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Jus Soli on U.S. Military Property: Extending Birthright Citizenship to Babies Born to Refugee Mothers Evacuated by the United States Military Following Family Service to the United States

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Jus Soli on U.S. Military Property: Extending Birthright Citizenship to Babies Born to Refugee Mothers Evacuated by the United States Military Following Family Service to the United States

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The United States' airlift evacuation of Afghan citizens from Afghanistan in the summer of 2021 facilitated the departure of Afghans whose personal safety was compromised in the face of the Taliban seizure of Afghanistan.[1] Evacuees airlifted by the United States military were leaving Afghanistan because their personal safety was compromised due to the assistance an evacuee or their family member(s) had provided to the United States government in Afghanistan.[2] Since the airlift evacuations, "more than 250 children have been born to Afghan evacuees on United States military bases [within the United States]."[3] At least 570 babies in total have been born in the United States to Afghan evacuee mothers.[4] These 570-plus children were automatically granted U.S. citizenship because they were born on United States soil.[5]

Paths to United States Citizenship

The United States grants citizenship in three primary ways: (1) Naturalization (a process by which a person may gain citizenship after meeting the requirements outlined in the Immigration and Nationality Act);[6] (2) birth on United States soil (known as "*jus soli*"[7]); or (3) birth to parents who are United States citizens (known as *jus sanguinis*[8]).[9] The only way, then, that children who are born abroad can acquire United States citizenship at birth is

through their parents' citizenship status.

While the United States automatically grants citizenship to a person born in the United States or in one of its territories,[10] the term "U.S. territory" does not include military bases abroad because the land that makes up U.S. military bases "remains sovereign territory of the host country." [11]

A person born outside of the United States must meet the following three requirements if they are to be granted U.S. citizenship at birth: (1) at least one parent of the baby is a U.S. citizen; (2) the U.S. citizen parent meets residence or physical presence requirements outlined by U.S. Citizenship and Immigration Services before the person's birth; and (3) all other "applicable requirements under either INA 301 or INA 309" are met.[12] *Jus soli* citizenship does not apply on United States military bases abroad.

An Exception Should Be Made for Babies Born to Afghan Refugee Families Evacuated by U.S. Military Forces.

United States citizenship should extend to babies born to refugee mothers who have been evacuated by U.S. military forces and who give birth while aboard a U.S. military vehicle or while on a U.S. military base.

One such scenario caught the attention of the media in the fall of 2021. A baby was born to an Afghan refugee mother while the mother was in the cargo hold of a C-17 Globemaster plane at Ramstein Air Base in Germany.[13] At least forty other Afghan refugee babies have been delivered at Ramstein Air Base since the evacuations began.[14] While the babies born at Ramstein would have received U.S. citizenship had they been born on a United States military base in the United States or one of its territories, none of the babies born at Ramstein were granted U.S. citizenship.[15] Nor will the babies be granted German citizenship despite being born on a military base in Germany, because German citizenship is passed down based on descent from a German parent.[16] Additionally, though Afghan citizenship can be passed down through a child's parents, the babies' parents could potentially have trouble registering their child for citizenship with Afghanistan, rendering the babies' Afghan nationality as one that exists in theory but not legally.[17] The Afghan refugee babies—babies from families that assisted the United States, whose families were evacuated by the United States, whose families were transported on United States planes, babies who were ultimately delivered by United States military medics, and babies who are part of families that are destined for the United States[18]—could be considered, in effect, then, "stateless." [19]

Why Statelessness Matters and Why Congress Should Address the Issue of Citizenship for Babies Born to Families Who Aided and Later Were Evacuated By The United States

The United Nations Refugee Agency defines "stateless persons" as "individuals who are not considered citizens or nationals under the operation of the laws of any country." [20] The United Nations Human Rights Counsel indicates that the right to a nationality is a "fundamental human right," as the barriers that exist for those without a nationality make it difficult if not impossible for people to attend school, get medical care, open a bank account, or perhaps even get married.[21]

Congress should reconsider and change the laws regarding citizenship of babies born on U.S. military bases to refugee parents who were evacuated by the United States military because they provided a critical service to the United States government. The least the United States could do for families who put their lives at risk in an effort to assist the United States in Afghanistan is to welcome babies born on U.S. military bases abroad with open arms and a promise of citizenship and belonging.

[1] Hardin Long, Sarah Miller, Daphne Panayotatos, Yael Schacher & Eric Schwartz, *Refugees and Those Who Remain At Risk in Afghanistan*, Refugees International (Sept. 8, 2021), <https://www.refugeesinternational.org/reports/2021/9/7/after-the-airlift-protection-for-afghan-refugees-and-those-who-remain-at-risk-in-afghanistan>.

[2] *Id.*

[3] Ali Harb & Zubair Babakarkhail, 'Born as US Citizen': Afghan Refugees Welcome Newborns in US, Aljazeera (Aug. 26, 2021), <https://www.aljazeera.com/news/2021/11/20/afghan-newborns>.

[4] Jeff Gammage, *Mothers Who Fled Afghanistan are Welcoming 16 Babies. They Got a Philly-style Baby Shower*, The Philadelphia Inquirer (Feb. 20, 2022), <https://www.inquirer.com/life/afghan-evacuees-baby-shower-immigration-20220220.html>.

[5] U.S. Citizenship and Immig. Serv., Policy Manual Chapter 3: U.S. Citizens at Birth, <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3>.

[6] Immigration and Nationality Act of 1952 (codified at 8 U.S.C. §§ 1104–1401).

[7] U.S. Dep't of State, Foreign Affairs Manual § 301.1-1, U.S. Department of State, <https://fam.state.gov/fam/08fam/08fam030101.html>.

[8] *Id.*

[9] *Military Children Born Abroad*, FindLaw (June 20, 2016), <https://www.findlaw.com/military/family-employment-housing/military-children-born-abroad.html>.

[10] U.S. Citizenship and Immig. Serv., Policy Manual Chapter 3: U.S. Citizens at Birth, <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3>.

[11] *Frequently Asked Questions*, U.S. Dep't of State, <https://travel.state.gov/content/travel/en/records-and-authentications/requesting-a-vital-record-as-a-u-s-citizen/faqs.html>.

[12] U.S. Citizenship and Immig. Serv., Policy Manual Chapter 3: U.S. Citizens at Birth, <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3>.

[13] Nell Clark, *A Baby Born to Mom Fleeing Afghanistan Is Named After The Evacuation Flight*, NPR (Aug. 27, 2021), <https://www.npr.org/2021/08/26/1031287754/a-baby-born-to-mom-fleeing-afghanistan-is-named-after-the-evacuation-flight>.

[14] Anna Mulrine Grobe, *For Afghan Arrivals, A Taste of the US at an Air Base in Germany*, The Christian Science Monitor (Oct. 26, 2021), <https://www.csmonitor.com/World/2021/1026/For-Afghan-arrivals-a-taste-of-the-US-at-an-air-base-in-Germany>.

[15] *Frequently Asked Questions*, U.S. Dep't of State, <https://travel.state.gov/content/travel/en/records-and-authentications/requesting-a-vital-record-as-a-u-s-citizen/faqs.html>.

[16] *Explained: Afghan Refugee Gives Birth on Flight, What Will Her Baby's Nationality Be?*, The Indian Express (Aug. 27, 2021), <https://indianexpress.com/article/explained/explained-afghan-refugee-gives-birth-on-flight-what-will-her-babys-nationality-be-7467195>.

[17] *The Right to a Nationality of Refugee Children Born in the EU and the Relevance of the EU Charter of Fundamental Rights*, European Council on Refugees and Exiles at 2 (Feb. 2017), <https://ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf> (<https://ecre.org/wp-content/uploads/2016/12/refugee-children-nationality-LEAP-leaflet.pdf>).

[18] Marion MacGregor, *Ramstein: Thousands of Afghan Evacuees Await Transfer to US*, Info Migrants (Sept. 3, 2021), <https://www.infomigrants.net/en/post/34833/ramstein-thousands-of-afghan-evacuees-await-transfer-to-us>.

[19] United Nations High Commissioner for Refugees, *Statelessness*, <https://www.unhcr.org/en-us/statelessness.html> (<https://www.unhcr.org/en-us/statelessness.html>) (last visited Feb. 4, 2023).

[20] *Id.*

[21] *OHCHR and the Right to a Nationality*, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

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