CHART B: ACQUISITION OF CITIZENSHIP DETERMINING IF CHILDREN BORN ABROAD AND OUT OF WEDLOCK ACQUIRED U.S. CITIZENSHIP AT BIRTH[1]

PART 1: Mother was a U.S. citizen at the time of the child's birth.
PART 2: Mother was not a U.S. citizen at the time of child's birth and child was legitimated or acknowledged by a U.S. citizen father.
A child cannot acquire citizenship at birth through an adoption.[2]

PART 1: MOTHER IS A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH

Date of Child's Birth:	**Requirements:**	
Prior to 12/24/52:[3]	Mother was a U.S. citizen who resided in the U.S. or its outlying possessions at some point prior to birth of child. **EXCEPTION:** The child will not acquire citizenship through the U.S. citizen mother if s/he was legitimated by the father under the following circumstances:[4] 1. The child was born before 5/24/34; 2. The child was legitimated before turning 21; AND 3. The legitimation occurred before 1/13/41.	
On/after 12/24/52 and prior to 6/13/17:	Mother was U.S. citizen physically present in the U.S. or its outlying possessions for a continuous period of 1 year at some point prior to birth of child.	
On/after 6/13/17:[5]	Both parents citizens	One had resided in the U.S. or its outlying possessions. Note USCIS and DOS might have different view.[6]
	One citizen and one national parent	Citizen had been physically present in U.S. or its outlying possessions for continuous period of 1 year. Note USCIS and DOS might have different view.[7]
	One citizen, one alien parent	Citizen had been physically present in U.S. or its outlying possessions 5 years, at least 2 of which were after age 14.[8]

PART 2: MOTHER WAS NOT A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH AND THE CHILD WAS LEGITIMATED OR ACKNOWLEDGED BY FATHER,[9] WHO WAS A U.S. CITIZEN WHEN CHILD WAS BORN[10]

Date of Child's Birth:	**Requirements:**
Prior to 1/13/41:	1. Child legitimated at any time after birth, including adulthood, under law of father's domicile. 2. If so, use CHART A to determine if child acquired citizenship at birth.
On/after 1/13/41 and prior to 12/24/52:	1. Child legitimated before age 21 under law of father's domicile, or paternity established through court proceedings before 12/24/52. 2. If so, use CHART A to determine if child acquired citizenship at birth unless paternity established through court proceeding.[11]
On/after 12/24/52 and prior to 11/15/68:	1. Child legitimated before age 21 under law of father's or child's domicile.[12] 2. If so, use CHART A to determine if child acquired citizenship at birth.
On/after 11/15/68 and prior to 11/15/71:	**OPTION A:** 1. Child legitimated before age 21 under law of father's or child's domicile. 2. If so, use CHART A to determine if child acquired citizenship at birth. **OPTION B:**[13] 1. Child/father blood relationship established by clear and convincing evidence;[14] 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until s/he reaches 18;[15] and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile,[16] or father must acknowledge paternity of child in writing under oath, or paternity must be established by competent court. 5. If #s 1–4 are met, use CHART A to determine if child acquired citizenship at birth.
On/after 11/15/71:[17]	1. Child/father blood relationship established by clear and convincing evidence;[8] 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until s/he reaches 18; and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile, or father must acknowledge paternity of child in writing under oath, or paternity must be established by competent court. 5. If #s 1–4 are met, use CHART A to determine if child acquired citizenship at birth.[18]

Endnotes for Chart B

The information in these charts comes from case law, statutory language, the USCIS policy manual, the Adjudicator's Field Manual, the Foreign Affairs Manual, and INS interpretations. Although the USCIS policy manual supersedes previous policy memos and the Adjudicator's Field Manual, the USCIS policy manual is silent on many subjects discussed at length in prior USCIS policy statements and INS Interpretations. In the absence of guidance to the contrary from the USCIS policy manual, the ILRC believes advocates should continue to use helpful clarifications and guidance from prior USCIS policy statements and INS Interpretations.

This Chart is intended as a general reference guide only.

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[1] Congress has passed many laws governing the acquisition of citizenship at birth, including the Act of May 24, 1934, the Nationality Act of 1940, the Act of March 16, 1956, and the Immigration and Nationality Amendments of 1986.

[2] See *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006) (holding that petitioner did not obtain citizenship at birth based on adoption by U.S. citizen since INA § 301(g) did not address citizenship through adoption); see also *Colaianni v. INS*, 490 F.3d 185 (2d Cir. 2007) (same); 7 FAM 1131.4(a) (requiring an actual blood relationship; birth in wedlock insufficient to presume paternity for acquisition); but see *Solis-Espinoza v. Gonzales*, 401 F.3d 1091 (9th Cir. 2005) (holding that a child acquired citizenship through biological father's wife when they were married at time of birth, father acknowledged child, and mother accepted her as her own); *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) (explaining that a child acquired U.S. citizenship at birth even though neither of his biological parents were citizens, but at the time of his birth his mother was married to a U.S. citizen).

[3] A qualifying child born before 5/24/34 acquired U.S. citizenship when the Nationality Act of 1940, effective 1/13/41, bestowed citizenship upon the child retroactively to the date of birth.

[4] *Matter of M-*, 4 I&N Dec. 440, 443–44 (BIA 1951).

[5] On June 12, 2017, the Supreme Court changed the rules applicable to unwed U.S. citizen mothers "prospectively." Although the Court did not define at which precise point this decision will apply, immigration counsel will argue based on case law that the decision applies to persons born starting June 13, not June 12. See, e.g., *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 535-38 (1991) ("A judicial decision can be said to apply 'prospectively' when it is applied to conduct or events occurring after the date of that decision.").

[6] See INA § 301(c); *Sessions v. Morales-Santana*, 137 S.Ct. 1678 (2017). DHS and the Department of State may argue that an unwed U.S. citizen mother must first show that the U.S. citizen father meets the paternity requirements under INA § 309(a) in order to benefit from this provision. An unwed U.S. citizen father, after meeting the paternity requirements himself, does not need to show anything other than an unwed U.S. citizen mother's citizenship to take advantage of this provision; this allows children who may have an estranged U.S. citizen parent to still benefit from this provision. Thus, adding such a paternity requirement to claims through U.S. citizen mothers would seem to violate the Equal Protection Clause and contradict recent Supreme Court case law. In *Sessions v. Morales-Santana*, the Supreme Court ruled that the physical presence and residency requirements must be equal between mothers and fathers. Nowhere did the Supreme Court suggest that paternity requirements should now be imposed upon claims to citizenship made through unwed mothers; in fact, it has upheld the separate paternity requirements in Part 2 as justifiable when applied to unwed U.S. citizen fathers. *Id*. at 1694; see also *Nguyen v. INS*, 533 U.S. 53 (2001).

[7] See INA § 301(d). The statutes apply this provision to married parents and, if the father proves paternity under INA § 309(a) [see CHART B, Part 2], unwed U.S. citizen fathers. It is the ILRC's opinion that the Supreme Court's principal of equal protection would extend this provision to unwed U.S. citizen mothers as well. In *Sessions v. Morales-Santana*, the Supreme Court found that the more lenient physical presence requirement for unwed U.S. citizen mothers and alien fathers violated the Equal Protection Clause of the U.S. Constitution, as compared with the longer requirements for unwed U.S. citizen fathers and alien mothers. 137 S.Ct. 1678 (2017). The Supreme Court did not address this provision governing where one parent is a U.S. citizen and the other parent is a national. Now that the Supreme Court has struck down the preferential treatment of unwed U.S. citizen mothers, the ILRC's opinion is that this one-year physical presence requirement for situations where one parent is a U.S. citizen and one parent is a national would extend to all parents, including unwed U.S. citizen mothers. If it is unconstitutional to give unwed U.S. citizen mothers a more lenient requirement where the father is an alien, it would also be unconstitutional to deny them equal treatment where the father is a national. However, because the statutory scheme regarding U.S. citizen mothers is now unclear, this may have to be resolved by further guidance or litigation. The USCIS and the Department of State may argue that the father must first establish paternity under INA § 309(a) [see CHART B, Part 2] before this requirement would apply to unwed U.S. citizen mothers, or that unwed U.S. citizen mothers simply cannot benefit from this modified provision even where the other parent is a national.

[8] The Supreme Court found that the more lenient one-year physical presence requirement for unwed U.S. citizen mothers in INA § 309(c) in comparison with that in INA § 309(a) (incorporating INA § 301(g)) for unwed U.S. citizen fathers violated the Equal Protection Clause of the U.S. Constitution. *Sessions v. Morales-Santana*, 137 S.Ct. 1678 (2017). The Supreme Court held that going forward, unwed mothers would be subject to the same five-year physical presence requirement in INA § 301(g) as unwed fathers and married couples. *Id*., at 1701.

[9] Many of the criteria for "legitimation" look to the law of the child's or father's domicile. See 7 Fam 1130, at 59-69 for summaries of legitimation requirements for U.S. states and territories. The Fifth Circuit held that a child was "legitimated" under Mexican law when his father "acknowledged" him by placing his name on the child's birth certificate. *Iracheta v. Holder*, 730 F.3d 419 (5th Cir. 2013) (reversing more than three decades of previous interpretation of Mexican requirements).

[10] The statutes state that if the child did not acquire citizenship through her mother, but was legitimated by a U.S. citizen father under the listed conditions, apply the acquisition law pertinent to legitimate children born in a foreign country. See CHART A. Several cases have challenged the more onerous requirements for unwed fathers as opposed to unwed mothers. The Supreme Court has upheld the paternal-acknowledgment requirement as justifiable for unwed U.S. citizen fathers. See *Nguyen v. INS*, 533 U.S. 53 (2001). However, recently the Supreme Court struck down the differing physical presence requirements between unwed fathers and

unwed mothers, finding that a more lenient physical presence requirement for unwed mothers violated the U.S. Constitution. *Sessions v. Morales-Santana*, 137 S.Ct. 1678 (2017). Both unwed fathers and unwed mothers are now subject to the same physical presence requirements under INA § 301(g). See also Note 7, *supra*. It is the ILRC's opinion that for physical presence purposes on or after June 13, 2017, unwed fathers, unwed mothers, and married couples are now treated equally.

[11] The patchwork of amended laws in this period, some of which did not cross-reference existing laws, has produced several avenues for fulfilling the residency requirements during this period for legitimated children. If the father legitimates the child before the age of 21, the applicant can apply either the residency requirements set by § 201(g) of the Nationality Act or set by § 301(a)(7) of the former INA. 7 FAM 1134.5-3. Under the INA, one can qualify if 1) the father has 10 years residence in the U.S., 5 of which are after the age of 16; and 2) the child resided in the U.S. for a period or periods totaling 5 years between the ages of 13 and 21. See 7 FAM 1134.2 (NA). If the father served honorably in the U.S. Armed Services after December 7, 1941 and before December 31, 1946, then the father must have 10 years in the U.S., 5 of which after the age of 12. In this scenario the child need not be legitimated but must satisfy the INA's retention requirements. See INA § 201(i). Under the INA, one can qualify if 1) the father has 10 years residence in the U.S., 5 after the age of 14; and 2) the child has been physically present in the U.S. for 5 years between ages 14 and 28. 7 FAM 1133.2-2 (former INA). However, if the paternity is established through court proceedings, the child may only comply with the residence requirements of § 201(g) of the Nationality Act of 1940. Additionally, children of U.S. veterans born in this period may be eligible for citizenship under either the NA or the INA. *Y.T. v. Bell*, 478 F. Supp. 828 (W.D. Pa. 1979); 7 FAM 1134.4.

[12] For children born out of wedlock, legitimation under the statute in effect during this period, 8 USC § 1409(a) (1952), must be by the biological father. See *U.S. v. Marguet-Pillado*, 560 F.3d 1078 (9th Cir. 2009) (holding that a child born out of wedlock, neither of whose natural parents was a U.S. citizen at the time of his birth, cannot acquire citizenship at birth because of a subsequent action by a U.S. citizen); *Martinez-Madera v. Holder*, 559 F.3d 937 (9th Cir. 2009) (explaining that a person born out of wedlock who claims citizenship by birth must share a blood relationship with the U.S. citizen).

[13] Individuals born in this range can elect whether to establish citizenship either under Option A, "old" INA § 309, or Option B, "new" INA § 309, amended by the INAA, Pub. L. 99-653 (Nov. 14, 1986). The decision can be based on which requirements are easier for the individual to prove. See 7 FAM 1133.4-2(a)(3).

[14] INA § 309 does not require a blood test or any other specific type of evidence. See *Miller v. Albright*, 523 U.S. 420, 437 (1997). But under the clear and convincing standard, the fact-finder must come to "a firm belief in the truth of the facts asserted." 7 FAM 1131.4-2. Generally the child's birth certificate will be sufficient proof. In some instances, the child's U.S. citizen parent might not be listed on the birth certificate, the birth certificate might not be available, and/or USCIS might question the authenticity or veracity of the birth certificate. Under any of these circumstances, ILRC encourages the clients to submit additional documentation including medical records, religious records such as baptismal certificates, other birth records, and witness affidavits. If the parents are still alive, a blood test or DNA test can show the parent-child relationship.

[15] Although FAM guidelines say that the letter has to be dated before the child turned 18, see 7 FAM 1133.4-2, the statutory language does not technically require that the letter be written before the child was 18. See 8 USC § 1409(a)(3). Advocates can try to argue that a letter written by the father after the child reaches 18, coupled with proof of actual support while the child was under 18, should still satisfy this requirement. See *Miller v. Albright*, 523 U.S. 420, 432 (1998) (declining to interpret 8 USC § 1409(a)(3)); *U.S. v. Gomez-Orozco*, 188 F.3d 422 (7th Cir. 1999) (reversing to allow petitioner to explore claim to U.S. citizenship under, among others, 8 USC 1409(a) even where there was no written statement).

[16] If a legitimation occurred, Option A is the more favorable approach for acquisition of citizenship, not Option B. See Note 9, *supra*.

[17] If a child was already legitimated before 1986 (i.e. legitimated before age 21 under the law of the father or child's domicile, described as Option A above), that child had already become a U.S. citizen when the new laws went into effect. Thus the more stringent laws enacted in 1986 (described as Option B above) are irrelevant to those children because they had already become U.S. citizens, and the new laws acknowledge that they cannot revoke that citizenship. Pub. L. 100-525, § 8(r), (Oct. 24, 1988).

[18] Note that if the child was born on or after 11/15/86, the residence requirement for the U.S. citizen father under CHART A changes.