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(Original Signature of Member)

119TH CONGRESS
2^D SESSION

H. R.

To amend section 301 of the Immigration and Nationality Act to clarify those classes of individuals born in the United States who are not nationals or citizens of the United States at birth.

IN THE HOUSE OF REPRESENTATIVES

Mr. MCGUIRE introduced the following bill; which was referred to the Committee on _____

A BILL

To amend section 301 of the Immigration and Nationality Act to clarify those classes of individuals born in the United States who are not nationals or citizens of the United States at birth.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Birthright Citizenship
5 Clarification Act of 2026”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) the phrase “subject to the jurisdiction
2 thereof” in section 1 of the 14th Amendment to the
3 Constitution of the United States reflects a principle
4 of allegiance and obedience, not mere geography;

5 (2) *United States v. Wong Kim Ark*, 169 U.S.
6 649 (1898), involved a person born in the United
7 States to alien parents permanently domiciled and
8 residing in the United States, and described histor-
9 ical exceptions for children of foreign sovereigns or
10 their ministers, persons born on foreign public ships,
11 children of enemies within and during a hostile occu-
12 pation, and children of members of Indian Tribes;

13 (3) Congress later addressed the Indian Tribe
14 exception through the Indian Citizenship Act of
15 1924 and carried forward the words “born in the
16 United States, and subject to the jurisdiction there-
17 of” in the Nationality Act of 1940 and the Immigra-
18 tion and Nationality Act of 1952, now codified at
19 section 301(a) of the Immigration and Nationality
20 Act (8 U.S.C. 1401(a)); and

21 (4) Justice Kavanaugh, concurring in the judg-
22 ment and dissenting in part in *Trump v. Barbara*,
23 concluded that Executive Order 14160 conflicted
24 with section 301(a), but explained that Congress
25 could establish exceptions for children born to for-

1 eign citizens unlawfully or temporarily in the coun-
2 try; this Act exercises that authority to clarify citi-
3 zenship at birth and deter birth tourism and visa
4 manipulation.

5 **SEC. 3. PURPOSES.**

6 The purposes of this Act are—

7 (1) to preserve in Federal statutory law the his-
8 torical exceptions to citizenship at birth for children
9 of foreign sovereigns or their ministers, persons born
10 on foreign public ships, and children of enemies
11 within and during a hostile occupation of part of the
12 territory of the United States;

13 (2) to amend section 301(a) of the Immigration
14 and Nationality Act (8 U.S.C. 1401(a)) in the man-
15 ner identified by Justice Kavanaugh by establishing
16 statutory exceptions for persons born in the United
17 States to foreign citizens unlawfully or temporarily
18 present in the United States; and

19 (3) to define lawful but temporary presence by
20 reference to temporary presence categories reflected
21 in Executive Order 14160, including the Visa Waiv-
22 er Program and student, work, tourist, and other
23 nonimmigrant visas.

1 **SEC. 4. CITIZENSHIP AT BIRTH CLARIFICATION.**

2 (a) IN GENERAL.—Section 1401(a) of title 8, United
3 States Code, is amended by striking the semicolon at the
4 end and inserting the following:

5 “: *Provided*, That a person born in the United States
6 shall not be considered born subject to the jurisdiction of
7 the United States, and shall not be a national or citizen
8 of the United States at birth under this subsection, if the
9 person is described in subsection (i);”.

10 (b) CERTAIN PERSONS NOT SUBJECT TO JURISDIC-
11 TION.—Section 1401 of title 8, United States Code, is
12 amended by adding at the end the following:

13 “(i) CERTAIN PERSONS NOT SUBJECT TO THE JU-
14 RISDICTION OF THE UNITED STATES.—

15 “(1) PERSONS DESCRIBED.—For purposes of
16 subsection (a), a person born in the United States
17 shall not be considered born subject to the jurisdic-
18 tion of the United States, and shall not be a na-
19 tional or citizen of the United States at birth under
20 subsection (a), if, at the time of such person’s
21 birth—

22 “(A) the person is a child of a foreign sov-
23 ereign or a minister of a foreign sovereign;

24 “(B) the person is born on a foreign public
25 ship;

1 “(C) the person is a child of an enemy
2 within and during a hostile occupation of any
3 part of the territory of the United States;

4 “(D) the person’s mother is an alien who
5 is unlawfully present in the United States, and
6 the person’s father is not, at the time of such
7 person’s birth, a citizen or national of the
8 United States or an alien lawfully admitted for
9 permanent residence; or

10 “(E) the person’s mother is an alien whose
11 presence in the United States is lawful but tem-
12 porary, and the person’s father is not, at the
13 time of such person’s birth, a citizen or national
14 of the United States or an alien lawfully admit-
15 ted for permanent residence.

16 “(2) DEFINITIONS.—In this subsection:

17 “(A) The term ‘alien’ has the meaning
18 given such term in section 101(a)(3).

19 “(B) The term ‘alien lawfully admitted for
20 permanent residence’ has the meaning given
21 such term in section 101(a)(20).

22 “(C) The term ‘mother’ means the imme-
23 diate female biological progenitor.

24 “(D) The term ‘father’ means the imme-
25 diate male biological progenitor.

1 “(E) The term ‘foreign public ship’ means
2 a vessel or aircraft owned, operated, or com-
3 manded by a foreign sovereign and used exclu-
4 sively for a sovereign, public, noncommercial
5 governmental purpose.

6 “(F) The term ‘hostile occupation’ means
7 the actual hostile control of any part of the ter-
8 ritory of the United States by the armed forces,
9 agents, or instrumentalities of a foreign enemy
10 during a war, invasion, or armed attack against
11 the United States.

12 “(G) The term ‘minister of a foreign sov-
13 ereign’ means an ambassador, public minister,
14 diplomatic agent, or other official representative
15 of a foreign sovereign who is recognized by the
16 United States and entitled to diplomatic immu-
17 nity under Federal law or treaty obligation. For
18 purposes of this subsection, the term ‘foreign
19 sovereign’ means a foreign monarch, head of
20 state, head of government, or other sovereign
21 authority of a foreign state recognized by the
22 United States.

23 “(H) The term ‘unlawfully present’ means,
24 with respect to an alien, that the alien—

1 “(i) is present in the United States
2 without having been admitted or paroled;

3 “(ii) remains in the United States
4 after the expiration of the period of stay
5 authorized by the Secretary of Homeland
6 Security or the Attorney General;

7 “(iii) is present in the United States
8 in violation of the terms or conditions of
9 admission, parole, status, classification, or
10 other authorization to remain; or

11 “(iv) otherwise lacks lawful immigra-
12 tion status under the immigration laws.

13 “(I) The term ‘lawful but temporary’
14 means, with respect to the presence of an alien
15 in the United States, presence that does not
16 constitute lawful admission for permanent resi-
17 dence and that is pursuant to—

18 “(i) the Visa Waiver Program under
19 section 217; or

20 “(ii) a nonimmigrant visa or non-
21 immigrant classification under section
22 101(a)(15), including a student, exchange,
23 tourist, business, work, temporary worker,
24 crewman, transit, treaty trader, treaty in-
25 vestor, intracompany transferee, or other

1 temporary nonimmigrant visa or classifica-
2 tion.”.

3 **SEC. 5. EFFECTIVE DATE; PROSPECTIVE APPLICATION.**

4 (a) **EFFECTIVE DATE.**—The amendments made by
5 this Act shall apply to persons born in the United States
6 on or after the date that is 30 days after the date of enact-
7 ment of this Act.

8 (b) **PROSPECTIVE APPLICATION.**—Nothing in this
9 Act may be construed to deny or impair citizenship or na-
10 tionality at birth to any person born before the date de-
11 scribed in subsection (a).

12 **SEC. 6. SEVERABILITY.**

13 If any provision of this Act, an amendment made by
14 this Act, or the application of such provision or amend-
15 ment to any person or circumstance is held to be unconsti-
16 tutional or otherwise invalid, the remainder of this Act,
17 the amendments made by this Act, and the application of
18 such provision or amendment to any other person or cir-
19 cumstance shall not be affected.