

Policy Matters – The Immigration Lens, Episode 2: Birthright Citizenship

(This transcript was generated through AI technology.)

Dani Mayer

Hello and welcome to our podcast, The Immigration Lens. My name is Dani Mayer. I'm an attorney here at Seyfarth on the Global Immigration and Mobility team, and today I'll be your host. Our practice specializes in helping multinational organizations develop and manage comprehensive global mobility programs. To learn about our practice or our team, please visit [Seyfarth.com](https://www.seyfarth.com) or check out our blog. I'm thrilled to speak with Leon Rodriguez, a partner here at Seyfarth, to discuss birthright citizenship. Leon, could you give an introduction to yourself and your practice here at Seyfarth?

Leon Rodriguez

Sure. So I am a partner in Seyfarth's Washington, DC office, and among my roles in the firm are, one, is one of the co-chairs of our Immigration Compliance and Enforcement Team, and secondly, as the chair of our Government Relations and Policy Group. What that means about at least some of the things that I do day-to-day here at Seyfarth is that I am focused on various sorts of immigration compliance issues, including those related to I-9 and E-Verify, those related to enforcement of laws that prohibit citizenship status discrimination and discrimination based on national origin, in compliance with the requirements of various visa statuses. And in my government relations role, I assist our clients in one, staying ahead of policy developments related not only to immigration, but all other labor and employment areas. And I am also the litigator of our immigration group. And so, whether it is broad, systemic challenges that we might bring against various actions that the government may be taking or considering, or whether it is assisting an individual foreign national who works for one of our corporate clients, and challenging a visa outcome that both we and they see as inappropriate. Also worth mentioning that before I joined Seyfarth now, more than eight years ago, hard to believe, I was the director of US Citizenship and Immigration Services under President Obama.

Dani Mayer

Thank you for that introduction. Can you tell us a little bit about birthright citizenship and the news that we're hearing about it?

Leon Rodriguez

The term "birthright citizenship" has for more than a century, been a concept that means that subject to very, very limited exceptions, if you are born, a person is born, on US soil, they become a United States citizen just by virtue of having been born here. And the limited exceptions are children of diplomats were born while the diplomats are in the US or children of enemy soldiers or their spouses. So, the historically recognized exceptions are quite limited. In more recent years, there has been an ideological trend to suggest that the concept of birthright citizenship should be read far more narrowly, and that it

exclude at least certain categories of individuals who were born to parents who lack certain immigration or citizenship status. And so what this turned into under the new Trump administration was an executive order that said two things: one, that the concept of birthright citizenship should actually be interpreted under the Constitution as meaning a child, at least one of whose parents is either a United States citizen or legal permanent resident, meaning that a US born child of anything from an undocumented person to an employment based non-immigrant visa beneficiary, a refugee who has not yet adjusted status, an asylum seeker who has not yet been granted asylum, or has been granted asylum and not yet adjusted status, and people now all kinds of other potential visa categories that none of these people's children would be if born in the United States, be considered US citizens at birth, and in the way in which this order intended to implement this idea is to order that the federal government would no longer issue any kind of documentation consistent with US citizenship to such children who would no longer be deemed US citizens by birth.

Dani Mayer

And, at this time, what is the status of that executive order?

Leon Rodriguez

So, there have been three different lawsuits filed: one in Seattle, one in Boston, and one in Maryland, not far from where I'm sitting right now. In two of those lawsuits have now resulted in injunctions. One of those is now in the process of being reviewed by -- one of those injunctions by a court of appeals and so far, including from relatively conservative judges. For example, the judge in Seattle was a Reagan appointee, is that this is just simply a plain misreading, in fact, a completely unsupported reading of what the Constitution says. And I haven't taken the liberty to read it, but I think I'm going to do it right now what the Constitution actually says in this point. "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, in the state where they reside." And so what these folks are hanging their hat on is what the definition of this term "subject to their jurisdiction thereof" means, and their basic theory has been said, "subject to the jurisdiction thereof" means that if you have any claim on citizenship somewhere other than the United States, then that automatically means that you are not subject to the jurisdiction of the United States, even if, of course, you could be arrested. There's all kinds of ways in which you would be responsive to the to the US government, even after being born. So far, that's been the position of the judges. There's a decent chance that this is going to get all the way up to the Supreme Court, where they will need to decide what to do. Even a court that has in other ways been sympathetic to President Trump. I think this is going to be a really tough case for them to go his way, because, among other reasons, our entire immigration system, our entire citizenship system, our entire passport system, our vital document system, as far as birth certificates and driver's license, has all been built around this assumption that if you're born here, you're a US citizen. So now what's going to happen is, as of two weeks ago, when this order went into effect, if you're born in the United States, you basically have no status, because you don't necessarily have status in your parents' country. That requires some effort on their part for you to get that status, and you are basically stateless at the time of your birth, and we have no clear statutory instructions under US law as to what you do with that child once they're born.

Dani Mayer

And what is the timeline for the court to provide updates on this?

Leon Rodriguez

There is no specific timeline right now. I mean, this is going to, you know, there's certainly deadlines for the litigants to file certain things. But right now, this, you know, this could be kicking around in court for a few months. It could be, you know, this could go on potentially for years, especially given the enormity of what the administration is trying to do here, this really could be kicking around for a long time.

Dani Mayer

At this point, how can your team help prepare clients for any potential changes that might come out of this?

Leon Rodriguez

Yeah, I think right now, I think the main thing is for clients to be aware that this is out there, but also to be aware of the fact that there is litigation that right now, this litigation has been effective in preventing this from having any immediate effectiveness or impact on children being born subsequent to the effective date of the order. Should this be upheld in any degree by the courts, then there will be some significant issues that clients will need to consider, or at least the employees of our clients will need to consider as to what you need to do in order to secure your child's status. You know, you have a decision to make at that point, one, will you seek to register them as a citizen of whatever country. And incidentally, every other country in the world does provide for, including the United States, does provide for citizenship by parentage. There are a couple of countries that limit it to the father, but generally it is citizenship by parentage, and they all have different procedures and different timelines and different deadlines for doing that, but that will now become a more urgent issue, but we're far away from that. I mean, that's the one thing I do want to say to anybody who might be listening to this, we're far away from that right now, because I do think the one thing the courts are going to find is there is no way that you can implement this interpretation unless you also create legal structures, both at the federal level and at the state level to assimilate this new interpretation of the Constitution. And that, by the way, may be enough for the whole thing to just go away at some point, but I think that there's no way that the courts are going to be able to just let this sort of go into effect without at least that demand from the federal government.

Dani Mayer

Thank you, Leon. This has been an informative discussion. If you're interested in tuning into the conversation, follow our blog at bigimmigrationlawblog.com or check out our practice page on Seyfarth.com. Thank you.