# Who Is An American Citizen?

by Phyllis Schlafly Mar. 31, 2004

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In a world of inhumanity, war and terrorism, American citizenship is a very precious possession. It affords rights that residents of other countries can only dream of.

So who is eligible to claim American citizenship? The U.S. Supreme Court may soon consider that question.

Yasser Esam Hamdi was captured as an enemy combatant during the American military operation in Afghanistan. When interviewed by a U.S. interrogation team, Hamdi identified himself as a Saudi citizen who had been born in the United States.

Now that he has been detained, he contradicts that by claiming to be a citizen of the United States based on his birth in Baton Rouge, Louisiana to Saudi Arabian parents. There is no evidence that his parents intended to settle in the United States, or even that they had a right to do so.

Hamdi was residing in Afghanistan when he was captured. His father, Esam Fouad Hamdi, joined the lawsuit from his country of Saudi Arabia.

Section 1401(a) of Title 8 of the United States Code defines a U.S. citizen as "a person born in the United States, and subject to the jurisdiction thereof." This law uses the same language as the Citizenship Clause of the Fourteenth Amendment.

There is no evidence that Hamdi or his parents ever consented to be subject to the sovereignty of the United States, or sought to settle in the United States or to renounce their Saudi Arabian citizenship. All evidence is that they retained allegiance to Saudi Arabia.

Birth on U.S. territory has never been an absolute claim to citizenship. The Fourteenth Amendment does not automatically extend to children born to alien parents at war with the United States, or to the children of diplomatic agents, or to American Indians, or to illegal aliens.

If it did, American Indians would automatically have been American citizens since they were born on what is U.S. territory. But Indians who belong to tribes were not citizens until given that status by Congress.

The Supreme Court held in 1884 in Elk v. Wilkins that "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more `born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations."

The logic of this decision applies with equal force to visitors or aliens who remain loyal to foreign powers. The Fourteenth Amendment did not change this.

In the 1942 case called In re: Thenault, a federal court ruled: "Of course, the mere physical fact of birth in the country does not make these children citizens of the United States, inasmuch as they were at that time children of a duly accredited diplomatic representative of a foreign state. This is fundamental law and within the recognized exception not only to the Constitutional provision relative to citizenship,

Amendment Article 14, Section I, but to the law of England and France and to our own law, from the very first settlement of the Colonies."

In supporting passage of the Fourteenth Amendment, Senate Judiciary Committee Chairman Lyman Trumbull explained that the jurisdictional language in the Citizenship Clause "means `subject to the complete jurisdiction thereof.' ... [Are] the Navajo Indians subject to the complete jurisdiction of the United States? By no means. We make treaties with them. ... It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government ... that he is `subject to the jurisdiction of the United States.' ... It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens."

The extensive litigation concerning American Indians illustrates that consent rather than place of birth is what controls citizenship. Indians did not receive citizenship until conferred by congressional acts in 1887, 1901 and 1924, long after ratification of the Fourteenth Amendment.

The Constitution states that "no person except a natural born citizen" is eligible to be President. Everyone recognizes that this provision disqualifies the Governors of California and Michigan who were born in Austria and Canada, respectively.

On the other hand, then Michigan Governor George Romney, whose birthplace was Mexico, ran for president in 1968, and Senator John McCain, whose birthplace was the Panama Canal Zone, ran for president in 2000. Both were "natural born citizens" because their parents were U.S. citizens and subject to the jurisdiction of American sovereignty.

It's not the physical location of birth that defines citizenship, but whether your parents are citizens, and the express or implied consent to jurisdiction of the sovereign. The facts and the law argue against American citizenship for Hamdi.