

Born in the USA

What about children of illegals?

BY FREDERICK GRAB

I make no claim to a solution to the confounding issue of illegal immigration in this country. Others with far more at stake personally, better information and at least the potential power to do something about it have tried for years and failed to come up with one. But I believe that one aspect of the charged controversy—the question of the American-born children of illegal aliens—is considerably less problematic than it is made to appear.

The 14th Amendment to the U.S. Constitution, fully ratified in 1868 as one of the three “Civil War Amendments,” provides that “all persons born or naturalized in the United States and subject to the jurisdiction thereof” are U.S. citizens. Without recourse to legislative history, it seems obvious that the main purpose of this provision was to afford citizenship to former slaves emancipated by the previous amendment. It seems equally clear that it was never intended to legitimate the citizenship of children whose parents are in this country illegally. Indeed, a rational argument can be made that such children are not actually subject to the jurisdiction of the United States due to the status of their parents: being in flagrant violation of an unenforced immigration law and living under false identities, it can be argued that the parents are not, as a matter of fact, under U.S. jurisdiction.

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This is not a strong position, however. If we desire to change this situation it would appear that only an amendment or new Supreme Court interpretation could revise that standard to require that the birth mother be in the United States lawfully. So for the foreseeable future, we are faced with the unpleasant dilemma of the child-citizen whose illegal parents are being deported.

To be sure, the prospect of children being



Mexican illegals being deported back to Mexico board a plane in Los Angeles on July 27, 1976.

wrenched from their parents is troubling. But what are the options open to these parents? First, it was their choice, not the children’s or the U.S. government’s decision, to enter this country in violation of U.S. law. If American citizen-parents violate the penal law and are sent to prison, the very same consequences apply: their children must be cared for by friends, relatives or by the system. The same is true of parents who are killed or die in accidents.

The immigrant parents had the option of attempting to enter this country legally, and the problems they face in this regard are of their own making.

And what exactly are these consequences? The deported illegals, first of all, have the absolute right to take their children with them back to their countries of origin. The U.S. government is not breaking up the family; the choice to do so rests with the parents. The loss of local educational opportunities and friends is no different for children of citizens who relocate. I submit that the root of the immigration dilemma lies elsewhere and that the sad consequences for these children, as well as their deported parents, are real, sometimes tragic, but totally be-

side the point.

When this country exploded into civil war in 1861, the popular focus was on slavery. But President Lincoln—personally opposed to slavery—wrote to Horace Greeley early in the war that his guiding principle was the preservation of the Union. And if he could do so “without freeing any slave... by freeing all the slaves... [or] by freeing some and leaving others alone,” he stated that he would.

Despite the passions raised now by the immigration issue on both sides of the debate, there seems to be little thought given to the values which underlie it, akin to Lincoln’s commitment to the Union. We talk about jobs, national language and culture, historical inequities, crime, etc. But for those already

in this country lawfully, these are really details, peripheral considerations. Instead, there appears to be something more central and fundamental—akin to Lincoln’s devotion to this great experiment called the United States—which citizens inchoately rely upon as worth preserving and many see as threatened by runaway immigration.

Rather than hurling epithets at each other, both sides in the controversy might do better trying to clarify this core value and forming the debate around it. As every fund-raiser knows, the key to success lies with the children. We shouldn’t be distracted by the unpleasant consequences of our immigration policy until we determine what exactly it is meant to preserve. ■

XIV Amendment to the U.S. Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. ■