

United States.⁹³ The term "outlying possessions of the United States" means American Samoa and Swains Island.⁹⁴

b. CITIZENSHIP BY BIRTH IN UNITED STATES [§§ 2688-2698]

§ 2688. Doctrine of jus soli

Both the Fourteenth Amendment to the U.S. Constitution⁹⁵ and the INA⁹⁶ provide that persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States. This provision is declaratory of the pre-existing common-law principle of jus soli, under which a person's nationality is determined by his or her place of birth, and which was the law of the United States even prior to the adoption of the Fourteenth Amendment.⁹⁷

§ 2689. —Who is born in United States and subject to United States jurisdiction

A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if his or her birth occurs in territory over which the United States is sovereign, even though another country provides all governmental services within the territory, and the territory is subsequently ceded to the other country.⁹⁸ Using secondary evidence, including the defendant's mother's baptismal record from a U.S. church, a Czechoslovak census for the defendant's childhood household, and post-World War II documents signed by the defendant's mother, the defendant proved by a preponderance of the evidence that his mother was born in the United States, and was thus a U.S. citizen by birth.⁹⁹ However, a child who is conceived in the United States, but born in another country is not a child born in the United States.¹

A child born on a merchant vessel of American registry, on the high seas, of alien parents who are domiciled in the United States is not a child born in the United States.²

- ♦ *Practice guide:* The case of a child born in the United States whose citizenship may be doubtful because his or her parent was an ambassador, envoy, or minister of a foreign country, should be resolved in consultation with the Citizenship and Passport Section of the Diplomatic or Consular Office to determine whether any claim to citizenship exists.³

§ 2690. Persons born in United States to member of aboriginal tribe

A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe is a national and citizen of the United States

93. 8 USCA § 1101(a)(38).

94. 8 USCA § 1101(a)(29).

95. US Const. Amend 14 § 1.

96. 8 USCA § 1401(a).

97. U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898).

98. Matter of Cantu, 17 I. & N. Dec. 190, I. & N. Interim Dec. No. 2748, 1978 WL 36395 (B.I.A. 1978).

99. U.S. v. Breyer, 841 F. Supp. 679 (E.D. Pa. 1993), aff'd, 41 F.3d 884 (3d Cir. 1994), reh'g and reh'g in banc denied, (Dec. 13, 1994).

1. Montana v. Rogers, 278 F.2d 68 (7th Cir. 1960), cert. granted, 364 U.S. 861, 81 S. Ct. 102, 5 L. Ed. 2d 84 (1960) and judgment aff'd, 366 U.S. 308, 81 S. Ct. 1336, 6 L. Ed. 2d 313 (1961).

2. Lam Mow v. Nagle, 24 F.2d 316 (C.C.A. 9th Cir. 1928).

3. U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898).