

S.1554 - The Adoptee Citizenship Act of 2019 FAQ

What is the problem?

A finite subset of children adopted from overseas, those born before February 27, 1983, face a unique problem. These individuals were adopted as children from abroad by U.S.-citizen parents. They grew up in the United States believing that they were American citizens, too. Yet through no fault of their own, these adoptees never actually obtained U.S. citizenship.

The Child Citizenship Act of 2000¹ remedies this issue for every affected and eligible adoptee born after February 27, 1983. For those born on or before February 27, 1983, however, this issue remains unresolved. The most immediate and dire consequence is that they are deportable. Some have already been deported for certain criminal offenses. This is because without citizenship, most international adoptees are inappropriately subject to the law governing non-citizen, legally present immigrants.

The vast majority of these adoptees are productive members of society with families and a social network. The threat of deportability hinders their ability to participate in American life to the full extent possible. Fundamentally, unlike their American-born peers, these international adoptees who did not obtain citizenship cannot freely apply for jobs, work for the government, vote, participate in jury duty, enroll in certain government programs, or travel abroad like they should.

An international adoptee is brought to the country under the presumption that he or she will receive the same treatment as a child naturally born to a U.S. citizen parent on American soil. Current law has robbed those children who were adopted from overseas and born on or before February 27, 1983, of this expectation.

How did this problem start?

The problem stems from parents who did not take the additional step of naturalizing their child in the window of time between the child's adoption and the child's 16th birthday. International adoption has been described as a two-step process. First, the parent must follow "any state laws governing their [child's] adoption within the U.S." Second, the parent must obtain their child's citizenship.² As one article explains,

This second step involved applying to INS, which could take up to three years in total. This step also involved document production from both the adoptive mother, father, and any children of

¹ Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

² Note, Holland L. Hauenstein, *Unwitting and Unwelcome in Their Own Homes: Remediating the Coverage Gap in the Child Citizenship Act of 2000*, 104 Iowa L. Rev. 2123, 2129 n.31 (2019), <https://ilr.law.uiowa.edu/print/volume-104-issue-4/unwitting-and-unwelcome-in-their-own-homes-remediating-the-coverage-gap-in-the-child-citizenship-act-of-2000/> (citations omitted) (altering formatting).

the family, “including birth and marriage certificates, photo identifications, immigrant cards and certified English translations of documents written in other languages.”³

A fundamental principle of adoption law is that “the rights and status of an adopted child are the same as those of a natural child.”⁴ Parents may have believed that the same principle applied to federal citizenship laws. Sometimes, the fault lies with the parents themselves or with adoption agencies,⁵ lawyers, or government entities. In no case was the failure to naturalize the fault of the child.

How could this problem go undetected by affected individuals for so long?

For many adoptees, their lack of citizenship comes as a surprise.⁶ They report interacting with the government in multiple ways without ever receiving an indication that they lacked citizenship. For example, adoptees had been employed,⁷ received social security cards,⁸ received military identification,⁹ received driver’s licenses,¹⁰ passed background checks to obtain a firearm,¹¹ voted,¹² and have been called to jury duty¹³ without any indication that they lacked citizenship.

How many people are affected by this problem?

No precise statistics are available from the U.S. Department of Homeland Security or the U.S. Department of State. According to the South Korean Ministry of Health and Welfare, about 20,000 children of the total number children adopted from South Korea to families in the United States in the last 60 years lack records of U.S.-citizenship finalization.¹⁴ U.S. Senate staff met with representatives

³ *Id.*

⁴ John Bourdeau & Kristina E. Music Biro, Effect of Adoption Upon Individuals’ Status, Rights, Duties, and Obligations, 2 Am. Jur. 2d Adoption § 172 (footnotes omitted).

⁵ Hauenstein, *supra*, at 2129 n.31 (omitting citations) (altering formatting).

⁶ See, e.g., Tara Bahrapour, They grew up as American citizens, then learned that they weren’t, Wash. Post (Sept. 2, 2016), https://www.washingtonpost.com/local/social-issues/thousands-of-adoptees-thought-they-were-us-citizens-but-learned-they-are-not/2016/09/02/7924014c-6bc1-11e6-99bf-f0cf3a6449a6_story.html. Justin Ki Hong, Joy Kim Alessi, and Monte Haines are just three examples of adoptees who learned in their adulthood that they were never American citizens.

⁷ David was employed without ever learning that he was not an American citizen. David’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/storycollection/davids-story-california/>.

⁸ Frank, John, Judy, and Anuar received social security numbers. See Frank’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/storycollection/frank/>; John Pak’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/john-paks-story/>; Judy’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/storycollection/judy/>; Anuar’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/storycollection/anuars-story/>.

⁹ Monte received a military identification and served in the military for several years before he was eventually deported. Monte, Adoptee Rights Campaign, <https://adopteerightscampaign.org/storycollection/monte/>.

¹⁰ David received a driver’s license without having citizenship. David’s Story, *supra*.

¹¹ David passed a background check to obtain a firearm without having citizenship. *Id.*

¹² Joy voted without knowing that she lacked citizenship. Joy’s Story, Adoptee Rights Campaign, <https://adopteerightscampaign.org/joys-story-texas/>.

¹³ One woman adopted from Iran was called to jury duty even though she lacked citizenship. Bahrapour, *supra*.

¹⁴ Adoptee Rights Campaign, US Adoptees Without Citizenship National and State-by-State Estimates, at 5, 15 (2018), <https://adopteerightscampaign.org/wp-content/uploads/2018/05/National-Report-for-Release-to->

from the South Korean government on September 5, 2019, and officials explained that this number was determined using the government's adoption records.

What are some examples of this problem?

The stories from Joy of Texas, Joao of Ohio, and Jody of California show the detrimental effects endured by adoptees who have not been able to obtain citizenship.

Joy discovered she was not a US citizen after applying for a passport in her twenties. Her parents did not complete the naturalization process for her after her legal adoption.¹⁵ Later, after her parents divorced, she entered into the foster care system, which again did not serve in earning her citizenship to the U.S. before she aged out.¹⁶ She felt that the U.S. government, the adoption agency, her parents, and the foster care system had all acted in complete disregard to her citizenship status.¹⁷ Twenty-seven years later after discovering that she was not a citizen, Joy was finally naturalized in 2019.¹⁸

After adoption as an orphan from Brazil at the age of eight, Joao adapted to life in midwestern America and fell out of touch with his native roots and language.¹⁹ At 18 years old, he received a first-time conviction for selling 7.5 ounces of marijuana and was sentenced to probation. But because the offense was considered an aggravated felony, in 2000 and at age 21, he was ordered to be deported. In August 2000, despite the unanimous recommendation of the Ohio state parole board in favor of clemency for Joao, the Ohio Governor, Robert Taft, refused to grant a pardon that could have exempted him from deportation.²⁰ His adoptive mother, Nancy Saunders, said this would be "a death sentence." After his deportation, Joao settled into a small house outside Sao Paulo where he would open his own school to teach English and father a daughter. But four years after deportation, Joao was murdered in the streets of Brazil, thousands of miles away from his family and home.²¹

Jody was adopted by a couple in his preteens. He was a soldier in the U.S. Army and served two tours of duty in Vietnam and received eight medals: "four Bronze Stars, two Medals of Valor, the Purple Heart, and an Army Commendation medal."²² After his tours of duty, Jody was arrested for marijuana and

[Congress-Apr-29.pdf](#) (citing statistics provided in an "in person meeting with the Adoptee Rights Campaign volunteers" and the South Korean Ministry of Health and Welfare). Staff of Senator Roy Blunt and Senator Mazie Hirono verified this estimate of 20,000 in their meeting with South Korean government representatives on September 5, 2019.

¹⁵ Jodie Fleischer, Rick Yarborough & Steve Jones, Tens of Thousands of Adoptees Learn They Aren't US Citizens, Even After Decades Living Here, News 4 (Feb. 4, 2019, 6:26 PM), <https://www.nbcwashington.com/investigations/Tens-of-Thousands-of-Adoptees-Learn-They-Arent-US-Citizens-Even-After-Decades-Living-Here-505213201.html>

¹⁶ Joy's Story, *supra*.

¹⁷ *Id.*

¹⁸ Fleischer, Yarborough & Jones, *supra*.

¹⁹ Kevin G. Hall, After Arrest, U.S. Sent Ohio Man to Brazil and Death, Orlando Sentinel (May 30, 2004), <https://www.orlandosentinel.com/news/os-xpm-2004-05-30-0405300027-story.html>.

²⁰ Memorandum from Margaret Mikyung Lee, Legislative Attorney, American Law Division, to McLane Layton, Changes in the Immigration and Nationality Act resulting in the deportation or detention of adopted children of U.S. citizens, at CRS-9.

²¹ Hall, *supra*.

²² Abe Opincar, Jody Gravett, orphan, Vietnam vet, in trouble, San Diego Reader (Feb. 5, 1998), <https://www.sandiegoreader.com/news/1998/feb/05/hero-without-country/#>.

methamphetamine possession. As such, he was considered to have been convicted of two aggravated felonies and was subject to deportation. He lacked citizenship and even a completed adoption and was classified as an illegal resident. He was ultimately not deported, but he felt disparaged: “I went to Vietnam to help my country out. I fought real hard for my country. And now, in the end, my country turns around and says, ‘We don’t want you anymore.’ I just don’t understand it. And it seems like all my life I’ve been asking ‘Why?’”²³

What kind of visas were used to bring these people into the United States?

Visas that adoptive parents would use to bring their children over included IR 3 and IR 4. After 2008, visas also included IH 3 and IH 4. Whether or not a child arrives on an IR 3/IH 3 visa or an IR 4/IH 4 visa, he or she is screened for suitability for international adoption,²⁴ and his or her prospective adoptive parents are screened for their suitability to adopt.²⁵

Some adoptees may have entered on non-immigrant visas or by parole.²⁶ This would not be reflected in U.S. Department of State adoption statistics.

How many of these people have been deported?

There are no exact numbers, as the U.S. Department of Homeland Security does not track whether an individual is an intercountry adoptee in the course of the individual’s deportation. Based on what is known about the size of the international adoptee population, a very small segment of adoptees without citizenship have been deported.

²³ *Id.*

²⁴ See Bureau of Consular Affairs, Non-Convention Adoption Cases: Form I-604 Determination and Immigrant Visa Appointment Scheduling, Travel.State.Gov, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/Non-Convention-Adoption-Cases-Form-I-604-Determination-and-Immigrant-Visa-Appointment-Scheduling.html> (last visited May 17, 2020) (describing the process for determining a child’s suitability for adoption).

²⁵ See Bureau of Consular Affairs, U.S. Department of State, Hague Visa Process, Travel.State.Gov, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/us-hague-convention-adoption-and-visa-process.html> (last visited May 17, 2020) (describing the process for screening prospective parents’ suitability); Bureau of Consular Affairs, U.S. Department of State, Non-Hague Visa Process, Travel.State.Gov, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/immigrant-visa-process/non-hague-visa-process.html> (last visited May 17, 2020) (same).

²⁶ See e.g., 108 H. Report 529, 108th Congress, 2d Session (June 8, 2004), (providing an account of Lindita Idrizi Heath, who was born in 1984, arrived in the U.S. by parole, and adopted by a Maryland couple after her 16th birthday). See also, e.g., Private Law No. 107-1, <https://www.congress.gov/107/plaws/pvtl1/PLAW-107pvtl1.pdf> (providing for permanent resident status for Rita Mirembe Revell); 107 H. Report 129, 107th Congress, 1st Session (July 10, 2001), <https://www.govinfo.gov/content/pkg/CRPT-107hrpt129/html/CRPT-107hrpt129.htm> (providing an account of Rita Revell, Ugandan orphan brought into the U.S. on a student visa as a little girl and raised by Mr. Dennis Revell, then a public relations corporation president and CEO, and Ms. Maureen Reagan, daughter of President Ronald Reagan).

Are these people able to receive public benefits?

Availability of public benefits likely depends on the service. U.S. Social Security benefits may be available to noncitizens by virtue of their employment, as “[m]ost U.S. jobs are covered under Social Security.”²⁷ Benefits such as federal student aid may also be available, although the process to obtain federal student aid may be more complicated than the process for those with citizenship.²⁸

Applying limits and additional requirements for the receipt of public benefits is inappropriate when applied in the context of a child who is legally adopted from another country and never provided citizenship.

What countries are these people from?

Countries include Argentina, Brazil, Cambodia, China, Colombia, Costa Rica, Dominican Republic, El Salvador, Germany, Great Britain, Guatemala, Haiti, India, Iran, Ireland, Japan, Mexico, Panama, Philippines, Russia, Samoa, South Korea, St. Kitts, Thailand, Ukraine, and Vietnam.²⁹

Why didn’t their parents just fill out the paperwork correctly the first time?

As one attorney and adoptive parent has explained,

[i]t is a common misconception that adoption confers U.S. citizenship on international adoptees which it does not. Unfortunately, some adoption agencies, lawyers and judges also thought all international adoptees became citizens once they were adopted. That is why when many parents relied on professionals, they may have been told the wrong information. Also, the paperwork for international adoption can be very daunting for parents who are not lawyers and who may be coping with difficult adoption citizenship issues.³⁰

Why should adopted children be treated the same as birth children?

It is fundamental legal policy to attribute the rights of a child naturally born to a couple to a child adopted by a couple.³¹ As one author writes, “Under American law, children who have been adopted are expected to have the same rights as biological children, and that goal of equality is also reflected in legal and social standards of international human rights conventions.”³²

²⁷ Dawn Nuschler, Social Security Benefits for Noncitizens, RL32004, CRS (Nov. 17, 2016).

²⁸ See U.S. Citizenship & Eligible Noncitizens, at 1-27, <https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkVol1Ch2.pdf>.

²⁹ US Adoptees Without Citizenship National and State-by-State Estimates, *supra*, at 5.

³⁰ Email on filed with the Office of U.S. Senator Roy Blunt.

³¹ Bourdeau & Biro, *supra*.

³² Joseph D’Agostino, *Equalizing the Treatment of Foreign-Adopted Children*, Adoption Advocate No. 33 (National Council for Adoption, Alexandria, Va.), March 2011, <http://www.adoptioncouncil.org/publications/2011/03/adoption-advocate-no-33>.