

## When is a Citizen Not a Citizen?

(Citizenship Jeopardy) By Cindy Simpson

Trivia question: What do Anwar al-Awlaki, Yaser Esam Hamdi, and newborn twin daughters of Mexican drug lord Joaquin Guzman have in common? The correct answer:

"What is 'presumed' US citizenship."

The adjective "presumed" was used by Justice Scalia to describe Hamdi's US citizenship in the famous 2004 case of *Hamdi v. Rumsfeld*. Hamdi was born in Louisiana in 1980 to Saudi parents, and in 2001 he was captured by US forces in Afghanistan and held as an enemy combatant. Hamdi's father filed the petition from Saudi Arabia, arguing that his son was a US citizen and entitled to due process.

Noted constitutional law expert Dr. John Eastman in his editorial, "Wrong Question in Hamdi," argued that the question before the Court should have been: "Why is Hamdi being treated as a citizen at all?"

The Center for American Unity ("CAU") and the Eagle Forum submitted amicus briefs in Hamdi that described the reasons they considered Hamdi's claim to "birthright citizenship" (the practice of granting US citizenship to every baby born on US soil, regardless of the citizenship, domicile, or legal status of its parents) more than presumptuous.

Tom Tancredo, one of the signers of the CAU brief, is asking the same question of al-Awlaki: Was he "ever really an American citizen?"

As both briefs in Hamdi explained at length, those who insist birth on US soil mandates automatic citizenship base their views on this provision in the 14th Amendment: "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."

The CAU brief noted:

The Citizenship Clause of the Fourteenth Amendment was added during Senate debate

[wherein] the authors discussed in great detail their purpose and intentions in adding the requirement that a person be born, not just in the United States, but "subject to the jurisdiction thereof." Sen. Howard, sponsor and author of the Citizenship Clause, when questioned about the meaning of "jurisdiction," responded that the phrase was intended to be read as meaning "not owing allegiance to anybody else."

Sen. Trumbull, Chairman of the Judiciary Committee, described persons who "are not subject to our jurisdiction in the sense of owing allegiance solely to the United States." Chairman Trumbull noted that even "partial allegiance if you please, to some other government" is sufficient to disqualify a person under the jurisdiction requirement.

Although Justice Scalia did not elaborate on his usage of "presumed" in the opening of his dissenting opinion in Hamdi, the government's Respondent brief and both amicus briefs referenced above used the same terminology. It could be argued that the entire case rested on the questionable premise of Hamdi's US citizenship.

The Court appeared to follow just such a two-step analysis in the famous 1875 women's suffrage case of *Minor v Happersett*. Justice Waite, writing the majority opinion, first addressed the claim of Virginia Minor's citizenship, and then proceeded to discuss whether such citizenship entitled her to the right to vote.

In answer to the first issue, (and thus making this part of the opinion a direct holding and not dicta), Justice Waite wrote:

"At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners."

It is interesting to note that the judicial precedent established in *Minor* is heavily relied upon by so-called "birthers" who doubt the Article 2 "natural born" presidential eligibility of Obama, born a dual citizen in the US, the son of a non-US

citizen father who was here in the country legally but temporarily on a student visa with the stated intention to return to his native Kenya to work in its government.

Popular opinion, however, would contend that all four of the "presumed" citizens in my original question--Awlaki, Hamdi, and Guzman's twin daughters, because of their made-in-the-USA birth certificates, are "natural born citizens." If their births were also announced in the local newspaper, presumably they could all run for President of the United States.

In 2005, the year after the Hamdi decision, the House Subcommittee on Immigration convened the hearing "Dual Citizenship, Birth-right Citizenship, and the Meaning of Sovereignty." Dr. Eastman, an expert witness at the hearing, noted:

"With the absurdity of Hamdi's claim of citizenship so recently and vividly before us, it is time for the courts, and for the political branches as well, to revisit Justice Gray's erroneous interpretation of that language [i.e., in Wong Kim Ark], restoring to the constitutional mandate what its drafters actually intended, that only a complete jurisdiction, of the kind that brings with it a total and exclusive allegiance, is sufficient to qualify for the grant of citizenship to which the people of the United States actually consented."

I wrote more about that Congressional hearing **here**, noting the fact that all present appeared to agree (some reluctantly) that the Constitution did not mandate the present birth-right practice that creates the additional dilemma of dual citizenship. The hearing generated little media attention, however.

In the meantime, the State Department, rarely enforcing its policies discouraging dual citizenship although continuing to require rejection of past citizenships in the Oath of Naturalization, has adopted a sort of "don't ask, don't tell" policy, described by

Frances Stead Sellers in her thoughtful essays: "**When Conflict Focuses on Citizenship**" and "**A Citizen on Paper Has No Weight.**"

One can't help but wonder if one of the secrets in the secret memo that the Obama administration has relied upon in its justification for taking out al-Awlaki is the pivotal question: "Was al-Awlaki really a US citizen?"

A public discussion of the citizenship controversy, even more than adding heat to the "roiling boil" of the politically incorrect topic of immigration reform, may also bring to light the fact that the "birthers" contentions actually have substantial merit. A serious examination of Obama's eligibility, when combined with his falling popularity, would likely place his re-election prospects in further jeopardy.

Seen by some as a calculated move to re-ignite his failing campaign, last month Obama ordered the fatal drone attack on al-Awlaki. Just last December, Yale Professor Peter Schuck, in his article, "Citizen Terrorist," presciently wrote: "In the case of a known terrorist like al-Awlaki, his citizenship status may (depending on how the courts rule on the issue) affect whether the government can kill him without legal process." The Obama administration obviously did not wait for a ruling.

[Note by A.R. Nash: The interpretation of the Constitution is not left solely to the Supreme Court, but is required of both Houses of Congress and the President in carrying out their duties. If Congress passes a bill that the President finds unconstitutional, he is obligated by his oath to veto it without consulting the other branches of government. The federal departments, such as State, and Homeland Security are also obligated and entitled to pass judgment on constitutional issues in connection with their policies, and reject or embrace choices based on their understanding of the Constitution.]

American Thinker's Ron DeSantis writes:

If American citizenship creates a zone of protection around jihadists (as well as other malcontents) who take up arms against the

United States, then America's enemies will have an incentive to recruit individuals who can claim American citizenship but who have no actual loyalty to the country. This will provide al-Qaeda (and other enemies of the U.S.) with an unwarranted tactical advantage, -an advantage not in any way mandated by the Constitution.

Stanley Renshon, author of The 50% American, has estimated that over 40 million Americans are dual citizens. The ongoing practice of granting birthright citizenship to the children of non-US citizens continues to expand that figure.

As Ms. Sellers wrote, "War is all about taking sides - unless, of course, you can't because you belong on both sides."

The killing of al-Awlaki should be a serious wake-up call. The continued refusal of our country's leaders to examine the implications of dual citizenship and birthright citizenship on both the sovereignty and security of our nation places us all in jeopardy.

[There's one problem with that call to action, and that is that our "country's leaders" are *not* leaders. They do not lead, they obfuscate, obstruct, ignore, and oppose any action that will cost them votes.]

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