



# Center for Immigration Studies

## Stop Automatically Granting U.S. Citizenship to Children of Foreign Diplomats

It is time to end the State Department's mismanagement of the 14th Amendment 'birthright citizenship' issue.

By [Phillip Linderman](#) on February 5, 2024

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In a highly publicized case, the State Department informed [Siavash Sobhani](#), an Iranian-heritage medical doctor living and working in Virginia, that he had been mistakenly authorized for American citizenship some 30 years ago. Officials declined to renew his U.S. passport.

Sobhani's father had been a foreign diplomat, posted to the Iranian embassy in Washington, where his son was born. American officials had confused whether the father was on the so-called "blue list" or "white list" of accredited foreign mission staff at the time.

Under State Department's complicated rules, babies born in this country to blue-list diplomats are not considered U.S. citizens, while white-list offspring, born from parents who are typically administrative or consular staff, are deemed full Americans. This strange outcome ignores the fact that, in both cases, the foreign parents are temporarily in our country, employed by another government or international organization, and enjoying unique diplomatic privileges or immunities. The State Department's Office of Foreign Missions (OFM) is charged with keeping up with the distinctions and managing this dubious system.

Categorizing foreign officials on one list or another can be a tricky matter, often manipulated by unscrupulous foreign missions that seek to help a pregnant female staffer birth an American citizen. As the Sobhani case demonstrates, OFM's important function, if not done right, can result in wrongly handing out U.S. passports.

For years, my colleagues at the [Center for Immigration Studies \(CIS\)](#) have monitored and analyzed this poorly conceived and run system, calling out the vulnerabilities in managing it. No one at the State Department really takes full ownership of supervising the diplomatic lists, as the Sobhani case illustrates, with its administrative headaches and processing confusion. Moreover, it all rests on a fundamentally flawed interpretation of the 14th Amendment's citizenship clause. CIS has rightly [called on the State to change the system](#).

At any given time, there are some 100,000 foreign diplomats and their dependents living in the United States. These officials are accredited to bilateral embassies and consulates as well as a plethora of international organizations, most significantly the United Nations and its satellite entities. Keeping up with these people is a major challenge.

Although many, perhaps most, foreign officials are professionals not interested in exploiting their diplomatic

presence, a significant number are out to game their privileges, including scoring U.S. passports for relatives and friends.

The differences between OFM's blue list and white list are rooted in international practices and law, codified in the Vienna conventions on diplomatic and consular protections.

Under the Vienna conventions, "blue-list" diplomats, as direct representatives of their foreign governments, receive the highest privileges and immunities in the host country; in particular, they are shielded from arrest. "White-list" administrative staff and consular officials also enjoy considerable privileges and immunities, but have fewer arrest protections.

So, when it comes to matters of diplomat babies born in our country, State Department applies an expansive—and unjustified—interpretation of the 14th Amendment's *jus soli* citizenship clause: "All persons born or naturalized in the United States, and *subject to the jurisdiction thereof*, are citizens of the United States."

Thus, according to the State Department, blue-list babies, born in the U.S. to parents with greater privilege and immunities are not "subject to the jurisdiction," of this country and therefore not automatically American citizens. But somehow white-list offspring, with comparatively less arrest protection, are "subject to the jurisdiction" and the babies are entitled to a U.S. passport. It is an insignificant distinction that opens an illegitimate back door to American citizenship.

In reality, both blue listers and white listers, as mentioned, enjoy some aspect of diplomatic privileges and immunities, which are sliding concepts. They never should have been seized upon by the State Department as a way to award U.S. passports to the children of some diplomats and not the others.

The much more sensible interpretation of the 14th Amendment is that Congress did not intend for *any* foreign officials to create American citizen babies simply because these children were born here during their parents' diplomatic tour of duty. These are not *jus soli* births; American citizenship deserves a much higher standard.

It should be noted that although State's dubious system does not award blue-list babies an American passport, it still grants them, inexplicably, legal permanent residence (or green card status), complete with a U.S. Social Security number. Why? This, too, is unwarranted. All these babies should simply receive the same category of diplomatic visas that their parents hold.

Of course, these same offspring also receive a routine birth certificate from an American state (or D.C.) that mostly says nothing on paper about the reason they were born on U.S. territory. The chances that years later they can apply and receive a U.S. passport, their names having been lost or improperly recorded on a poorly kept blue list, is very real.

The bureaucratic mismanagement that confounded the Iranian Sobhani's case (recall he was trying to renew his U.S. passport that he had had for years) cuts both ways, but I would wager that many more unauthorized passports have been issued than taken back. Such cases are certainly not written about in the Washington Post and publicized on social media.

It is not clear when the State Department began this illegitimate practice of awarding U.S. citizenship to foreign diplomat offspring. All indications are it was an internal bureaucratic decision without any basis in congressional legislation or presidential executive order. Instead of inventing such practices, State's OFM should focus on its core mission of maintaining and publishing the diplomatic list, but for unclear reasons [it has stopped doing so](#).

The Sobhani case illustrates that it is past time to reexamine the entire interpretation of the citizenship clause, and not just in matters concerning foreign diplomats. The 14th Amendment's current expansive *jus soli* interpretation is rooted in a 19th century America that never anticipated the current globalized world; it was a time when migrants completely uprooted themselves, boarded wooden sailing ships, and cut ties to their

homeland. In that pre-modern world, with no routine intercontinental jet travel and digital communications, it arguably made sense that all babies became American citizens when born on U.S. territory. Such babies were all destined to assimilate and Americanize.

But, today, maintaining that same interpretation of the 14th Amendment and its *jus soli* application to foreigners, temporarily in our country, makes no sense and, *rebus sic stantibus*, needs to be changed. Handing out U.S. passports to people who do not intend to be Americans undermines the very concept of citizenship; it makes a mockery of the duties and benefits that should come with citizenship.

The confused result is that in today's globalized world, American citizenship is under siege: illegal migrants, foreign students and tourists, Mayorkas's parolees, and even staffers employed at embassies or international organizations all line up with the expectation that their babies, born on American soil for whatever reason, are entitled to a U.S. passport.

It matters not that they may be in the country unlawfully or have no intention even to raise their child in the United States as an American. We must do better, and in response to Biden's era of reckless open-borderism we are, now more than ever, called on to act.

Congress or a new president should make a test case out of the State Department's treatment of foreign diplomat babies. First, instruct State that *all* officials of *all* foreign missions are presumptively not "subject to the jurisdiction" of the U.S. by the nature of their work; they are all thus ineligible to gain *jus soli* citizenship for their offspring born here. OFM can still keep blue and white lists for other reasons, but none of the offspring should be eligible for U.S. citizenship or permanent residency.

Starting with diplomatic newborns is a good political strategy that leads to the bigger public policy and legal battle needed to change the current unworkable interpretation of the 14th Amendment's citizenship clause. CIS estimated in 2018 that there were some [297,000 births a year](#) to mothers unlawfully in the country. We can only imagine how much bigger that number is now after three years of Biden's open-borderism.

We must be smart. [As Pat Buchanan wrote in 2018](#) during the first Trump presidency:

*Most legal scholars do not think Trump can, by executive order, determine who is or is not a citizen under the 14th Amendment. Yet should Trump issue an executive order and lose in the Supreme Court, the controversy could raise public consciousness and force Congress to enact legislation to clarify what the 14th Amendment precisely means.*

Exactly. Pass the executive order or tighten up the law; somebody like the ACLU will then certainly sue, and we will then be off to the races that end at the Trump-majority Supreme Court.

Meanwhile, Congress should require the State Department to make public the number of U.S. passports that are issued each year to the offspring of foreign officials posted in our country.

And will someone also please demand that the State Department [publish updated diplomatic lists](#)?

Topics: [Birthright Citizenship](#)

[Op-ed](#)