

# REFORMING BIRTHRIGHT CITIZENSHIP: A MUST FOR U.S. POPULATION POLICY

## An NPG Position Paper

### EXECUTIVE SUMMARY

Section 1, Clause 1 of the 14<sup>th</sup> Amendment of the U.S. Constitution declares: “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<sup>1</sup>.” Originally intended to protect the civil rights of freed slaves during the Reconstruction Era, the law has instead become a popular Constitutional loophole that is frequently exploited by the pro-amnesty and open-border immigration lobbies. In an effort to further their agenda of mass migration to and permanent legal settlement within the United States, these special interest groups are demanding that the U.S. adopt their interpretation of our nation’s 14<sup>th</sup> Amendment:

*Any child born on American soil shall be automatically granted full legal United States citizenship. Even if one or both parents are in the U.S. illegally, the child must still be given citizenship – and therefore have the right to later sponsor a large number of family members to live in the U.S. as legal immigrants.*

This application of the law – which has been widely upheld by the U.S. court system and championed by an ever-more-accommodating federal government – is par for the course in a deteriorating immigration system that encourages massive population growth. Specifically, this interpretation of the 14<sup>th</sup> Amendment has given rise to the phenomenon known as “**Anchor Babies**” – children whose parents intentionally give birth to them within the U.S. for the purpose of gaining citizenship. Once automatic birthright citizenship is assigned to the child, the “anchor baby” is then later used to manipulate our nation’s present chain migration policies – ensuring legal immigration privileges are granted to the child’s parents, siblings, and even adult members of their extended family.

When combined with today’s inconsistent enforcement of immigration laws, many would-be migrants see the benefits of having an “anchor baby” as outweighing the potential consequences of unlawful entry. The Social Security number and U.S. citizenship of the newborn are viewed as an investment, ensuring that the child can later sponsor his or her parents – and many other family members – to legally settle in the U.S. permanently. With recent White House directives prohibiting the prosecution of many illegal aliens, the odds have been increasingly high that the family of the baby would not be deported even if the Customs and Immigration Service tracked them down. Such blatant disregard for our laws, and the wrong-headed application of our 14<sup>th</sup> Amendment, has helped establish a chain of migration into the United States – and the resulting population impacts are enormous. In September 2015, Pew Research Center estimated that there were approximately 295,000 “anchor babies” born in the U.S. in 2013, “making up 8% of... U.S. births that year<sup>2</sup>....”

For 45 years, NPG has consistently demonstrated how U.S. population growth has caused, contributed to, or worsened many of the everyday problems we experience as Americans: mounting environmental damage, a lagging economy, overburdened infrastructure, dwindling natural resources, and a diminishing quality of life. Immigration – legal, illegal, and the U.S.-born children of immigrants – will soon become the primary driver of our nation’s population growth. This irrefutable and direct link is why NPG has long held that our nation must adopt reasonable and responsible immigration policies, which includes the immediate clarification of the

14<sup>th</sup> Amendment to end the practice of automatic birthright citizenship. As part of our overall efforts to reverse population growth, the U.S. must either:

1. Pass legislation, such as H.R. 140 (the Birthright Citizenship Act of 2015), which would change the current law regarding who is eligible for automatic birthright citizenship, or;
2. Enact a new Constitutional Amendment that will clearly define the present 14<sup>th</sup> Amendment – and put a stop to those who are abusing “anchor baby” rules once and for all.

Passing a new Constitutional Amendment is a long and arduous task that could take years. It requires a vote of two-thirds of both houses of Congress to propose an Amendment, and then three-fourths of the states – at least 38 – must ratify it. We must begin that process now. In the meantime we must also pass H.R. 140, which would revise the current anchor baby policy with legislation that essentially prevents children born in the U.S. from becoming citizens unless at least one parent is already a citizen or legal permanent resident here. If this legislation were passed but eventually ruled unconstitutional based on the 14<sup>th</sup> Amendment, efforts for a new Constitutional Amendment would already be underway – so the problem could be solved much sooner.

A multitude of bad policies and lax enforcement precedents have dangerously weakened our nation’s immigration system. We must act now to strengthen it – or pay a huge price in the long run. Clarifying America’s 14<sup>th</sup> Amendment is a cornerstone of that fight. While this change is unlikely to single-handedly resolve all of our nation’s problems, it is a critical first step towards NPG’s ultimate goal: to slow, halt, and eventually reverse U.S. population growth in order to preserve a livable future.

## **FROM SPIRIT TO LETTER: CHANGES TO THE 14<sup>TH</sup> AMENDMENT’S APPLICATION**

The 14<sup>th</sup> Amendment was ratified in 1868 in an effort to reaffirm the rights of children of newly-freed slaves after the end of the U.S. Civil War. However, no one living during the Reconstruction Era could foresee a time when migrants could fly from anywhere in the world and arrive in the U.S. within 24 hours. And no one imagined a system so easy to manipulate, where an immigrant could come to the U.S. on one of the millions of temporary visas our nation permits each year – or even sneak across our porous borders and enter illegally – and take advantage of this ambiguous law to gain automatic citizenship for their newborn.

In the nearly 150 years since the 14<sup>th</sup> Amendment’s ratification, U.S. citizenship has become one of the most coveted and valuable commodities in the world. Because of this high demand, a large number of court cases have repeatedly demanded a precedent be set for exactly whom – and under exactly which circumstances – automatic birthright citizenship will be granted. In fact, according to the Library of Congress, the 14<sup>th</sup> Amendment “...is cited in more litigation than any other Amendment<sup>3</sup>.”

In the *Slaughterhouse Cases* of 1873, the U.S. Supreme Court set an early precedent for birthright citizenship when it remarked “The phrase ‘subject to its jurisdiction’ was intended to exclude... citizens or subjects of foreign States born within the United States<sup>4</sup>.” In *Elk v. Wilkins* (1884), the Supreme Court again specified that those who were “members of and owing immediate allegiance to... an alien... power,” were not eligible for birthright citizenship<sup>5</sup>. These rulings prevented the exploitation of the law’s original intent, setting a standard which restricted birthright citizenship to only those children with no potentially-conflicting loyalties to a foreign government.

However, in *United States v. Wong Kim Ark* (1898) the Supreme Court suddenly reversed its position. In an unfortunate and short-sighted ruling, the Justices set the precedent that our nation still observes today: almost all children born on American soil, regardless of their parents’ citizenship or residency status, qualify for automatic birthright citizenship. As a result of this decision, the 14<sup>th</sup> Amendment has become the primary legal defense for manipulating – or ignoring entirely – our nation’s immigration system in order to gain U.S. citizenship for a child. By continuing to uphold this outdated decision, the Courts have empowered a series

of immigration policies which encourage massive population growth.

The concept of birthright citizenship is not unique to the U.S. We are one of only 34 nations that retain the practice of unrestricted *jus soli* (Latin for “the law of the soil”), which confers automatic citizenship to almost anyone born in its territory<sup>6</sup>. A growing trend in nations around the world is the requirement that at least one parent must be a citizen, national, or legal permanent resident for a specified period of time before birthright citizenship is applied. Countries with such restricted birthright citizenship policies include Australia, France, Germany, Hong Kong, Ireland, Portugal, Thailand, and the United Kingdom. Clearly, with some of the world’s most well-developed nations incorporating these reasonable limitations, it is not without precedent to set conditions upon citizenship.

Also of note is India’s decision to abolish *jus soli* entirely. This move was primarily due to serious overpopulation problems there – much of which was caused by excessive immigration rates. According to the Population Reference Bureau, between 2001 and 2011 India’s population grew by 181 million people – “roughly equal to the population of... all of western Europe<sup>7</sup>.” This trend of immigration-driven population growth is also prevalent in the United States. While our overall numbers of annual immigration are lower than India’s, we must continue to highlight the link between high levels of immigration and resulting overpopulation.

As long as the current interpretation of the 14<sup>th</sup> Amendment is applied in the U.S., the “anchor baby” phenomenon will continue. And as full citizens, at age 21 these children may petition – **free of any quota limits** – for their parents “to come and live permanently in the United States<sup>8</sup>.” This unlimited category of family reunification adds significant numbers to our population – but when paired with other quota-limited visa categories for children, spouses, and siblings, the resulting chain migration can lead to huge increases in U.S. population.

## RISING BIRTHS TO THE FOREIGN-BORN

When one considers the damaging effects of overpopulation, the sheer numbers being added to our population base are of great concern. According

to the U.S. Census Bureau, our nation’s foreign-born population (including both legal and illegal immigrants) reached 41.3 million in 2013 – a nearly 25% increase since 2000<sup>9</sup>. In 2012 there were 896,363 U.S. births to foreign-born mothers, representing 23% of total births that year<sup>10</sup>. If this rapidly growing base of foreign-born adults also maintains the high birth rates traditionally found within immigrant populations, it may prove to be a recipe for enormous U.S. population growth.

And the data shows that a growing number of immigrants from around the world are indeed choosing to have their children in the U.S. According to the Migration Policy Institute, in 1990 “nearly 8.2 million children under 18 living in the U.S. had at least one immigrant parent – and 77% of those children were born in the U.S. By 2013, the number... had doubled to reach nearly 17.4 million – with 87.9% of those children being born in the U.S.<sup>11</sup>” They represented a full 25% of all children under age 18 in the United States at that time<sup>12</sup>.

Sadly, some have chosen to take advantage of the 14<sup>th</sup> Amendment loophole and the current acquiescence in Washington – and they are manipulating our weakened system for their own gain. In 2015, federal agents created a national media sensation when they raided 37 “maternity hotels” in Southern California. According to authorities, pregnant foreign women (primarily from China) paid various companies for packages that covered travel to and accommodations in the U.S. – “allegedly for the sole purpose of having a U.S.-citizen baby<sup>13</sup>....” In a statement, U.S. Immigration and Customs Enforcement (ICE) explained that women paid up to \$50,000 for lodging, transportation, and food – as well as promises of a Social Security number and U.S. passport for their baby.

As shocking as the story was for many Americans, the raids are just another case in what has become the bustling industry of “birth tourism.” For years, the number of foreign women giving birth on American soil has been steadily climbing: “in 2012, about 10,000 Chinese women gave birth in the U.S., more than double the 4,200 in 2008, according to Chinese state media<sup>14</sup>.” Delegate Gregorio Sablan represents the Northern Mariana Islands (a U.S. Territory that is just a four-hour flight from China) in Congress. In

February 2014, Sablan “reached out to the Department of Homeland Security to look into the ‘birth tourism’ situation... In 2009, only eight Chinese babies were born in Saipan. In 2012, that number jumped to 282... Now, 71 percent of babies born on the island are ‘American-born Chinese’<sup>15</sup>.”

The phenomenon of “birth tourism” isn’t exclusive to the Chinese. They simply represent some well-publicized examples of a growing trend. Yet the annual number of U.S. births through “tourism” remains relatively small when compared to the number born to illegal aliens – children who also gain automatic birthright citizenship, despite the legal status of either parent. In 2009, roughly 8% of all U.S. births – or 350,000 children – were born to at least one unauthorized immigrant parent<sup>16</sup>. By 2012, “children with at least one unauthorized immigrant parent accounted for 6.9% of U.S. students in kindergarten through 12<sup>th</sup> grade,” and nearly 80% of those children were born in the U.S.<sup>17</sup>

## **LENIENCY FOR UNAUTHORIZED IMMIGRANTS: A PRECEDENT FOR GROWTH**

In a series of executive directives in recent years, the Obama Administration legalized the status of millions of young unauthorized immigrants. Through the White House’s proposed Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, millions of illegal alien parents would also be granted legal status and become eligible to remain in the United States. The Pew Research Center study estimated that “4 million unauthorized immigrant parents... lived with their U.S.-born children... in 2012<sup>17</sup>.”

Previously, parents who had unlawfully entered the U.S. were ineligible for visas – and were also subject to deportation and a multi-year ban against

their re-entry<sup>18</sup>. Under DAPA, any deterrent against illegally entering the U.S. to give birth – whether to gain citizenship for a child or legal status for a parent – would be eliminated. In fact, DAPA would serve to elevate the legitimacy of illegal entry and the “birth tourism” industry. While the DAPA program faced a fierce legal battle and was thankfully struck down by the U.S. Supreme Court, it was just one more example of an irresponsible and short-sighted policy stance in Washington. This position of “outright accommodation of all immigrants – no matter what” is a dangerous precedent, as it stands to greatly increase U.S. population growth.

In 2009, the Pew Hispanic Research Center found: “Unauthorized immigrants comprise slightly more than 4% of the adult population of the U.S., but because they are relatively young and have high birthrates, their children make up a much larger share of both the newborn population (8%) and the child population (7% of those younger than age 18) in this country. ... Nearly four-in-five (79%) of the 5.1 million children (younger than age 18) of unauthorized immigrants were born in this country and therefore are U.S. citizens<sup>19</sup>.” Pew studies also revealed that “nearly half (46%) of unauthorized adult immigrants today – about 4.7 million people – are parents of minor children. By contrast, just 38% of legal immigrant adults and 29% of U.S.-born adults are parents of minor children<sup>20</sup>” This is why the foreign-born stand to significantly increase U.S. population size and growth over time\*.

## **NPG’S PROPOSED SOLUTION: A STATUTE WITH RESPONSIBLE RESTRICTIONS**

In an effort to embrace policies which work to reduce U.S. population to a much smaller, truly sustainable size, NPG advocates a simple clarification of the current legal precedent set for applying the 14<sup>th</sup>

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\* Despite gaining some insight through a number of studies, accurate statistics on the U.S.-born children of illegal aliens (including data detailing the residency status of both parents) are often difficult to obtain for analysis. This creates a significant challenge when groups like NPG – or our opponents – attempt to calculate a concrete number of total births each year that would be ineligible for citizenship if legislation such as H.R. 140 was adopted. However, a revision of birthright citizenship is not meant to act as a “magic bullet” to reverse U.S. population growth. The current application of the 14<sup>th</sup> Amendment is part of a series of policies which – when taken as a complete system – works to actively encourage immigrants to enter the U.S. and start a family, thereby increasing our population. And each step we take in reducing our nation’s population size and growth is critical to the long-term sustainability of our future.

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Amendment. Without removing the vital aspects of (or eliminating entirely) birthright citizenship, we propose a sole condition: at least one parent of the child must be a pre-existing U.S. citizen, national, or lawful permanent resident. This modest addition poses no consequences for those who have respected our laws and dutifully observed the legal immigration process. It is a reasonable condition for citizenship – one which has already been adopted by a number of Western nations, including Australia, France, Germany, Ireland, and the U.K.

While a new Constitutional Amendment could certainly act to restrict birthright citizenship rights within the United States, the likelihood of securing sufficient Congressional votes and subsequent ratification by the states is a long-shot at best. Instead, the options of a new statute or a Congressional resolution offer the greatest hope for change. A new statute could easily be implemented, rephrasing the requirement to be: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, *with at least one parent who is an existing U.S. citizen, national, or lawful permanent resident*, are citizens of the United States and of the state wherein they reside.”

If we are to preserve the American Dream for future generations, *we must act now* to reverse our population’s size and growth. While it will not entirely solve the problem of continued population growth, a simple restriction on birthright citizenship is one of the easiest, most reasonable steps toward protecting our future. This step must be taken, and – to see any long-term reduction in U.S. population growth – it must be followed by: strict reductions in legal immigration rates, immediate and strict enforcement of existing immigration laws, the end of “sanctuary” legislation and other accommodations for illegal aliens, and the broad public advocacy of the two-child family.

The solution to U.S. overpopulation will require a lengthy process of such seemingly-small victories, but we must begin now. For our grandchildren to enjoy the America of our forefathers – the strongest, most promising nation on earth – we must preserve U.S. citizenship as a priceless asset, not a mere commodity of convenience.

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## STATEMENT OF PURPOSE

Human population growth in the past century was three times the total growth from the origin of the species until 1900.

Coupled with sharply rising levels of resource consumption and economic activity in the more prosperous nations, that growth has imposed unprecedented strains on the ecological systems that support us and other living things. It has led in many parts of the world to rising unemployment, intensifying water shortages, increasing competition for resources, and the specter of hunger. It is affecting the world's climate, and the consequences – rising sea levels, more powerful hurricanes, heat waves, and more intense floods and droughts – are becoming apparent. Population growth has depended on fossil fuels, which are running down. Future generations must depend increasingly on renewable energy, which is unlikely to be recoverable in amounts sufficient to support more than a fraction of current world populations.

U.S. population has also quadrupled since 1900. The U.S. and the world are in a condition of overshoot.

NPG (Negative Population Growth) is the ideal of a turnaround in U.S. and world population growth until we approach less destructive and more tolerable levels, perhaps at numbers that were passed two or more generations ago.

### Our objectives are to:

- **document** the harm humans are inflicting on ourselves and our support systems and arrive at some rough idea of “optimum population” – the human numbers that can live at a decent standard of living within the constraints of environmental sustainability,
- **suggest** the policies on migration and human fertility that would make it possible to come down to such numbers,
- **persuade** our government at all levels, and other governments afflicted by population growth, to pursue such policies, and
- **dissuade** them from the pursuit of policies and behavior that, intentionally or not, lead to population growth.

To those ends, we promote concepts such as “the two-child family,” lowered rates of migration to the United States, and the development of conceptual systems such as the steady state economy. And we comment on the demographic implications of present and proposed policies and legislation.

NPG, Inc. is unique among national organizations in calling for a turnaround in population growth and describing the means to achieve it.

## ABOUT NPG

**Negative Population Growth (NPG)** is a national nonprofit membership organization. It was founded in 1972 to educate the American public and our political leaders about the devastating effects of overpopulation on our environment, resources, and standard of living. We believe that our nation is already vastly overpopulated in terms of the long-range carrying capacity of its resources and environment.

NPG advocates gradually halting and then reversing our U.S. population growth so that, after an interim period of population reduction, our population can be stabilized at a level that would be sustainable indefinitely, and afford an adequate standard of living for all, in a healthy environment. We believe that in order to be sustainable indefinitely our population should not exceed 150 million, its size two generations ago. We are convinced that goal could be reached within several generations by non-coercive tax incentives to encourage parents to have not more than two children, coupled with a substantial reduction in immigration.

## OTHER POSITION PAPERS BY NPG

### *A Proposed National Population Policy (2006)*

NPG believes that a national policy to turn U.S. population growth around is critically needed. In this paper, we offer a series of specific proposals as to how to accomplish that goal. We recognize the political resistances in the way of such policies, but still we think it useful to set forth our recommendations in one compact document, for the use of those who may come to share our concerns.

### *Toward Negative Population Growth: Cutting Legal Immigration by Four-Fifths (2014)*

Mass immigration, whether through established or extra-legal channels, has by default become the nation's de facto population policy. While Washington debates the immigrants' skills, status and provenance, their environmental impact is the same: immigrants and their children become part of the population base that intensifies the nation's depletion of resources and environmental stress. Current immigration numbers are excessive, if the U.S. is ever to reduce its population to an environmentally-sustainable size. NPG believes that this goal can only be met if illegal immigration is reduced to near zero, and legal immigration is reduced by four-fifths – to about 200,000 yearly.

### *A No-Growth, Steady-State Economy Must Be Our Goal (2014)*

In this paper NPG will argue that in order to create a sustainable economy, and thus prevent the destruction of our environment and resources, and a drastic reduction in per capita income and our standard of living, we must renounce and discard the goal of macro-economic growth (as distinct from per capita income). Even a steady-state economy, however, in order to be sustainable indefinitely, would need to be of a size relative to our ecosystem that would allow it to be in balance with our resources and environment.

### *Sanctuary Cities: Politics Overshadow Responsible U.S. Immigration Policies (2016)*

In recent years, America's radio stations, televisions, newspaper headlines, and magazine covers have been inundated with talk of "sanctuary cities." Experts on both sides of the argument have proclaimed their position – it's the "absolutely right" or "absolutely wrong" thing for America to do, depending on who you ask. However, a few critical pieces of information seem to be missing from this debate – information which is necessary if our nation is to make an informed decision on such an important policy.



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