous solution to prevent statelessness?' (European Network on Statelessness, 9 April 2015) <http://www.statelessness.eu/blog/jus-soli-miraculous-solution-prevent-statelessness>

3 The current status of nationality law in the U.S.

The United States confers citizenship to those born within the territory of the U.S. and those who are born abroad to U.S. nationals. The U.S. confers its citizenship based on both the principles of *jus soli* and *jus sanguinis*. *Jus soli* is not just an abstract principle to the U.S., it is guaranteed in the Fourteenth Amendment of the Constitution. 62

3.1 Acquisition of nationality

Under current interpretations of U.S. law, the children of irregular migrants automatically become U.S. citizens when born on American soil, regardless of citizenship or status of the child’s parents. The Fourteenth Amendment is one of the fundamental principles of American civil rights, as it provides due process and equality in the eyes of the law to all persons.63 It also provides that all persons born or naturalized in the U.S. are subject to its jurisdiction and are U.S. citizens.64 The Fourteenth Amendment in 1868 restored birthright citizenship under U.S. law and overturned the previous decision by the U.S. Supreme Court 1857 referred to as the *Dred Scott*65 case which ruled that individuals of African descent could never become citizens of the U.S.66

3.2 *Jus soli*

The Citizenship Clause of the U.S. is based on the common law doctrine of *jus soli*, ('right of soil'), under which a person’s nationality at birth is determined by the territory in which the person was born. *Jus soli* is the predominant principle of acquisition of nationality in the Americas; from the U.S. to Argentina, almost all countries have *jus soli* provisions in

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65 *Dred Scott V. Sandford*, 60 U.S. 393 (1856)
their law.\textsuperscript{67} The history of immigration, which these countries all have in common, can serve as an explanation for that.\textsuperscript{68} Jus soli is contrasted by \textit{jus sanguinis} (‘right of blood’), in which a person’s nationality is determined by descent. \textit{Jus sanguinis}\textsuperscript{69} is the most common principle outside of the Americas. However, a lot of countries have adopted limited \textit{jus soli} provisions in their nationality law in their quest to reduce statelessness.

3.3 The practical problems of acquiring citizenship under current U.S. laws

Being the child of an irregular migrant has a series of consequences. From an early age, children have to bear the consequences of the actions of their parents, and even of the immigration status of their parents. Being the child of an irregular migrant has its challenges. They are born into a state where either one or both of their parents have an irregular status. In the eyes of the state the parents are not supposed to be there and are often invisible. By extension the child is born into a state that might not even know of its existence and not want to grant it their nationality, often expecting it to inherit the irregular status of its parents and live in the shadows.\textsuperscript{70} Even if that is not the case, parents are sometimes reluctant to register their children when they are born for the fear of revealing their irregular status.\textsuperscript{71}

The central issue to be discussed here is whether the irregular status of the parents has an effect on the legal status of their children. Irregular migrants share some issues with refugees and the stateless. Issues include, but are not limited to problems with accessing education and healthcare, obtaining identity documents, having the ability to travel freely, facing discrimination and social exclusion, and so on and so forth. This section will look at these issues in more depth. During recent times it has become easier for the children of migrants to acquire the nationality of the parents and of the country of birth, through many


\textsuperscript{69} Van Waas L., \textit{Nationality Matters, Statelessness Under International Law} (Intersentia 2008) 50


countries amending their nationality acts and hereby reducing the risk of statelessness due to a conflict of laws.\textsuperscript{72} Nowadays it is very common that \textit{jus soli} states are now granting nationality under certain circumstances to the children of their nationals born abroad.\textsuperscript{73} At the same time, \textit{jus sanguinis} countries are adopting more \textit{jus soli} provisions in their nationality laws, by granting nationality to children of certain categories of non-nationals born on their soil.\textsuperscript{74} These developments in the area of nationality laws and the convergence of the two doctrines can be seen as a response to the increase in mobility of populations in the past two centuries.\textsuperscript{75}

However, there has been a counter-development as well. Another consequence of the increase in migration is that there are changes to nationality regulations to restrict access to nationality to only certain groups. This threatens the doctrine of \textit{jus soli}. What was once seen as the ultimate answer to end statelessness at birth—the same doctrine that is thought to be the reason why the Americas may be the first continent to eradicate statelessness—is being limited. Several countries, including the U.S., are looking to introduce other conditions that need to be met in order for birthright citizenship to be applied.\textsuperscript{76} Through this, they are looking to exclude certain groups—such as the children of irregular migrants—by requiring a particular immigration status from the child’s parents. As a consequence, these children acquire their parents’ immigration status rather than obtaining the citizenship of the country in which they were born. By making parents transmit their illegal status to their children, the problem perpetuates for generations on end while they remain resided in that particular country. This also increases the exposure of these children to statelessness. Due to their illegal status in their country of birth, the children of irregular migrants become dependent on acquiring citizenship from the country of nationality of their parents.

While a great deal of countries have been including \textit{jus sanguinis} provisions to ensure that children born abroad to their nationals obtain their nationality, it is not always that simple. As previously mentioned, \textit{jus sanguinis} provisions are being limited in many countries. While some countries may have been very generous with their \textit{jus sanguinis}
provisions, now many are opting introduce restrictions to the conferral of nationality to consecutive generations born abroad in order to prevent persons who really have no ties to the country to be able to acquire their nationality. Due to these conflicting nationality laws, the children of irregular migrant are more likely to be exposed to statelessness.\(^{77}\) Having said that, it is important to note that at time of writing, the U.S. still upholds birthright citizenship as a blanket policy, meaning that with a few exceptions, the U.S. still confers citizenship to children of irregular migrants.

### 3.3.1 Birth registration

An important part to acquiring the citizenship of a country is birth registration. It is vital to be able to prove one’s claim to citizenship one needs evidence proving place of birth or parentage.\(^{78}\) Birth registration is defined as:

> The process by which a child’s birth is recorded in a civil register by the applicable government authority. This step provides the first legal recognition of a child and generally is required for the child to obtain a birth certificate.\(^{79}\)

Birth registration is a crucial step in the process of establishing a child’s nationality. This is why the lack of adequate birth registration puts children at higher risk of statelessness. What makes birth registration so important is that it is carried out by government officials, making the child known in the eyes of the government and reducing the risk of the existence of the child being contested. It is therefore also the most effective way of ensuring that the child obtains a nationality.\(^{80}\)

The vitality of birth registration has long ago been recognized by the international community and is enshrined as a fundamental human right in both the International Covenant on Civil and Political Rights (ICCPR)\(^{81}\) and the Convention on the Rights of the Child (CRC). In both of these international instruments, the right finds its place in the same article that declares the right to obtaining a nationality. This cannot be seen as a coincidence, but

\(^{77}\) Ibid, 447
\(^{78}\) Ibid, 447
\(^{80}\) Miller M., Birth Registration: statelessness and other repercussions for unregistered children, 3rd European Conference on Nationality of the Council of Europe, Council of Europe, Strasbourg, 2004. 6
\(^{81}\) Article 24 of the International Covenant on Civil and Political Rights (ICCPR)
rather, they should both be seen as important measures taken to protect children in their vulnerable status as minors. Even if the country in which the child is born is unable or unwilling to provide the child with a nationality, registering the child’s birth certainly goes a long way in ensuring the child’s ability to obtain one, as this gives him or her evidence of place of birth and parentage.

The children of irregular migrants are just as entitled to birth registration as the children of citizens or others who are born within the jurisdiction of the State. International instruments leave no room for discrimination and guarantee the right to birth registration for every child, regardless of their nationality, immigration status, or statelessness. However, even with the commitment of States to ensure the registration of all births, over 48 million new-born babies are affected by the lack of birth registration each year.

3.3.2 Discriminatory policies

Lack of access to birth registration is becoming common in the U.S. as well, especially as anti-immigrant sentiments are rising. Some states, like Texas, are denying birth certificates for children born to immigrant parents, or introducing additional conditions that need to be met in order for their children to be entitled to birth registration. Since 2013, immigrant families in certain parts of Texas have been denied birth certificates due to the fact that state registrars were refusing to accept voter ID-cards and forms of temporary certification of a person’s identity that are certified by consuls from their country of origin. The alternative forms of identification are very important, as many irregular migrants are no longer in possession of the identification document issued by their home countries, as they either left them behind, lost them or had them stolen, and are unable to get them back.

At present, anyone born in the U.S. is entitled to U.S. Citizenship under the 14th Amendment of the Constitution, including children born to irregular migrants. While the law

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82 Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, UN Doc. CRC/GC/2005/6, 2005.
doesn’t exclude the deportation of irregular migrants, their children are legal citizens. This
could create a difficult situation where parents are deported while the children born in the
U.S. are entitled to the same rights as any U.S. citizen. In order to make this situation more
manageable, it has been customary for state registrars to accept consulate-provided
identification cards to issue birth certificates, which are of utmost importance for these
U.S.-born children to be able to enjoy their rights and access to social benefits, access to
education, and access to medical care.86 However, thanks to a recent federal lawsuit, Texas
has agreed to expand what documentation is acceptable for them to be able to issue birth
certificates to U.S.-born children with irregular migrant parents.87 Still, in the time between
the lawsuit and the restrictions on issuing birth certificates, many children missed out on
access to vital services, such as medical care.88

What happened in Texas is not an uncommon issue. Something similar occurred in
Arizona, where lawmakers unsuccessfully attempted to pass laws that would deny or
restrict the issuance of birth certificates to U.S.-born children of irregular migrants.89 The
stricter guidelines were a response to a dramatic influx of migration from Central America
over the past few years.90 It is especially prevalent in the U.S. Border States which are most
affected by those coming from Central America.91

While these policies did not hold in either of these states, it is important to note the
bias and discrimination the children of irregular migrants face. Birth registration is often
dependent on the registrar who is in charge of carrying it out. A challenge that should
certainly not be downplayed is discrimination. People tend to have a certain bias towards
irregular migrants, or rather what is commonly referred to as ‘illegal immigrants’, which in

86 Young A., ‘Immigration Reform 2015: Texas Attempting To Block US-Born Children From Birth Certificates If
Mothers Entered Country Illegally, Say Immigrants, Lawyers’(International Business Times, 18 July
certificates-if-2014643>
87 Quigley A., ' Texas eases birth certificate rules for children with undocumented parents' (The Christian
Science Monitor, 26 July 2016)<http://www.csmonitor.com/USA/USA-Update/2016/0726/Texas-eases-birth-
certificate-rules-for-children-with-undocumented-parents>
88 Ibid.
89 Young A., ‘Immigration Reform 2015: Texas Attempting To Block US-Born Children From Birth Certificates If
Mothers Entered Country Illegally, Say Immigrants, Lawyers' (International Business Times, 18 July
certificates-if-2014643>
90 Quigley A., ' Texas eases birth certificate rules for children with undocumented parents' (The Christian
Science Monitor, 26 July 2016) <http://www.csmonitor.com/USA/USA-Update/2016/0726/Texas-eases-birth-
certificate-rules-for-children-with-undocumented-parents>
91 Ibid.
some cases makes it a decisive factor in the registration, or rather the non-registration of births. Especially in light of the election of Donald Trump as president, who has put the issue of birthright citizenship into the spotlight and has questioned whether the U.S.-born children of irregular migrants should obtain U.S. Citizenship. It is and continues to be critical for the rights of U.S.-born children of irregular migrants to be protected and have access to their constitutional rights. By choosing to focus on the status of the child’s parents, the child is denied many services that are vital to their existence.

3.3.3 Misinformed parents

Another notable hindrance to not registering children at birth, is the mind-set of the irregular migrants.\(^\text{92}\) Not knowing or not caring about the importance of registration at birth is a huge factor in children not being registered. Language barriers can sometimes play a role, as migrants do not always speak the language of the host State and therefore tend to be not as informed as the general population about the necessary procedures and requirements for registering their children.\(^\text{93}\) This is further exacerbated by the fact that they often do not receive the needed assistance to lead them through the necessary procedures and explain to them the applicable laws, and even fail to understand information campaigns that promote birth registration.\(^\text{94}\)

Further complications can result from a lack of awareness on the part of the child’s parents.\(^\text{95}\) Sometimes, parents fail to realize that their children should be registered at birth, or fail to realize how important it is to register their children at birth, or even how to go about registering their child once he/she is born. Other potential factors are that registering the birth of a child costs time, and in most cases also money, both of which that irregular migrants often do not have the luxury to spend. Registering their children therefore turns into an inconvenience, which makes parents think twice about doing it. It costs time and money to travel to the registrars’ office, and they more often than not need

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\(^\text{93}\) Ibid.

\(^\text{94}\) Ibid.

to take time off from work, also at the cost of their salaries.\textsuperscript{96} And when a fee is imposed for registering their child, they lose money, which often times they already had very little of in the first place.\textsuperscript{97} All of these factors can cause them to overlook the importance of registering their children, especially in the long term, making them instead focus on the immediate costs and hassles.

3.3.4 Fears of parents

Besides issues with the language of the host State and concerns about time and money, their irregular immigration status is also a reason why irregular migrants fail to register their children. This is perhaps the largest practical hurdle that irregular migrants face when trying to register the birth of their children.\textsuperscript{98} Parents sometimes fear that by trying to register their children they will uncover their immigration status and potentially face repercussions from the State. They fear that registering their child’s existence can subsequently lead to their arrest, or even their deportation.\textsuperscript{99} This fear causes parents to avoid going to the authorities to register their children, as the perceived threat is too large: they could be arrested or deported and that their family be torn apart. This, for them, often outweighs the need to register their child.

To sum up, we have observed that however vital birth registration is for the child to be able to fully enjoy his or her rights, a series of factors also contribute to the child not being registered. From bureaucracy to poverty to fear to literacy levels of the parents, many factors come into play when it comes to the non-registration of children. Surely more issues come into play, quite possibly more than one could even imagine. Though, one thing is clear, and that is that all of these factors taken together leave the children of irregular migrants in quite a vulnerable situation, oftentimes in a legal limbo of sorts.

\textsuperscript{97} Plan International, Universal Birth Registration – A Universal Responsibility, Plan International Working (2005) 29
\textsuperscript{99} Ibid.
4 The proposed changes to nationality law in the U.S.

4.1 Proposed changes in nationality law

Recently, the debate on granting birthright citizenship to the U.S.-born children of irregular migrants has once again resurfaced. A great deal of this debate focuses on the scope of the Fourteenth Amendment, specifically the phrase “subject to the jurisdiction thereof” in the Citizenship Clause. At the center of the debate is whether the drafters of the U.S. Constitution had intended to include the children of irregular migrants. As previously mentioned, the Citizenship Clause currently confers U.S. nationality to the children of irregular migrants. However, those fighting to end birthright citizenship for the children of irregular migrants argue that the children of irregular migrant are not “subject to the jurisdiction” of the U.S. and are therefore not eligible to obtain U.S. citizenship.

In the last few decades, during which the U.S. has seen a rise in irregular migration. Since then, fears have been growing that the existing law, which is based on jus soli, is attracting people to come to the U.S. to have their children there, in order for their child to become a U.S. citizen, and possibly improve their chances of becoming naturalized citizens themselves. Putting an end to birthright citizenship is seen as an effective means to reduce irregular migration. Various media personalities, experts and politicians alike have named this issue the ‘anchor baby’ situation, a term with negative connotation. In order to deal with this ‘anchor baby’ situation, it has been suggested that the way that the U.S. confers birthright citizenship should be revised.

For the past few decades, lawmakers, state-level legislators and various interest groups have been bringing forth proposals to limit birthright citizenship. There are some proposals to amend the Constitution, however this would require the approval by two-thirds of Congress and would also need to be ratified by three-fourths of the state legislatures, which are high hurdles to jump over.\textsuperscript{100} Therefore, a more popular proposal is that to amend the Immigration and Nationality Act without constitutional amendment.

Hearings on bills and resolutions to deny birthright citizenship to the children of irregular migrants can be traced back to as early as 1995. In 2005, a hearing was held on the

\textsuperscript{100} Van Hook J., Fix M., Migration Policy Institute, “The Demographic Impacts of Repealing Birthright Citizenship” (2010) \url{http://www.migrationpolicy.org/research/demographic-impacts-repealing-birthright-citizenship}
same topic. Over the years, many proposals to limit birthright citizenship have been introduced. Several of these bills focus on Section 301 of the Immigration and Nationality Act, which determines the language of the Citizenship Clause and states: “The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof...”. In 2015, the ‘Birthright Citizenship Act of 2015’ was introduced in both the House and Senate. Due to the fact that these proposals have a similar aim and scope, this thesis will only focus on the most recent one.

4.1.1 The Birthright Citizenship Act of 2015

In 2015, Republican Representative Steve King introduced H.R. 140: Birthright Citizenship Act of 2015 in the House. H.R. 140 sets out to end birthright citizenship for children born to irregular migrant parents on U.S. soil. The proposed legislation intends to only grant automatic citizenship to U.S.-born children, if they have at least one parent who is a citizen of the U.S., a lawful permanent resident, or an immigrant who is active in the armed forces. The bills would amend Section 301 of the Immigration and Nationality Act to specify that, as of the date of enactment:

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 for purposes of subsection (a)(1) if the person is born in the United States of parents, one 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”

After the introduction of the bill, Representative King stated:

A Century ago it didn’t matter very much that a practice began that has now grown into a birthright citizenship, an anchor baby agenda. When they started granting automatic

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101 INA § 301(a), 8 U.S.C. §1401(a)
citizenship on all babies born in the United States they missed the clause in the 14th Amendment that says, ‘And subject to the jurisdiction thereof.’ So once the practice began, it grew out of proportion and today between 340,000 and 750,000 babies are born in America each year that get automatic citizenship even though both parents are illegal. That has got to stop. I know of no other country in the world that does that. My Birthright Citizenship Act of 2015 fixes it, clarifies the 14th Amendment and it recognizes the clause, ‘And subject to the jurisdiction thereof.’ This Congress needs to Act.”

The bill has received a large number of cosponsors, namely 53, this is the highest amount of cosponsors that this bill has had since the 112th Congress in 2011.  

4.2 A rebuttal of arguments in favor of limiting birthright citizenship

A plethora of arguments are used by proponents of repealing birthright citizenship. Politicians, academics and media outlets alike, all have their arguments for why the U.S. should no longer grant citizenship to certain groups based on birthright. This section will explore these arguments.

4.2.1 Other countries do not confer birthright citizenship

A popular argument is that most other countries in the world do not have birthright citizenship, so there is no reason for the U.S. to confer it either. Peter Schuck and Rogers Smith of Yale University, the writers of Citizenship without Consent: Illegal Aliens in the American Polity (1985) point to this fact in their book, in which they criticize the fact that the U.S. continues to uphold birthright citizenship for the children of irregular migrants. A policy report by the Center for Immigration studies has pointed to the fact that the overwhelming majority of the world’s countries do not offer automatic citizenship to everyone born within their borders. Over the past few decades, many countries that once

103 Numbersusa, ‘REP STEVE KING INTRODUCES BIRTHRIGHT CITIZENSHIP BILL TO NEW CONGRESS’ (Numbersusacom, 8 January 2013)
did so – including Australia, Ireland, India, New Zealand, the United Kingdom, Malta, and the Dominican Republic have repealed such policies. Other countries are considering changes.\textsuperscript{105}

Based on this fact, the report argues that the U.S. would be well within its rights if it repealed birthright citizenship as well. In a similar trend, Numbers USA, a group lobbying for restrictive policies argues that the “U.S. is one of only two industrialized nations (Canada) to still grant automatic citizenship to newborns”.\textsuperscript{106} A study by Numbers USA revealed that only 33 countries worldwide offer birthright citizenship.\textsuperscript{107} However, an important detail left out of this argument and similar arguments is that 28 of the 33 countries in the world offering birthright citizenship are in the Americas.\textsuperscript{108} This is not to be taken as some sort of coincidence. The map below depicts countries that offer automatic birthright citizenship, marked in black.\textsuperscript{109}

The reason for this is the history of immigration that countries in the Americas all have in common: a history of modern nation-building and independence.\textsuperscript{110} After obtaining independence from Europe, many countries in the Americas founded their nations based on


\textsuperscript{106} End Birthright Citizenship, Numbers USA, <http://www.numbersusa.com/content/news/janiaru5-2011/end-birthright-citizenship.html>

\textsuperscript{107} Nations Granting Birthright Citizenship, Numbers USA, <http://www.numbersusa.com/content/learn/issues/birthright-citizenship/nations-granting-birthright-citizenship.html>


\textsuperscript{110} Ibid.
the principles of democracy and individual rights.\(^{111}\) Supporters of birthright citizenship recognize this fact, stating that

> The birthright immigration doctrine has served our nation well. We make sure that we don’t have second and third generation, marginalized migrants, as Germany does. . . . This is part of what makes the U.S. exceptional.\(^ {112}\)

As we can see, the argument related to U.S. exceptionalism can be seen as a double-edged sword, while opponents of birthright citizenship use it as an argument for repealing birthright citizenship, proponents of birthright citizenship argue that it’s what makes the U.S. great and should be a source of pride for the country, rather than a point of contention.

### 4.2.2 Children are able to acquire another nationality

An argument closely related to the prior one is that the children of irregular migrants can surely acquire nationality from their parent’s country of origin, which completely justifies the U.S. withholding birthright citizenship from them.\(^ {113}\)

It is certainly not untrue that in some cases the children of irregular migrants can acquire the nationality of the country of origin of their parents, however, in many situations this is not the case. There are often practical and legal barriers to being able to obtain the nationality of the country of origin of the parents. First of all, due to the fact that they are still young, they are unable to physically and legally apply for any rights and are therefore completely dependent on the assistance and support they receive from their parents or other legal guardians.\(^ {114}\) Second of all, many countries do not offer dual citizenship, and thus by relying on the child acquiring citizenship from the country of origin would put them at risk of being rendered stateless.\(^ {115}\) As previously mentioned, most children born to irregular migrants in the U.S. are of Mexican origin. Mexico however, does allow dual-citizenship.

\(^{111}\) Ibid.


\(^{114}\) Ibid.  

\(^{115}\) Faist T., Gurdes J., Migration Policy Institute, Dual Citizenship in the Age of Mobility (2008) 4
While at present, the U.S.-born children of Mexican migrants can obtain dual citizenship, there are both legal as well as practical hurdles that make the process cumbersome. From a legal perspective, they need to be able to produce a series of documents, including their own birth certificate and that of their parents in order to have a right to Mexican citizenship. Moreover, it is not until Mexican nationals reach 18 years that they qualify as full citizens. Practical barriers to obtaining Mexican citizenship, on the other hand is, that it is a taxing process, it involves a lot of bureaucracy, and if the children in question are from parents who do not have the relevant documentation or are otherwise unable to take all the necessary steps, they would be left without status in both the U.S. and Mexico.

A lot of these issues came to light after the Dominican Republic stopped providing birthright citizenship in 2010. In the landmark case of Dilcia Yean and Violeta Bosico v. the Dominican Republic, the Inter-American Court of Human Rights found that the government’s refusal to issue birth certificates to the children of irregular migrants was in violation of international norms. In its opinion, the Inter-American Court did not even entertain the idea that the children could acquire the nationality from the country of origin of their parents, because they had been residing in the Dominican Republic. Yet, they had trouble enjoying their most basic human rights and were unable to vote, register for school, receive health care, and live with the constant fear that their family could be torn apart.

The same could be said for the children of irregular migrants in the U.S., as they live with the same vulnerabilities and the same uncertainties. Another point to be made is that in some cases, the irregular migrants come from a long line of people who have been residing in the U.S.—whether legally or illegally—and often have little or no connection to the origin country of their parents or their grandparents. Therefore, suggesting that they could simply acquire the nationality of a country that they barely have any ties to is problematic.

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116 Ibid, 7
118 The Yean and Bosico Children v. Dominican Republic, Inter-Am Ct. H.R. (Sept. 8 2005)
119 Ibid.
4.2.3 Anchor babies

Another frequently used argument against birthright citizenship is the argument of ‘anchor babies’, this is a term with many negative connotations, and refers to “the citizen child of an irregular migrant”. Anchor baby is pejorative a term for a U.S.-born child with an irregular migrant mother. The term refers to the role of the child, who is granted birthright citizenship under the Fourteenth Amendment and can therefore act as a sponsor for U.S. Citizenship for other family members. It is a frequently used argument by opponents of immigration and opponents of birthright citizenship alike. Opponents of birthright citizenship argue that birthright citizenship attracts ‘birth tourism’ and ‘anchor babies’. It has been said that birthright citizenship is the “biggest magnet for illegal immigrants”. The idea is that if the U.S. were to repeal birthright citizenship, irregular migration would also decrease. Birthright citizenship is here seen as an incentive for irregular migration.

Over the years, there has definitely been a rise in the number of U.S.-born children of irregular migrants. Research by Pew Hispanic Center has shown that while in 2003, 63 percent of U.S.-born children to irregular migrants were citizens. In 2008, that number had already risen to 73 percent. Approximately 3.8 million irregular migrants had at least one child who was in possession of U.S. citizenship. However, research into the argument that citizenship is a motivating factor has found mixed evidence in support of it. PolitiFact states that “the data suggests that the motivator for illegal immigrants is the search for work and a better economic standing over the long term, not quickie citizenship for U.S.-born babies.” This statement is supported by various national surveys of Hispanic immigrants.

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121 Zorn E, 'Sinking 'Anchor Babies'' Chicago Tribune (Chicago, 18 August 2016)
and interviews with Hispanic mothers. Most of them do not enter the U.S. with the intent of becoming pregnant and having ‘anchor babies’. Rather, they enter the U.S. for economic opportunities and/or to escape poverty and violence and do not become pregnant until years later when they have fallen in love or have gotten married, often not realizing the potential troubles they could face as a consequence. Experts have also pointed to this fact, stating that there is little evidence to support the argument that Latinas are deliberately crossing the border to give birth. It is often no more a part of life than it would be anywhere else in the world.

Another development is the emergence of ‘maternity hotels’ in the Los Angeles area that cater to Chinese visitors who were looking to have their children born in the U.S. In this case, expectant mothers enter the U.S. on visitor’s visas and stay at hotels until their child is born. Once the child is born, they pack up and return back to their country with their citizen child. During raids by the Department of Homeland Security, it was discovered that these institutions were allegedly helping their clients by advising them to lie during visa interviews, evade taxes, or violate local zoning and building codes. The term ‘anchor baby’ has been used several times in the months leading up to the presidential elections, GOP members especially have referenced the issue in their arguments for immigration control. This provocative rhetoric has also been utilized by President-elect Trump, who has said “A woman gets pregnant. She’s nine months, she walks across the border, she has the baby in the United States, and we take care of the baby for 85 years, I don’t think so.”

The term ‘anchor baby’ is centered around a series of myths, the first one being that birth tourism is a big problem, and the second one being that a citizen child can stop parents from being deported. Firstly, according to Centers for Disease Control and Prevention, about 9,000 births in the U.S. in 2013 were to people who do not reside

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126 Ibid.
127 Ibid.
130 Ibid.
131 Ibid.
there.\textsuperscript{134} This is far less than many media outlets suggest. Birth tourists return to their home countries after giving birth, taking with them their American citizen children. They do not have any intention of remaining in the U.S. and thus do not make use of social benefits and services, or any other of the perks of citizenship either. While there is a chance that the citizen child may come back later and potentially sponsor relatives for U.S. citizenship after they turn 21, chances are still slim. Those who can afford to go to the U.S. for the purpose of birth tourism are generally those who already have a great deal of money, as the expenses of traveling to the U.S. for solely that purpose have been estimated at $35,000. Meaning that while birth tourism is definitely becoming a trend, it is only available to those who have the means to pay for the costs involved with childbirth in a foreign country, as the average family would not be able to afford such a trip. Secondly, over 46,000 people, which accounts 22 percent of all deportations in the second and third quarters of 2011 were of parents of citizen children, according to Immigration and Customs Enforcement.\textsuperscript{135} Moreover, it is important to note that the citizen child cannot sponsor their parents or other family members until they turn 21.

4.3 The impact of the proposals

Limiting birthright citizenship will surely have an impact on irregular migrants. This section will look at the various impacts of this proposal, ranging from the impacts on certain group to whether the proposals reach their intended goal.

4.3.1 Disproportionate impact

The impact of the repeal of birthright citizenship on Latino immigrants would be profound and disparate. As previously stated, Latinos make up three fourths of irregular migrants currently residing in the U.S. The 2009 American Community Survey revealed that over 40 percent of all foreign-born persons residing in the U.S. are Latino, while almost 30 percent of those were Mexican. Moreover, they also make up the largest group of irregular migrants currently in the U.S. Research has found that “about three out of four

\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid.
Unauthorized immigrants are Hispanic, so Hispanics would be disproportionately affected by a change in the citizenship law.” Overall, anti-immigration efforts have had a more profound impact on Latinos. For example, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act placed several restrictions on the types of humanitarian relief and pardons and weakened the due process rights for immigrants.\textsuperscript{136} This was followed by other aggressive immigration control measures, like ‘Operation Gatekeeper’, which was a border control campaign that resulted in the deaths of many immigrants during the desert crossing.\textsuperscript{137} These operations and measures only worsened in the post-9/11 era. The efforts by local and state organs to thwart Latino immigrants from obtaining citizenship or registering their children, which were previously mentioned are also an example of the impact of anti-immigration efforts on Latinos. This has gone on into recent times, during which enforcement policies of the Bush and Obama administration has led to a number of deportations. To be precise, 97 percent of the deportees in 2010 were Latino.\textsuperscript{138} Moreover, the fact that immigration policies are becoming increasingly aggressive, the majority of the persons currently incarcerated in federal prisons due to immigration status issues are Latino.\textsuperscript{139}

Repealing birthright citizenship would only perpetuate the disproportionate effect of anti-immigration policies on Latinos, and further perpetuate their unequal position. Furthermore, it would seriously contradict the principles of equality and liberty as they are enshrined in the U.S. Constitution, and would be considered as widespread discrimination.\textsuperscript{140} As the National Hispanic Leadership Agenda (NHLA) put it:

Such legislation would result in an underclass of Latinos that would be subject to disparate and adverse treatment based solely on their ethnicity, the national origin and race of their parents, and signal a return to a pre-Civil War constitutional era.\textsuperscript{141}

\textsuperscript{137} Ibid.
\textsuperscript{138} Ibid.
\textsuperscript{139} Ibid.
\textsuperscript{141} Ibid.
Repealing birthright citizenship would lead to a two-tiered system of citizens and continuing generations of noncitizens, who were born in the U.S., and no longer have ties to the country of their ancestors, but are somehow treated as less than that.\textsuperscript{142} This would result in further differences, and further discrimination between groups of citizens and noncitizens.

Apart from the disproportionate impact on Latinos, it would also have a disproportionate impact on children. Research done by the Migration Policy Institute indicates that the impact of the repeal would be felt exclusively by children. In fact, under current laws, the number of irregular migrant children would decline from 2.1 percent in 2010 to less than 1 percent in 2050.\textsuperscript{143} However, if limited, it would only lead to an increase in the number of children with an irregular status.\textsuperscript{144} Instead of solving the issue of irregular migrants, it would perpetuate the irregular status over generations, and children will be forced to pay for the actions of their ancestors.\textsuperscript{145}

\subsection*{4.3.2 Increase in irregular migrants}

Another problem, related to what was previously mentioned, is that instead of decreasing the amount of irregular migrants, it would increase it. This is not solving a problem; this is further perpetuating a problem by pretending to fix it. David Baluarte, a law professor at Washington and Lee University and the director of the Immigrant Rights Clinic warns that repealing birthright citizenship would be a huge disaster.\textsuperscript{146} If the U.S. chooses not to grant the children of irregular migrants U.S. citizenship, the problem of statelessness “could spiral out of control”, he goes on to say that “It would be a humanitarian crisis within the United States.”\textsuperscript{147} The Americas are on their way to becoming the first continent to eradicate statelessness, however, repealing birthright citizenship will turn that around. For

\begin{footnotesize}


144 Ibid.

145 Ibid.


147 Ibid.
\end{footnotesize}
example, in terms of deportation, the country of origin may not claim an irregular migrant who has been residing in the U.S. for a significant period of time. Moreover, the country of origin of the parents may not grant citizenship to a U.S. born child.\textsuperscript{148}

\textsuperscript{148} Ibid.
5 Theoretical framework

5.1 Interpretations of the Fourteenth Amendment

While at present, the *jus soli* interpretation of the Citizenship Clause is enforced, it has been challenged on numerous occasions. Some constitutional scholars argue that the intent of the drafters of the Citizenship Clause of the Fourteenth Amendment was not to include the children of irregular migrants, while others say that it does apply to the children of irregular migrants. Opponents of birthright citizenship argue that the wording in the Fourteenth Amendment is to be taken with its historical context, and therefore also the intent, which was to grant citizenship to freed slaves. Thus the wording of the Fourteenth amendment and Supreme Court cases in the decades after were only to be applied to slaves, and that the framers of the Fourteenth Amendment never intended for it to be applied to the children of irregular migrants.¹⁴⁹

Recently, there have been proposals by scholars and legislators to re-examine and reinterpret the Constitution Clause in order to limit birthright citizenship which confers U.S. Citizenship to any person born in the United States.¹⁵⁰ According to the proponents, citizens of foreign countries still owe allegiance to a foreign sovereign, therefore children born on U.S. soil to non-U.S. citizen parents do not owe complete allegiance to the U.S.¹⁵¹ Proponents of the reinterpretation of the Citizenship Clause also argue that birthright citizenship encourages unauthorized immigration, is problematic for antiterrorism efforts and leads to ‘anchor babies’.

However, this view of the Fourteenth Amendment is not supported by the legislative history of the U.S., nor its legal precedent.¹⁵² Birthright citizenship has been one of the fundamental tenets in the U.S. constitution, American law, and American values for nearly 150 years.¹⁵³ A quick look into the legislative history of the U.S. confirms this fact. Heavy

¹⁵¹ Herrling K, Catholic Legal Immigration Network Inc., ‘Birthright Citizenship and the Fourteenth Amendment’ (2011) 1
¹⁵² Ibid.
¹⁵³ Ibid.
debate surrounded the introduction of the Fourteenth Amendment, with certain delegates being concerned about including the children of immigrants.

Yet, only two classes of children were explicitly excluded from the Fourteenth Amendment at the time of its writing, the children of diplomats, and the children of some Native American Tribes who held on to their quasi-sovereign status until 1868. Currently, the phrase “subject to the jurisdiction thereof”, is taken to mean that only U.S.-born children of diplomats of foreign countries, who have immunity from U.S. laws and children born to enemy forces engaged in hostile occupation of the country’s territory are excluded from automatic citizenship.

5.2 Habitual residence

The 1961 Convention permits States to link certain requirements to the acquisition of citizenship. One of the possible requirements is that of having habitual residence within the territory of the State. The term habitual residence tends to be interpreted as legal residence, which hinders proper implementation of the 1961 Convention. By doing this, States sought to avoid the obligations of the Convention. Various international instruments support the understanding that habitual residence refers to a factual situation, rather than a legal qualification of residence. For example, the Convention on the Avoidance of Statelessness in relation to State Succession defines ‘habitual residence’ as ‘actual residence’. In other words, habitual residence refers to the location where a person’s everyday life takes place, regardless of the fact that his residence there is legal or not.

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155 Herrling K., Catholic Legal Immigration Network Inc., 'Birthright Citizenship and the Fourteenth Amendment' (2011) 2
156 Adviescommissie voor Vreemdelingenzaken, ‘No Country of One’s Own’ (2014) 64
157 ibid.
158 ibid.
5.3 Conceptions of Citizenship

There are two conceptions of citizenship, namely the ‘ascriptive view’ and the ‘consensual view’.\(^\text{159}\) The ‘ascriptive view’ is considered to be the prevalent view, which is that the Fourteenth Amendment automatically confers U.S. citizenship to every person born in U.S. territory, and that the phrase “subject to the jurisdiction thereof” has only limited exceptions, which are based on the principles of the jus soli doctrine, i.e. foreign diplomats, hostile occupying forces, or members of recognized Indian tribes.\(^\text{160}\) It follows the view that “jurisdiction” refers to territorial jurisdiction, which is the power of a sovereign to enforce its laws within its territorial limits. This interpretation is referred to as ‘ascriptive’ due to the fact that it determines citizenship by virtue of the geographical location of a person’s birth.\(^\text{161}\)

Contrary to the ‘ascriptive view’, according to the ‘consensual view’, the U.S. is not required to automatically grant citizenship to persons born in the U.S. to irregular migrants. This argument is centered around the phrase “subject to the jurisdiction thereof”, and the belief that this phrase was intended to place limitations on the birthright citizenship. According to some early proponents of this view it

"Demanded a more or less complete, direct power by government over the individual, and a reciprocal relationship between them at the time or birth, in which the government consented to the individuals’ presence and status and offered him complete protection."\(^\text{162}\)

In short, this view would turn birthright citizenship into “a product of mutual consent by the polity and the individual”.\(^\text{163}\) However, this viewpoint is only supported by a small minority.\(^\text{164}\)


\(^{160}\) Ibid.


\(^{162}\) Ibid.

\(^{163}\) Ibid, 13

\(^{164}\) Ibid, 13
5.4 The U.S. Supreme Court

There has never been an explicit ruling from the U.S. Supreme Court on whether or not the Citizenship Clause applies to irregular migrants. However, the Supreme Court has made statements while addressing other issues, which would also be of relevance in the discussion of birthright citizenship and the children of irregular migrants. As mentioned, specifically the section “subject to the jurisdiction thereof” is at the center of the debate about granting birthright citizenship to the children of irregular migrants. While the Supreme Court has not ruled on this specifically, there are enough opinions on the Fourteenth Amendment by Supreme Court Justices that we can draw from, starting from the first few decades after the adoption of the Fourteenth Amendment.\textsuperscript{165} Notable cases include the \textit{Slaughter-House Cases}, 83 U.S. 36 (1873), \textit{Elk v. Wilkins}, 112 U.S. 94 (1884), \textit{United States v. Wong Kim Ark} 169 U.S. 649 (1898), and \textit{Plyler v. Doe} 457 U.S. 202 (1982).

5.4.1 The Slaughter-House Cases

The \textit{Slaughter-House Cases} was the first Supreme Court case to interpret the Fourteenth Amendment, after \textit{Dred Scott} was overturned. However, the decision was not focused on the scope and interpretation of the Citizenship Clause. Rather, it declared the Privileges and Immunities Clause a “practical nullity.”\textsuperscript{166} During its decision, the majority stated that “The phrase, ‘subject to its jurisdiction’, was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign States, born within the United States.”\textsuperscript{167} However, this is not to be construed to set precedent on later courts due to the fact that it made reference to something that the Court wasn’t asked to rule on.\textsuperscript{168}

5.4.2 Elk v. Wilkins

In \textit{Elk v. Wilkins}, 112 U.S. 94 (1884) the Supreme Court made specific reference to the meaning of the Citizenship Clause, however not with regard to the children of irregular

\textsuperscript{165} Ibid, 6
\textsuperscript{166} Ibid, 7
\textsuperscript{167} Ibid, 7
\textsuperscript{168} Ibid, 7
John Elk was a member of a recognized Indian tribe at the time of his birth, but later separated from his tribe. The case came into being because a local registrar denied to register John Elk as a qualified voter, due to the fact that Elk “was an Indian and therefore not a citizen of the United States.” The Supreme Court dismissed Elk’s claim against the registrar and denied the claim to birthright citizenship by an American Indian on the grounds of the Supreme Court’s opinion that being born on U.S. soil is not sufficient grounds to grant somebody citizenship. It is equally important that the person who wishes to claim citizenship by birth is “subject to the jurisdiction” of the U.S. A majority of the Court agreed that the children of Native Americans were not considered to be “subject to the jurisdiction” of the U.S. as is laid out by the Fourteenth Amendment. The Court’s reasoning was that Indian tribes had a special status as independent political communities. The Court noted:

Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more “born in the United States and subject to the jurisdiction thereof,” within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations.

However, a century later, Native Americans were granted U.S. Citizenship through the Indian Citizenship Act of 1924.

5.4.3 United States v. Wong Kim Ark

*United States v. Wong Kim Ark 169 U.S. 649 (1898)* is the principal Supreme Court case that deals with the meaning of the Citizenship Clause in relation to birthright citizenship. *Wong Kim Ark* is perhaps the most cited case by supporters of Birthright Citizenship, because to them the Supreme Court confirmed during the case that the right to

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169 Ibid, 7
170 Elk v. Wilkins, 112 U.S. 94 (1884)
171 Ibid.
172 Ibid, 8
nationality extended to the children of non-citizens. While opponents argue that the case is not applicable to the children of irregular migrants. They argue that the parents of Wong Kim Ark were legally and permanently residing in the U.S. during the time of his birth, which is why a more expansive approach was used. However, to them, the case should not operate as binding precedent.

Wong Kim Ark was born in San Francisco in 1873 and lived and worked in California. His parents were Chinese citizens and did not qualify to naturalize due to then-existing laws. His parents returned to China in 1890. After a trip to China, Wong Kim Ark was detained by a customs agent when it was discovered that he was not a U.S. citizen and was barred entry by the Chinese Exclusion Acts. The government stated that “subject to jurisdiction” made reference to those born within the political, rather than the territorial jurisdiction of the U.S., used arguments based on jus sanguinis, and raised a number of arguments to argue for limits on citizenship.

While Wong Kim Ark’s attorneys argued that common law jurisprudence and the intent of the Fourteenth Amendment, The Court ruled in favor of Wong Kim Ark. In its decision, the Court declared that “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.” The Court went on to enumerate exceptions to birthright citizenship, which are the children of foreign diplomats, foreign public ships, or hostile occupying enemies, and members of Indian tribes. Moreover, the Court stated that the Citizenship Clause could not be abridged by the Chinese Exclusion Acts or any other legislation. The Supreme Court stated that “[A] child born in the United States, of parents of Chinese descent, who at the time of his birth, are subjects of the emperor of China, but

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175 Ibid.
177 U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)
178 Ibid.
have a permanent domicile and residence in the United States, and... are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States.”  

5.4.4 Plyler v. Doe

In *Plyler v. Doe*, the Supreme Court ruled that a Texas statute which refused state funds for the education of children who were not “legally admitted” into the U.S., and which allowed local school districts to deny enrollment to these children, was in violation of the Equal Protection Clause of the Fourteenth Amendment. \(^{181}\) Texas argued that due to the fact that “the Equal Protection Clause directs a State to afford its protection to persons within its jurisdiction” and that the “persons who have entered the United States illegally are not ‘within the jurisdiction’ of a State even if they are present within a State’s boundaries and subject to its laws.” \(^{182}\) The Court did not agree with this statement and noted that

> 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 of the Equal Protection Clause.  

5.5 Yean and Bosico v. the Dominican Republic

In 1997, the mothers of Dilcia Yean and Violeta Bosico went to the civil registry to request copies of their daughters’ birth certificates. The mothers of both girls were born in the Dominican Republic and had documents to prove their Dominican nationality. However, due to the fact that they were of Haitian descent, they were denied copies of their birth certificates. \(^{184}\) The reason why they were not allowed to register the births of the girls was that their fathers had an irregular migration status. They were therefore considered to be ‘in transit’ and did not have a claim to birthright nationality.

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\(^{180}\) U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)


\(^{182}\) Ibid.

\(^{183}\) Ibid.

The Inter-American Commission on Human Rights (IACHR) received a petition in favor of Dilcia Yean and Violeta Bosico against the Dominican Republic for denying them Dominican citizenship. The claim was that since the girls were not granted citizenship, they were placed in a vulnerable position. They were put in the threat of being expelled from the Dominican Republic and could not follow an education due to the fact that they lacked identity documents. The IACHR responded by adopting precautionary measures in order to prevent the deportation of the girls and guarantee that Violeta Bosico could continue to enjoy her right to education, while referring the case to the Inter-American Court of Human Rights (IACtHR).

In 2005, the IACtHR established the Dominican Republic had violated the rights to protection measures, equality and nondiscrimination, nationality, having a legal status and name by refusing to issue birth certificates and preventing applicants from enjoying their citizenship rights on the basis of their ancestors’ origin. The Court also found that the right to nationality is a precursor to being able to enjoy other rights. Therefore, by denying the girls a birth certificate, the Dominican Republic prevented them from being part of the political community.

As a response, the IACtHR ordered the Dominican Republic to adopt measures to put an end to historical discrimination that was caused by its birth record system and education system. Particularly, the Court urged for the adoption of a simple, accessible and reasonable procedure for Dominican children of Haitian descent to be able to obtain a birth certificate. Lastly, the Court also urged the Dominican Republic to guarantee all children access to free elementary education, without taking into regard their background or origin. The Court considered this to be of utmost importance due to the fact that children are entitled to special protection.

The decision by the Court followed many years of discrimination against Dominicans of Haitian descent. Even though the constitution of the Dominican Republic grants

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185 Ibid.
186 'Case of the Jean and Bosico Children v The Dominican Republic [ENG]' [Escr-net.org/caselaw/2006/case-jean-and-bosico-children-v-dominican-republic-eng]
187 Ibid.
188 Ibid.
189 Ibid.
190 The Yean and Bosico Children v. Dominican Republic, Inter-Am Ct. H.R. (Sept. 8 2005)
191 Ibid.
nationality to anyone born in the country under the principle of *jus soli*, it is inapplicable to children born to parents who are ‘in transit.’\textsuperscript{192} The government had retroactively decided to interpret this provision to mean that Haitian migrants, their children, and their grandchildren should be considered to be “in transit.” This caused that this group of people would no longer be eligible for citizenship, and as a result taking away citizenship from a large group.\textsuperscript{193}

This case highlighted the fact that the sovereign right of States to devise their own citizenship rules are limited by human rights obligations. The Inter-American Court named two fundamental rights that limit the authority of States to devise their own nationality laws.\textsuperscript{194} Namely, “on the one hand, by their obligation to provide individuals with the equal and effective protection of the law, and, on the other hand . . . their obligation to prevent, avoid, and reduce statelessness.”\textsuperscript{195} So, to put it differently, the authority of States to make their own nationality laws is limited by the right to freedom from discrimination and the right to nationality. According to the Court

> States have the obligation not to adopt practices or laws concerning the grant of nationality, the application of which fosters an increase in the number of stateless persons . . . Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.\textsuperscript{196}

This echoes article 1 of the 1961 Convention, which urges States to grant nationality to any person born on their territory if they would otherwise be stateless.\textsuperscript{197}

While—as previously established—the 1961 Convention does not apply to the U.S., there are several parallels between arguments used by the U.S. and the Dominican Republic that are worth noting. First of all, opponents of birthright citizenship in the U.S. claim that the children of irregular migrants are not “subject to the jurisdiction” of the U.S. In a similar fashion, the Dominican Republic also claims that irregular migrants are merely ‘in transit’ in

\textsuperscript{192} Yean and Bosico v. Dominican Republic’ (Open Society Foundations, 1 July 2009) <https://www.opensocietyfoundations.org/litigation/yan-and-bosico-v-dominican-republic>


\textsuperscript{195} The Yean and Bosico Children v. Dominican Republic, Inter-Am Ct. H.R. (Sept. 8 2005)

\textsuperscript{196} Ibid.

the country.\textsuperscript{198} However, it is important to note that the only exceptions in both cases are for children of diplomats. Irregular migrants are certainly subject to the jurisdiction of the U.S., due to the fact that they are to abide by the law and are not immune from prosecution.\textsuperscript{199} Regardless of their immigration status, they are subjected to the laws of the state in which they reside, meaning that they do fall under the territorial jurisdiction of the country in which they reside. In the \textit{Yean and Bosico} case, the Court stated that “it is not possible to consider that people are in transit when they have developed innumerable connections of all kinds.”\textsuperscript{200} The same can be said in the case of the U.S. This view is also supported by the U.S. Supreme Court, in \textit{Plyler v. Doe}, where the Supreme Court stated that “no child is responsible for his birth, and penalizing the child is an ineffectual—as well as unjust—way of deterring the parent.”\textsuperscript{201}

Another parallel to be drawn is in the claim that the children can acquire another nationality.\textsuperscript{202} In its opinion, the IACtHR did not entertain the notion of the \textit{Yean and Bosico} children being able to acquire Haitian nationality due to the fact that denying the children from Dominican nationality would have severe consequences on the children. This is because both the children and their parents resided in the Dominican Republic. Being unable to access education, healthcare, be able to vote, having them constantly live in fear of separation from their families, and leaving them without a juridical personality are examples of the severe consequences that these children would endure.\textsuperscript{203} These consequences are similar to those that the children in the U.S. would face if birthright citizenship were limited.\textsuperscript{204}

\textsuperscript{199} Ibid.
\textsuperscript{200} The \textit{Yean and Bosico Children v. Dominican Republic}, Inter-Am Ct. H.R. (Sept. 8 2005)
\textsuperscript{203} Ibid.
\textsuperscript{204} Ibid.
6 Conclusion

Birthright citizenship provides the greatest protection against statelessness by guaranteeing that children born on U.S. territory acquire U.S. citizenship regardless of the immigration status of their parents. This ensures that children do not inherit statelessness or the irregular status of their parents. Therefore, limiting birthright citizenship will surely have an impact on both the stateless population, as well as the irregular migrant population in the U.S.

Due to the fact that the U.S. currently still provides unconditional birthright citizenship, it can definitely be considered as a best practice in the eradication of statelessness at birth. However, this is not without its challenges, as this thesis has found, in practice some states have had a history of denying to register the children of irregular migrants. While their actions were later overruled, it is an important thing to note, especially in light of the Republican victory in the 2016 elections. It is fair to say that we can expect more situations like this.

Proposals to limit birthright citizenship in the U.S. all revolve around sentence “subject to the jurisdiction” in the Fourteenth Amendment. Proponents of limiting birthright citizenship argue that there would be less irregular migrations, as they see birthright citizenship as a large magnet for irregular migration. However, the opposite is true. People move to the U.S. for a variety of reasons, but they are usually to escape poverty or conflict, and not to have ‘anchor babies’ that would tie them to the country. They have babies, because children are a part of life. By limiting birthright citizenship, and not allowing the children of irregular migrants to become U.S. citizens, the number of undocumented migrants grows. This is because the limitation would give rise to a whole new generation of irregular migrants, it would allow children to inherit their parents’ irregular migration status. Perpetuating the irregular status over generations. Children should not be made to pay for the mistakes of their parents, and international law is also very clear on this.

These proposals are by no means new, and can be traced back to as early as the 1990s, however, it could be argued that due to President-elect’s victory it is more pressing than ever. As noted earlier, the Republicans have control over both the Presidency and Congress. Moreover, it is up to President-elect Trump to appoint Supreme Court Justices. It
is likely that he will appoint likeminded individuals who have similar views on immigration as him and his administration. That’s significant because it is up to the judicial branch to determine whether the Citizenship Clause could be more narrowly interpreted by Congress.

The 1961 Convention urges States to grant citizenship to children born on their territory if they would otherwise be stateless. While the U.S. hasn’t ratified the 1961 Convention, it is an important instrument in the international effort against statelessness and will still be taken as a guideline. If the U.S. limits citizenship, it would have to put in place a system to determine if children would otherwise be stateless. The 1961 Convention does not require countries to provide birthright citizenship, and allows countries to allow certain limitations to providing their citizenship. For example, instead of requiring the child’s parents to have a legal status, it could place the condition that the child has habitual residence within the territory of the State. Habitual residence refers to a factual situation rather than a legal one. It refers to a meaningful relationship between the person and the State in which he resides, or where they are born and grow up. For habitual residence, it is irrelevant whether the person is there legally or not. This might be a good alternative for the U.S., where there apparently are concerns if children born there to irregular migrants have a legitimate tie to the country.

If birthright citizenship were to be limited, not all the children born to irregular migrants would be stateless. For example, if the children in question are of Mexican origin, they would also be entitled to Mexican citizenship, however an arduous process this would be to acquire. However, if the children are born from parents that originate from countries that grant citizenship on the basis of jus soli, and the children would not have a claim to citizenship, these children would be rendered stateless. Another way that statelessness can be caused if birthright citizenship were limited is if the country of origin has discriminatory legislation. For example, if the mother is not permitted to pass on her nationality. So, if for whatever reason, the father is out of the picture, the mother would be unable to pass her nationality onto her child.

Limiting birthright citizenship would not automatically make the children of irregular migrants stateless but would potentially give rise to a new stateless generation under certain conditions. Due to the fact that the U.S. has not ratified the 1961 Conventions, it lacks the safeguards that are set forth by international law to prevent and reduce
statelessness. Moreover, at present, the U.S. lacks a consistent framework for recognizing stateless persons and addressing their needs.\textsuperscript{205} Therefore, until now, stateless persons are treated the same as non-U.S. citizens.\textsuperscript{206} Due to the lack of a viable framework, stateless persons are made more vulnerable than they already are, because they are not granted the special status or protection that they need.

As proven by the international standards referenced in this thesis, they are not in favor of limiting birthright citizenship if alternative remedies or safeguards are not put in place. Besides the 1961 Convention, the \textit{Yean and Bosico} case also proves the importance of citizenship and access to it. The IACtHR argued that by depriving the girls of their citizenship, the Dominican Republic was acting in stride with international standards. Because by depriving the children of their nationality, they were also deprived from their other rights, such as the right to education, healthcare, etc. They also lacked their juridical personality because they were denied citizenship. In a similar trend as the habitual residence, The Court argued that whether the children were there legally or not, they had a legitimate tie to the country due to the fact that their lives are there. There are many similarities between the \textit{Yean and Bosico} case and the proposed changes to nationality law in the U.S., so it is presumable that revoking U.S. citizenship for the children of irregular migrants would not be in line with the standards set forth by the American Convention on Human Rights.

Limiting birthright citizenship would at least in part negatively impact the international fight against statelessness. While the U.S. has not ratified the 1961 Convention, nor has it ratified the American Convention on Human Rights, they are important instruments that need to be recognized, especially in reference to combatting statelessness. If the U.S. wishes to go through with limiting birthright citizenship, it should at the very least put in place a statelessness determination procedure, so persons who would be rendered stateless would be given the recognition and protection as laid out by international standards. An important step would be adopting provisions from the 1961 Convention, for example by granting citizenship to children who would otherwise be stateless. Otherwise they would be made more vulnerable than they already are. They should also be given the opportunity to naturalize after a certain number of years.

\textsuperscript{205} The Stateless in the United States, Center for Migration Studies, <http://cmsny.org/the-stateless-in-the-united-states/>

\textsuperscript{206} Ibid.
Moreover, it is important to continue to encourage birth registration, even if the birthright citizenship is no longer granted. That way, these children can claim their nationality elsewhere, for example, in the country of origin of their parents. This would go a long way to ensure that the children can claim a different nationality and not be rendered stateless.
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