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Asian/American/Alien: Birth Tourism, the Racialization of Asians, and the Identity of the American Citizen

Mehera Nori*

INTRODUCTION

On March 3, 2015, federal agents raided thirty-seven locations in Southern California as part of an investigation into the practice of “birth tourism,” also known as “maternity tourism.” Investigators focused on three multimillion-dollar businesses that catered to wealthy, pregnant Chinese women hoping to give birth to their babies on American soil. The investigation unraveled when two Homeland Security Agents posed as foreign nationals seeking entry into the United States for the sole purpose of giving birth within the country. The agents documented conversations with these businesses and reported that these agencies advised women to sign up for tour packages to popular tourist destinations and to “fabricate [...] employment history to convince immigration officials that [they] would not overstay [their visas].” These agencies also reportedly instructed pregnant foreign nationals on how to dress so as to avoid suspicion from immigration officials, and advised these pregnant women to travel twenty-four to thirty weeks into their pregnancy. This investigation is the largest crackdown on birth tourism businesses; some of which have purportedly served up to 8,000 foreign women since 1999.

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4. Id.

5. Id.

6. Lewin, supra note 1. (“One of the businesses said on its website, starbabycare.com, that since it began in 1999, it had served 8,000 pregnant women, 4,000 of them Chinese.”).
Immigration has long been a hot topic in American media, and has recently been at the forefront of the political playing field. In late 2014, President Barack Obama described his plans to provide work permits to certain groups of undocumented immigrants. Such efforts would help alleviate the fear of deportation, and may help combat the implementation of harsh anti-immigration policies.\footnote{Vanessa Cardenas, \textit{5 Facts to Know About President Obama's Immigration Announcement}, CTR FOR AM. PROGRESS (Nov. 21, 2014), \url{https://www.americanprogress.org/issues/immigration/news/2014/11/21/101984/5-facts-to-know-about-president-obamas-immigration-announcement}; Bill Ong Hing, \textit{Like It or Not, Arizona's SB 1070 Is About Racial Profiling}, HUFFINGTON POST, (Apr. 27, 2012), \url{http://www.huffingtonpost.com/bill-ong-hing/arizona-immigration-law_b_1457435.html}.} Despite statistics that reflect a rising Asian immigrant population,\footnote{The Rise of Asian Americans, PEW RESEARCH CTR. (June 19, 2012), \url{http://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans}.} conversations regarding immigration reform mainly focus on Latino immigrants and seem to ignore Asian immigrants and Asian American communities.\footnote{Asian Immigration and the Myth of the "Model Minority", WNYC.ORG (Nov. 14, 2011), \url{http://www.wnyc.org/story/170366-asian-immigration-and-myth-model-minority/}.} However, the United States cannot leave Asians and Asian-Americans out of the immigration discussion. As birth tourism businesses make headlines, it is valuable to consider how responses to birth tourism shape Americans' understanding of citizenship and national identity. Through a conversation on birth tourism, we can begin to uncover what it means to be an American citizen.

This article discusses the impact of birth tourism on the larger conversation pertaining to Asian immigrants and citizenship rights. Part I provides a general background of the birth tourism industry and touches upon the issues and fears it raises. Part II explores the history of citizenship in the United States and draws comparisons to other theories of citizenship. Part III examines the racialized identity of Asians in America by considering the conversations on birth tourism and its relationship to the Asian-American identity. Finally, this paper briefly addresses the potential repercussions of birth tourism that may occur in the future.

I. WHAT IS BIRTH TOURISM?

Doctores Para Ti describes itself as a medical facility that provides obstetric services to foreign parents.\footnote{About Us, DOCTORES PARA Ti, \url{http://www.doctoresparati.com/childbirth.html} (last visited Jan. 23, 2015).} Located in El Paso, Texas, Doctores Para Ti runs a maternity tourism program, through which they “[facilitate their] childbearing service to foreign women who wish to receive safe and [adequate] medical care in the United States of America and obtain U.S. Citizenship for their newborn.”\footnote{Id.} For $5,500, a tourist can safely deliver a child at the Doctores Para Ti facility and return to their home country with
a child who has American citizenship. Doctores Para Ti primarily markets its services to Central and South American families, but the draw of birth tourism has extended to other parts of the world as well. In China, the Jia Mei Canadian and American Baby Counseling Services Center provides a plane ticket, housing accommodations in Los Angeles or Chicago, nannies, drivers, and a chef. For $30,000 to $40,000, wealthy Chinese families can move to the U.S. for a three-month period, and return to China with their naturalized American newborn. This practice has become a way for foreign families to obtain American citizenship for their children.

A. THE BUSINESS OF BIRTH TOURISM

In 2013, birth tourism made headlines in Southern California when it was revealed that a motel in Arcadia, California, had been operating a birth tourism business on the side. The motel charged wealthy foreign women $25,000 and provided medical services, travel accommodations, visas, and room and board. The motel also provided nursing staff and a full nursery for newborns. Although the motel’s side business was brought to the attention of Jason Kruckeberg, the Arcadia Assistant City Manager, he was unable to stop them from operating because the birth tourism business was technically legal. Mothers who came to the motel had either tourist or business visas and were not violating any immigration laws. Ultimately, the motel in Arcadia was shut down due to zoning violations, but a number of other birth tourism businesses continue to operate around the country.

While Central and South American families make up a substantial portion of birth tourists, a large portion of maternity tourism services market to Chinese, South Korean, Turkish, and Eastern European families as well. Many families have sought to deliver their children in the United States so as to access education, healthcare, and in some cases, to avoid laws in the parents’ native country.

Birth tourism is a direct reflection of the political and social realities

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14. Id.
16. Id.
17. Id.
18. Id.
19. Id.
faced by foreign parents. For South Korean mother Kim Jeong Yeon, having her child in the U.S. was a way for her child to avoid mandatory military service. For some Chinese families, birthing abroad is a way to circumvent China’s infamous one-child policy. The policy, implemented as a way to curb a rapidly growing population, restricts the number of children a family can have to one. However, the one-child policy does not account for children born outside of China. For the Lins, having their daughter Ada in Los Angeles allowed them to avoid the strict policies back in China.

The Lins are not the only couple to travel abroad in an effort to avoid the one-child policy. In another instance, Qiu Yun Chen, Chinese mother of two American-born children, petitioned for asylum in 2013 on the grounds that she would be forcibly sterilized upon her return home to Fujian province. The Seventh Circuit denied her appeal, stating that they lacked a rational basis for approving her request. While many of the maternity tourists come from East Asia, families from Eastern Europe and Turkey are also drawn to the global status associated with U.S. citizenship. The Marmara Manhattan, a luxury hotel in New York City, offers long-term stay options, as well as supportive services. In 2009, Marmara Manhattan reportedly hosted fifteen families who came to deliver their children in New York, at a cost of $45,000 per family. Generally, the education and healthcare systems are major incentives for foreign families. In addition, having an American-born child eventually provides a possibility for sponsorship and legal immigration for the rest of the family once the child turns twenty-one.

23. Blackstone, supra note 22.
24. Id.
26. Id. at 208.
States. For others, the cost is worth the reward: a child with U.S. citizenship. *Jus soli*, the practice of conferring a nation’s citizenship rights to any person born in that nation, is common in the Americas, and the United States is one of the few western countries that takes a more unrestricted approach to conferring citizenship based on location.\(^{30}\)

**B. WHY BIRTH TOURISM?**

The United States has maintained its policy of birthright citizenship, but is one of few western nations to do so.\(^{31}\) The Fourteenth Amendment of the Constitution states, “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.”\(^{32}\) As such, a person born within the United States or in one of the designated American territories acquires citizenship at birth.\(^{33}\) According to the National Center for Health Statistics (“NCHS”), there were a total of 4,247,694 registered births in the United States in 2008.\(^{34}\) Furthermore, the NCHS estimates that of those registered births, 7,462 babies were born to foreign nonresident mothers.\(^{35}\)

Although there has been backlash against birthright tourism, others believe that birthright tourism is not an important issue.\(^{36}\) To some, the percentage of births by foreign parents is too insignificant to prioritize. Angela Kelley, a Senior Fellow at the Center for American Progress, suggests why this might be the case, noting that birthright citizenship is a “fundamental and integral” part of the nation’s character and that proposed legislative changes would be intrusive and ineffective.\(^{37}\) However, Kelley also stated that the idea of birth tourism “leaves a bad taste in [her] mouth,” and that she does not condone the maternity tourism programs that take advantage of birthright citizenship.\(^{38}\) There are many contrasting views on this issue. Some Americans side with Kelley’s second statement and

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35. Graff, supra note 15. See also Jeffery S. Passel and Paul Taylor, *Unauthorized Immigrants and Their U.S.-Born Children*, PEW RESEARCH CENTER (Aug. 11, 2010), http://www.pewhispanic.org/2010/08/11/unauthorized-immigrants-and-their-us-born-children. This figure has been estimated differently by various sources; the consensus is that the percentage of unauthorized births by foreign national parents is fairly small.
37. Schecter, supra note 20.
38. Schecter, supra note 20.
consider the birth tourism industry to be an unethical loophole to legal immigration. On the other side of the spectrum, birth tourism is regarded as a clever way to utilize existing law to the foreign mother’s benefit. Immigration attorney John Kang seemingly supported this notion, stating that birth tourism is not exactly a loophole, but simply a way for “people [to make] the best use of the law that’s in existence today.” Kang also notes that it is not illegal for pregnant tourists—termed “pregnant foreign nationals” by U.S. Customs and Border Protection—to travel, and that it would be difficult for the government to discern whether a pregnant foreigner was coming to the United States for the sole purpose of delivering a baby.

The boom in birth tourism has caused some communities to protest. For example, in Chino Hills, a suburb of Los Angeles, the operation of a maternity tourism business caused community backlash. Residents came together and formed Not In Chino Hills, an organization whose mission statement is to keep members informed of issues related to birth tourism. The group’s website explains that the tourists are transported around in nondescript vans, and the group encourages community members to “report any illegal activity to the appropriate authorities.” Not In Chino Hills also encourages members to contact public officials and express concerns about the birth tourism industry.

Following the community backlash from Chino Hills residents, Los Angeles County experienced a spike in complaints from residents of other suburbs, causing officials to worry for the safety of the expectant mothers. Reportedly, members of Not In Chino Hills asked residents to follow mini vans that they believed were tied to maternity tourism businesses. The Chino Hills outrage was not just the work of a handful of residents, but also the Chinese American Association of Chino Hills (“CAACH”). In late 2012, CAACH president Wai-Min Liu and vice

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40. Id.
45. “Maternity Hotel” In Chino Hills, supra note 41.
46. Id.
president Ann Lim reached out to local news reporters to affirm their stance against birth tourism. Their press release stated,

CAACH strongly believe that this is an outrageous exploitation of the United States constitution. . . . The business operators of the birth tourism and maternity hotels should be stopped for exploiting our constitution and the innocent pregnant women. CAACH strongly believe in just and due process for immigrants to earn their citizenship and our constitution.

Like many in the Chino Hills community, CAACH’s members maintained their belief that immigration should be achieved through legal pathways. However, attaining legal citizenship through birth tourism is not as easy as it sounds. An American-born child can only sponsor their immediate relatives once they turn twenty-one. According to a recent article in *Forbes*, birth tourism is not the fastest path to legal immigration, contrary to popular belief.

Even though there are an unlimited number of visas for immediate relatives of U.S. citizens, the sponsorship process can be very lengthy. For those already within the United States, the citizen relative must first file a Petition for Alien Relative; once that is approved, the applicant or citizen relative must also file for Adjustment of Status to declare permanent residency. For citizen relatives outside of the United States, they must file a Petition for Alien Relative and will be notified by the Department of State once an immigrant visa becomes available. If the citizen relative does not apply for the immigrant visa within one year of receiving notification, their petition may be terminated. America’s immigration laws are very strict, and the practice of birth tourism does not prevent deportation for families who continue to reside in the United States with their American-born child. Therefore, should a foreign family choose to remain in the country with their American-born child, the family may still be deported for not lawfully immigrating.

Mainstream media has frequently fixated on the fear of “anchor babies,” which is the notion that undocumented immigrants will use their

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53. *Id.*
54. *Id.*
55. *Id.*
56. IN CHINO HILLS!, *supra* note 42.
American-born children as an “anchor” for their own citizenship, as U.S. citizens can sponsor foreign relatives for citizenship. Although this topic is often raised as an anti-immigration argument, the elite Asian women who pay thousands of dollars for birth tourism services are usually not actively trying to stay in the United States. Most of these women are wealthy, well-educated, and live luxurious lifestyles in their home country—they are rarely in danger of overstaying their visits. Still, the fear of illegal immigration has caused some politicians to propose drastic changes to America’s long-standing history of birthright citizenship.

II. CITIZENSHIP AND POLITICS
A. THE HISTORY OF BIRTHRIGHT CITIZENSHIP IN THE UNITED STATES

As mentioned above, the United States is one of the few western countries to have unrestricted *jus soli,* as codified in the Fourteenth Amendment. The Fourteenth Amendment, ratified in 1868, intended to extend natural citizenship to slaves in the wake of the Civil War. It states that “persons born or naturalized in the United States, and subject to the jurisdiction thereof” are citizens of the United States. Scholars note that American birthright citizenship derives from English common law, particularly from a case known as *Calvin’s Case.* *Calvin’s Case* was brought in 1607 concerning estates in England that had been conveyed to a child who was born in Scotland; the central legal question of the case was whether Scottish-born Calvin could be considered a citizen of England in order to own real property. Ultimately, the case established that those born in Scotland retained citizenship in England as well. The Court of the King’s Bench reasoned that Calvin was under the jurisdiction of the English crown, as Calvin was born after the two kingdoms of Scotland and England had been united.

57. Schecter, supra note 20.
58. Demick, supra note 21 (“Indeed, most [birth tourists] are eager to fly home as soon as they can get the birth certificates and passports for their newborns.”).
59. Id.
61. Supra note 32.
64. See generally Calvin’s Case, 77 E.R. 377 (1608). See also Polly J. Price, *Natural Law and Birthright Citizenship in Calvin’s Case* (1608), 9 YALE J.L. & HUMAN. 73, 74 (1997) (“Calvin’s Case is the earliest, most influential theoretical articulation by an English court of what came to be the common-law rule that a person’s status was vested at birth, and based upon place of birth.”).
65. Id.
66. Id. at 81.
67. Price, supra note 62 at 73.
England were united. Therefore, he was able to “enjoy the benefits of English law as subjects of the King.” Accordingly, Calvin’s Case granted individuals born within the boundaries, and subject to the governmental jurisdiction, of a state, to “enjoy the benefits” offered to them by that state.

Birthright citizenship has existed in the United States since the conception of the nation and has been slowly expanded to include classes that were historically excluded on the basis of race. In 1898, the Supreme Court of the United States decided United States v. Wong Kim Ark. Wong, a Chinese laborer, was born in San Francisco to immigrant parents in 1873. In 1890, Wong traveled to China and was permitted to reenter the United States due to his status as a U.S. citizen. Five years later, Wong again traveled to China, but was denied reentry due to a determination that he was not a citizen. Shortly before this case was brought, President Arthur had signed the Chinese Exclusion Act, a sweeping piece of legislation that prohibited the immigration of Chinese laborers. While the intent was to halt the influx of Chinese workers that had been steadily rising during the late 1800s, the Chinese Exclusion Act was not meant to apply to Chinese individuals who were found to be U.S. citizens. In Wong’s case, the Court asked the question of “whether a child born in the United States, of parents of Chinese descent, who . . . are subjects of the emperor of China . . . becomes at the time of his birth a citizen of the United States.”

In the majority opinion, Justice Gray turned to a number of sources to interpret the Fourteenth Amendment. He noted that the Constitution does not provide guidance as to the limits of jus soli, and as such, interpreting the Citizenship Clause requires a review of precedent. Through his examination of Calvin’s Case and other prior cases and statutes, Justice Gray determined that there were no authorities limiting “the established rule of citizenship by birth within the dominion.” The Court also noted that the Citizenship Clause was intended to apply to all people born within

68. Id. at 80.
69. Id. at 73.
70. Price, supra note 62 at 73.
72. Id. at 652.
73. Id.
76. Wong Kim Ark, 169 U.S. 649, 653 (“It is conceded that, if he is a citizen of the United States, the acts of congress known as the ‘Chinese Exclusion Acts,’ prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States, do not and cannot apply to him.”).
77. Id.
79. Id. at 674.
the boundaries of the United States, and as such, people were not to be restricted based on "color or race." Ultimately, the Court concluded that Wong was a citizen of the United States. Justice Gray stated:

The fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory . . . including children here born of resident aliens. . . . The amendment, in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States.

Justice McKenna, who dissented in this decision, argued that the Fourteenth Amendment, along with prior cases, implied citizenship passed through allegiance to nation—determined by a child’s parents—rather than location of birth. He noted that the Citizenship Clause does not “arbitrarily make citizens of children born in the United States of parents who, according to the will of their native government and of this government, are and must remain aliens.” Though the Court rejected Justice McKenna’s view, numerous nations have policies that grant citizenship based on the citizenship of one’s parents, rather than on location of one’s birth.

B. THEORIES OF CITIZENSHIP: BIRTHRIGHT AND BLOODRIGHT

The theory of citizenship as inherited through one’s parents’ citizenship is known as jus sanguinis, or “right of blood.” Unlike the United States, the majority of countries in continental Europe have adopted policies that confer citizenship based on parentage. In jus sanguinis nations, foreigners who cannot trace their heritage back to the country may have a much harder time gaining citizenship. Since jus sanguinis determines citizenship based on ancestry and country of family origin, nationals who have lived abroad for generations may be able to return to their ancestral homeland, while foreigners must “earn the right to

80. Id. at 676.
81. Id. at 693.
82. Id. at 730.
83. Id. at 732.
84. Feere, supra. note 60 at 5.
naturalize.  

In some European countries, earning the right to naturalize may require an individual to meet a certain set of requirements. In France, for example, French-born children whose parents are non-French can access French citizenship once they turn eighteen, so long as they can show that they have lived in France for at least five years. Similarly, the United Kingdom has a combined version of jus soli and jus sanguinis. Those who do not have ancestry that they can trace back to the U.K. but wish to become citizens must be eighteen or over, be of "good character," plan to reside in the U.K., meet residency and English language requirements, and pass a citizenship exam.

Because jus sanguinis predicates the concept of citizenship on family allegiance to a nation rather than location of birth or permanent residence, it can be difficult for foreigners to access the benefits of being a naturalized citizen. By basing citizenship on one's parents' allegiance and ancestry, jus sanguinis is a theory of citizenship that does not anticipate transnational families. Yet, global migration is growing. The United Nations Department of Economic and Social Affairs reports that "the global migrant stock grew twice as fast [during the 2000-2010 period] than during the previous decade," and there were an estimated 232 million international migrants around the world in 2013. In that vein, countries are becoming increasingly tolerant of dual citizenship, which allows families to maintain a stronger legal connection to their home countries. However, the ability to access dual citizenship tends to be based on jus sanguinis, and not all countries recognize dual nationality.

By contrast, the United States does recognize dual nationality, which does not necessarily imply citizenship; noncitizen nationals are those born in U.S. territories to which jus soli does not fully apply. Additionally, it is difficult for U.S. nationals to lose their nationality; U.S. nationality is

87. Id.
88. Gilbertson, supra note 31.
93. Id. at 5.
only revoked if citizens voluntarily seek foreign nationality with intent to give up their U.S. nationality.\textsuperscript{95} The difficulty of losing U.S. nationality can be advantageous to foreign nationals who want their children to retain their birthright connections to the U.S. while they are raised abroad, which is what happens with many children born in through birth tourism programs. Compared to other western countries, America's citizenship policy is quite relaxed. Anyone born within the nation's borders or in select American territories can claim U.S. citizenship; as the country with the largest indefensible border, the United States may be more susceptible to birth tourism than other western nations.

C. POLITICAL RESPONSE AND THE BIRTHRIGHT CITIZENSHIP ACT

Some politicians fear that birth tourism would allow for high rates of illegal immigration. Fears of the costs of undocumented immigrants on American taxpayers have spurred a number of attempts to restrict \textit{jus soli}. In 2009, forty-one politicians introduced the Birthright Citizenship Act.\textsuperscript{96} Spearheaded by Georgia Congressman Nathan Deal, the Act proposed only conferring citizenship to children born on U.S. soil "if at least one of their parents is a U.S. citizen or national, a legal permanent resident of the U.S., or actively serving in the U.S. military."\textsuperscript{97} The Act, if implemented, would not have an impact on the citizenship of those born before the date of enactment.\textsuperscript{98} In 2008, Colorado Congressman Tom Tancredo addressed the House of Representatives on the topic of birthright citizenship, and spoke to the fears many have with regards to the concept of "anchor babies" and illegal immigration.\textsuperscript{99} Congressman Tancredo stated that the Fourteenth Amendment has been grossly misinterpreted and misapplied, as there was "no such thing as illegal immigration" at the time the Fourteenth Amendment was ratified.\textsuperscript{100} Congressman Tancredo also addressed the fear of "anchor babies."\textsuperscript{101} He noted "it results not just in the benefit for a child who is born as a U.S. citizen, it also makes it easier for the parent of that anchor baby or the illegal alien to become a U.S. citizen through that child."\textsuperscript{102} Many fear that not only will undocumented aliens use their "anchor babies" as a path to citizenship for themselves, but also that

American taxpayers will be made to foot medical bills for pregnant foreigners who deliver within the country. According to a study conducted by the Pew Research Center, there were an estimated 340,000 children born to unauthorized immigrants in 2008, approximately 8% of the total 4.3 million babies born in the U.S. that year. Although it is a small percentage of the overall births in the country, many worry that the increase of maternity tourism programs will increase the number of unauthorized immigrants in the country. In his speech to the House, Congressman Tancredo concluded by saying, “It's time we yank back the illegal alien welcome mat, eliminate perverse incentives for illegal immigration like birth right citizenship and taxpayer services for illegal aliens.”

The Birthright Citizenship Act has been introduced in nearly every congressional cycle and has consistently failed to pass. While some believe amending *jus soli* will solve some of the current immigration problems, others do not think restrictions on birthright citizenship will help. According to a report by the Migration Policy Institute, amendments to deny citizenship to undocumented children born within the U.S. would have the opposite effect and could ultimately create a “self perpetuating class of unauthorized immigrants.” The report notes that, using a demographics analysis, it is estimated that “the population of unauthorized immigrants would rise from 11 million today to 16 million in 2050.” The report, published in 2010, states that children born to the 11 million unauthorized immigrants would not have a claim to U.S. citizenship if birthright citizenship under *jus soli* was repealed, and the children and grandchildren of those 11 million unauthorized immigrants would likely be unable to claim citizenship in the country of their ancestors, as most *jus sanguinis* nations require. Thus, a “repeal of the [Fourteenth] Amendment or enactment of the Birthright Citizenship Act would lead to the establishment of a permanent class of unauthorized persons,” because they would neither be able to claim citizenship in the U.S. nor in the country of their U.S.-born ancestor’s origin.

Practical implications aside, some worry that a repeal of birthright citizenship would contradict the American spirit. In response to the Birthright Citizenship Act of 2009, Azadeh Shahshahani, director of the Immigrant Rights Project of the American Civil Liberties Union of Georgia said “[they] would stand in strong opposition to this bill as it's in

103. *Id.*
105. *Nathan Deal, supra* note 97.
107. *Id.*
108. *Id.* at 2.
110. *Nathan Deal, supra* note 97.
fundamental contradiction to [the] nation's long history of welcoming immigrants and bestowing inalienable rights” upon all those born in the country.111

American citizenship has long been considered a valuable possession. In Perez v. Brownell, the Court decided that Congress had the right to revoke a native-born citizen’s citizenship if that citizen participated in a foreign election.112 In his dissent, Chief Justice Warren stated,

Citizenship is a man’s basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. . . . His very existence is at the sufferance of the state within whose borders he happens to be.113

Warren posited that citizenship is so valuable that to strip one of their citizenship status would be to leave them without any rights or any “lawful claim to protection from any nation.”114 Warren’s notion of the inalienability of citizenship was later affirmed in Afroyim v. Rusk, in which the Supreme Court reversed Perez and stated that in the United States, “the people are sovereign and the [government] cannot sever its relationship to the people by taking away their citizenship.”115 Such an inalienable right is the gift many foreign pregnant nationals hope to bestow upon their children.

D. STATELESSNESS AND CITIZENSHIP LAW

Maternity tourism programs can help foreign national mothers give their children the gift of American citizenship, but they rarely warn of the possibility of citizenship revocation. As decided in Perez v. Brownell, Congress has the ability to revoke citizenship from naturalized U.S. citizens under certain circumstances.116 A revocation of citizenship could lead to the unusual and complicated status of statelessness. According to the Department of State, statelessness occurs when a person does not “enjoy citizenship . . . in any country.”117 In 2011, the United Nations High Commissioner for Refugees estimated that there are between 3.5 million and 12 million stateless individuals across 64 countries.118

In 1961, the United Nations adopted the Convention on the Reduction of Statelessness in the hopes of assisting the numerous existing stateless
individuals, and eliminating the structures that allow statelessness to become a reality.\textsuperscript{119} While nations are allowed to decide how to structure their citizenship, the U.N. argues that “[nations] must do so in compliance with international norms relating to nationality.”\textsuperscript{120} In an effort to avoid statelessness, the Convention focuses on how nations grant citizenship and places an emphasis on birthright citizenship. Article I, Section 1 of the Convention states that nations that ratify the document shall grant citizenship “at birth, by operation of law,” or through application to the “appropriate authority.”\textsuperscript{121} Article I, Section 4 of the Convention requires contracting states to grant nationality “to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born.”\textsuperscript{122} Article 8 of the Convention further states that a “Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.”\textsuperscript{123} The United States is not among the signatories who have ratified the Convention, and is in no way obligated to implement or enforce any of these provisions. Since there are no laws prohibiting the revocation of citizenship, and many Asian countries do not offer dual citizenship, the danger of statelessness as a result of birthright citizenship reform is a possible reality; if such legislation were to pass, a class of stateless individuals would be created. Moreover, mothers who travel to the United States to give birth run the risk of removing their children from the ability to access their ancestral nationality.

Perhaps in a response to increasingly transnational generations, some countries have adopted citizenship laws that bestow citizenship to children born abroad based on their parents’ citizenship. For example, Article III of the Nationality Law of the People’s Republic of China states that the nation does not recognize dual citizenship for any Chinese national;\textsuperscript{124} however, Articles IV, V, and VI state that those born abroad or those who are stateless may be able to claim Chinese citizenship provided they have at least one parent who is a Chinese national.\textsuperscript{125} Currently, all of those who were born in the United States to foreign national parents are still considered United States citizens. Furthermore, legislative proposals, such

\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id. at 7.
\textsuperscript{123} Id. at 11.
\textsuperscript{124} NATIONALITY LAW OF THE PEOPLE’S REPUBLIC OF CHINA, ARTICLE III (Sept. 10, 1980).
\textsuperscript{125} Id. at ARTICLES V, VI.
as the Birthright Citizenship Act, do not have enough support to implement 
strict legislation that would strip naturalized citizens of their citizenship.

While the Birthright Citizenship Act is unlikely to become law, birth 
tourism is still on the minds of many politicians. The 2016 Presidential 
Election Cycle has seen a number of politicians expressing their views on 
immigration and, inevitably, anchor babies. Republican contender Jeb 
Bush recently commented on the demographics of maternity tourists and 
the anchor baby phenomenon, stating that there are more Asian immigrants 
coming to the United States.\(^\text{126}\) Bush further stated that he felt these 
undocumented immigrants were “taking advantage of [the] noble concept” 
of birthright citizenship.\(^\text{127}\) Access to birthright citizenship will likely 
continue to be a hot topic in upcoming elections and will undoubtedly 
spark backlash from immigrant communities, given the racialized 
implications of immigration reform.

III. RACIALIZATION AND ASIAN IDENTITY

In 2010, Arizona made headlines when it passed SB 1070, a law that 
allows Arizona law enforcement officers to “arrest a person if the officer 
has probable cause to believe” that “the person to be arrested has 
committed any public offense that makes the person removable from the 
United States.”\(^\text{128}\) While SB 1070 allowed law enforcement officials to 
question Asians and Asian Americans, the bill mainly seemed to be a 
response to immigration from the Latino and Hispanic communities, and 
caused many Hispanic voters to reconsider their party affiliations as a 
result.\(^\text{129}\)

Given its shared border with Mexico, it seems understandable that 
Arizona would target their immigration reform efforts on curbing 
immigration from their neighboring country; yet Asian immigrants are also 
coming to the United States in increasing numbers. Overall statistics on 
immigration imply that Asian immigrants, both legal and unauthorized, 
have surpassed the number of immigrants from the Hispanic community.\(^\text{130}\)

Recent census data reports that thirty-six percent of all new immigrants in 
2010 were Asian, compared to thirty-one percent of Hispanic 
immigrants.\(^\text{131}\) However, Asian immigrants make up a smaller percentage 
of the unauthorized immigrant population. According to the Department of


\(^{127}\) Id.


\(^{131}\) Id.
Homeland Security, 1.3 million of the estimated 11 million unauthorized immigrants are from various nations in Asia. Additionally, the number of unauthorized births is also increasing. According to Chinese state media, there were 10,000 births in the United States to foreign Chinese mothers in 2012, a significant increase from 4,200 in 2008.

The impact of birth tourism from Asian mothers is not as immediate as it may seem. Most of the pregnant women coming from China, Korea, and other Asian nations are not seeking to “anchor” themselves in the United States. As one news source reported, “most are eager to fly home as soon as they can get the birth certificates and passports for their newborns.” The impact of birth tourism from Asian nationals is not as much of a concern for some, given that these women are wealthy and do not have a personal interest in staying in the United States. Additionally, conversations around unauthorized Asian immigrants are not at the forefront of the immigration discussion, in part due to the way Asians have been racialized as permanent foreigners. This racialization and perpetual “othering” of Asians has quelled fears of any threats to the American identity.

A. ASIANS AS ALIEN CITIZENS

Proposals to change birthright citizenship seek to increase the difficulty of becoming a naturalized citizen for those with two foreign national parents. While the impact of proposed birthright citizenship legislation on current naturalized citizens with two foreign parents is unclear, the possibility of creating a stateless, alien citizen is a concern. Scholar Mae Ngai argues that Asians are particularly susceptible to becoming “alien citizens,” and that the history of immigration reform has racialized Asian immigrants in such a way that renders them permanent foreigners. Ngai states that alien citizenship for Asian immigrants “was the invariable consequence of racial exclusion from immigration and naturalized citizenship.” Ngai notes also that Asian immigrants straddle the fine line between legal and illegal citizenship, due to the fact that many naturalized citizens are considered “foreign by the mainstream of American culture and, at times, by the state.” While Ngai’s focus is primarily on immigrants who reside and work within the U.S., the flexibility of citizenship and the potential of statelessness is nonetheless a legitimate issue with regards to birth tourism. More importantly, the history of race
and ethnicity-based exclusion may lead many Asian American communities to worry about the way their citizenship status may change if birthright citizenship is amended. Proving one's citizenship may be more difficult for those of Asian descent. Ngai argues that even though the United States considers itself a nation of immigrants, Asian immigrants and naturalized Asian-Americans are not considered truly American. In relation to race and birthright citizenship during the World War II era, she writes:

EXCLUSION . . . legally defined all Asians as racially unassimilable and hence ineligible to naturalized citizenship. For Asian Americans born in the United States, birthright citizenship held certain tangible benefits (the right to be present, to own land, etc.) yet remained subject to enormous cultural denial by the mainstream of American society, which regarded “Asian” and “American citizen” as mutually exclusive concepts.

The view of Asian communities as “unassimilable” permanently others them and, in the event birthright citizenship is repealed, may complicate their access to citizenship as a result of their racialized identities as “alien citizens.” The American Immigration Council contends that a repeal of birthright citizenship would not just affect unauthorized immigrants, but would have a profound effect on everyone. They argue that all Americans would have to “prove their children derive U.S. citizenship through one or both of their parents,” a process that would be difficult for many.

B. EXCLUSION FROM CITIZENSHIP

As Ngai notes, Asians have historically been excluded from the benefits of American citizenship, even when they attempt to obtain it legally. The Naturalization Act of 1790, the country’s first naturalization law, included requirements that were “explicitly racial.” The Act required that alien applicants reside in the country for two years prior to naturalization and that they be a “free White person.” In 1906, President Theodore Roosevelt signed into law the Naturalization Act of 1906, which amended existing law to include a requirement that only those who were white and those who were of African descent or nativity could naturalize, which further excluded Asian immigrants. The Act states “that no alien
shall hereafter be naturalized or admitted as a citizen of the United States who cannot speak the English language.145 These exclusions from citizenship led some immigrants to challenge the requirements laid out in the law.

In 1922, Takao Ozawa, a Japanese man who had resided in the United States for twenty years, brought a suit against the government, arguing that he fell into the category of “free white person.”146 The Court disagreed, noting that the previous exclusion of African-Americans and Native Americans did not mean that Asians were intended to be included by virtue of not being listed as an excluded class.147 Justice Sutherland, who wrote the majority opinion, stated:

The intention [of the law] was to confer the privilege of citizenship upon that class of person whom the [founding] fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges.148

The Court then defined whiteness for the purposes of citizenship. Justice Sutherland cited past cases which established that “the words ‘white person’ were meant to indicate only a person of what is popularly known as the Caucasian race,” and that the Court in 1922 saw “no reason to differ.”149 This exclusion of Asians through the law was furthered in 1923 when the Supreme Court heard United States v. Bhagat Singh Thind.150 In this case, the Court asked whether Bhagat Singh Thind, a “high-caste Hindu, of full Indian blood,” could be considered a white Caucasian person under the Naturalization Act.151 Again, Justice Sutherland delivered the majority opinion. The Court addressed the definition of “Caucasian,” and noted that “Caucasian” and “white” were not synonymous.152 Justice Sutherland noted that even though “the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity,” there are “unmistakable” differences between the two, and Indian immigrants cannot be considered white for the purposes of naturalization.153 Thus, the notion of whiteness was crafted in tandem with the construction of what it means

146. Ozawa at 194–95.
147. Id.
148. Id. at 195.
149. Id. at 197.
151. Id. at 206.
152. Id. at 208.
153. Id. at 209.
to be an American citizen, and those of Asian descent were decidedly not citizens.

C. ASIANS AS PERMANENT FOREIGNERS

Asians have been viewed as a minority group for centuries. As author Juanita Tamayo Lott notes,

The minority status of Asian Americans was further reinforced by popular images of them as foreigners and enemies. On one hand, Blacks and Whites are considered the primary settlers of the United States, American Indians and Alaskan Natives indigenous to this land, and Hispanics, as descendants of Spanish America, indigenous to the Southwest and the Caribbean. On the other hand, the prevailing image of Asian Americans is that they are alien to this country.154

This image of Asians as constant foreigners has been perpetuated by strict immigration laws that specifically excluded groups of Asians, and was further continued through laws that defined the class of American citizens through an exclusion of Asian immigrants.

The othering of Asians has continued well into this century and impacts not only first-generation immigrants, but also second-generation Asian Americans who were born and raised in the United States. Legal scholar Frank Wu writes that Asians, whether immigrants or second-generation Americans, are frequently asked “where [they are] *really* from,” implying that, due to their racial identity, they could not be truly American.155 Wu notes that through this casual and constant othering, Asians are “figuratively and even literally returned to Asia and ejected from America.”156 The question of where one is “*really* from” not only implies that the individual does not belong in this country, but also that they can never be part of the American citizenry. Wu writes that this creates an us/them dichotomy—that Asians do not belong as equals to American citizens.157 Wu further states that this us/them dichotomy is often, perhaps illogically, justified by noting that “because it would not be easy for a white person to become a Chinese citizen . . . the United States is no different in making it hard for a Chinese person to become an American citizen.”158

It has yet to be seen what exactly this othering means for U.S. born children raised abroad. Though they may have legal citizenship, their upbringing outside of the U.S. leaves them culturally stranded. These children, products of the increasingly popular birth tourism industry, may

156. *Id.*
157. *Id.* at 80.
158. *Id.* at 84.
return to find that they are, and always will be, alien citizens.

D. RECLAIMING IDENTITY

After presidential hopeful Jeb Bush commented on the influx of Asian birth tourists, Asian-Americans took to social media to tell their own stories of identity and cultural belonging. Bush's comments about the anchor baby phenomenon being "more related to Asian people" struck a nerve with many Asian Americans and Asian immigrants, who felt that the politician's comment was yet another microaggression that furthered the othering of Asian American communities. Twitter users posted comments about their identities and the struggles of feeling permanently foreign, each with the hashtag "#MyAsianAmericanStory." One such tweet from user Daniel Wu read: "At 18 so proud to be voting for 1st time then being stopped at door: 'Do you know you have to be American to vote?' #MyAsianAmericanStory." Wu's tweet succinctly highlighted the impact of the persisting anti-immigrant sentiment on Asian communities; even though Asian Americans may have legal citizenship, they are culturally viewed as outsiders. Other users echoed Wu's frustration, noting that assimilating into American culture was not enough to shield them from racism and devaluation of their American status. The identity of Asian-Americans complicates the concepts of citizenship and identity as they relate to children born to maternity tourists.

IV. CONCLUSION

As federal investigators continue to crack down on birth tourism businesses, the topic of birthright citizenship and citizenship loopholes will continue to be discussed in the news. Whether the discussion will focus on the growth of Asian Americans is questionable. While the Birthright Citizenship Act is a drastic and somewhat unreasonable approach to immigration reform, American society will have to have a conversation about what it means to be an American citizen.

There are thousands of American citizens living abroad with their foreign national parents; many are young, but in time they may come back to the United States as adults. American society will have to consider the way in which these transnational citizens impact the concept of American

160. Id.
citizenship. We will have to ask ourselves what it means to have a class of citizens who obtained citizenship for the sole purpose of accessing our country’s beneficial systems, and who have no real ties to the United States aside from a birth certificate.

Furthermore, nations will have to adapt to the changing face of global citizenship. As the rate of immigrants increases, countries around the world may have to reconsider their citizenship policies. Ultimately, the impact of birth tourism will truly be felt when those U.S. born children who live abroad grow up and decide to come back to what is legally their home.