

**Testimony of J. Richard Cohen,
President, Southern Poverty Law Center
Before the
Subcommittee on Immigration and Border Security
Committee on the Judiciary
United States House of Representatives
April 29, 2015**

My name is Richard Cohen. I am an attorney and the president of the Southern Poverty Law Center. I have appeared in many state and federal courts, including the Supreme Court of the United States, and have testified on two prior occasions before congressional judiciary committees. I am honored to have been asked to testify today on the issue of birthright citizenship, and I hope that my testimony will be helpful to the subcommittee.

Founded in 1971 in Montgomery, Alabama, the birthplace of the modern civil rights movement, the Southern Poverty Law Center was founded to make the promise of the Fourteenth Amendment and the civil rights acts passed in the 1960s a reality in the Deep South. Since that time, we have represented tens of thousands of persons in cases ranging from racial desegregation to gender discrimination, from prison reform to children's rights, and from

the Southern District of Florida recognized the rights of Wendy and other children of undocumented parents, holding that demanding higher tuition was against “a fundamental principle of American jurisprudence,” that children should not be punished for the actions of their parents. _____, 892 F.Supp.2d 1321, 1330 (S.D. Fl. 2012). The court went on to explain that “[o]bviously no child is responsible for his birth and penalizing the . . . child is an ineffectual – as well as unjust – way of deterring the parent.” (citing _____, 457 U.S. 202, 220 (1982)).

The “fundamental principle of American jurisprudence” to which the court in _____ referred finds expression in the Bible, _____, Ezekiel 18:20, and, perhaps more importantly, for purposes of today’s hearing, in the Fourteenth Amendment.

Passed in the aftermath of a war that claimed more than 600,000 lives, the Fourteenth Amendment provides that “All persons born or naturalized in the United States, and subject

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Nearly a century later, the Supreme Court relied on *Plyler v. Doe*'s interpretation of the Citizenship Clause in holding that, under the Equal Protection Clause, undocumented children are entitled to a public education. *Plyler v. Doe*, 457 U.S. 202 (1982). Although the majority in *Plyler* was a narrow one, the Court was unanimous that American-born children are "subject to the jurisdiction" of the United States and are therefore citizens, regardless of their parents' immigration status. *Plyler* at 243. In its analysis, the Court found that the meaning of the phrase "person within its jurisdiction" in the Equal Protection Clause is the same as "subject to the jurisdiction thereof" in the Citizenship Clause. Both, the Court said, are meant in a geographic sense, applying to anyone within the physical boundaries of the country. The Court quoted *Plyler*'s finding that it was "impossible to construe the words 'subject to the jurisdiction thereof,' in the opening sentence [of the Fourteenth Amendment], as less comprehensive than the words 'within its jurisdiction,' in the concluding sentence of the same section; or to hold that persons 'within the jurisdiction' of one of the States of the Union are not 'subject to the jurisdiction' of the United States." *Plyler v. Doe*, 457 U.S. at 211 n. 10 (quoting *United States v. Wong*, 169 U.S. at 687).

Various legal scholars have made interesting arguments offering a different interpretation of the birthright citizenship clause.⁴ But, to their credit, they have acknowledged that their arguments would require us to reject the understanding of the Citizenship Clause that has prevailed for more than 100 years.⁵ Given that the Fourteenth Amendment was intended to put the issue of birthright citizenship beyond the reach of congressional legislation,⁶ it would be quite anomalous at this late date to attempt to diminish or change the meaning of birthright citizenship other than by a constitutional amendment.

From the beginning, our society has grappled with efforts to exclude certain categories of people from American citizenry. During the 1866 debate, Senator Edgar Cowan of Pennsylvania raged against the idea of children of Chinese immigrants and Gypsies becoming citizens by virtue of being born here, warning of a “flood of immigration of the Mongol race,” an “inva[sion] by a flood of Australians or people from Borneo, man-eaters or cannibals,” and Gypsies who “live nowhere, settle as trespassers wherever they go, and whose sole merit is a universal swindle.” Senator Cowan urged his colleagues to restrict citizenship to people who resembled him, saying that “[i]f I desire the exercise of my rights I ought to go to my own people, the people of my own blood and lineage, people of the same religion, people of the same beliefs and traditions, and not thrust myself in upon a society of other men entirely different in all respects from myself.” Cong. Globe, 39th Cong. 1st Session, 2890-91.

Senator John Conness of California rose in defense of the Amendment. He conceded that “it may be very good capital in an electioneering campaign to declaim against the Chinese.” But he described Chinese immigrants as an “industrious people ... now passing from mining into other branches of industry and labor” including in “kitchens of hotels ... as farm hands in the fields ... [and] in building the Pacific railroad.” Their children and those of Gypsies born in this country should be “regarded as citizens of the United States,” he said. No person “claiming to have a high humanity,” he argued, could take a contrary position. Cong. Globe, 39th Cong. 1st Session, 2892.

When the Supreme Court addressed birthright citizenship in _____, the decision came during a period of tremendous backlash to Chinese immigration. Just 16 years earlier, President Arthur had signed the Chinese Exclusion Act, stopping the flow of Chinese

system”). Today, we are witnessing another backlash to our nation’s changing demographics and are engaged in serious debates about our immigration policy. Regardless of one’s position on immigration policy questions, the sanctity of the birthright citizenship clause should not be disturbed. Any other course would risk creating a new class of second-class citizens.

This past fall, Wendy Ruiz, our client in the Florida tuition case I mentioned earlier in my testimony, spoke at the Dexter Avenue King Memorial Baptist Church, the church from which Dr. King and his allies launched the modern civil rights movement, the Second American Revolution. She told a deeply American story, one about her family’s struggles and her commitment to get an education to help others in her community. It is simply inconceivable to