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DEPORTING A US CITIZEN CHILD? TAKE A LEAF OUT OF THE STATE DEPARTMENT'S BOOK ON BIRTHRIGHT CITIZENSHIP

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By Cyrus D. Mehta

This week, while we have all been stunned at the way Customs and Border Patrol (CBP) sent a four year old US citizen child packing out of the country to Guatemala, http://edition.cnn.com/2011/OPINION/03/23/navarrette.child.deported/?hpt=Sbin, even though her parents lived in the US, we can take some comfort that the State Department scrupulously adheres to birthright citizenship enshrined in the 14th Amendment of the US Constitution.

Contrary to the common notion -that parents come to the US to give birth to children so that they may become US citizens - some non-US citizen parents do not desire that their minor children remain US citizens, notwithstanding their birth in the US. Their main motivation is that if they choose not to live in the US permanently, they would rather that the child enjoys the citizenship of their nationality so that he or she does not suffer any potential impediments later on in that country, such as the inability to vote, attend educational institutions or stand for elected office. Often times, the country of the parent's nationality and the United States lay claims on the child's citizenship, and this may often create conflicts between the citizenship laws of the two countries, particularly if the child will return to its parents' country and live there.

For instance, a child born to Indian citizen parents in the US can still claim to be an Indian citizen by descent, even though India does not otherwise permit dual nationality, provided that the parents declare that the child does not hold the passport of another country, http://www.mha.nic.in/pdfs/ic_act55.pdf. This may

not be possible if the child is born in the US, and thus a US citizen and potentially an Indian citizen, since the State Department's regulation provides that ".

a. *Parents or guardians cannot renounce or relinquish the U.S. citizenship of a child who acquired U.S. citizenship at birth.*

While the FAM leaves open the possibility for a minor to renounce citizenship, there must be a determination by the consul whether the minor had the requisite maturity and knowing intent, free from parental influence. According to 7 FAM 1292(i)(3), "Minors who seek to renounce citizenship often do so at the behest of or under pressure from one or more parent. If such pressure is so overwhelming as to negate the free will of the minor, it cannot be said that the statutory act of expatriation was committed voluntarily. The younger the minor is at the time of renunciation, the more influence the parent is assumed to have." 7 FAM 1292(i)(2) further states, "Children under 16 are presumed not to have the requisite maturity and knowing intent." It should be noted, though, that even if a child successfully renounces US citizenship, upon reaching 18 years, the child has a six-month opportunity to reclaim US nationality. See INA § 351(b).

The deportation of the 4 year old child is one recent example. CBP's sister agency, Immigration and Customs Enforcement (ICE), has also been notorious for detaining and deporting US citizens in recent times, http://stateswithoutnations.blogspot.com/2010/07/us-citizens-detained-and-deported-2010.html despite an ICE memo admonishing its officers to treat claims by US citizens with care and sensitivity, http://www.ice.gov/doclib/detention-reform/pdf/usc_guidance_nov_2009.pdf. In a time when a very vocal minority is advocating for the repeal of birthright citizenship, government agencies in charge of enforcing immigration laws ought not to be swayed by the passions of the day, and must scrupulously ensure that a child born in the US, regardless of the parents' status, is treated as a US citizen under the 14th Amendment of the US Constitution, like the State Department does.