

Testimony for Rep. Brian Bilbray
Before the House Judiciary Subcommittee on Immigration & Claims
June 25, 1997

Mr. Chairman, before I begin, I'd like to ask unanimous consent that my full written statement be entered into the record.

Thank you, Mr. Chairman, for holding this important hearing today and allowing us the opportunity to discuss my bill, H.R. 7. I appreciate your help, and that of your staff, in putting together the witness panels and assisting our West Coast witnesses with their arrangements.

Many lifetime experiences have led me to introduce H.R. 7, "The Citizenship Reform Act of 1997." After World War II, my mother, the first Australian "war bride" ensured that my older brother and I were born on U.S. territory to guarantee our U.S. citizenship. I grew up along the U.S.- Mexican border. My family and I live within eyesight of the border of the U.S. and Mexico. As a citizen, mayor, county supervisor and now Congressman, I have witnessed first-hand the human cost of illegal immigration confronted by our communities on both sides of the border.

As a mayor and county supervisor, I've dealt with the problems of illegal immigrant mothers coming over to U.S. hospitals to have their babies, who in turn become automatic U.S. citizens and are therefore eligible for county, state and federal social services. We've all heard the alarming statistics. We are fortunate to have San Diego County Supervisor Pam Slater here today who can share her insight on this issue.

I do not blame these women for wanting to provide the best possible health care for their babies. Nor do I blame them for wanting to provide better opportunities for their family and wanting their children to be U.S. citizens. Thousands of people, every year, patiently go through the time consuming naturalization process to receive the privilege of becoming a United States citizen. In a few moments, you will hear from Ms. Gwat Bhattacharjie, who went through this process.

It is out of fairness for these thousands of people, like my mother, like Ms. Bhattacharjie, who follow and respect our laws, that we must pass H.R. 7. While the automatic granting of citizenship clearly serves as a strong incentive for illegal immigration, the fact remains that such practice amounts to a reward for entering this country in violation of our laws. That is fundamentally unfair, and clearly an unintended consequence to the 14th Amendment.

Our former colleague, Mr. Beilenson, recognized this unfairness and put it quite eloquently during last year's hearing on this issue. And I quote, "We are a Nation that has taken great pride in expanding the civil rights of groups of people through the years. The notion of denying an existing right to any class of people, no matter how sensible it may be, is something that goes against our nature as Americans...However, the situation that we are addressing - the automatic conferring of citizenship on children of people who have entered our country in violation of our laws - is so unfair - and unintended when the 14th Amendment was first adopted - that it does provide, I believe, one of those rare compelling reasons for amending the Constitution." I, too, believe this case is compelling, though, I believe we don't need a constitutional amendment to fix this problem. I encourage you all to review Mr. Beilenson's testimony from last year and ask that his statement be entered into the record.

Opponents of H.R. 7 talk about how this bill would create a separate class of people. Mr. Chairman, that is already going on now with the current and inaccurate interpretation of the 14th amendment. As Mr. Beilenson pointed out last year, the current situation favors children of one illegal family over another. If a mother and father comes over illegally with a young child, that child does not have citizenship. But if a similar young mother and father come across the border illegally and give birth to a child, that child is a

citizen. There is no legitimate reason for that distinction between those two families, those two children.

Congress must act now. Some would argue that Congress does not have the authority to act on its own and that a constitutional amendment is required. I disagree. Though I may be wrong, we have to at least try to resolve this problem statutorily. If I am wrong, the courts will strike it down. I don't think they will. Also, reading the transcripts of the debate on the Senate floor by the authors of the 14th Amendment, their intentions were quite clear -- Congress has the authority to clarify and define citizenship and that citizenship is not necessarily granted simply because you are born here. Senator Howard, author of the 14th Amendment, repeatedly stressed this fact during the debate. Hence, the clause, "subject to the jurisdiction of." We have Dr. Edward Erler here who will further examine this important issue.

Obviously, there are exceptions to birthright citizenship. Congress has employed these constitutional powers in several cases. It clarified and legislated citizenship status for native Americans in 1870 with the Winnebago Indians in Minnesota, by permitting them to apply for citizenship with the condition that the Indians cease to be members of the tribe. The Indian Territorial Nationalization Act in 1890 broadened the earlier Act by allowing any member of any Indian tribe or nation residing in Indian territory to apply for citizenship. From 1854 until 1924, citizenship was a common Government incentive to encourage assimilation of Indian persons. Congress' authority to nationalize Indians was also sustained by the courts in the case of *Elk v. Wilkins* in 1884 and *the U.S. v. Celestine* in 1909. These cases are important for two reasons -- first it reaffirmed Congressional authority, and second, it limited the notion of birthright citizenship. Because it was perceived that Indians owed their allegiance to their tribe, not the U.S., they were therefore not under the obedience of the U.S. Therefore, they were only to be granted U.S. citizenship by an act of Congress. Congress did this in 1924.

The *McKay v. Campbell* case specifically said that to be a citizen of the United States by reason of birth, a person must not only be born within the territorial limits, but he also must be born "subject to the jurisdiction," meaning the power and obedience of the United States. Clearly, a person who breaks our laws in entering our country is not "obedient" to the United States.

Some have also cited the Wong Kim Ark case as legal precedence for the granting of automatic birthright citizenship, and why a constitutional amendment is necessary. This case actually supports my point in H.R. 7. Let me point out that Mr. Ark was born in the U.S. by parents who were here **legally**.

H.R. 7 does not challenge any of these cases. Children born of legal residents are granted U.S. citizenship under H.R. 7. In fact, **no Supreme Court case has ever been tried involving illegal immigrants**. Illegal immigrants just didn't exist during the debates of the 14th Amendment because we did not have any immigration laws at that time.

Mr. Chairman, I want to make it perfectly clear...my legislation only affects those who break our laws and enter our country illegally. It's simply an attempt to bring fairness to a highly emotional and complex issue. For 60 years, the absurd notion of segregation was accepted as constitutional, but eventually was overturned. Let's not make the same mistake in the name of the Constitution.

Again, thank you, Mr. Chairman, for your leadership on the whole issue of reforming our immigration laws. I look forward to working with you in bringing H.R. 7 to the floor of the House.