



# NATIONAL SECURITY LAW JOURNAL

**Excerpt from Vol. 3, Issue 2 (Spring/Summer 2015)**

Cite as:

Daniel Pines, *Violating the Constitution and Risking National Security: How the Children of Foreign Diplomats Born in the United States Become U.S. Citizens in Contravention of the Fourteenth Amendment*, 3 NAT'L SEC. L.J. 232 (2015).

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ISSN: 2373-8464

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VIOLATING THE CONSTITUTION AND  
RISKING NATIONAL SECURITY:  
HOW THE CHILDREN OF FOREIGN DIPLOMATS  
BORN IN THE UNITED STATES BECOME U.S. CITIZENS IN  
CONTRAVENTION OF THE FOURTEENTH AMENDMENT

**Daniel Pines\***

*There are approximately 5,000 foreign diplomats and their spouses officially residing in the United States. Many of them give birth to children while serving here. The “Citizenship Clause” of the Fourteenth Amendment to the U.S. Constitution, as noted in numerous Supreme Court opinions, provides that children of foreign diplomats born in the United States are not entitled to U.S. citizenship. Nonetheless, most of those newborn children acquire citizenship because the U.S. government does not have a working mechanism in place to prevent it. This results not only in a flaunting of the Constitution (not to mention international law), but also poses a significant threat to national security. The diplomatic parents of these children are the official representatives of a foreign nation. Some of them are foreign spies. By dint of their profession, they have sworn fealty to a foreign nation, which is not necessarily a nation friendly to the United States. Nonetheless, their now-U.S. citizen children will eventually be able to sponsor their foreign representative parents for U.S. residency, which in turn can result in citizenship. Such status provides the parents with protection under the U.S. Constitution, allows them to reside in the United States, and*

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\* Associate General Counsel, Office of General Counsel, Central Intelligence Agency. All statements of fact, opinion, or analysis expressed are those of the author and do not reflect the official positions or views of the Central Intelligence Agency (“CIA” or “the Agency”) or any other U.S. government agency. Nothing in the contents should be construed as asserting or implying U.S. government authentication of information or CIA endorsement of the author’s views. This material has been reviewed by the CIA to prevent the disclosure of classified information.

*permits them to enter and leave the United States at will. If these parents are spies, or even merely continue to be supportive of their home nation, we are giving both our allies and our enemies the keys to our castle. This Article will not only describe the problem, but also offer some simple, practical solutions to preclude activities that violate our most supreme law and threaten our nation.*

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## INTRODUCTION

The Fourteenth Amendment of the United States Constitution provides: “[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of

the United States . . . .”<sup>1</sup> This “Citizenship Clause”<sup>2</sup> makes the United States fairly unusual in the manner in which it bestows citizenship. Most nations determine a newborn’s citizenship solely by the citizenship of its parents.<sup>3</sup> Under the Citizenship Clause, however, the United States also grants citizenship based on birthplace—children born inside the United States or its territories are automatically U.S. citizens.

There is one exception: per the Citizenship Clause, the newborn child must also be “subject to the jurisdiction” of the United States. That phrase has created some controversy over the years. While questions concerning whether children born in the United States to American Indians and legal, foreign-national residents are considered “subject” to U.S. jurisdiction have since been resolved,<sup>4</sup> many outspoken critics assert that the children of illegal aliens born in the United States should not be automatically granted U.S. citizenship, though the courts have thus far disagreed.<sup>5</sup>

What has never been in question is that the phrase “subject to the jurisdiction thereof” clearly and intentionally excludes foreign diplomats. The drafters of the Amendment, the Supreme Court, the U.S. government, and every serious scholar to have considered the matter have continuously and uniformly accepted that this provision precludes citizenship for children of foreign diplomats born in the United States.<sup>6</sup> Yet, as a matter of practice, children born in this

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<sup>1</sup> U.S. CONST. amend. XIV, § 1.

<sup>2</sup> Lino A. Graglia, *Birthright Citizenship for Children of Illegal Aliens: An Irrational Public Policy*, 14 TEX. REV. L. & POL. 1, 5 (2009) (noting this sentence of the Fourteenth Amendment is often referred to as the “Citizenship Clause”); John C. Eastman, *Born in the U.S.A.? Rethinking Birthright Citizenship in the Wake of 9/11*, 12 TEX. REV. L. & POL. 167, 170 (2007).

<sup>3</sup> BLACK’S LAW DICTIONARY 941 (9th ed. 2009); William M. Stevens, Comment, *Jurisdiction, Allegiance, and Consent: Revisiting the Forgotten Prong of the Fourteenth Amendment’s Birthright Citizenship Clause in Light of Terrorism, Unprecedented Modern Population Migrations, Globalization, and Conflicting Cultures*, 14 TEX. WESLEYAN L. REV. 337, 378 (2008) (“Most nations, including Mexico, regard the children born to their nationals living abroad to be citizens of their parent’s country.”).

<sup>4</sup> See *infra* Part I.

<sup>5</sup> See *infra* Parts I.A-C.

<sup>6</sup> See *infra* Part I.D.

country to foreign diplomats are routinely afforded U.S. citizenship.<sup>7</sup> Indeed, it appears to be the rare exception where such a child does not automatically become a U.S. citizen.<sup>8</sup>

One could put a positive spin on this development, arguing that providing such citizenship serves to co-opt foreign diplomats and their families, or at the very least allows them to join our American family. However, there are extremely serious concerns about granting citizenship to the children of foreign diplomats. Not only does this violate the U.S. Constitution, it also violates international law. In addition, it is unfair to the hundreds of thousands of other foreigners who go through the appropriate—and Constitutional—process to become U.S. citizens.

More concerning, the diplomatic parents of these children are, due to their profession, loyal to another nation, and not always one that is on friendly terms with the United States. Not only do these parents owe fealty to another country, but they are also expected to be amongst the most loyal the foreign nation has to offer. After all, their sovereign has enough faith in them to trust that they will effectively represent their country thousands of miles away. Further, many of these parents are actually foreign intelligence officers, assigned to the United States to spy on our government, companies, and populace.<sup>9</sup> Granting citizenship to the children of these diplomats creates a U.S. national security problem, whether the parents are ordinary foreign representatives or serve some clandestine function. Once these citizen children reach adulthood, they will be able to sponsor their parents and other family members for U.S. residency and eventually U.S. citizenship, allowing those family members protection under U.S. law and the U.S. Constitution,

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<sup>7</sup> See *infra* Part II.

<sup>8</sup> *Id.*

<sup>9</sup> 22 U.S.C. § 254c-1(a) (2012) (acknowledging that there are foreign government officials in the United States who are engaged in intelligence activities and stating that their numbers “should not exceed the respective numbers, status, privileges and immunities, travel accommodations, and facilities within such country of official representatives of the United States to such country.”).

and giving such individuals the ability to enter and leave the United States almost at will.<sup>10</sup>

The granting of citizenship to children of foreign diplomats is not a nominal problem. There are approximately 5,000 foreign diplomats and their spouses in the United States.<sup>11</sup> The U.S. government does not keep official track of children of foreign diplomats,<sup>12</sup> which is in fact part of the problem. However, one scholar estimates that in 1995 there were 13,000 dependents of foreign diplomats in the United States.<sup>13</sup> While many of these dependents were born outside the United States, large numbers of them were born in this country, and many more are born here every year.<sup>14</sup> For example, as of late 2013, reports surfaced that 118 children of South Korean diplomats held American citizenship due to their being born in the United States during their parents' diplomatic tour.<sup>15</sup> There are similar reports of a number of Pakistani diplomats obtaining U.S. citizenship for their children born in the United States, even though such practice violates not only our Constitution, but also an explicit ban by the Pakistani Foreign Office.<sup>16</sup> And, of course, nothing prevents diplomats of countries antagonistic to the United States from bearing children in this country as well.

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<sup>10</sup> See *infra* Part III.E.

<sup>11</sup> *Diplomatic List*, U.S. DEP'T OF STATE, <http://www.state.gov/documents/organization/233875.pdf> (last visited Feb. 3, 2015).

<sup>12</sup> *Id.*

<sup>13</sup> Michael B. McDonough, Note, *Privileged Outlaws: Diplomats, Crime and Immunity*, 20 SUFFOLK TRANSNAT'L L. REV. 475, 487 n.75 (1997) (noting there were 18,000 people in the United States who could claim diplomatic immunity in 1995).

<sup>14</sup> Peter Spiro, *Breaking: Children of Diplomats Getting US Citizenship!*, OPINIO JURIS (July 11, 2011, 1:41 PM), <http://opiniojuris.org/2011/07/11/breaking-children-of-diplomats-getting-us-citizenship/> (noting that there are dozens if not hundreds of newborns of diplomats being granted U.S. citizenship every year).

<sup>15</sup> Chung Min-uck, *130 Diplomats' Children Hold Dual Citizenship*, KOREA TIMES (Oct. 10, 2013, 5:05 PM), [http://www.koreatimes.co.kr/www/news/nation/2013/11/120\\_144108.html](http://www.koreatimes.co.kr/www/news/nation/2013/11/120_144108.html).

<sup>16</sup> *Pakistani Diplomats get U.S. Nationality for Children*, PAKISTAN TODAY (Oct. 14, 2013), <http://www.pakistantoday.com.pk/2013/10/13/news/national/pakistani-diplomats-get-us-nationality-for-children/> [hereinafter *Pakistani Diplomats*].

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Part I of this Article evaluates the Citizenship Clause of the Fourteenth Amendment, describing how the drafters, the courts, scholars, and the U.S. government have all determined that children of foreign nationals fall outside the provisions of the Citizenship Clause. Part II describes how newborn children of foreign diplomats nonetheless acquire U.S. citizenship due to gaps in the system. Part III depicts the serious concerns raised by this flaunting of the Citizenship Clause. Finally, Part IV offers a number of basic solutions to help resolve the problem. These include proposed mechanisms to prevent these children from acquiring U.S. citizenship in the first place, as well as procedures to strip away the citizenship status of those who have already become citizens in violation of the U.S. Constitution.

#### I. THE FOURTEENTH AMENDMENT SPECIFICALLY PRECLUDES CITIZENSHIP FOR CHILDREN OF FOREIGN DIPLOMATS

The Fourteenth Amendment arose as a result of the Civil War.<sup>17</sup> Prior to the war, only white persons born within the United States were considered U.S. citizens,<sup>18</sup> a point driven home by the Supreme Court in 1857, with the now-vilified decision of *Dred Scott v. Sandford*.<sup>19</sup> In *Dred Scott*, the Court held that all blacks in the United States, even free blacks, were not citizens of the United States, and a state could not make them citizens.<sup>20</sup> The Court further held that Congress could not prohibit the extension of slavery to new territories, and therefore invalidated the Missouri Compromise.<sup>21</sup> Many Americans condemned the *Dred Scott* opinion almost immediately.<sup>22</sup>

In 1865, after the conclusion of the Civil War, Congress enacted the Thirteenth Amendment, which the states quickly

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<sup>17</sup> *Slaughter-House Cases*, 83 U.S. (16 Wall) 36, 70 (1872).

<sup>18</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 674-75 (1898).

<sup>19</sup> *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

<sup>20</sup> *Id.* at 393-94.

<sup>21</sup> *Id.* at 395-96.

<sup>22</sup> *Slaughter-House Cases*, 83 U.S. at 73 (noting that the *Dred Scott* decision “met the condemnation of some of the ablest statesmen and constitutional lawyers of the country.”).

ratified.<sup>23</sup> This Amendment outlawed slavery and involuntary servitude, and gave Congress the power to enforce that prohibition via legislation.<sup>24</sup> However, a number of states in the South quickly adopted laws that sought to curb the effect of emancipation by limiting many of the civil rights of blacks in those states.<sup>25</sup> As the Supreme Court later described it in the famous *Slaughterhouse Cases*, such legislation “imposed upon [black Americans] onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value . . . .”<sup>26</sup>

The U.S. Congress responded by enacting the first civil rights law, the Civil Rights Act of 1866.<sup>27</sup> The purpose of the Act was twofold: to overrule the *Dred Scott* decision by making it clear that blacks were both federal and state citizens, and to guarantee that black citizens were given the same civil rights as white citizens.<sup>28</sup> Congress based its authority to pass the Civil Rights Act on the provisions of the Thirteenth Amendment.<sup>29</sup> Nonetheless, President Andrew Johnson vetoed the Act, claiming that it exceeded the Amendment’s provisions.

Congress easily overruled President Johnson’s veto and went a step further, proposing the Fourteenth Amendment to constitutionalize the Civil Rights Act.<sup>30</sup> This would not only ensure that Congress had the authority to pass such civil rights legislation, but would also protect the key provisions of the Act from being repealed by a later Congress.<sup>31</sup> As the Supreme Court later noted, the purpose of the Fourteenth Amendment was “to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to

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<sup>23</sup> Graglia, *supra* note 2, at 6.

<sup>24</sup> U.S. CONST. amend. XIII.

<sup>25</sup> Graglia, *supra* note 2, at 6.

<sup>26</sup> *Slaughter-House Cases*, 83 U.S. at 70.

<sup>27</sup> Graglia, *supra* note 2, at 6.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 6-7; *Slaughter-House Cases*, 83 U.S. at 70-71.

<sup>31</sup> Graglia, *supra* note 2, at 7; *United States v. Wong Kim Ark*, 169 U.S. 649, 675 (1898).



any alien power, should be citizens of the United States and of the State in which they reside.”<sup>32</sup> The Fourteenth Amendment was ratified in 1868.<sup>33</sup>

The first section of the Fourteenth Amendment provides:

*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.* No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.<sup>34</sup>

The italicized sentence in the section, appropriately known as the Citizenship Clause,<sup>35</sup> lays out the two requirements for U.S. citizenship. The first requirement is that the individual must have been born (or naturalized) in the United States.<sup>36</sup> This requirement differs significantly from most other countries.<sup>37</sup> Most nations follow the principle of *jus sanguinis*, i.e., that a child’s citizenship is determined by the citizenship of his or her parents.<sup>38</sup> The United States, through the Fourteenth Amendment, adheres not only to *jus sanguinis*, but also to the principle of *jus soli*, namely that a child’s citizenship is based on his or her place of birth.<sup>39</sup> Therefore, any child born in the United States is considered a U.S. citizen, so long as

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<sup>32</sup> *Elk v. Wilkins*, 112 U.S. 94, 101 (1884).

<sup>33</sup> *Wong Kim Ark*, 169 U.S. at 675.

<sup>34</sup> U.S. CONST. amend. XIV, § 1 (emphasis added).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> BLACK’S LAW DICTIONARY 941 (9th ed. 2009).

<sup>38</sup> *Id.*; Stevens, *supra* note 3, at 378 (“Most nations, including Mexico, regard the children born to their nationals living abroad to be citizens of their parent’s country.”).

<sup>39</sup> 7 FOREIGN AFFAIRS MANUAL (FAM) 111(a)(1) (2013); BLACK’S LAW DICTIONARY 942 (9th ed. 2009). The United States also follows *jus sanguinis* to a limited degree, permitting children born abroad to U.S. citizen parents to seek U.S. citizenship. Stevens, *supra* note 3, at 354.

he or she fulfills the second requirement—being “subject to the jurisdiction” of the United States at the time of birth.<sup>40</sup>

This second requirement of the Citizenship Clause has led to serious debate amongst scholars and the courts. The problem begins with the fact that, as the U.S. Supreme Court has noted, “[t]he Constitution nowhere defines the meaning of these words, either by way of inclusion or exclusion.”<sup>41</sup> Concurrent and subsequent statutory law similarly provides no guidance.<sup>42</sup> Additionally, as discussed below, the legislative history behind the Amendment is muddled at best. Thus, in the almost 150 years since ratification of the Amendment, court cases and scholarly writings have sought to determine whether certain categories of children—those of American Indians, foreign nationals, illegal aliens, and, of primary interest to this Article, foreign diplomats—are “subject to the jurisdiction” of the United States and therefore U.S. citizens if born in this country.

#### A. *American Indians*

When Congress originally proposed the language for the Citizenship Clause, it considered the issue of whether the children of American Indians born in the United States were U.S. citizens. Indeed, an amendment was offered at that time to change the proposed language of the Citizenship Clause to read: “All persons born in the United States, and subject to the jurisdiction thereof, *excluding Indians not taxed*, are citizens of the United States and of the States wherein they reside.”<sup>43</sup> This instigated a heated congressional debate as to what the term “excluding Indians not taxed” meant and whether it was necessary.<sup>44</sup> In the end, the proposed amendment was defeated on the ground that it was redundant, as American Indians were considered members of a foreign nation and therefore clearly not intended to be U.S. citizens.<sup>45</sup>

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<sup>40</sup> U.S. CONST. amend. XIV, § 1.

<sup>41</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898).

<sup>42</sup> Graglia, *supra* note 2, at 5.

<sup>43</sup> CONG. GLOBE, 39th Cong., 1st Sess. 2890 (1866).

<sup>44</sup> *Id.* at 2890-97.

<sup>45</sup> *Id.* at 2897.

The issue came before the Supreme Court in 1884, in the case of *Elk v. Wilkins*.<sup>46</sup> John Elk, an American Indian who claimed that he had severed his tribal affiliation, was denied the right to vote in Nebraska under the theory that he was not a U.S. citizen under the Fourteenth Amendment.<sup>47</sup> The Supreme Court agreed. The Court determined that Indian tribes, though falling within the territorial limits of the United States, were considered alien nations, with whom the United States dealt via treaty or special acts of Congress.<sup>48</sup> They were not taxed by the United States, general acts of Congress did not apply to them unless specifically intended, and they owed their immediate allegiance to their tribe, not to the United States.<sup>49</sup> The Court also noted that, since ratification of the Fourteenth Amendment, Congress had passed several acts of legislation providing naturalization of certain Indian tribes, which would be superfluous if American Indians were already U.S. citizens.<sup>50</sup> Thus, the Court held that American Indians “not being citizens by birth, can only become citizens in the second way mentioned in the Fourteenth Amendment, by being ‘naturalized in the United States,’ by or under some treaty or statute.”<sup>51</sup>

The Supreme Court upheld this conclusion fourteen years later in *United States v. Wong Kim Ark*,<sup>52</sup> a case involving children of foreign nationals. As the Court noted in *Wong Kim Ark*, the phrase “subject to the jurisdiction thereof” in the Citizenship Clause was meant to exclude “children of members of the Indian tribes, standing in a peculiar relation to the National Government, unknown to the common law.”<sup>53</sup>

This position remained in effect for decades. Finally, to overcome this interpretation of the Citizenship Clause and the Supreme Court precedent, Congress passed the Indian Citizenship

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<sup>46</sup> *Elk v. Wilkins*, 112 U.S. 94, 94-96 (1884).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 98-100.

<sup>49</sup> *Id.* at 99-102.

<sup>50</sup> *Id.* at 104.

<sup>51</sup> *Elk*, 112 U.S. at 103.

<sup>52</sup> See generally *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

<sup>53</sup> *Id.* at 682.

Act of 1924.<sup>54</sup> It granted citizenship to all children of American Indians born inside the United States.<sup>55</sup>

*B. Foreign Nationals*

The legislative history of the Fourteenth Amendment also contained debate about whether the children of foreign nationals, and in particular Gypsies and Chinese nationals for some reason, would be considered U.S. citizens if born in this country.<sup>56</sup> Though the drafters of the Citizenship Clause never came to a final conclusion on this topic,<sup>57</sup> the Supreme Court resolved this issue decisively in 1898 in the *Wong Kim Ark* decision,<sup>58</sup> referenced above.<sup>59</sup> Wong Kim Ark was born in San Francisco to parents who were U.S. residents of Chinese descent. When he was about 21 years old, Wong Kim Ark went on a temporary visit to China. Upon his return to the United States, he was denied entry on the grounds that he was not considered a U.S. citizen due to his parents' foreign nationality.<sup>60</sup> Relying on a historical analysis of the Fourteenth Amendment—including an assessment of British law, legislative history, the *Elk v. Wilkins* case, and other precedent—the Court concluded that the Citizenship Clause intended to grant U.S. citizenship to all persons born in the United States, whether children of Chinese nationals or any other nationality.<sup>61</sup> As the Court noted, the entire purpose of the Fourteenth Amendment was to preclude discrimination based on race or nationality: “[T]he opening words [of the Citizenship Clause], ‘All persons born,’ are general, not to say

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<sup>54</sup> Indian Citizenship Act of 1924, ch. 233, 43 Stat. 233.

<sup>55</sup> *Id.*; see also 8 U.S.C. § 1401(b) (2012) (“The following shall be nationals and citizens of the United States at birth . . . (b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property . . .”).

<sup>56</sup> See, e.g., CONG. GLOBE, 39th Cong., 1st Sess. 2891-92 (1866).

<sup>57</sup> *Id.* at 2890-97.

<sup>58</sup> *Wong Kim Ark*, 169 U.S. 649.

<sup>59</sup> See *supra* text accompanying notes 48-49.

<sup>60</sup> *Wong Kim Ark*, 169 U.S. at 653.

<sup>61</sup> *Id.* at 675-76, 682, 688.

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universal, restricted only by place and jurisdiction, and not by color or race . . . .”<sup>62</sup>

At least one critic has questioned whether this is an appropriate result in the wake of 9/11.<sup>63</sup> This critic has pointed to the fact that Yaser Hussen Hamdi, who became a militant with the Taliban before being captured and sent to Guantanamo Bay, is considered a U.S. citizen due to the fact that he was born in the United States to Saudi parents who were only temporarily residing here.<sup>64</sup> This critic suggests that the framers of the Fourteenth Amendment never intended to have U.S. citizenship granted to foreign national enemies of the state, such as Hamdi.<sup>65</sup> Nonetheless, when Hamdi filed suit against the United States over his detention at Guantanamo Bay, the Supreme Court treated him as a U.S. citizen due to his birth in the United States.<sup>66</sup>

### C. *Illegal Aliens*

The most extensive debate over the Citizenship Clause has been related to children born inside the United States to illegal or undocumented aliens.<sup>67</sup> A number of scholars have asserted that the phrase “subject to the jurisdiction thereof” should preclude such children from acquiring U.S. citizenship because their parents, as illegal aliens, are not “subject” to the jurisdiction of the United States, and the U.S. government has not consented to their residence in the United States.<sup>68</sup> These scholars note that in 1868, when the Fourteenth Amendment was ratified, neither Congress nor the states

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<sup>62</sup> *Id.* at 676.

<sup>63</sup> See generally Eastman, *supra* note 2.

<sup>64</sup> *Id.* at 168-69.

<sup>65</sup> *Id.* at 177-78.

<sup>66</sup> Hamdi v. Rumsfeld, 542 U.S. 507, 516 (2004) (“The threshold question before us is whether the Executive has the authority to detain citizens who qualify as ‘enemy combatants.’”).

<sup>67</sup> Jon Feere, *Birthright Citizenship for Children of Foreign Diplomats?*, CTR. FOR IMMIGRATION STUDIES (July 2011), <http://www.cis.org/sites/cis.org/files/articles/2011/birthright-diplomats.pdf>.

<sup>68</sup> See generally Graglia, *supra* note 2; Stevens, *supra* note 3; *Citizenship Reform Act of 1997, Hearing on H.R. 7 Before the Subcomm. on Immigration and Claims of the H. Comm on the Judiciary*, 105th Cong. 53-56 (1997) (statement of Edward J. Erler, Professor of Political Sci., Cal. State Univ. at San Bernardino).

had illegal immigrants in mind.<sup>69</sup> This is because the concept of an “illegal” alien did not then exist in the United States as there were no restrictions on immigration to the United States in the mid-nineteenth century.<sup>70</sup> These scholars assert that, had Congress and the individual states considered illegal immigration at the time, they would not have extended citizenship to children of such immigrants.<sup>71</sup> Pointing to legislative history, these scholars note that the principle authors of the relevant sections of the Citizenship Clause of the Fourteenth Amendment interpreted “subject to the jurisdiction thereof” to mean subject to the “complete” jurisdiction of the United States, and illegal immigrants are not subject solely to U.S. jurisdiction.<sup>72</sup>

The problem with this argument is that it would exclude citizenship not just of illegal aliens, but of many others as well. As these scholars themselves note, it would exclude the children born to U.S. Lawful Permanent Residents (“LPR”) from automatically being granted U.S. citizenship, as LPRs are not subject solely to U.S. jurisdiction, but also usually to the jurisdiction of their home country.<sup>73</sup> Children of dual citizens might also be precluded if the parent’s foreign nation could exert some jurisdictional claim over the child, especially in a situation where the child sought dual citizenship as well. As noted in Part I(B) above, the Supreme Court has already clearly found that children of legal residents born in the United States are U.S. citizens.

The Court has made a similar determination with regard to the children of illegal aliens, though only in dicta. In 1982, the Court evaluated a Texas statute that effectively precluded public school education for illegal aliens.<sup>74</sup> In declaring that statute to be in violation of the Equal Protection Clause of the Fourteenth Amendment, the Court noted in a footnote the holding in *Wong Kim Ark* that children born to lawful aliens in the United States were

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<sup>69</sup> Graglia, *supra* note 2, at 5-6.

<sup>70</sup> *Id.* at 6.

<sup>71</sup> *Id.* at 5-6.

<sup>72</sup> *See id.* at 7; Stevens, *supra* note 3, at 369-70.

<sup>73</sup> Graglia, *supra* note 2, at 7.

<sup>74</sup> *See Plyler v. Doe*, 457 U.S. 202 (1982).

deemed U.S. citizens, and found no reason that the logic of *Wong Kim Ark* should not be extended to illegal aliens as well.<sup>75</sup> As the Court noted:

[G]iven the historical emphasis [of the Citizenship Clause] on geographic territoriality, bounded only, if at all, by the principles of sovereignty and allegiance, no plausible distinction with respect to Fourteenth Amendment ‘jurisdiction’ can be drawn between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful.<sup>76</sup>

Based on this analysis, even the scholars who object to citizenship for children born in the United States to illegal aliens accept that such is the current law of the land.<sup>77</sup> The U.S. government has similarly accepted this principle. As the State Department’s Foreign Affairs Manual (“FAM”) provides: “All children born in and subject, at the time of birth, to the jurisdiction of the United States acquire U.S. citizenship at birth even if their parents were in the United States illegally at the time of birth.”<sup>78</sup>

The impact of this interpretation of the Citizenship Clause is fairly significant. Policy-wise, it has been noted that this has created a concerning paradox—at a time when the United States has devoted extraordinary resources and focus on preventing illegal immigration, our laws have nonetheless created an enormous incentive for such immigration: namely, U.S. citizenship for the children of such immigrants born in the United States.<sup>79</sup> As one critic has stated, “It is difficult to imagine a more irrational and self-defeating legal system than one which makes unauthorized entry into this country a criminal offense and simultaneously provides perhaps the greatest possible inducement to illegal entry.”<sup>80</sup>

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<sup>75</sup> *Id.* at 211 n.10.

<sup>76</sup> *Id.*

<sup>77</sup> Graglia, *supra* note 2, at 11, 13-14; Eastman, *supra* note 2, at 178-79.

<sup>78</sup> 7 FAM 1117(d) (2013).

<sup>79</sup> Graglia, *supra* note 2, at 2; Stevens, *supra* note 3, at 346-47.

<sup>80</sup> Graglia, *supra* note 2, at 4.

This is not merely a theoretical concern. It is estimated that more than half of all births in Los Angeles, and almost 10 percent of all births in the United States, are to mothers who are inside the United States illegally.<sup>81</sup> Many of these mothers have admitted that they entered the United States illegally for the sole purpose of having their child born here and thus automatically become a U.S. citizen.<sup>82</sup>

Such citizenship benefits not just the newborn, but the entire family. While the U.S. government can technically deport illegal immigrants even after such immigrants have given birth in the United States, immigration judges tend not to do so. In such cases, judges typically claim that deportation of the family could deprive the child of the benefits of U.S. citizenship and thus create an “extreme hardship,” one of the bases for precluding deportation.<sup>83</sup> In addition, even if the family is deported or leaves the United States, the child as a U.S. citizen is always able to return to visit or reside.<sup>84</sup> Upon adulthood, if the child establishes permanent residency in the United States, he or she can also sponsor his or her once-illegal alien parents for permanent residence in the United States.<sup>85</sup> The parents are generally then admitted into the U.S. without regard for the usual quota limits.<sup>86</sup> The parents also receive the welfare and other benefits that the United States bestows on U.S. citizen children, such as that provided under the Aid to Families with Dependent Children Act (“AFDCA”).<sup>87</sup> One court has even stated that the U.S. government is

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<sup>81</sup> *Id.* at 2-3.

<sup>82</sup> *Id.* at 3; *see also* Oforji v. Ashcroft, 354 F.3d 609, 621 (7th Cir. 2003) (Posner, J., concurring) (noting that it is estimated that 165,000 babies are born in the United States to illegal aliens and others who come to the United States solely for the purpose of giving birth to a U.S. citizen).

<sup>83</sup> Graglia, *supra* note 2, at 3. It is also worth noting that President Obama’s recent executive action on immigration will provide a legal reprieve for the undocumented parents of U.S. citizens and LPRs who have resided in the United States for at least five years. Max Ehrenfreund, *Wonkblog: Your Complete Guide to Obama’s Immigration Executive Action*, WASH. POST (Nov. 20, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/11/19/your-complete-guide-to-obamas-immigration-order/>.

<sup>84</sup> Graglia, *supra* note 2, at 3.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*



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required to extend the benefits of the AFDCA to the siblings of U.S. citizen children.<sup>88</sup>

#### D. Children of Foreign Diplomats

While, as noted above, there has been significant debate over the years whether the children of American Indians, lawful foreign national residents, and illegal aliens born in the United States are U.S. citizens, no such debate has arisen with regard to children of foreign diplomats. As one commentator describes it, “no serious scholar or immigration advocacy organization has argued that children born to foreign diplomats should be granted citizenship.”<sup>89</sup> The main reason is that foreign diplomats are considered extensions of their home sovereign.<sup>90</sup> As the Supreme Court has articulated, granting the children of foreign diplomats U.S. citizenship would mean that the diplomat “would owe temporary and local allegiance to a foreign prince, and would be less competent to the objects of his mission.”<sup>91</sup>

Indeed, the framers of the Fourteenth Amendment, while in dispute about whether the Citizenship Clause should apply to American Indians and foreign nationals, appear to have been unanimous with regard to children of foreign diplomats. As Senator Jacob Howard, one of the principal authors of the Citizenship Clause, proclaimed when moving it to the floor of the Senate, the Clause would not provide citizenship to those “who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States.”<sup>92</sup> In the debate over the Citizenship Clause that followed, no member of Congress suggested otherwise.<sup>93</sup>

The Supreme Court has continuously upheld this premise, noting that even before enactment of the Fourteenth Amendment, “it

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<sup>88</sup> *Id.* (citing *Darces v. Woods*, 679 P.2d 458, 465 (Cal. 1984)).

<sup>89</sup> Feere, *supra* note 67, at 5.

<sup>90</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 684-85 (1898).

<sup>91</sup> *Id.* at 685 (quoting *Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 139 (1812)).

<sup>92</sup> CONG. GLOBE, 39th Cong., 1st Sess. 2890 (1866).

<sup>93</sup> *Id.* at 2890-97.

is beyond doubt” that children of foreign diplomats born in the United States were not considered citizens.<sup>94</sup> The Fourteenth Amendment merely codified that principle. In the *Slaughterhouse Cases*, just seven years after ratification of the Fourteenth Amendment, the Supreme Court noted:

The first observation we have to make on [the Citizenship Clause of the Fourteenth Amendment] is, that it puts to rest both the questions which we stated to have been the subject of differences of opinion. It declares that persons may be citizens of the United States without regard to their citizenship of a particular State, and it overturns the Dred Scott decision by making *all persons* born within the United States and subject to its jurisdiction citizens of the United States. That its main purpose was to establish the citizenship of the negro can admit of no doubt. 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.<sup>95</sup>

Even in the cases subsequent to the *Slaughterhouse Cases*, cited in the sub-parts above, where the Supreme Court evaluated whether American Indians, children of foreign nationals, and illegal aliens born in the United States were or were not U.S. citizens, the Court constantly recognized that children born of diplomats were to be excluded. In *Elk v. Wilkins*, the Court held that American Indians, owing their allegiance to their tribes, should not be U.S. citizens, just like the “children born within the United States, of ambassadors or other public ministers of foreign nations.”<sup>96</sup> *Wong Kim Ark* emphasized that the phrase “and subject to the jurisdiction thereof” was clearly meant to preclude “children of diplomatic representatives of foreign State” from citizenship.<sup>97</sup> As the *Wong Kim Ark* Court noted: “The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory . . . including all children here born of resident aliens, with

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<sup>94</sup> *Wong Kim Ark*, 169 U.S. at 674-75.

<sup>95</sup> *Slaughter-House Cases*, 83 U.S. (16 Wall) 36, 73 (1873) (emphasis in original).

<sup>96</sup> *Elk v. Wilkins*, 112 U.S. 94, 102 (1884).

<sup>97</sup> *Wong Kim Ark*, 169 U.S. at 682.

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the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers . . . .”<sup>98</sup>

More recent lower court opinions have continued to affirm this principle. For example, in *Raya v. Clinton*, a district court in Virginia considered the case of Amany Mohamed Raya, who was born in 1981 at Walter Reed Army Medical Center in Washington, D.C.<sup>99</sup> At the time of her birth, her father was the Administrative Attaché at the Embassy of the Arab Republic of Egypt in the United States.<sup>100</sup> Twenty-three years later, Ms. Raya sought a U.S. passport, claiming that she was a U.S. citizen due to her being born in the United States.<sup>101</sup> After the U.S. State Department refused to issue her a passport, she pressed her claim in federal district court.<sup>102</sup> The District Court in the Western District of Virginia agreed with the State Department, concluding that because Ms. Raya’s father was a diplomat on the date that she was born, Ms. Raya was not a U.S. citizen and therefore not entitled to a U.S. passport.<sup>103</sup>

Government regulations mirror this conclusion. For example, regulations issued by the Department of Homeland Security and the Department of Justice’s Executive Office for Immigration Review provide: “A person born in the United States to a foreign diplomatic officer accredited to the United States, as a matter of international law, is not subject to the jurisdiction of the United States. That person is not a United States citizen under the Fourteenth Amendment to the Constitution.”<sup>104</sup> The U.S. Citizenship and Immigration Services website provides similar guidance.<sup>105</sup>

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<sup>98</sup> *Id.* at 693.

<sup>99</sup> *Raya v. Clinton*, 703 F. Supp. 2d 569, 571 (W.D.Va. 2010).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 571-72.

<sup>103</sup> *Id.* at 578-79.

<sup>104</sup> 8 C.F.R. § 101.3(a)(1) (2013).

<sup>105</sup> U.S. CITIZENSHIP & IMMIGR. SERVICES, GREEN CARD FOR A PERSON BORN IN THE UNITED STATES TO A FOREIGN DIPLOMAT (Mar. 23, 2011) [hereinafter GREEN CARD], available at <http://www.uscis.gov/green-card/other-ways-get-green-card/green-card-person-born-foreign-diplomat-united-states/green-card-person-born-united->

The only suggestion anywhere that perhaps children of foreign diplomats might have a possible legal claim to U.S. citizenship comes, interestingly enough, from the U.S. State Department. As recently as the mid-1990s, the State Department firmly asserted in its FAM that “children born in the United States to diplomats to the United States are not subject to U.S. jurisdiction and do not acquire U.S. citizenship under the 14<sup>th</sup> Amendment or the laws derived from it.”<sup>106</sup> This echoes a statement from 1871, when then-Secretary of State Hamilton Fish asserted that the term “‘and subject to the jurisdiction thereof,’ was probably intended to exclude the children of foreign ministers, and of other persons who may be within our territory with rights of extraterritoriality.”<sup>107</sup> Within the past few years, however, the once-clear statement in the State Department’s FAM regulations has been replaced with the following, much murkier guidance:

‘Blue List’ Cases – Children of Foreign Diplomats: 7 FAM 1100 Appendix J (under development) provides extensive guidance on the issue of children born in the United States to parents serving as foreign diplomats, consuls, or administrative and technical staff accredited to the United States, the United Nations, and specific international organizations, and whether such children are born ‘subject to the jurisdiction of the United States.’<sup>108</sup>

As the citation suggests, the denoted “Appendix J” does not yet exist, and thus there is none of the promised “extensive guidance” on how to deal with children of foreign diplomats. In fact, Appendix

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states-foreign-diplomat (“A person born in the United States to a foreign diplomatic officer accredited to the United States is not subject to the jurisdiction of United States law. Therefore, that person cannot be considered a U.S. citizen at birth under the 14th Amendment to the United States Constitution.”).

<sup>106</sup> 7 FAM 1116.2-2 (1995).

<sup>107</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 689-90 (1898) (quoting a letter from then-Secretary of State Fish to then-American Minister to Italy Marsh).

<sup>108</sup> 7 FAM 1111(d)(3) (2013).

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J has been under development since at least 2011,<sup>109</sup> and has yet to materialize.<sup>110</sup>

Nonetheless, this lack of specificity from the State Department regulations is an outlier, and may prove to be nothing more than a bureaucratic place-marker while the State Department decides what language to use in its Appendix J. It is difficult to envision how the State Department would undermine the U.S. Constitution, clear legislative history, unanimous Supreme Court precedent stretching over 150 years, and uniform scholarly assessment to determine that children of foreign diplomats born in the United States are in fact entitled to citizenship.

## II. HOW CHILDREN OF FOREIGN DIPLOMATS ROUTINELY ACQUIRE U.S. CITIZENSHIP IN VIOLATION OF THE FOURTEENTH AMENDMENT

With such clear and virtually uniform guidance that children of foreign nationals born in the United States are not U.S. citizens, why do such children nonetheless acquire such status as a matter of course? The reason is that children of foreign diplomats who are born in the United States are routinely given U.S. birth certificates upon birth, and shortly afterwards apply for and are provided Social Security numbers (“SSNs”).<sup>111</sup> This is due to the current, quirky process surrounding births in the United States.

To begin with, there are no federal requirements for hospitals to ask new parents if they are foreign diplomats.<sup>112</sup> State agencies do not typically impose such requirements on hospitals either.<sup>113</sup> Because the general rule in the United States is that anyone born here is automatically a U.S. citizen, hospitals presume that all

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<sup>109</sup> Feere, *supra* note 67 (asserting that the State Department was expecting to publish Appendix J by the end of 2011).

<sup>110</sup> *See generally* 7 FAM 1100 *et seq.*

<sup>111</sup> Feere, *supra* note 67, at 1, 3.

<sup>112</sup> *Id.* at 3.

<sup>113</sup> *Id.*

newborns fall within this ambit and issue U.S. birth certificates to anyone born in their hospital.<sup>114</sup>

Indeed, a senior obstetrician at a major hospital in Washington, D.C. recently described the current practice to the author. Despite the large presence of diplomats in the D.C. area, neither this obstetrician nor, to the best of his knowledge, any other doctor in his hospital inquires of the parent(s) of a newborn whether either parent is a foreign diplomat. In fact, this senior physician was not even aware that children of foreign diplomats were precluded from U.S. citizenship, believing instead that anyone born in a U.S. hospital is automatically a U.S. citizen.<sup>115</sup>

While the burden in this area perhaps should not be borne by doctors and other hospital staff, alternate mechanisms are not in place to resolve the problem. The forms parents fill out at U.S. hospitals in order to acquire birth certificates for their newborn children provide no solution. Though each state has its own form, most states use the standard form created by the National Center for Health Statistics (“NCHS”), Division of Vital Statistics, which is the federal agency responsible for seeking to standardize birth certificate issuance.<sup>116</sup> The standard NCHS form does not ask whether either parent is a foreign diplomat.<sup>117</sup> Indeed, it does not request any information about the occupations of the parents,<sup>118</sup> apparently due to the belief that several states would not have the funds to code such

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<sup>114</sup> *Id.* at 1, 3.

<sup>115</sup> Interview with a senior obstetrician at a major Washington, D.C. hospital (notes on file with author).

<sup>116</sup> See *Birth Data*, CTR. FOR DISEASE CONTROL & PREVENTION [hereinafter *Birth Data*], <http://www.cdc.gov/nchs/births.htm> (last visited Feb. 2, 2015).

<sup>117</sup> See *U.S. Standard Certificate of Live Birth*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/data/dvs/birth11-03final-acc.pdf> (last visited Feb. 2, 2015); see also *2003 Revisions of the U.S. Standard Certificates of Live Birth and Death and the Fetal Death Report*, CTR. FOR DISEASE CONTROL & PREVENTION, [http://www.cdc.gov/nchs/nvss/vital\\_certificate\\_revisions.htm](http://www.cdc.gov/nchs/nvss/vital_certificate_revisions.htm) (last visited Feb. 2, 2015) [hereinafter *Standard Certificate*] (standard certificates are typically updated and revised every 10-15 years; the 2003 version is the most recent, replacing the 1989 version).

<sup>118</sup> *Standard Certificate*, *supra* note 117.

information.<sup>119</sup> A number of individual state forms do request the parents' occupation, but permit parents to leave that section blank and the state will still issue the birth certificate.<sup>120</sup> Even if a parent were to indicate on the form that he or she was a "diplomat," there is no indication that the child would be denied a birth certificate.<sup>121</sup> Indeed, current State Department policy appears to be that all children born in the United States, including children of diplomats, are entitled to U.S. birth certificates.<sup>122</sup> The U.S. government considers a U.S. birth certificate to be sufficient proof of U.S. citizenship.<sup>123</sup>

Once a child has been born in the United States, the relevant state or the child's parents send the child's information to the Social Security Administration ("SSA"), which is responsible for issuing SSNs.<sup>124</sup> Akin to the birth certificate form,<sup>125</sup> the SSN form does not ask whether either parent is a foreign diplomat.<sup>126</sup> Though the SSA recognizes that children of diplomats are not entitled to SSNs, it

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<sup>119</sup> *Report: Children of Foreign Diplomats Enjoy U.S. "Super Citizen" Status*, FOXNEWS.COM (July 11, 2011), <http://www.foxnews.com/politics/2011/07/11/children-foreign-diplomats-enjoying-us-super-citizen-status-says-report/> [hereinafter *Super Citizen*].

<sup>120</sup> Feere, *supra* note 67, at 3.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 5 (noting that in an e-mail response to the author, the State Department asserted that even children born to foreign diplomats "are entitled to [U.S.] birth certificates"); *Super Citizen*, *supra* note 120 (noting that a State Department spokesperson told the news station, "Persons born in the United States, including a child of foreign diplomats, are legally entitled to an official birth record issued by the Bureau of Vital Statistics of the state in which the child is born."); 7 FAM 1110 (2014) (noting that all persons born in the United States are entitled to a U.S. birth certificate, and not indicating any exceptions to include children of foreign diplomats).

<sup>123</sup> *Proof of U.S. Citizenship and Identification When Applying for a Job*, U.S. CITIZENSHIP & IMMIGR. SERVICES (Feb. 3, 2010), <http://www.uscis.gov/us-citizenship/proof-us-citizenship-and-identification-when-applying-job> [hereinafter *Proof of U.S. Citizenship*], (noting "[y]our birth certificate provides proof of citizenship").

<sup>124</sup> Feere, *supra* note 67, at 3-4; *Learn What Documents You Need to Get a Social Security Card*, U.S. SOC. SEC. ADMIN., <http://www.ssa.gov/ssnumber/ss5doc.htm> (last visited Feb. 2, 2015).

<sup>125</sup> *See Standard Certificate*, *supra* note 117.

<sup>126</sup> *See* U.S. SOC. SEC. ADMIN., APPLICATION FOR A SOCIAL SECURITY CARD (FORM SS-5) (Aug. 2011), available at <http://www.ssa.gov/online/ss-5.pdf>.

typically issues SSNs to anyone who has a valid birth certificate because it has no mechanism in place to investigate whether requests for new SSNs are for children of foreign diplomats.<sup>127</sup> While possession of an SSN does not designate U.S. citizenship status, it does provide considerable benefits to its holders, as it is required in order to get a job in the United States, collect social security, and receive other government benefits, and often is necessary to open U.S. bank accounts or acquire a U.S. credit card.<sup>128</sup>

Admittedly, the State Department does maintain a list of all foreign diplomats and their spouses inside the United States.<sup>129</sup> Known as the “Blue List,”<sup>130</sup> this list of diplomats is updated quarterly and is available online for state government agencies, the SSA, and the general public to peruse.<sup>131</sup> However, even with the list available online, it is extremely difficult for state government agencies in charge of issuing birth certificates or the SSA to cross-check with a birth certificate or SSN request for a given child. To begin with, the list is quite lengthy: the Winter 2013 version of the Blue List, for example, runs 104 pages long and is dual columned.<sup>132</sup> Given that almost four million children are born inside the United States each year,<sup>133</sup> this creates an extremely labor-intensive cross-checking issue. This is made even more difficult by the fact that the Blue List is apparently not in an easily searchable format for the SSA’s computer system,<sup>134</sup> and probably not compatible with state agencies’ systems either.

More importantly, a match in names would not be conclusive, or even particularly useful. Many names on the

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<sup>127</sup> Feere, *supra* note 67, at 3.

<sup>128</sup> U.S. SOC. SEC. ADMIN., YOUR SOCIAL SECURITY NUMBER AND CARD (Oct. 2013), available at <http://www.ssa.gov/pubs/EN-05-10002.pdf>.

<sup>129</sup> *Diplomatic List*, *supra* note 11.

<sup>130</sup> GREEN CARD, *supra* note 105 (describing the State Department’s Diplomatic List as the “Blue List”); 7 FAM 1111(d)(3) (2013) (describing the list of diplomats in the United States as the “Blue List”).

<sup>131</sup> *Diplomatic List*, *supra* note 11.

<sup>132</sup> *Diplomatic List*, U.S. DEP’T OF STATE (Winter 2013), <http://www.state.gov/documents/organization/205353.pdf>.

<sup>133</sup> *Birth Data*, *supra* note 111.

<sup>134</sup> Feere, *supra* note 67.



diplomatic list are common; a match of names would hardly be definitive proof that the parent was a diplomat, and it would take extensive effort to try to weed out all the “false positives.” Further, a foreign diplomat parent might not give the same name to the hospital, or on the birth certificate form, that is listed on the Blue List. While this may be an intentional mechanism to deceive, it may also be entirely innocent. Many foreign nationals go by several names, or nicknames, or just have a different approach to “first” and “last” names than Americans.<sup>135</sup> In addition, even if a child of a foreign diplomat did not receive, or was even denied, a Birth Certificate or SSN at the time of birth, nothing would prevent that child from seeking such documents after his or her parent left the diplomatic service.<sup>136</sup> At that point, the parent would not be on the Blue List. Thus, no amount of cross-checking would preclude the child from receiving a birth certificate or an SSN if the child could prove he or she was born in the United States. Further, the SSA, and presumably most state agencies, do not maintain records of applicants who have been denied an SSN.<sup>137</sup>

In the end, then, hospitals do not query parents of a newborn whether they hold diplomatic status, and U.S. government policy is to issue a birth certificate to a child born in the United States regardless of his or her parent’s occupation. An SSN is then issued as a matter of course. As a result, despite the fact that the government is clearly aware of the restriction on children born to diplomats, it

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<sup>135</sup> See generally William D. Bowman, *The Story of Surnames*, 7 AMERICAN SPEECH, no. 2, 1931, at 147-50 (noting that in most Western countries, a surname is placed after a given name, but the opposite is true in many other countries, including Asian nations); 7 FAM 1300 app. C (2013) (noting the difficulty with names in passports); Feere, *supra* note 67; *Chinese Names*, TRAVELCHINAGUIDE.COM, <http://www.travelchinaguide.com/essential/chinese-name.htm> (last visited Feb. 2, 2015) (“The names of Chinese people have their own tradition and characteristics. Unlike Westerners, the family name in China is put first, followed by the given name.”).

<sup>136</sup> *National Vital Statistics System*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nchs/nvss.htm> (last updated Jan. 15, 2015) (describing the process for applying for a U.S. birth certificate later in life); SOCIAL SEC. ADMIN., SSA PUB. NO. 05-10023, SOCIAL SECURITY NUMBERS FOR CHILDREN (2013), available at <http://www.ssa.gov/pubs/EN-05-10023.pdf> (discussing the process for acquiring a social security number for newborns, as well as for those over the age of 12).

<sup>137</sup> Feere, *supra* note 67.

nonetheless issues them U.S. birth certificates and SSNs—i.e., all the requisite documents for proof of U.S. citizenship—as standard practice.<sup>138</sup>

### III. THE SERIOUS PROBLEMS WITH PROVIDING U.S. CITIZENSHIP TO CHILDREN OF FOREIGN DIPLOMATS

There are numerous reasons why granting U.S. citizenship to the children of diplomats is problematic. The practice violates the U.S. Constitution, as well as international law and basic fairness. More concerning, it poses a significant national security risk to the United States.

#### A. *Violation of the U.S. Constitution*

As discussed in detail in Part I above, the Fourteenth Amendment provides that anyone born in the United States is considered a U.S. citizen with one and only one limitation: the person must be “subject to the jurisdiction” of the United States.<sup>139</sup> While there is some debate about whether that limitation applies to illegal aliens and others, it is crystal clear that the limitation applies to foreign diplomats, per the drafters of the Amendment, the Supreme Court, the U.S. government, and every significant scholar who has considered the issue.<sup>140</sup> Thus, allowing children of foreign diplomats to acquire U.S. citizenship is a blatant violation of the U.S. Constitution.

In addition, as also noted above in Part I, the courts and the U.S. government have determined that virtually every category of children born in the United States—including children of American Indians, foreign nationals and illegal aliens—are U.S. citizens. The only category that everyone agrees is precluded by the Fourteenth Amendment from U.S. citizenship is children of foreign diplomats. If such children nonetheless are permitted to become U.S. citizens, then the sole limitation in the Citizenship Clause is eliminated and

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<sup>138</sup> See *Proof of U.S. Citizenship*, *supra* note 124 (noting that the State Department views a U.S. birth certificate as all that is needed to acquire U.S. citizenship).

<sup>139</sup> U.S. CONST. amend. XIV, § 1.

<sup>140</sup> See *supra* Part I.D.

the Constitutional provision “subject to the jurisdiction thereof” effectively becomes a complete nullity, a result that runs contrary to the general rule that all words and phrases in the Constitution are to have import and effect.<sup>141</sup>

### B. *Violation of International Law*

Allowing diplomats’ children to acquire U.S. citizenship also violates international law. An entire international protocol is devoted exclusively to this one issue.<sup>142</sup> That protocol has only one main provision: “Members of the mission not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.”<sup>143</sup> The purpose behind this protocol is fairly self-evident. It is meant to prevent host nations from co-opting foreign diplomats by offering them or their family members the opportunity to acquire nationality or citizenship status. Diplomats are supposed to owe fealty to their home nation. That loyalty can be seriously undermined if the host nation makes the diplomat, or members of his or her family, citizens of the host nation.<sup>144</sup>

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<sup>141</sup> *Silveira v. Lockyer*, 312 F.3d 1052, 1069 n.24 (9th Cir. 2002), abrogated on other grounds by *United States v. Vongxay*, 594 F.3d 1111, 1116 (9th Cir. 2010) (noting the “well-established canon of interpretation that requires a court, wherever possible, to give force to each word in every statutory (or constitutional) provision”); *Florida Sugar Marketing and Terminal v. United States*, 220 F.3d 1331, 1337 (Fed. Cir. 2000) (“Like clauses in a statute, related clauses of the Constitution should be interpreted to avoid contradictions in the text or rendering of some part of the text superfluous.”).

<sup>142</sup> Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Acquisition of Nationality, Apr. 18, 1961, 500 U.N.T.S. 223 [hereinafter *Optional Protocol*]. For a list of participating countries, see U.N. Treaty Collection, available at [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-4&chapter=3&lang=en](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-4&chapter=3&lang=en).

<sup>143</sup> *Optional Protocol*, *supra* note 142.

<sup>144</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 684-85 (1898); Min-uck, *supra* note 15 (noting that a number of Korean diplomats acquire U.S. citizenship for their children born in the U.S. and asking “[h]ow will the diplomats protect the national interest when they look up to the U.S. so much”).

Admittedly, the United States and other countries, including the United Kingdom and France, have refused to ratify the protocol.<sup>145</sup> However, this is not because they disagree with the overarching principle; rather, it is because they take issue with the language used.<sup>146</sup> For example, the protocol suggests that a child born in the United States should not receive U.S. citizenship if his or her father is a U.S. citizen, but his or her mother is a foreign diplomat.<sup>147</sup> There is also concern that the language of the protocol could cause statelessness if, e.g., an illegitimate child was born in the United States to a mother who was a foreign diplomat.<sup>148</sup> Nonetheless, the United States, as well as other countries that have thus far refused to ratify the protocol, continue to abide with the long-standing, broad, customary international law principle that underlies that international convention—namely that members of a foreign mission and members of their household (including newborn children) in a receiving state should not acquire the nationality of the receiving state.<sup>149</sup>

### C. *Unfairness*

As the Supreme Court has noted, “Citizenship is a most precious right”<sup>150</sup> and a “priceless treasure.”<sup>151</sup> Millions of foreign nationals regularly seek U.S. citizenship and permanent residency every year through the U.S. government’s normal immigration process.<sup>152</sup> The United States expends considerable time, effort, and

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<sup>145</sup> Optional Protocol, *supra* note 142 (listing the countries which have and have not ratified the protocol).

<sup>146</sup> SATOW’S DIPLOMATIC PRACTICE 149-50 (Ivor Roberts ed., 6th ed. 2009).

<sup>147</sup> *Id.* at 149.

<sup>148</sup> *Id.* at 150.

<sup>149</sup> *Id.* at 149-50.

<sup>150</sup> *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 159 (1963).

<sup>151</sup> *Johnson v. Eisentrager*, 339 U.S. 763, 791 (1950) (Black, J., dissenting).

<sup>152</sup> Petra Cahill et al., *Through the Obstacle Course of Immigration, Many Paths to Citizenship*, NBCNEWS.COM (Apr. 10, 2013, 3:32 PM), [http://usnews.nbcnews.com/\\_news/2013/04/10/17675597-through-the-obstacle-course-of-immigration-many-paths-to-citizenship?lite](http://usnews.nbcnews.com/_news/2013/04/10/17675597-through-the-obstacle-course-of-immigration-many-paths-to-citizenship?lite) (describing how there are 4.4 million applicants for permanent residence in the United States); Tara Bahrapour, *Number of Immigrants Applying for U.S. Citizenship Is Down 62%, Report Finds*, WASH. POST (Sept. 12, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/11/AR2009091103727.html> (noting that 1.38 million

funds to limit the numbers of foreign nationals who are accorded citizenship status.<sup>153</sup> The children of foreign diplomats should not be allowed to circumvent U.S. government immigration policy and criteria merely because their nation chose their parents to work as diplomats in the United States during the period of time in which they were born. This is unfair to the United States, its current citizens, and the millions of foreign nationals who apply for U.S. citizenship through our normal, legal procedures.

D. “Super-Citizens”? Not Really

In 2011, Jon Feere from the Center for Immigration Studies published a report entitled *Birthright Citizenship for Children of Foreign Diplomats*.<sup>154</sup> Mr. Feere’s report appears to have been the first published account to raise the issue of diplomat children being accorded U.S. citizenship and to have outlined the process by which this occurs.<sup>155</sup> Mr. Feere argues that the main problem with this situation is that such children not only are accorded the privileges of U.S. citizenship, but also the benefits of diplomatic immunity.<sup>156</sup> As such, Mr. Feere labels such children “Super-Citizens,” and breathlessly proclaims the unfairness that these Super-Citizens possess more rights than standard U.S. citizens.<sup>157</sup>

For thousands of years, foreign diplomats have been accorded special protection in the countries where they serve.<sup>158</sup>

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people applied for U.S. citizenship in 2007, but only 525,783 applied in 2008, allegedly due to an increase in the application fee).

<sup>153</sup> *FY 2012 Budget in Brief*, U.S. DEP’T OF HOMELAND SEC. 141, 144, available at <http://www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf> (noting that CIS has more than 11,000 employees and its 2011 budget was more than \$3 billion); *Naturalization Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/archive/archive-news/naturalization-fact-sheet> (last visited Feb. 2, 2015) (providing statistics on the number of persons naturalized each year, which averages about 680,000 annually).

<sup>154</sup> Feere, *supra* note 67.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Vienna Convention on Diplomatic Relations and Optional Protocol on Disputes, Apr. 18, 1961, 23 U.S.T. 3227 [hereinafter Vienna Convention on Diplomatic Relations] (“Recalling that people of all nations from ancient times have recognized

Even ancient Greek and Roman diplomats enjoyed such protections.<sup>159</sup> Such privilege assured dignity of the sovereign, and allowed the diplomat—a representative of the foreign nation—to do his or her job without threat of reprisal from the host government. As the Supreme Court described in 1898, “without such exemption, every sovereign would hazard his own dignity by employing a public minister abroad. His minister would owe temporary and local allegiance to a foreign prince, and would be less competent to the objects of his mission.”<sup>160</sup>

The concept of diplomatic protection was eventually codified as international law, in 1961, by the Vienna Convention on Diplomatic Relations (“Vienna Convention”),<sup>161</sup> and entered into force for the United States in 1972.<sup>162</sup> It is considered to constitute customary international law throughout the world and therefore is generally deemed binding even on the few nations that have not ratified the convention.<sup>163</sup>

The Vienna Convention provides numerous protections for members of any diplomatic mission. The head of the mission and any members of the staff of the mission holding diplomatic rank (together referred to as “diplomatic agents”)<sup>164</sup> are exempt from

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the status of diplomatic agents”); *United States v. Enger*, 472 F. Supp. 490, 504-05 (D.N.J. 1978) (providing a detailed history of diplomatic immunity).

<sup>159</sup> *Enger*, 472 F. Supp. at 504-05.

<sup>160</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 684-85 (1898) (quoting Chief Justice Marshall in *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116, 137-139 (1812)); *see also* *Swarna v. Al-Awadi*, 622 F.3d 123, 137 (2d Cir. 2010) (“Sitting diplomats are accorded near-absolute immunity in the receiving state to avoid interference with the diplomat’s service for his or her government.”); *Great Socialist People’s Libyan Arab Jamahiriya v. Miski*, 683 F. Supp. 2d 1, 11 (D.D.C. 2010) (“Diplomatic immunity flows from foreign state sovereign immunity . . . .”); *Devi v. Silva*, 861 F. Supp. 2d 135, 143 (S.D.N.Y. 2012) (noting that diplomatic immunity serves to protect “the interests of comity and diplomacy among nations and, not incidentally, to ensure the protection of our own diplomats abroad”).

<sup>161</sup> Vienna Convention on Diplomatic Relations, *supra* note 158; *Enger*, 472 F. Supp. at 505 (“[T]he law of diplomatic immunity has been codified by the Vienna Convention, the principle effect of which is to codify the customary law of diplomatic relations, including the law of diplomatic immunity.”).

<sup>162</sup> 22 U.S.C. § 254a(4) (2012).

<sup>163</sup> *Enger*, 472 F. Supp. at 505.

<sup>164</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art 1.

social security provisions.<sup>165</sup> With few exceptions, they are exempt from paying any dues or taxes, whether federal, state, or local.<sup>166</sup> They are exempt from any personal service to the receiving state, as well as military obligations, to include requisitions, contributions, or billeting.<sup>167</sup> The receiving state can adopt laws exempting diplomatic agents from all customs, duties, taxes, and related charges.<sup>168</sup> Their private residences are inviolable.<sup>169</sup> Similarly inviolable are the diplomatic agent's papers, correspondence, and property.<sup>170</sup> The diplomatic agent's personal baggage is exempt from inspection, unless there are "serious grounds" for believing it does not contain articles for the mission's official use or for the personal use of the agent for his or her household, or that it contains articles that are illegal to import or export.<sup>171</sup>

Probably most important, and most controversial, a diplomatic agent is effectively precluded from civil litigation or criminal prosecution, or nearly anything connected to the U.S. court system.<sup>172</sup> In compliance with the Vienna Convention, the United States has codified this exemption in U.S. statute.<sup>173</sup> As 22 U.S.C. § 254d provides: "Any action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations . . . shall be dismissed."<sup>174</sup> This means that a current diplomatic agent enjoys "near-absolute immunity" from civil or

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<sup>165</sup> *Id.* art. 33.

<sup>166</sup> *Id.* art. 34.

<sup>167</sup> *Id.* art. 35.

<sup>168</sup> *Id.* art. 36, para 1.

<sup>169</sup> *Id.* art. 30, para 1.

<sup>170</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art. 30, para 2.

<sup>171</sup> *Id.* art. 36, para 2.

<sup>172</sup> *Id.* art. 29 and 31; William G. Morris, Note, *Constitutional Solutions to the Problem of Diplomatic Crime and Immunity*, 36 HOFSTRA L. REV. 601, 601 (2007).

<sup>173</sup> *Montuya v. Chedid*, 779 F. Supp. 2d 60, 62 (D.D.C. 2011) (stating that "Congress enacted the Diplomatic Relations Act, 22 U.S.C. § 254d" in accordance with the Vienna Convention).

<sup>174</sup> 22 U.S.C. § 254d (2012); *see also Montuya*, 779 F. Supp. 2d at 62 ("If the Court, therefore, concludes that Defendants are entitled to diplomatic immunity, it must dismiss the action.").

criminal action.<sup>175</sup> It shields a diplomatic agent not only from ordinary lawsuits or crimes, but also from alleged violations of the United States Constitution,<sup>176</sup> and even from allegations of violations of *jus cogens*, such as torture, genocide, or extrajudicial killing.<sup>177</sup> This not only precludes the U.S. government from taking action against foreign diplomatic agents, but indeed places an affirmative duty on the U.S. government to protect such diplomats from prosecution in federal, state, and local court.<sup>178</sup>

As Mr. Feere emphasizes in his study, the diplomatic immunities and privileges outlined above apply not just to diplomats, but also extend to their family members, including their newborn children.<sup>179</sup> Thus, Mr. Feere concludes that children of foreign diplomats born in the United States acquire both U.S. citizenship *and* the full and awesome benefits of diplomatic immunity.<sup>180</sup> When Mr. Feere released his study, numerous media outlets expressed outrage at the creation of such Super-Citizens.<sup>181</sup> Unfortunately, Mr. Feere's

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<sup>175</sup> Baoanan v. Baja, 627 F. Supp. 2d 155, 160 (S.D.N.Y. 2009) (stating that, under the Vienna Convention, "a current diplomatic agent enjoys near-absolute immunity from civil jurisdiction").

<sup>176</sup> Sabbithi v. Al Saleh, 605 F. Supp. 2d 122, 129 (D.D.C. 2009) ("Plaintiffs do not cite a single case, however, in which diplomatic immunity was withheld in order to provide redress for a constitutional violation. Instead, case law suggests that diplomatic immunity can shield a diplomat from liability for alleged constitutional violations.").

<sup>177</sup> Devi v. Silva, 861 F. Supp. 2d 135, 142 (S.D.N.Y. 2012) (noting that "[n]o United States court has recognized a jus cogens exception to diplomatic immunity from its civil jurisdiction," that the United States government has refused to accept a jus cogens exception, and that the international community has similarly not accepted such an exception); *Sabbithi*, 605 F. Supp. 2d at 129 (asserting that the United States and the international community do not recognize a jus cogens exception to diplomatic immunity).

<sup>178</sup> Derrick Howard, *Twenty-First Century Slavery: Reconciling Diplomatic Immunity and the Rule of Law in the Obama Era*, 3 ALA. C.R. & C.L. L. REV. 121, 141 (2012).

<sup>179</sup> Feere, *supra* note 67.

<sup>180</sup> *Id.*

<sup>181</sup> *Super Citizen*, *supra* note 120 (asserting that "[t]he Founding Fathers and drafters of the 14th Amendment to the Constitution may just turn over in their graves" at the news); R. Cork Kirkwood, *CIS: Children of Foreign Diplomats Are Citizens*, NEW AMERICAN (July 18, 2011), <http://www.thenewamerican.com/usnews/immigration/item/2126-cis-children-of-foreign-diplomats-are-citizens> (expressing outrage over the concept of "super-citizens").



assertion is incorrect. Children of diplomats who acquire U.S. citizenship do *not* also receive the benefits of diplomatic immunity. The Vienna Convention explicitly provides that the privileges and immunities of diplomatic agents apply to the “family of a diplomatic agent forming part of his household . . . *if they are not nationals of the receiving State . . .*”<sup>182</sup>

The United States fully comports with this requirement. U.S. law explicitly provides that family members who are entitled to diplomatic immunity are those who “form a part of [the diplomat’s] household *if they are not nationals of the United States.*”<sup>183</sup> The term “nationals” of the United States includes U.S. citizens born in the U.S.<sup>184</sup> Should a child of a foreign diplomat acquire U.S. citizenship or LPR status in the United States, the U.S. government provides that the child “ceases to have the rights, privileges, exemptions, or immunities which may be claimed by a foreign diplomatic officer.”<sup>185</sup> In its guide to U.S. law enforcement and courts on diplomatic immunity, the Department of State notes:

**Nationals or Permanent Residents of the United States.** The general rules [for diplomatic immunity] set forth above assume that the staff members of the diplomatic mission are nationals of the sending country or some third country. The United States, as a matter of policy, does not normally accept as diplomatic agents its own nationals, legal permanent residents of the United States, or others who are “permanently resident in” the United States. *The family members of diplomatic agents enjoy no privileges or immunities if they are nationals of the United States.* Members of the administrative and technical staff (including their families) and members of the service staff enjoy no privileges and immunities if they are

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<sup>182</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art. 37, para. 1 (emphasis added).

<sup>183</sup> 22 U.S.C. § 254a(2)(A) (2012) (emphasis added).

<sup>184</sup> 8 U.S.C. § 1401(a) (2012).

<sup>185</sup> 8 C.F.R. § 101.3(c) (2014); *see also Green Card, supra* note 105 (noting that children of foreign diplomats must “relinquish (give up) your rights, privileges, exemptions or immunities which are available to you as the child of a foreign diplomatic officer” in order to acquire LPR status).

U.S. nationals, legal permanent residents, or foreign nationals  
“permanently resident in” the United States.<sup>186</sup>

It is possible that the U.S. government is not enforcing the above provisions of the Vienna Convention, U.S. statutory law, or State Department guidance, just as it is not enforcing the overall prohibition on children of foreign diplomats acquiring U.S. citizenship in the first place. However, neither Mr. Feere nor anyone else raises this idea, nor is there any evidence to support it. Indeed, the available evidence suggests the contrary. Specifically, the Blue List, which as noted above is the official State Department list of all diplomats and their spouses in the United States, explicitly contains an asterisk next to the name of any U.S. national on the list, noting that such asterisked individuals do not enjoy immunity under the Vienna Convention.<sup>187</sup>

In any case, even if the United States is granting diplomatic immunity to these diplomat children, it would probably have little actual impact. After all, newborns and even toddlers are not generally in a position, due to their age and—let’s face it—lack of mobility, to violate U.S. criminal or civil laws. Further, diplomatic immunity for family members ends when the diplomat’s tour ends.<sup>188</sup> Thus, unless a diplomat remains a member of a foreign mission to the United States for decades, it is unlikely that any child born to a diplomat in the United States will become old enough during his or her parent’s diplomatic tour to commit a crime or be sued such that diplomatic immunity would even come into play. And, even if the child became part of a court case and sought to invoke diplomatic immunity, nothing would preclude the United States or a U.S. court from determining that the child did not in fact possess such immunity due to the fact that the child possessed U.S. citizenship. Thus, Mr. Feere’s concern about Super-Citizens, while certainly alarming on its face, appears to be without much merit.

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<sup>186</sup> U.S. DEP’T OF STATE, BUREAU OF DIPLOMATIC SEC., DIPLOMATIC AND CONSULAR IMMUNITY: GUIDANCE FOR LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 5 (July 2011) [hereinafter DIPLOMATIC IMMUNITY] (emphasis added), available at <http://www.state.gov/documents/organization/150546.pdf>.

<sup>187</sup> *Diplomatic List*, *supra* note 11.

<sup>188</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art. 39(2).

### E. National Security Concerns

What is extremely worrisome about diplomats' children being granted U.S. citizenship are the national security concerns this can trigger. Such children, once they obtain adulthood, can sponsor their parents and other relatives for LPR status,<sup>189</sup> also known as Green Card status, assuming the parents are no longer official members of the diplomatic corps.<sup>190</sup> As an LPR, the parent would be allowed to reside permanently in the United States,<sup>191</sup> leave the United States for up to six months at a time,<sup>192</sup> generally come and go as he or she pleases,<sup>193</sup> and eventually acquire U.S. citizenship himself or herself.<sup>194</sup>

The problem with this scenario is that such parents, by dint of their profession, possess loyalty to their foreign nation. More specifically, as diplomats, they are considered to be so loyal and trustworthy that they can represent the sovereign and the country from afar, and therefore would be expected to have more fealty to their home country than a regular foreign national. Most concerning, the United States does not have any real choice with regard to whom a foreign country decides to designate as a foreign diplomat.<sup>195</sup> Therefore, the U.S. has less control over who is issued a foreign diplomatic visa than it does over who is issued a standard visa. This allows for the possibility of a foreign country designating an "undesirable" as a diplomat, who then bears children while

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<sup>189</sup> *Green Card for an Immediate Relative of a U.S. Citizen*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/green-card/green-card-through-family/green-card-immediate-relative-us-citizen> (last visited Feb. 2, 2015) (stating that U.S. citizens can sponsor a parent for LPR status once the citizen attains the age of 21).

<sup>190</sup> See DIPLOMATIC IMMUNITY, *supra* note 186 (noting that the United States does not generally accept foreign diplomats who possess LPR or U.S. citizen status).

<sup>191</sup> *After a Green Card is Granted*, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/green-card/after-green-card-granted> (last visited Feb. 2, 2015) (stating that persons possessing LPR status are entitled to work and reside in the United States).

<sup>192</sup> 8 U.S.C. § 1101(a)(13)(C)(ii) (2012).

<sup>193</sup> *Id.*

<sup>194</sup> 8 U.S.C. § 1422 (2012); 8 C.F.R. § 316.2 (2014).

<sup>195</sup> Admittedly, the United States does not have to accept undesirable foreign diplomats, but it is rare for a country to refuse entry of a diplomat. See *infra* notes 201-04.

residing in the United States. Those children instantly become U.S. citizens and can later sponsor the undesirable individual for LPR status to permanently reside in the United States.

More ominous, it is well known and accepted that many foreign intelligence officers serve as “diplomats” here in the United States.<sup>196</sup> Their job usually is to spy on the U.S. government, as well as on our businesses and the general populace. Assuming such foreign intelligence officers bear children during their tour in the United States, such offspring, when they reach adulthood, could sponsor the intelligence officer for U.S. LPR status. With such status in hand, the intelligence officer would then be able to reside permanently in the United States, as well as travel in and out of the country basically at will, using his or her LPR status as a mechanism to assist in spying on our interests. Less likely, but even more chilling, foreign nations, whether knowingly or unknowingly, could nominate terrorists or narcotraffickers as diplomats, who could utilize their position for a similar long-term seeding plan.<sup>197</sup> Also possible, a foreign country could use this loophole as part of a very long-term seeding operation to have diplomats or intelligence officers purposefully bear children in the United States with the intention of developing such U.S. citizen children to become foreign intelligence officers.

While all of these long-term seeding scenarios may appear on their face to be ludicrous or the storylines of cheap spy novels, it is important to recognize that foreign nations often take a vastly longer-term approach to intelligence matters than the United States does. Russia, for example, is well known for dispatching “illegals,” spies who adopt the identities of Americans and reside in our country for years, if not decades, posing as the family next door.<sup>198</sup>

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<sup>196</sup> 22 U.S.C. § 254c-1(a) (2012) (noting that the number of foreign government officials in the United States who are engaged in intelligence activities “should not exceed the respective numbers, status, privileges and immunities, travel accommodations, and facilities within such country of official representatives of the United States to such country”).

<sup>197</sup> It probably would be easier for such terrorists and narcotraffickers to enter the United States illegally and have children here than utilize the foreign diplomat path.

<sup>198</sup> Ellen Barry, *‘Illegals’ Spying Ring Famed in Lore of Russian Spying*, NY TIMES (June 29, 2010), <http://www.nytimes.com/2010/06/30/world/europe/30sleepers.html>

This is the premise of the FX television show “The Americans.”<sup>199</sup> Yet this is more than just theoretical or fictional. In 2010, the U.S. government uncovered and evicted an actual spy ring made up of ten such Russian intelligence officers who had resided in the United States for more than a decade.<sup>200</sup> Al Qaeda and other terrorist groups are also known for having a long-term view with regard to planning.<sup>201</sup> There is no indication that the Russians, or any other foreign intelligence service or terrorist organization, have utilized the U.S. citizen status of children of their diplomats in any “illegals” operation, but clearly nothing precludes them from doing so, as long as the United States continues to keep this loophole in place.

Admittedly, the United States does not have to “accept” all foreign diplomats, and could refuse the entry of undesirable foreign diplomatic officers or foreign intelligence officials, or declare them *persona non grata* (“PNG”) after they are in the country and require them to leave.<sup>202</sup> However, there are significant political reverberations attendant with refusing or expelling (often referred to as “PNGing”) a country’s diplomats. Such action can obviously harm the overall diplomatic relationship the United States has with the other country.<sup>203</sup> Furthermore, the other nation might decide to reciprocate and PNG our diplomats resident in their country, as the United States sometimes does after our diplomats are PNGed.<sup>204</sup> Due

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(noting that Russian “illegals” remain undercover for “years or even decades”); Walter Pinkus, *Fine Print: Despite Arrests, Russian ‘Illegals’ Won’t Go Away*, WASH. POST (July 13, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/12/AR2010071205341.html>.

<sup>199</sup> *The Americans*, FX CHANNEL, <http://www.fxnetworks.com/shows/the-americans/about>.

<sup>200</sup> Mary Beth Sheridan & Andrew Higgins, *U.S. and Russia Complete Spy Swap*, WASH. POST, July 10, 2010, at A1.

<sup>201</sup> Catherine Herridge, *Al Qaeda Expansion in Libya Part of Long-Term Terror Vision?*, FOXNEWS.COM (Dec. 7, 2012), <http://www.foxnews.com/politics/2012/12/07/al-qaeda-expansion-in-libya-part-long-term-vision/> (describing the long-term planning conducted by Al-Qaeda).

<sup>202</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art. 9(1).

<sup>203</sup> Howard, *supra* note 178, at 143.

<sup>204</sup> See Juan Carlos Lopez & Catherine E. Shoichet, *U.S. Expels 2 Venezuelan Diplomats*, CNN.com (Mar. 11, 2013, 3:18 PM), <http://www.cnn.com/2013/03/11/us/venezuela-diplomats-expelled/> (noting the justification offered by a State Department spokesman for the U.S. expelling two Venezuelan diplomats in reaction

to this concern, very few foreign diplomats are not “accepted” by the United States.<sup>205</sup> In addition, even if the United States was inclined to PNG an undesirable diplomat or foreign intelligence officer, the United States is unlikely to take such action merely because the officer or the officer’s spouse was about to give birth.

#### IV. RECOMMENDATIONS FOR RESOLVING THE PROBLEM

There are a number of steps that the U.S. government could take to try to resolve this problem. Certain practical solutions would hopefully diminish the number of children of foreign diplomats who are granted U.S. citizenship in the first place. Further, the U.S. government could take steps to revoke the U.S. citizenship of those diplomats’ children who have already illegally obtained such status.

##### *A. Steps that Could Be Taken to Preclude Diplomats’ Children from Obtaining U.S. Citizenship*

The U.S. government could issue guidance to hospitals requiring that they inquire into whether a child born at the hospital has a parent who is a foreign diplomat. Foreign diplomats and their family members are issued Identification Cards.<sup>206</sup> The cards indicate that the bearer is entitled to full diplomatic immunity.<sup>207</sup> Diplomats and their family members could be required to produce them whenever they are admitted to a U.S. hospital.

Standard birth certificate and SSN applications could also be amended to require parents to state, under penalty of perjury,

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to Venezuela PNGing two U.S. diplomats: “Around the world, when our people are thrown out unjustly, we’re going to take reciprocal action. We need to do that to protect our own people.”); *see also U.S. Expels Ecuadorian Ambassador*, CNN.COM (Apr. 7, 2011, 9:14 PM), <http://www.cnn.com/2011/POLITICS/04/07/ecuador.ambassador/>.

<sup>205</sup> Aoife O’Donoghue, *Persona Non Grata or How to Get Rid of Foreign Diplomats*, HUMANRIGHTS.IE (July 22, 2011), <http://humanrights.ie/international-law/international-human-rights/persona-non-grata-or-how-to-get-rid-of-foreign-diplomats/> (“Within diplomatic law [use of persona non grata] is considered a very serious censure and is rarely resorted to unless in the most serious of circumstances.”).

<sup>206</sup> *Diplomatic Immunity*, *supra* note 186, at 9, 17.

<sup>207</sup> *Id.* at 17.

whether either parent is a foreign diplomat.<sup>208</sup> Such forms could also note that children of such parents are not entitled to U.S. citizenship. Of course, foreign diplomats could lie on such forms, knowing that they are actually immune from perjury or any other criminal sanction, per diplomatic immunity.<sup>209</sup> However, diplomats usually take great strides to comply with U.S. law due to the ramifications—including being PNGed by the United States, having their diplomatic immunity waived by their home country, or being prosecuted by their own government—that could occur if the diplomat is viewed as violating our laws.<sup>210</sup> In addition, some foreign states explicitly preclude their diplomats from seeking U.S. citizenship for their children,<sup>211</sup> thus imposing greater sanctions on the diplomat should he or she lie on the form. At the very least, placing such information and requirements on the forms would give diplomats and hospitals notice of the rules.

The U.S. government could also change its current position regarding the issuance of U.S. birth certificates. As noted above, the State Department's current position is that any child born in the United States is entitled to a birth certificate, and that any child with a U.S. birth certificate is automatically entitled to U.S. citizenship.<sup>212</sup> The U.S. government could amend this policy to preclude the children of foreign diplomats from receiving a U.S. birth certificate. Alternatively, the government could place a specific and clear marking on birth certificates provided to diplomats' children, or even issue special birth certificates to these children, which would indicate that the bearer of the certificate, though born in the United States, is not a U.S. citizen. This would be akin to the special license plates the

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<sup>208</sup> Feere, *supra* note 67.

<sup>209</sup> See *supra* text accompanying notes 159-65.

<sup>210</sup> James E. Hickey, Jr. & Annette Fisch, *The Case to Preserve Criminal Jurisdiction Immunity Accorded Foreign Diplomatic and Consular Personnel in the United States*, 41 HASTINGS L.J. 351, 376-77 (1990); Vienna Convention on Diplomatic Relations, *supra* note 158, art. 32(1) (allowing a sending state to waive diplomatic immunity for its diplomatic agents), art. 31(4) (stating that diplomatic immunity does not "exempt him from the jurisdiction of the sending State), & art. 9(1) (noting that the receiving State can PNG a foreign diplomat "at any time and without having to explain its decision").

<sup>211</sup> See *Pakistani Diplomats*, *supra* note 16.

<sup>212</sup> See *Birth Data*, *supra* note 116; *Standard Certificate*, *supra* note 117.

U.S. government issues to motor vehicles operated by diplomats to differentiate them from other drivers.<sup>213</sup>

The Blue List, which as noted above lists all foreign diplomats and their spouses residing in the United States,<sup>214</sup> could also be revised. To begin with, its electronic format could be made more compatible with other government systems so that it can be synchronized with the SSA's computer system.<sup>215</sup> Further, the government could ensure that the names on the Blue List correspond with the names on diplomats' identification cards.<sup>216</sup> In this way, when the diplomat shows his or her identification card to the hospital, and fills out any required paperwork using the name on the identification card, it would correspond to the name on the Blue List and thus be easy for the SSA to cross-reference. The SSA could then refuse to issue Social Security Numbers to these diplomats' children.<sup>217</sup>

The Blue List could also list not only diplomats and their spouses, but also all dependents residing in the diplomats' household, including newborns. If that is too unwieldy, then an additional list could be created that contains such information. In any case, all foreign diplomats could be required to notify the State Department of any additions to their households, including newborn children. This would not prove overly burdensome to enforce, as it would be presumed that diplomats would be incentivized to have their children placed on the list in order to ensure the children receive all the benefits that accrue through diplomatic immunity. The names of any newborn children added to this list could be forwarded to the SSA to further ensure that these children are not issued Social Security Numbers.

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<sup>213</sup> *Diplomatic Immunity*, *supra* note 174, at 10, 21.

<sup>214</sup> *See Diplomatic List*, *supra* note 7.

<sup>215</sup> Feere, *supra* note 67.

<sup>216</sup> *See* DIPLOMATIC IMMUNITY, *supra* note 186.

<sup>217</sup> While Social Security Numbers are issued to non-U.S. citizens, it is difficult to envision a reason to issue an SSN to a diplomat's child who will not be receiving U.S. citizenship. In addition, there is no reason why these diplomatic children should receive the benefits of an SSN, such as job and social security benefits. *See* Feere, *supra* note 67; *Super Citizen*, *supra* note 120.



Finally, as noted above, the State Department's Foreign Affairs Manual (FAM) is strangely ambiguous about whether children of foreign diplomats born in the United States are entitled to U.S. citizenship.<sup>218</sup> This falls contrary to the express desires of the drafters of the U.S. Constitution, extensive Supreme Court precedent, scholarly analysis, and every other statement by the U.S. government. It also creates uncertainty. The FAM therefore could be updated to make it clear that children of foreign diplomats born in this country are not entitled to U.S. citizenship.

*B. Revoking U.S. Citizenship of Diplomats' Children*

In addition to precluding citizenship for children of foreign diplomats, the U.S. government could also take steps to revoke the citizenship of those foreign diplomatic children who have already improperly received U.S. citizen status. Generally speaking, the courts have been adamant that, under the Fourteenth Amendment, the government cannot strip a U.S. citizen of his or her citizenship. As the Supreme Court forcefully stated:

In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power.<sup>219</sup>

In addition, as noted above, the Fourteenth Amendment was specifically enacted to ensure that future Congresses could not strip away the rights of black (or other) Americans through subsequent legislation.<sup>220</sup> Thus, as the Supreme Court has noted, the Government cannot frustrate the foundational intention of the

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<sup>218</sup> See *supra* text accompanying notes 102-04.

<sup>219</sup> *Afroyim v. Rusk*, 387 U.S. 253, 257 (1967); see also *Vance v. Terrazas*, 444 U.S. 252, 260-61 (1980) (reaffirming *Afroyim*).

<sup>220</sup> See *Elk v. Wilkins*, 112 U.S. 94, 101 (1884).

Fourteenth Amendment and “rob a citizen of his citizenship without his consent by simply proceeding to act under an implied general power to regulate foreign affairs or some other power generally granted.”<sup>221</sup> Indeed, the Court has stated that the loss of citizenship “is more serious than a taking of one’s property, or the imposition of a fine or other penalty. For it is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country.”<sup>222</sup> Thus, the courts have routinely viewed the taking of U.S. citizenship as “an extraordinarily severe penalty.”<sup>223</sup>

Due to the drastic nature of such a penalty, the courts have generally permitted revocation of U.S. citizenship only in cases where the U.S. citizen has formally abandoned such citizenship.<sup>224</sup> However, courts have also permitted revocation of citizenship in situations of willful misrepresentation or circumstances of error in order to “safeguard the integrity” of U.S. citizenship.<sup>225</sup> In the context of citizenship acquired through naturalization, the Supreme Court has noted: “[T]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship ‘illegally procured,’ and naturalization that is unlawfully procured can be set aside.”<sup>226</sup> Thus, the Court has canceled a naturalized citizen’s citizenship when it determined that the individual, in originally seeking that citizenship, did not comply with a requirement to file a certificate with the Department of Labor.<sup>227</sup> Similarly, the Court canceled a certificate of citizenship

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<sup>221</sup> *Afroyim*, 387 U.S. at 263.

<sup>222</sup> *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

<sup>223</sup> *Klapprott v. United States*, 335 U.S. 601, 612 (1949).

<sup>224</sup> *Afroyim*, 387 U.S. at 268 (holding that the government can only revoke U.S. citizenship if the citizen “voluntarily relinquishes that citizenship”).

<sup>225</sup> *Fedoreno v. United States*, 449 U.S. 490, 506-07 (1981).

<sup>226</sup> *Id.* at 506 (revoking the citizenship of an individual who willfully misrepresented facts on his visa application about his activities in World War II); *see also* 8 U.S.C. § 1451 (2012) (permitting revocation of naturalization if it was “illegally procured or [was] procured by concealment of a material fact or by willful misrepresentation”).

<sup>227</sup> *Maney v. United States*, 278 U.S. 17, 23 (1928).

where the naturalization process was not conducted in open court, as required by statute.<sup>228</sup>

The lower courts have continued this practice of revoking citizenship granted in error. In one recent Ninth Circuit case, the court revoked the citizenship of an individual who was raised in Mexico, but who apparently adopted another person's identity in order to claim to have been born in the United States.<sup>229</sup> The Ninth Circuit not only revoked the petitioner's citizenship, but also revoked the U.S. citizenship of the petitioner's foreign-born wife and foreign-born children, who had previously claimed derivative U.S. citizenship as the spouse and children of the petitioner, pursuant to his fraudulent claim.<sup>230</sup>

In another case, the Ninth Circuit evaluated the U.S. citizenship of an individual born in the Philippines to a father who was a U.S. citizen.<sup>231</sup> The court determined that a statute in force at the time of the petitioner's birth required the father to have resided in the United States prior to petitioner's birth in order for the petitioner to acquire U.S. citizenship, and the father had not complied with this requirement.<sup>232</sup> The Ninth Circuit then evaluated 8 U.S.C. § 1453, which provides in pertinent part that the Attorney General "is authorized to cancel any certificate of citizenship . . . if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained . . ." <sup>233</sup> The court held that any errors in law or fact in obtaining a certificate of citizenship constitute "an illegality," even if the individual "had never committed any wrongful acts in obtaining his certificate, and the error . . . involved a mistake of law."<sup>234</sup> Based on this, the Ninth

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<sup>228</sup> *United States v. Ginsberg*, 243 U.S. 472 (1917).

<sup>229</sup> *Mondaca-Vega v. Holder*, 718 F.3d 1075 (9th Cir. 2013).

<sup>230</sup> *Id.* at 1078, 1096 (Pregerson, J., dissenting); *see also* *Lim v. Mitchell*, 431 F.2d 197 (9th Cir. 1970) (considering revocation of U.S. citizenship thirty-six years after the petitioner was admitted to the United States, but ultimately holding the U.S. government did not meet its burden of showing that petitioner's citizenship was granted in error).

<sup>231</sup> *Friend v. Reno*, 172 F.3d 638 (9th Cir. 1999).

<sup>232</sup> *Id.* at 648.

<sup>233</sup> 8 U.S.C. § 1453 (2012).

<sup>234</sup> *Friend*, 172 F.3d at 647.

Circuit revoked petitioner's U.S. citizenship, finding that the district court "erred in holding that the mistake of law resulting in [petitioner's] receipt of a certificate or citizenship was not sufficiently serious to permit the certificate's revocation."<sup>235</sup>

While most of the cases in this area of law have involved naturalized or derivative citizenship, the same concepts should apply for birth citizenships. After all, the Citizenship Clause addresses both naturalization and birth citizenship in the same sentence and in the same manner.<sup>236</sup> Indeed, under the U.S. Constitution, a native citizen and a naturalized citizen "stand . . . on equal footing . . . in all respects, save that for eligibility to the Presidency."<sup>237</sup> In addition, the requirement that citizenship is granted solely to persons "subject to the jurisdiction" of the United States is a Constitutional requirement. If the courts are routinely willing to revoke or cancel naturalized or derivative citizenship that does not comply with statutory requirements, surely the courts should not have difficulty revoking birth citizenship that does not comply with the very Constitutional provision that authorized birth citizenship in the first place.

The U.S. government could therefore consider taking steps to revoke the citizenship of diplomatic children who have been granted U.S. citizenship. As noted above, Section 1453 of title 8 of the U.S. Code grants the Attorney General the power to revoke citizenship "if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained . . . ."<sup>238</sup> As the courts have interpreted this provision to extend to citizenship obtained through government or other error,<sup>239</sup>

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<sup>235</sup> *Id.*; see also *Licudine v. Winter*, 603 F. Supp. 2d 129 (D.D.C. 2009) (determining that the petitioner's birth in the Philippines did not constitute birth in the United States for purposes of the 14th Amendment).

<sup>236</sup> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States . . . ." U.S. CONST. amend. XIV, § 1.

<sup>237</sup> *Baumgartner v. United States*, 322 U.S. 665, 673 (1944) (quoting *Luria v. United States*, 231 U.S. 9, 22 (1913)).

<sup>238</sup> 8 U.S.C. § 1453 (2012).

<sup>239</sup> See generally *Magnuson v. Baker*, 911 F.2d 330 (9th Cir 1990); *Ben Huie v. INS*, 349 F.2d 1014 (9th Cir. 1985).

the Attorney General can use this provision to revoke the citizenship of diplomats' children, whether or not the diplomat purposefully sought to acquire such citizenship in violation of the U.S. Constitution.

This may prove tricky to employ in practice, though. So long as the diplomat retains his or her post, the diplomat and his or her child retain diplomatic immunity. This means that the U.S. government may be precluded from bringing the newborn and the newborn's diplomat parents (as the newborn's presumed guardians) into court to attempt to revoke the newborn's U.S. citizenship status. Of course, this only applies until the diplomat's tour has ended. Once that occurs, the U.S. government can take action to revoke the child's citizenship. This may prove complicated, however, as the child would likely reside outside the United States at that time.

Alternatively, the U.S. government could attempt to bring such cases while the diplomat remains at his or her post in order to force the diplomat to make a choice. On the one hand, the diplomat could seek to invoke diplomatic immunity. This would presumably preclude any court action, but would be tacit acknowledgement that the child was not entitled to U.S. citizenship because, as noted above, U.S. citizens cannot claim diplomatic immunity.<sup>240</sup> Alternatively, the diplomat could waive diplomatic immunity<sup>241</sup> in order to attempt to preserve the child's U.S. citizenship status, which would permit the government to move forward against the child. If nothing else, by bringing such cases the U.S. government would raise public awareness of the issue, could preclude diplomats from seeking citizenship for their children born in the United States, and could induce foreign countries to crack down on their diplomats seeking such citizenship for their children.

## V. CONCLUSION

At its base, much of the concern with regard to granting citizenship to diplomats' children born in the United States comes

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<sup>240</sup> See *supra* text accompanying notes 169-73.

<sup>241</sup> Vienna Convention on Diplomatic Relations, *supra* note 158, art. 32 (permitting waiver of diplomatic immunity).

down to consent. As the Supreme Court has noted, a significant international law principle posits that “no one can become a citizen of a nation without its consent.”<sup>242</sup> Any other option would violate the base principle of sovereignty as “[a]ll exceptions . . . to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself.”<sup>243</sup>

Yet consent is effectively lacking in this situation. The United States does not choose who is a diplomat to the United States. That decision is made by the foreign country. Admittedly, the United States can refuse to accept a diplomat’s credentials, or have him or her expelled from the country.<sup>244</sup> But it is unlikely that the United States would take such a drastic step, with all of its geopolitical ramifications, merely to preclude a birth. Further, the mere failure of the U.S. government to take action to refuse or to expel a diplomat is not the same as the United States consenting to the offspring of such diplomats being automatically entitled to U.S. citizenship. The U.S. government has consented to allow foreign diplomats to represent their nations here in the United States, but such consent is only temporary. It lasts only so long as the foreign national remains in his or her position as diplomat, and is meant solely to permit that foreign national to conduct his or her job representing a foreign government. Once the diplomat’s position ends, either by decision of the foreign nation or through action by the U.S. government to expel the diplomat, then the consent for the diplomat to be in the United States ends as well.<sup>245</sup> Such temporary consent to allow an official to reside in the United States to perform a job on behalf of a foreign sovereign is vastly different from the United States consenting to grant permanent citizenship to the children of that official born here during that job period. Put another way, why should a foreign country, by dint of who it chooses to be its representative, get to choose which of *its* citizens become *our* citizens?

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<sup>242</sup> *Elk v. Wilkins*, 112 U.S. 94, 103 (1884).

<sup>243</sup> *United States v. Wong Kim Ark*, 169 U.S. 649, 684 (1898).

<sup>244</sup> Vienna Convention on Diplomatic Relations, *supra* note 159, art. 9(1).

<sup>245</sup> *Id.* at arts. 9, 10, 43.

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Thus, the undermining of sovereignty and the violation of the concept of consent are additional concerns that can be added to the list of problems raised by allowing diplomats' children born in the United States to become U.S. citizens. The fact that such action violates the Constitution is only the starting point. Violations of international law and unfairness also permeate the scenario. Finally, and perhaps most critically, the danger of having the children of foreign representatives become citizens of our country, with the ability to eventually sponsor their (potentially hostile and possibly intelligence officer) parents for LPR status or citizenship should not be underestimated. This is a critical national security loophole that our enemies can utilize, and they may already be doing so.

This is not an overwhelmingly difficult problem to resolve. Diplomats primarily reside in only two cities in the United States—Washington, D.C. and New York City.<sup>246</sup> Merely providing knowledge to the hospitals in those two cities, along with fixing some gaps in birth certificate and Social Security Number issuance procedures, would go a long way towards eliminating most of the problem. Taking judicial action against those who have already illegally acquired U.S. citizenship would further diminish the potential harm. At risk is not just constitutional consistency, but also our national security.



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<sup>246</sup> 2013 Diplomatic List, *supra* note 132; David Osborne, *Can a Diplomat Get Away with Murder?*, THE INDEPENDENT (Jan. 10, 1997), <http://www.independent.co.uk/news/world/can-a-diplomat-get-away-with-murder-1282444.html>.