

*Judges Invite
Illegal Immigration*

THE PECULIAR NOTION that foreigners residing illegally in the United States should enjoy the same rights as American citizens is found nowhere in the U.S. Constitution or federal law. This anomaly was created by supremacist judges.

First, the Supreme Court denied government the right to distinguish between citizens and aliens, then encouraged and protected the large-scale entry of illegal aliens into the United States. Holdovers from the Warren Court presumed to mandate this policy even though the Constitution clearly recognizes the basic difference between citizens and aliens. Justice William Rehnquist explained this in his lone dissent in *Sugarman v. Dougall* (1973), a case that overturned New York's requirement that state civil servants be U.S. citizens. Rehnquist wrote that "the Constitution itself recognizes the difference between citizens and aliens. That distinction is constitutionally important in no less than eleven instances in a political document noted for its brevity."

In 1971, in *Graham v. Richardson*, Justice Harry Blackmun added a new right to the Fourteenth Amendment. Writing for the Court's majority, Blackmun held that "a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specified number of years violate the Equal Protection Clause." Grabbing power for judges to override legislative policymaking, Blackmun stated that "classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny."

The Supreme Court continued to blur the distinction between citizens and aliens. In 1973, in *In Re Griffiths*, the Supreme Court ruled that this new equal-protection privilege gives noncitizens the right to take the bar exam and become licensed lawyers.

One would think that government employees should be citizens of the same country as their government. But asserting "judicial scrutiny" in *Hampton v. Mow Sun Wong*, the Supreme Court in 1976 substituted its own views for those of Congress and ruled that citizenship is an unconstitutional requirement for holding a government job.

Justice William Brennan, who was appointed in 1956 but continued to promote judicial supremacy long after Earl Warren retired, was still on the Court in 1982 when he wrote the 5 to 4 decision that opened the floodgates to illegal aliens.

In *Plyler v. Doe*, Brennan created a brand-new addition to the Constitution's equal protection clause: the requirement that the State of Texas must provide free public

education to the children of foreigners who had entered the United States illegally. Texas had passed a law limiting public education to those who were in our country lawfully. Justice Brennan and his fellow activists ruled that the Texas law was unconstitutional. They misused the equal protection clause to prohibit any state from denying free education to illegal aliens unless the state proved “some substantial state interest”—and saving the taxpayers’ money was deemed to be insufficient justification.

The *Plyler* decision gave foreigners a powerful incentive to sneak into our country: they could enroll their children in our public schools. They could also start demanding other benefits paid for by U.S. taxpayers because of Brennan’s broad-brush opinion in *Plyler*. Brennan ruled that because aliens are a “class” of people, they must be treated equally with every other person in the state regardless of the financial cost to the taxpayers. Thus, the Brennan decision opened our borders to a stampede of illegal aliens.

In 2001, the Supreme Court declared that “once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” The Supreme Court created this fiction in *Zadvydas v. Davis*.

The notorious Court of Appeals for the Ninth Circuit, which presides over California, Arizona, and other western states, has driven a truck through this opening created by the Supreme Court. With every new dispute, the Ninth Circuit has sweetened the bait that attracts millions of illegal aliens. “The Fifth Amendment also protects aliens,” the Ninth

Circuit declared in *Torres-Aguilar v. INS* (2001). In *Sagana v. Tenorio* (2004), the Ninth Circuit added, “Aliens who are in the jurisdiction of the United States under any status, even as illegal entrants or under a legal fiction, are entitled to the protections of the Fourteenth Amendment.”

In 2005, the Ninth Circuit ruled in *Mohammed v. Gonzales* that women from countries that allow female mutilation are eligible for asylum in the United States. Amnesty International estimates that 135 million girls and women, mostly in Africa, are victims of this horrendous practice, and that an additional two million more are currently at risk. The sheer numbers of applicants who could petition for asylum on this basis are mind-boggling.

It is no wonder that the Ninth Circuit has become a mecca for immigration cases. According to Clinton-appointed Ninth Circuit Judge Michael Daly Hawkins, “Three years ago, immigration cases were 8 percent of our calendar. Today, as we speak, that percentage is 48 percent.”

MORE INTERFERENCE IN PUBLIC SCHOOLS

More Supreme Court mischief involving immigrants and public schools was started in 1974 by *Lau v. Nichols*, a decision written by yet another Warren Court holdover, William O. Douglas. He refused to relinquish judicial power longer than any Supreme Court justice in history, staying over thirty-six years.

The Civil Rights Act of 1964, Title VI, says that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in,

be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” The law says nothing about language. Legislating from the bench, the Court made two errors. First, it allowed the bureaucracy to twist the definition of “national origin” to include language deficiency. Second, it allowed a private right of action based on this change, such that almost anyone could sue over it. This decision authorized the federal courts to create and enforce the rights of non-English speaking people, thereby taking away power from Congress to decide this issue.

This decision was the origin of the mistake called bilingual education, a system of keeping immigrant children speaking their native language in public schools instead of rapidly learning English. Immigrant children were kept in segregated classrooms for up to 80 percent of the day, often for five to seven years, never learning English. California schools ultimately taught public school children in forty-two different languages.

Prior to the *Lau* decision, the United States had assimilated millions of immigrants over two centuries without the government providing foreign-language teachers. Immigrant children went directly into public schools where only English was spoken. They rapidly learned English and went home and taught it to their parents. After *Lau v. Nichols*, the schools abandoned the system that had proved so successful and substituted bilingual education.

This system of language apartheid grew into a billion-dollar boondoggle and resulted in harm, not benefit, to the children it was supposed to help. Two decades later, the

voters in California, Arizona, and Massachusetts passed referenda repudiating bilingual education, but a generation of children had grown up without learning English.

THE CITIZENSHIP CLAUSE AND OATH

The Citizenship Clause of the Fourteenth Amendment states that U.S. citizens are “all persons born or naturalized in the United States and subject to the jurisdiction thereof.” Federal law uses almost identical language. “Subject to the jurisdiction thereof” is an essential part of the definition.

History clearly confirms the importance and necessity of those five words. American Indians, despite the obvious location of their birth, did not receive U.S. citizenship until it was conferred by congressional acts in 1887, 1901, and 1924, long after ratification of the Fourteenth Amendment. The extensive litigation concerning American Indians proves that the consent of both the government and the individual is what controls citizenship, rather than place of birth.

What about babies who may be born to diplomats or their wives who happen to be in the United States at the moment of birth? They are not U.S. citizens, either. A baby born to the wife of the ambassador from France, for example, will surely be a French citizen, not an American citizen. Dating back to the Roman Empire, citizenship has always been a privilege extended only on conditions established by the sovereign (as it was granted to St. Paul), not the mere happenstance of location of birth or residence.

For nearly two centuries, the Supreme Court faithfully construed citizenship consistent with the Constitution and

the intent of our Founders. In 1884, in *Elk v. Wilkins*, the Court held that

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

In 1915, in *Heim v. McCall*, the Supreme Court properly upheld New York’s authority to distinguish between citizens and non-citizens and thereby show preference to citizens in hiring for public transit projects. In describing the State of New York as “a recognized unit and those who are not citizens of it are not members of it,” the Court ruled that New York “could prefer its own citizens to aliens without incurring the condemnation of the National or the state constitution.”

In 1927, in *Ohio ex rel. Clarke v. Deckebach*, the Supreme Court unanimously rejected the equal protection argument and upheld a Cincinnati ordinance requiring that licenses to operate pool halls be issued only to U.S. citizens.

In 1942, in *In re Thenault*, a federal court in the District of Columbia re-confirmed the conditions of citizenship:

“Of course, the mere physical fact of birth in the country does not make these children citizens of the United States, inasmuch as they were at that time children of a duly accredited diplomatic representative of a foreign state. This is fundamental law and within the recognized exception not only to the Constitutional provision relative to citizenship, Amendment Article 14, Section 1, but to the law of England and France and to our own law, from the very first settlement of the Colonies.”

TAMPERING WITH NATIONAL SECURITY

Since the years of the Warren Court, the Supreme Court has obscured the fundamental constitutional definition of citizenship without dealing with it directly. The justices have toyed with their own notions of citizenship instead of sticking with the Constitution as written, and this has even interfered with our national security.

Yaser Esam Hamdi was captured in Afghanistan as an enemy combatant during our military operation there. When interviewed by a U.S. interrogation team, he identified himself as a Saudi citizen who had been born in the United States. But after being detained as an enemy combatant, he argued that he was a U.S. citizen because of his birth in Baton Rouge, Louisiana, to Saudi Arabian parents. His father, Esam Fouad Hamdi, joined the lawsuit from his country of Saudi Arabia.

There is no evidence that Hamdi ever consented to be subject to the jurisdiction of the United States, or sought to settle in the United States, or renounced his Saudi Arabian

citizenship. All evidence is that he retained allegiance to Saudi Arabia.

The short answer to Hamdi's legal claim should have been that he was not an American citizen. But litigation about his rights unfortunately assumed that he was a U.S. citizen and was therefore entitled to the rights and privileges of that status. Without addressing the citizenship issue, the Supreme Court ultimately held in *Hamdi v. Rumsfeld* (2004) that Hamdi could contest his status as an enemy combatant. That forced the Bush Administration to agree to release Hamdi and deport him to Saudi Arabia in exchange for his dropping his claim to U.S. citizenship.

PREVARICATING ABOUT CITIZENSHIP

To become a naturalized U.S. citizen, it is necessary to take this solemn oath:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national impor-

tance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

There is no ambiguity about this oath. To become a U.S. citizen, immigrants are required by our law not only to swear allegiance to the United States, but to absolutely renounce any and all allegiance to the nation from which they came. This oath makes clear that there can never be any divided loyalty or dual citizenship with an immigrant's native country. But again, Supreme Court justices who believe that they can legislate according to their notions of what public policy should be continued their interference in congressional jurisdiction over immigration by encouraging the mischievous notion of dual citizenship.

The U.S. Constitution, Article I, Section 8 gives the power over naturalization law solely to Congress, not to the Court. Using its constitutional authority, Congress passed a law providing that "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by: . . . (e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory."

In a 5 to 4 vote, the Warren Court overturned this law in *Afroyim v. Rusk* (1967). The case involved a Jewish immigrant from Poland who became a U.S. citizen in 1926 and, like other naturalized citizens, took an oath renouncing his former citizenship. But in 1950 he went to Israel and voted there. The law expressly required forfeiture of citizenship

for voting in a foreign election. Yet contrary to the plain words of the statute, the Court held that he did not lose his U.S. citizenship by voting in a foreign country.

Actually, Afroyim did not betray his oath because he did not vote in his native country. But unfortunately, this case has been used to promote dual citizenship by those who encourage divided loyalties among immigrants. The oath every new citizen must take should prevent naturalized U.S. citizens from voting in their native country.

Our country is now confronted with the problem that some immigrants have falsely been led to believe that they are or can be dual citizens, and Mexico is aggressively promoting the notion that Mexicans in the United States can vote in both countries. This dangerous notion would dilute our national identity and culture.

Under the U.S. Constitution, all questions of citizenship and naturalization should be made by Congress, not by supremacist judges.

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- The Citizenship Clause in federal law is Section 1401(a) of Title 8 of the United States Code.

- Mexico is just one of many countries from which visitors now come to the United States and claim birthright citizenship. “An entire cottage industry now caters to people from South Korea, China, the Middle East and elsewhere who visit the United States just to give birth and then go back home. Once the child reaches 21, he can petition to have his families outside the country join him legally in the United States. These children are called ‘anchor babies.’” “Immigration: Stop the Abuse,” *Florida Times-Union* (Jacksonville), April 4, 2003, B-4. Some estimates are that anchor babies exceed 200,000 each year. Websites even promote travel to the United States to give birth, setting up a claim to American citizenship.
- By the government’s own estimates, in January 2000 there were seven million illegal aliens living in the United States. “Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000,” Office of Policy and Planning, U.S. Immigration and Naturalization Service 1 (2003). A Bear Stearns report dated January 3, 2005, stated: “The number of illegal immigrants in the United States may be as high as 20 million people.” Tens of thousands pour over our border on a daily basis.
- Rice University economist Dr. Donald Huddle estimated that illegal aliens cost \$5.4 billion in public assistance as long ago as 1990. Shari B. Fallek, “Comment: Health Care for Illegal Aliens: Why It Is a Necessity,” 19 *Houston Journal of International Law*, 951, 957 (Spring 1997). “For the decade from 1993 to 2002, he estimated that the net cost for illegal immigrants would be \$186.4 billion. Between 1993 and 2002, illegal immigrants will cost \$221.5 billion in public assistance and displacement costs. Regarding jobs, Dr. Huddle suggested that in 1992, 2.07 million U.S. workers were displaced from jobs by immigrants, which cost \$11.9 billion. He estimated the cost of job displacement for the 1993-2002 decade to be \$171.5 billion.” *Id.* at 957-58.
- *Clayworth v. Bonta* noted that California medical programs pay

an estimated \$852 million annually to cover the costs of illegal aliens. For diseases brought in by aliens, see Dr. Madeleine Perner Cosman, "Illegal Aliens and American Medicine," 10 *Journal of American Physicians and Surgeons*, No. 1, 6 (Spring 2005).

LESSON NINE

JUDGES INVITE ILLEGAL IMMIGRATION

QUESTIONS FOR DISCUSSION:

- ★ Where did the notion come from that foreigners residing illegally in the United States should enjoy the same rights as American citizens?
- ★ Where did the notion come from that U.S. taxpayers are obligated to admit the children of illegal aliens into public schools?
- ★ How did a Supreme Court decision provide motivation for illegal aliens to sneak across our borders?
- ★ How did it happen that our public schools suddenly started bilingual education?
- ★ Read the Constitution's Citizenship Clause and explain the significance of the words "subject to the jurisdiction thereof."
- ★ Read the oath that everyone must take in order to become a naturalized U.S. citizen and explain why it would be a violation of the oath to claim a divided loyalty or dual citizenship with the immigrant's native country.
- ★ How does the *Hamdi* case show that accepting the notion of birthright citizenship can pose a national security danger?