

Birth Tourism: Bringing Home a New Souvenir

Thanks to a loophole in our nation's immigration law, Southern California has become a destination of choice for birth tourists: expectant mothers who travel to our country – in most cases, legally - for the explicit purpose of obtaining U.S. citizenship for their child.

The United States is one of the few remaining countries in the world that grants citizenship to all children born on its soil, regardless of their parents' legal status. Numerous websites have sprung up selling birth tourism packages for tens of thousands of dollars, offering foreign nationals tourist visa guidance, luxury accommodations, and assistance in obtaining U.S. passports for their newborns.

While not technically illegal, this practice allows a child when they reach the age of 21 to anchor their family into the United States. The child – and potentially their family – will have access to a wide array of taxpayer-funded benefits, including access to a U.S. education and health care. This creates a powerful incentive for individuals and families to recklessly disregard and exploit our nation's laws.

While we are a welcoming society, we have a duty to protect the citizens and legal residents of this country and California by enforcing our current laws and closing loopholes that facilitate birth tourism and illegal immigration. Just recently, San Gabriel law enforcement officials uncovered an illegal maternity center in a converted townhouse in which twelve women – all Chinese foreign nationals – and ten newborns were living. Officials in the cities of Walnut and Monterey Park have also begun investigating suspected birth tourism centers run out of residential homes for violations of local building codes.

Although coming to the United States on a visa to give birth is not illegal, it is a blatant exploitation of the Fourteenth Amendment. While originally intended to guarantee citizenship to all freed slaves, the citizenship clause of the Amendment has been grossly misinterpreted to grant citizenship to all children born on U.S. soil – an attractive incentive for temporary visitors and illegal immigrants that the authors of the Amendment never intended.

When observing the debate surrounding the Fourteenth Amendment, it appears clear that the authors intended only to grant citizenship to persons born here who were "subject to the jurisdiction" of the United States. The authors also understood the phrase "subject to the jurisdiction thereof" to have the same meaning as the phrase "and not subject to any foreign Power," included in the Civil Rights Act of 1866. It would be difficult to argue that temporary visitors and illegal immigrants are not subject to a foreign power or that they do not owe allegiance to anybody but the United States.

Some have argued that a constitutional amendment would be required to close this loophole. However, Section 5 of the Fourteenth Amendment explicitly delegates to Congress the right to legislate how the provisions of the Amendment are to be applied, so Congress could legislatively undo this misrepresentation.

As we look to restore respect for the rule of law and protect the citizens and lawful residents of our nation, Congress should act quickly to close the automatic birthright citizenship loophole that encourages the distasteful and exploitative practice of birth tourism.

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