

Opinion No. [29-08]

October 9, 1929

TO: Office of the Attorney General of New Mexico

CITIZENSHIP -- Not affected by adoption.

OPINION

Supplementing our conversation of this morning and with reference to your request for an opinion as to the effect of adoption, if any, on the citizenship of a child adopted and with reference to the further question as to the citizenship status of a child born in the United States of parents, citizens of another country, I have to advise you after some consideration of this subject as follows: Section 1 of the XIV Amendment to the Constitution of the United States provides that "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 interpretation of the language quoted has devolved upon the Supreme Court of the United States in a number of cases with the result that there seems to be no question but what in such a case as described by you the child born in this state of citizens of Mexico residing here is a citizen of the United States, and of New Mexico.

Although adoption may and does effect rights and privileges of the child adopted, such effects are governed by the statutes of the state in which the adoption takes place and are all of a contractual character. The obligations of such contract being determined by the legislature of the state. No state, however, may, by legislative act, deprive one of constitutional rights. Citizenship is a constitutional right and we are of the opinion that the citizenship of a child is in no wise effected by adoption proceedings.

An interesting case reported in 178 Fed., 150, is that of United States vs. Sibray, in which it was held that children born to an alien woman after her entry into the United States were citizens and not subject to deportation either in proceedings for the deportation of the mother or at all.