
"WHO IS A U.S. CITIZEN?"

***"The Evolution of Citizenship Law
in
The United States of America"***

This is a brief history of U.S. citizenship law since the adoption of the U.S. Constitution in 1788, and the convening of the First U.S. Congress in 1789. It is also a brief history of some of the overseas American organizations that have been involved in trying to change these laws to make them more rational and humane. For U.S. citizens who live outside the United States, and whose children are born or adopted abroad, there are still important citizenship acquisition issues and other challenges that need to be addressed and redressed.

The information provided here has been collected from many different sources, in written publications, and via the Internet, and includes not only legislation and legal interpretations, but also some relevant international conventions and declarations. It is put in the *"present tense"* to help capture the thoughts of those involved at the time these events took place.

It is clear from reading through this history that the concept of *"citizenship"*, and to whom it should be granted, has never been a very simple matter, but rather one of great and continuing complexity. Your thoughts, comments and suggestions would be most welcome.

1790 THE "FIRST AMERICAN NATURALIZATION LAW": On 26 March, the first Naturalization Law (1 [Stat.103](#)) provides the first rules to be followed by the U.S. Government in the granting of national citizenship. This law limits naturalization to immigrants who are *"free white persons"* of *"good moral character"*. It thus leaves out indentured servants, slaves, free blacks, and later Asians. While women are included in the act, the right of citizenship does *"not descend to persons whose fathers have never been resident in the United States"* Citizenship therefore is inherited exclusively through the father. This is also the only statute that ever purports to grant the status of a *"natural born citizen"*. In order to address one's *"good moral character,"* the law requires two years of residence in the United States and one year in the state of residence, prior to applying for citizenship. When these requirements are met, an immigrant can file a *"Petition for Naturalization"* with *"any common law court of record"* having jurisdiction over his residence asking to be naturalized. Once convinced of the applicant's good moral character, the court will administer an oath of allegiance to support the Constitution of the United States. The clerk of court will make a

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record of these proceedings, and *"thereupon such person shall be considered as a citizen of the United States."*

"CITIZENSHIP OF CHILDREN BORN ABROAD": The Act also establishes the United States citizenship of children of citizens, born abroad, without the need for naturalization:

"And the children of citizens of the United States that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States".

1795 THE "CITIZENSHIP ACT OF 1795": On 29 January, Congress repeals and replaces the language of the earlier citizenship legislation of 1790. It increases the period of required residence from two to five years in the United States, and introduces the *"Declaration of Intention"* requirement, or *"first papers"*, which creates a two-step naturalization process, and confers the status of *"citizen"* and not *"natural born citizen"*. The Act specifies that naturalized citizenship is reserved only for *"free white person[s]."* Immigrants intending to naturalize have to go to their local court and declare their intention at least three years prior to their formal application. In the declaration, the immigrant will also indicate his understanding that upon naturalization, he will take an oath not only of allegiance to the United States but also of renunciation of his former sovereign. In addition to the declaration of intention and oath of renunciation, the 1795 Act requires all naturalized persons to be *"attached to the principles of the Constitution of the United States"* and be *"well disposed to the good order and happiness of the same."* The provision relating to children born abroad is:

"And the children of citizens of the United States that may be born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States". (Act of January 29, 1795, Section 3, 1 Stat. 414, 415)

"TALBOT V. JANSEN": The Supreme Court rules that the jurisdiction of the court extends to the seas and that a citizen of the United States can also hold the citizenship of another nation (in the case of Talbot that second citizenship is in France). (*3 U.S.*, 133 (1795))

1802 THE "CITIZENSHIP ACT OF 1802": On 14 April, Congress overhauls U.S. citizenship legislation and all former laws are repealed. The new language pertaining to citizenship transmission overseas is as follows.

"The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who are now, or have been citizens of the United States shall, born out of the limits and jurisdiction of the United States, be considered as citizens of the United States : Provided, that the right of citizenship shall not descend to persons whose fathers have never resided within the United States." (Section 4, 2 Stat. 153, 144.)

It will subsequently be alleged, by some, that the provision concerning children born abroad is expressly limited to the children of persons who then were, or had been, citizens, and therefore does not include foreign-born children of any person who became a citizen following its enactment. The number of Americans living overseas is still quite small so this is not a major issue.

1855 THE "CITIZENSHIP ACT OF 1855": On 10 February, Congress enacts a new law to clear up the allegation that during the half century, between 1802 and 1855, U.S. legislation did not allow U.S. citizen fathers, who had not become citizens of the United States before the act of 1802, to transmit U.S. citizenship to their children born abroad. The "Act of 1855", like every previous act of Congress upon this subject, however, continues to restrict the right of citizenship transmission thereafter by citizen fathers born abroad unless they too subsequently become residents of the United States. The new language reads:

- *"All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."* (Section 1, 10 Stat. 604.)

1857 "DRED SCOTT V. SANFORD": In the arguments made in this famous Supreme Court case upholding slavery, in regard to the "natural born citizen" clause, the dissent states that it is acquired by place of birth (*jus soli*), not through blood or lineage (*jus sanguinis*): *"The first section of the second article of the Constitution uses the language, 'a natural-born citizen.' It thus assumes that citizenship may be acquired by birth. Undoubtedly, this language of the Constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the Constitution, which referred citizenship to the place of birth."* (The majority opinion in this case will be mostly overturned by the 14th Amendment.) (60 U.S. 393 (1857)):

1868

THE "14TH AMENDMENT": On 28 July, the 14th Amendment to the Constitution is ratified by the legislatures of the requisite number of States. While it redefines the automatic acquisition of citizenship by birth in the United States, it does not touch upon the acquisition of citizenship by being born abroad of American parents; and leaves that subject to be regulated, as it has always been, by Congress, in the exercise of the power conferred by the Constitution to "establish a uniform rule of naturalization." The first section states:

- *"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 DIFFERENCE A COUPLE OF WORDS MAKE": If the opening words of this sentence had been slightly different, in the form "All persons born *in* or naturalized *by* the United States" many subsequent problems faced by children born abroad, who will eventually lose their citizenship for not returning to live in the United States for a requisite number of years, could have been avoided.

1878 THE "REVISED STATUTES OF 1878": In this Statute, there are the same general provisions as the 1855 Act. (Section 1993, Revised Statutes of 1878.)

1898 "UNITED STATES V. WONG KIM ARK": The Supreme Court rules that a person born within the jurisdiction of the U.S. to non-citizens who "are not employed in any diplomatic or official capacity" is automatically a citizen. (169 U.S. 649 (1898)).

Wong Kim Ark was born in San Francisco to Chinese parents around 1870 (the exact time is uncertain due to discrepancies among the various sources). In 1895, upon his return from a visit to China, he was refused entry by US customs officials, who asserted that despite his having been born in the US, he was a subject of the Chinese emperor and not a US citizen.

At this time, US law (the "Chinese Exclusion Acts") severely limited Chinese immigration and barred people of Chinese ancestry from becoming naturalized US citizens -- and it was argued, on this basis, that Wong was ineligible to be considered a US citizen, in spite of his having been born in the US.

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The Supreme Court disagrees, ruling on a 6-2 vote that Wong Kim Ark was in fact a US citizen. The court cited the "*citizenship clause*" of the 14th Amendment, which states that all persons born (or naturalized) in the United States, and subject to the jurisdiction thereof, are citizens. Although the original motivation for this language in the 14th Amendment was to secure citizenship for the freed Negro slaves, the court holds that the clause clearly applies to "*all persons*", regardless of their race or national origin.

The court rejects outright the idea that the Chinese could be singled out for special treatment in this respect. "*To hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries,*" the majority write, "*would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.*"

As for the question of being "*subject to the jurisdiction*" of the United States -- i.e., the relationship between a person and a government whereby one "*owes obedience to the laws of that government, and may be punished for treason or other crimes*" -- the Supreme Court observes that English common law (legal tradition inherited from Britain by the US) has long recognized only two jurisdictional exceptions to the principle of *ius soli* (citizenship by birth on a country's soil): namely, (a) foreign diplomats, and (b) enemy forces in hostile occupation of a portion of the country's territory. Since neither of the above exceptions applied to Wong Kim Ark's parents, the court holds that he was unquestionably a US citizen by virtue of his having been born in the US.

The fact that, under the Chinese Exclusion Acts, Wong's parents could not become US citizens -- or even that Wong himself would not have been eligible for naturalization in the US on account of his race -- is simply irrelevant in light of the 14th Amendment's citizenship clause. The Constitution was superior to statutes such as the Chinese Exclusion Acts; these acts of Congress, according to the Supreme Court, "*cannot control [the 14th Amendment's] meaning, or impair its effect, but must be construed and executed in subordination to its provisions.*"

It should be noted, however, that the Supreme Court does *not* question the validity of the Chinese Exclusion Acts as such.

1907 ***THE "CITIZENSHIP ACT OF 1907"***: On 2 March, Congress establishes new obligations on citizens born abroad to register their intentions to eventually become residents of the United States in order to remain U.S. citizens, and to also take an oath of allegiance upon attaining a certain age. The language is as follows:

- "*That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority.*" (Act of March 2, 1907, Section 6, 34 Stat. 1228, 1229.)

1927 "***WEEDIN V. CHIN BOW***"; The Supreme Court issues a ruling clarifying the inability of a U.S. citizen to transmit citizenship to a child born abroad if the parent has never lived in the United States prior to the birth of the child abroad. (This is still true today, although the specific statutes upon which the Supreme Court's ruling was based have changed since 1927.) The ruling states:

- "*A child born outside the U.S. cannot claim U.S. citizenship by birth through a U.S. citizen parent who had never lived in the U.S. prior to the child's birth.*" (274 U.S. 657 (1927))

1934 **THE "CITIZENSHIP ACT OF 1934"**: On 24 May, Congress makes a major change to the "citizenship law" to now enable U.S. citizen mothers to also transmit U.S. citizenship at birth abroad. But for the first time the law now also creates a new burden by imposing a mandatory "subsequent five year residence requirement" in the United States, prior to reaching age eighteen, and an "oath of allegiance requirement" within six months of the child's twenty-first birthday, for any child born abroad to parents, one of whom is an alien. The new law states:

- "Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of birth of such child is a citizen of the United States, is declared to be a citizen of the United States: but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization." (Section 1, 48 Stat. 797.)

1939 **"PERKINS V. ELG"**: Marie Elizabeth Elg was born in the US to Swedish parents, who took her back with them to Sweden when she was a baby. Shortly after her 21st birthday, she obtained a US passport and returned to the US.

Some years later, the US government attempted to deport her on the grounds that when her parents had taken her to live in Sweden, she had become a Swedish citizen (under Swedish law), and as a result had lost her US citizenship. It was argued that an 1869 citizenship treaty between the US and Sweden, providing for the orderly transfer of citizenship by immigrants, called for loss of US citizenship following Swedish naturalization. This was one of the so-called "*Bancroft Treaties*" enacted between the US and numerous other countries between 1868 and 1937.

The Supreme Court rules, unanimously, that the actions of Elg's parents in obtaining Swedish citizenship for their daughter could not prevent her from reclaiming US citizenship and returning to the US as an adult, provided she did so within a reasonable time after reaching adulthood. The *Elg* case is not, strictly speaking, a **dual** citizenship case, since the court's assumption is that once Elg had reached adulthood, she had the right to choose US citizenship instead of (**not** in addition to) Swedish citizenship -- i.e., that this right had not been taken away from her by actions her parents had taken when she was a child.

Further, the law as it existed at the time did not, in fact, require Elg (who was born on US soil) to make an "election" of US citizenship (i.e., swear allegiance to the US and return to live there) upon reaching adulthood. The Supreme Court later rules in "*Mandoli v. Acheson*" that a US-born dual US/Italian citizen could keep his US citizenship despite not having made any such declaration. The issue is not really central to the *Elg* case anyway, because Elg did get a US passport and move back to the US before her 22nd birthday.

Congress later amends the citizenship law so that a child whose parents gave up or lost their citizenship and moved abroad could keep his citizenship by moving back to the US prior to reaching age 25. However, this provision is eventually repealed altogether in 1978 (*Public Law 95-432*).

Frances Perkins is Secretary of Labor in the administration of Franklin D. Roosevelt. The reason Perkins is listed first in the citation of this case is that a lower court (the Court of Appeals for the D.C. Circuit) had ruled in Elg's favor, and the government is appealing that ruling. Whenever a case comes before the US Supreme Court, the first name listed is always the "*petitioner*" -- i.e., the party which lost in the lower court and appeals to the Supreme Court. (307 U.S. 325 (1939))

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1940 THE "NATIONALITY ACT OF 1940": U.S. citizenship legislation is changed again, this time adding a new "*prior residence in the United States*" requirement for a U.S. citizen parent married to a non-American of at least ten years, five of which after attaining the age of sixteen years. This will cause problems for U.S. citizen mothers or fathers who are younger than twenty-one years of age, if they are married to an alien and have a child born abroad. There is also a "*subsequent residence requirement*", this time of five years between the ages of thirteen and twenty-one. Citizenship will now "*automatically expire*" once it is impossible to meet this subsequent residency requirement. The language of this new legislation is:

- "*Section 201. The following shall be nationals and citizens of the United States at birth:*
- "*(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.*
- "*(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934.*" (Section 201, 54 Stat. 1137)

1948 THE "UNIVERSAL DECLARATION OF HUMAN RIGHTS": The United States is one of the 48 countries in the U.N. General Assembly that votes to adopt this Declaration on 10 December. Among its commitments are the following:

- *All human beings are born free and **equal in dignity and rights.*** (Article 1)
- *"**All are equal before the law** and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."* (Article 7)
- *"**Everyone has the right to a nationality.** No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".* (Article 15)
- *"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. **The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.**"* (Article 16).
- *"Motherhood and childhood are entitled to special care and assistance. **All children, whether born in or out of wedlock, shall enjoy the same social protection.**"* (Article 25)

1950 "SAVORGNAN V. UNITED STATES ET AL.": The U.S. Supreme Court holds that a native-born American citizen who, in the United States, became an Italian citizen in 1940,

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and lived in Italy with her husband from 1941 to 1945, thereby lost her American citizenship even if, when she applied for and accepted Italian citizenship, she did not intend to give up her American citizenship. (338 U.S. 49 (January 9, 1950))

1952 THE "IMMIGRATION AND NATIONALITY ACT OF 1952": The Congress amends U.S. citizenship transmission and retention requirements once again. For citizens married abroad to an alien, the prior "*physical presence in the United States requirement*" is changed to ten years, five of which after the age of fourteen. Nineteen year old Americans married to aliens can now transmit U.S. citizenship to their children born abroad. The "*citizenship retention criteria*" for children born abroad to a U.S. citizen and an alien parent is now changed to a requirement to come to the United States prior to age twenty-three, and remain physically present for a continuous five years period before attaining the age of twenty-eight. Otherwise citizenship will expire at mid-night on the 23rd birthday. The language of this new legislation is as follows:

- "*Section 301. (a) The following shall be nationals and citizens of the United States at birth:*
- "*(1) a person born in the United States, and subject to the jurisdiction thereof;*
- "*(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States, who prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totalling not less than ten years, at least five of which were after attaining the age of fourteen years.*
- "*(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United State(s) for at least five years: Provided, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.*
- "*(c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: Provided, however, That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended."* (66 Stat. 163, 235, 8 U.S. Code Section 1401 (b), June 27, 1952.)

"CITIZENSHIP FOR CHILDREN BORN ABROAD "OUT OF WEDLOCK": Sec. 1409 of this new 1952 citizenship legislation also makes a provision for a "*child born abroad out of wedlock*" to become a U.S. citizen. The law for the first time makes a distinction between the rights of unmarried U.S. citizen men and women to transmit citizenship to a child born abroad. It requires five years of prior residence in the United States for a father, but only one year of prior residence for a mother. The language of this legislation is as follows:

- "**Section 1409 - (a)** *The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408 of this title, shall apply as of the date of birth to a person born out of wedlock if –*
- (1) a blood relationship between the person and the father is established by clear and convincing evidence,*

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(2) *the father had the nationality of the United States at the time of the person's birth,*

(3) *the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and*

(4) *while the person is under the age of 18 years –*

(A) *the person is legitimated under the law of the person's residence or domicile,*

(B) *the father acknowledges paternity of the person in writing under oath, or*

(C) *the paternity of the person is established by adjudication of a competent court.*

(b) *Except as otherwise provided in section 405 of this Act, the provisions of section 1401(g) of this title shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.*

(c) *Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year. (66 Stat. 163, 235, 8 U.S. Code Section 1409, June 27, 1952.)*

“KAWAKITA V. U.S.”: Tomoya Kawakita is a dual US/Japanese citizen (born in the US to Japanese parents). He was in Japan when World War II broke out, and because of the war was unable to return to the US. During the war, he actively supported the Japanese cause and abused US prisoners of war who had been forced to work under him. After the war, he returned to the US on a US passport, and shortly thereafter he was charged with (and convicted of) treason for his wartime activities.

Kawakita claims that he had lost his US citizenship by registering in Japan as a Japanese national during the war, and as a result he could not be found guilty of treason against the US. Presumably, the reason Kawakita fights so tenaciously **not** to be considered a US citizen is that he sees this as the only way to escape a death sentence for his treason conviction.

However, the Supreme Court rules that since Kawakita had dual nationality by birth, when he registered himself as Japanese, he was simply reaffirming an already existing fact and was not actually **acquiring** Japanese citizenship or renouncing his US citizenship.

The court acknowledges that a dual citizen, when in one of his countries of citizenship, is subject to that country's laws and cannot appeal to his other country of citizenship for assistance. However, even when the demands of both the US and the other country are in irreconcilable conflict -- such as in wartime -- a dual US/other citizen must still honor his obligations to the US even when in the other country.

Although Kawakita loses his appeal, his death sentence is eventually commuted by President Eisenhower. He is released from prison, stripped of his US citizenship, and deported to Japan.

The reason the respondent in this case (the second party named in the case's title) is the United States -- rather than a government official (such as the Secretary of Labor or the

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Secretary of State) -- is that the case started as a criminal prosecution rather than as a lawsuit. (343 U.S. 717 (1952))

"MANDOLI V. ACHESON": Joseph Mandoli is a dual US/Italian citizen by birth (born in the US to Italian parents). He left the US as an infant and moved to Italy with his parents. When he sought to return to the US in 1937, his claim to US citizenship was rejected because he had failed to return promptly to the US upon reaching the age of majority, and also because he had served briefly in the Italian army in 1931.

The Supreme Court rules that the law, as it then stood, did not permit natural-born US citizens to be stripped of US citizenship for failing to return to the US upon reaching adulthood.

The court does not base its ruling in this case on any overarching constitutional arguments. Rather, it examines the legislative history of the portions of US citizenship law, and concludes that Congress had consciously chosen to make these provisions applicable only to **naturalized** US citizens (see "*Rogers v. Bellei*" below).

In particular, the court notes that although US law at that time required certain US citizens with childhood dual citizenship (such as those born abroad to American parents) to make a specific "election" of US citizenship (i.e., a declaration of allegiance followed by a return to the US) upon reaching adulthood, no such requirement applies to a person who had US citizenship on account of having been born in the US. Lower courts had apparently interpreted the Supreme Court's earlier decision in "*Perkins v. Elg*" as imposing such an "election" requirement quite broadly.

The court also decides that Mandoli's foreign military service did not warrant loss of his US citizenship because, under Mussolini's Fascist government, he really had had no choice but to join the Italian army.

Dean Acheson (Dean was his first name, not a title) is Secretary of State during Truman's second term as President. (344 U.S. 133 (1952))

1956 "FEE V. DULLES": The Supreme Court hears a case based upon the 1934 legislation concerning a child born abroad on or after May 24, 1934, who acquired U.S. citizenship through one citizen parent. The law mandated that the child had to comply with certain conditions for establishing American residence in order to retain his American citizenship. In "*Fee v. Dulles*", the lower courts uphold the original administrative position that a person who had not complied with the conditions prescribed by previous statutes had lost his citizenship and derived no benefit from the more generous retention provisions of the 1952 act. However, upon consideration of this issue when it reaches the Supreme Court, the Solicitor General "*confesses error*", taking the position that a person who could comply with the terms of section 301 (b) and (c) would retain his American citizenship, even though he had not fulfilled similar provisions of the earlier statutes. The Supreme Court reverses the lower court, and thus adopts the view projected in the Solicitor General's "*confession of error*". (236 F.2nd 855 (C.A. 7, 1956), (355 U.S. 61)). *Supreme Court in Fee v. Dulles* (236 F.2nd 855 (C.A. 7, 1956), (355 U.S. 61)).

1956 THE "CITIZENSHIP ACT OF MARCH 16, 1956," (70 STAT. 50).

- "*That section 301 (a) (7) of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940*".

1957 THE "CITIZENSHIP ACT OF SEPTEMBER 11, 1957" (71 STAT. 644).

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- "Section 16. In the administration of section 301 (b) of the Immigration and Nationality Act, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence."

1958 "THREE SUPREME COURT CASES ON LOSS OF NATIONALITY": On March 31, 1958, the U.S. Supreme Court rules on three cases regarding loss of nationality. The decisions demonstrate that on loss-of-nationality issues the Supreme Court has abandoned the Savorgnan precepts of the past and that every statute for involuntary expatriation is now in jeopardy:

"NISHIKAWA V. DULLES": The case involves loss of nationality for service in the armed forces of a foreign state. It concerns a dual U.S.-Japanese citizen who had been held to have lost U.S. citizenship by serving in the Japanese army in World War II. The court deems it unnecessary to reach the constitutional issue and rules that the U.S. Government has not established, with the requisite certainty, that the military service was voluntary. The Court holds that when the issue of voluntariness is raised, the U.S. Government has the burden of proving the voluntariness of the potentially expatriating act and must do so by clear, convincing, and unequivocal evidence. 356 U.S. 129 (1958)

"PEREZ V. BROWNELL": The Supreme Court rules again on the loss of U.S. citizenship. Clemente Martinez Perez, born in El Paso, Texas, on March 17, 1909, resided in the United States until 1919 or 1920 when his parents took him to Mexico. In 1928 he was informed that he had been born in the State of Texas.

During World War II he applied and was admitted into the United States as a Mexican alien railroad worker. His application for such entry contained his recitation that he was a native-born citizen of Mexico. By 1947, however, Perez had returned to Mexico and in that year applied for admission to the United States, this time as a citizen of the United States. Upon his arrival in the United States he was charged with failing to register under the "Selective Service Laws" of the United States during World War II. Under oath, Perez admitted that between 1944 and 1947 he had remained outside the United States to avoid military service and had voted in an election in Mexico in 1946.

On May 15, 1953, he surrendered to Immigration authorities in San Francisco as an alien unlawfully in the United States but claimed that he was a "citizen of the United States by birth" and thereby entitled to remain. The U.S. District Court, however, found that Perez had lost his American citizenship, a decision that was affirmed by the court of appeals. The lower courts held that Congress can attach loss of citizenship only as a consequence of conduct engaged in voluntarily, even if there was no intent or desire to lose citizenship. This law was enacted as the *Nationality Act of 1940 (54 Stat 1137), as amended*.

In 1958, a divided United States Supreme Court (5-4) upholds these decisions because Perez "became involved in foreign political affairs and evidenced an allegiance to another country inconsistent with American citizenship, thereby abandoning his citizenship." Two central holdings of *Perez v. Brownell* find that:

- "The provision of the Fourteenth Amendment that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States," sets forth the two principal modes (but not the only ones) for acquiring citizenship, but nothing in the terms, the context, the history, or the manifest purpose of the Fourteenth Amendment warrants the inference of a restriction upon the power otherwise possessed by Congress to withdraw citizenship.
- "Congress, acting under the Necessary and Proper Clause of Art I, 8, cl 18, of the Federal Constitution, may attach loss of nationality to voting in a foreign political

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election, since the means, withdrawal of citizenship, is reasonably calculated to effect the end that is within the power of Congress to achieve, the avoidance of embarrassment in the conduct of foreign relations attributable to voting by American citizens in such elections, and the importance and extreme delicacy of the matters sought to be regulated demand that Congress be permitted ample scope in selecting appropriate modes for accomplishing its purpose.” (356 U.S. 44 (1958))

The holdings in the *Perez* case will be repudiated by the Supreme Court nine years later, in “*Afroyim v. Rusk*.” Herbert Brownell Jr. is Attorney General during Eisenhower’s first term in office.

“TROP V. DULLES”: Albert Trop, a native-born citizen, was convicted of desertion while a private in the US Army during World War II. He was sentenced to three years at hard labor and dishonorably discharged. Some years later, his application for a passport is rejected on the grounds that he had lost his citizenship due to his desertion.

The Supreme Court, by a 5-4 vote, strikes down the relevant provision in the Immigration and Nationality Act. In three separate concurring opinions, various justices propose that citizenship can not be taken away by Congress at all; or, even if it can sometimes be revoked, it is unacceptable to give such power to military authorities. (356 U.S. 86 (1958)). This renders *Section 401(g) of Nationality Act of 1940 (54 Statutes at Large 1137)*, as amended, and *INA Section 349(a)(x)* invalid. The four dissenters in this suit comprise the remainder of the *Perez* majority, and they find the statute a reasonable and constitutional measure.

“NEW CONGRESSIONAL LEGISLATION ON CITIZENSHIP”: Largely as a result of these loss of citizenship decisions of the Supreme Court, Congress will enact *Section 349(c) INA* creating a rebuttable presumption that a potentially expatriating act was performed voluntarily. Congress thereby modifies the Court’s decision concerning the burden-of-proof requirement in loss-of-nationality cases.

1959 “DECLARATION OF THE RIGHTS OF THE CHILD”: On 10 December 1959, the United Nations adopts General Assembly Resolution 1386 (XIV) entitled the “*Declaration of the Rights of the Child*”.

The Declaration states:

WHEREAS the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

WHEREAS the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

WHEREAS the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

WHEREAS mankind owes to the child the best it has to give,

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Now, therefore, the General Assembly Proclaims

THIS DECLARATION OF THE RIGHTS OF THE CHILD to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Among the important provisions it the following:

§3. The child shall be entitled from his birth to a name and a nationality.

Although the U.S. Government plays an active role in the drafting of this Convention it will not sign it until 1995, thirty-six years later, and has so far, as of 2012, never ratified it.

1961 “**MONTANA V. KENNEDY**”: The Supreme Court rules that a child born abroad prior to May 24, 1934, to an American citizen mother did not acquire American citizenship at birth, since at that time citizenship at birth was transmitted only by a citizen father. Although subsequent legislation conferred upon American women the power to transmit citizenship to their children born abroad, such legislation was not retroactive and did not bestow citizenship on persons born before the enactment of such legislation. (366 U.S. 308 (1961)).

See also: Wolf v Brownell (253 F.2nd 141 -(C.A. 9, 1958)-certiori denied (358 U.S. 859)). and *D'Alessio v. Lehmann* (289 F.2nd 371 -(C.A. 6, 1961)-certiori denied (368 U.S. 822)).

1963 “**KENNEDY V. MENDOZA-MARTINEZ**”: In another five-to-four vote, the Supreme Court invalidates a statute prescribing loss of nationality as a consequence for evading military service. The majority opinion of Justice Goldberg deems the statute punitive and finds it defective because the penalty was imposed without observing the constitutional safeguards relating to penal sanctions. This renders INA Section 349 (a)(10) and Section **401(j)** NA unconstitutional. 372 U.S. 144 (1963)

1964 “**SCHNEIDER V. RUSK**”: Angelika Schneider was born in Germany. She came to the US with her parents and became a US citizen upon their naturalization. While a graduate student in Europe, she met a German man whom she later married, and she moved permanently to Germany to live with him.

In 1959, she is denied a passport by the State Department on the ground that she had lost her United States citizenship under the specific provisions of *Paragraph 352 (a)(1) of the Immigration and Nationality Act, 8 U.S.C. Paragraph 1484 (a)(1)*, by continuous residence for three years in a foreign state of which she was formerly a national.

The Court, by a five-to-three vote, holds this statute “*violative of Fifth Amendment due process*” because there is no like restriction against foreign residence by native-born citizens. The dissenting Justices (Mr. Justice Clark, joined by Justices Harlan and White) base their position on what they regard as the long acceptance of expatriating naturalized citizens who voluntarily return to residence in their native lands; possible international complications; past decisions approving the power of Congress to enact statutes of that type; and the Constitution's distinctions between native-born and naturalized citizens. This renders INA Section 352 unconstitutional. (377 U.S. 163 (1964)). The statutory provision which is struck down in this ruling will be repealed by Congress in 1978 in *Public Law 95-432*.

1966 **THE “CITIZENSHIP ACT OF 1966”**: Congress amends Section 301 (a) (7) of the Immigration and Nationality Act of 1952 to read as follows:

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- "Section 301 (a) (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: **Provided***, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date." Act of November 6, 1966 (80 Stat. 1322),

A "VIETNAM WAR DEATH, THE "NEXUS CLOCK", A CHILD DENIED U.S. CITIZENSHIP": The untimely death of a soldier on a battlefield triggers a subsequent "nexus" problem for his progeny. A Master Sergeant in the U.S. Army dies in combat in Vietnam in 1966. He had earned two Purple Hearts, several Army Commendation Medals, a Presidential Citation, and the Air Medal. He volunteers to return to Vietnam for a second tour because he is a dedicated soldier and loves his country so much. This time he does not return alive. Several years later, when his daughter gives birth to a child abroad, and goes to the U.S. Embassy in Bern, Switzerland to register the birth, she is told the child is not eligible to be a U.S. citizen. Although she had lived in the household of her father for seventeen and a half years as an Army dependent, five of those years had not been after the age of fourteen, as the law then required. Her father had died before she turned nineteen so the years after his death, when she lived abroad with her widowed mother, were no longer positive "nexus" years for U.S. citizenship transmission purposes. When his heart stopped her "nexus" clock stopped too. He gave his life for his country. The United States said thanks, but this was not enough to earn sufficient "nexus" for your grandchild.

1967 "AFROYIM V. RUSK": The Supreme Court rules on another overseas American citizenship case. Beys Afroyim (born Ephraim Bernstein in Poland in 1893) immigrated to the US in 1912 and became a naturalized US citizen in 1926. In 1950, Afroyim moved to Israel. In 1960, he was denied a passport by the State Department on the ground that he had lost his United States citizenship under the specific provisions of *Section 349 (a)(5)* of the *Immigration and Nationality Act of 1952 (8 U.S.C. Section 1481(a)(5)*, by his having voted in a foreign election.

The Court, by a five-to-four vote, holds that the Fourteenth Amendment's definition of citizenship was significant and that Congress has no "general" power, *express or implied, to take away an American citizen's citizenship without his assent,*" (387 U.S. at 257). It rules that Congress' power is to provide a uniform rule of naturalization and, when once exercised with respect to the individual, it is exhausted, citing Mr. Chief Justice Marshall's well-known but not uncontroversial dictum in "*Osborn v. Bank of the United States*" (9 *Wheat.* 738, 827 (1824)).

The Court says that the "undeniable purpose" of the Fourteenth Amendment was to make the recently conferred "citizenship of Negroes permanent and secure" and "to put citizenship beyond the power of any government unit to destroy," (387 U.S. at 263).

The "*Perez v. Brownell*" decision (356 U.S. 44 (1958)), a five-to-four holding in 1958, and precisely to the opposite effect, is now overruled. In dissent (Mr. Justice Harlan, joined by Justices Clark, Stewart and White) takes issue with the Court's claim of support in the legislative history, elucidates the Marshall dictum, and observes that the adoption of the

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Fourteenth Amendment did not deprive Congress of the power to expatriate on permissible grounds consistent with "*other relevant commands*" of the Constitution.

Because of this decision, which is retroactive in effect, most of the substantive analysis in loss-of-citizenship cases now requires a judgment as to whether a person intended to relinquish U.S. citizenship at the time of committing the potentially expatriating act. This renders Section 401(e) of the Nationality Act of 1940, and INA Section 349(a)(6), as originally enacted, unconstitutional under the Fourteenth Amendment. (387 U.S. 253 (1967)). "Rusk" in this case is Dean Rusk, who is Secretary of State under President Johnson.

1971 "**ROGERS V. BELLEI**": The Supreme Court hears another citizenship case. Aldo Mario Bellei, the plaintiff, was born in Italy on December 22, 1939. He is now 31 years of age. Bellei challenges the constitutionality of "*Section 301 (b) of the Immigration and Nationality Act of 1952*", which provides that one who acquires United States citizenship by virtue of having been born abroad to parents, one of whom is an American citizen, who has met certain residence requirements, shall lose his citizenship unless he resides in this country continuously for five years between the ages of 14 and 28.

A three-judge District Court had held the section unconstitutional, citing "*Afroyim v. Rusk*" and "*Schneider v. Rusk*". The Supreme Court, in a five-to-four decision, rules that Congress does have the power to impose the condition subsequent of residence in the country on Bellei, who does not come within the Fourteenth Amendment's definition of citizens as those "*born or naturalized in the United States*", and its imposition is therefore not unreasonable, arbitrary or unlawful. Justice Black files a dissenting opinion in which Justices Douglas and Marshall join. Justice Brennan files a dissenting opinion in which Justice Douglas joins. (April 1971: 401 U.S. 815 (1971)).

1972 **THE "CITIZENSHIP ACT OF 1972"**: Congress amends the "*Immigration and Nationality Act of 1952*" by changing *section 301 (b)* to the new text below; by repealing *Section 16 of the Act of September 11, 1957*; and by adding the new *section 301 (d)* below.

- "*Section 301 (b) Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless (1) he shall come to the United States and be continuously physically present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years; or (2) the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years. In the administration of this subsection absences from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence.*"
- "*Section 301 (d) Nothing contained in subsection (b) as amended, shall be construed to alter or affect the citizenship of any person who has come to the United States prior to the effective date of this subsection and who, whether before or after the effective date of this subsection, immediately following such coming complies or shall comply with the physical presence requirements for retention of citizenship specified in subsection (b) prior to its amendment and the repeal of section 16 of the Act of September 11, 1957.*" (Act of October 27, 1972 (87 Stat. 1289)).

1977 "**NEW PROPOSAL TO "CHANGE U.S. CITIZENSHIP TRANSMISSION AND RETENTION REQUIREMENTS FOR CHILDREN BORN OVERSEAS"**: Congressman Joshua Eilberg, Chairman of the Immigration sub-Committee, of the House Committee on the Judiciary, introduces a bill to eliminate the requirement that children born overseas to a U.S. citizen parent and a non-citizen parent must return to live in the United States for two years, between their 14th and 28th birthdays, to retain their citizenship. He also proposes to

eliminate the jeopardy children with two nationalities face of losing their U.S. citizenship if they live abroad in the country of their second nationality. (*19 October 1977: HR 9637*)

THE “FOUNDING OF THE AMERICAN CHILDRENS’ CITIZENSHIP RIGHTS LEAGUE (ACCRL)” IN GENEVA: A new non-profit organization is created in Geneva, Switzerland, in November 1977, to promote the citizenship rights of U.S. children born abroad. The objective is to make it easier for every U.S. citizen parent, whether married or unmarried, to transmit U.S. citizenship to a child born abroad, and to abolish any possible statelessness for any such child born abroad. It will be financed exclusively by donations from individuals who support the endeavors of the group. Chapters are quickly set up in Holland, Belgium, England and later also in Greece, Iran and Egypt. There are numerous other cooperating organizations in Germany, France, Brazil and other countries.

A “CITIZENSHIP BILL IS ALSO INTRODUCED IN THE SENATE”: Senator Edward Kennedy, a member of the Senate Committee on the Judiciary’s sub-Committee on Immigration, introduces a bill in the Senate that is similar to the Eilberg proposal in the House, but which would go farther and also reduce the prior residence that an American citizen married to an alien must have in the United States to be able to transmit citizenship at birth to a child born abroad, from the current ten years of prior residence, to only two years. (*15 November 1977; S. 2314*).

ANOTHER “CITIZENSHIP BILL IS INTRODUCED IN THE HOUSE”: Congressman Robert McClory (R-IL), ranking Republican in the House of Representatives’ Committee on the Judiciary, whose daughter and grand-daughter live in Geneva, Switzerland, introduces another citizenship reform bill, this time co-sponsored by Congressman Eilberg. The “*McClory proposal*” would eliminate *all* prior residence in the United States for transmission of citizenship abroad, and also eliminate retention requirements for those born abroad, as well as the jeopardy for those born with two nationalities. (*15 December 1977: HR 10232*).

THE “CINDERELLA CITIZENSHIP CONUNDRUM” AND OTHER PROBLEMS”: According to a State Department report in 1978, approximately 14,000 children are born overseas each year with “*Cinderella Citizenship*” which will expire at midnight on the child’s 26th birthday unless the child has returned to live for two continuous years before reaching age 28, as required by sub-section 301 (b) of the current citizenship legislation. The State Department says that in recent years, from 100 to 200 children have been involuntarily expatriated each year for this reason. An additional 25-50 citizens lose their U.S. citizenship each year through the application of the current Citizenship law’s Section 350’s ambiguous requirements. The State Department estimates that about 40,000 children are born to U.S. citizen parents and qualify for U.S. citizenship at birth, with an unknown additional number of children born abroad with no rights to American citizenship because one American parent has not fulfilled the present prior U.S. residence requirements. An unknown number of these children may actually be born “*stateless*”.

1978 “OVERSEAS AMERICAN DEMONSTRATION ON THE STEPS OF THE U.S. EMBASSY IN LONDON”: On May 10, 1978, more than 100 American children demonstrate on the steps of the U.S. Embassy in London to protest U.S. laws that could cause them to lose their citizenship and possibly become stateless. The organizer of the demonstration is Toby Hyde, co-chairman of the London branch of ACCRL. Toby Hyde is also still serving as the worldwide head of Democrats Abroad.

THE “CITIZENSHIP ACT OF 1978” (THE “MCCLORY BILL”): This new legislation repeals subsections (b), (c) and (d) of section 301 of the Immigration and Nationality Act of 1952, and becomes effective as of October 10, 1978. It also strikes out “(a)” after “Section 301” and redesignates paragraphs (1) through (7) as subsections (a) through (g) respectively. It removes the requirement for a child acquiring U.S. citizenship at birth abroad to subsequently reside in the United States to retain this citizenship. This bill is the direct result of efforts undertaken abroad by the American Children’s Citizenship Rights League, founded in Geneva in 1977, which has branches in many other countries. (*Act of October 10, 1978 (92 Stat. 1046)*)

1980 **“VANCE V. TERRAZAS”**: In a new citizenship case, the Supreme Court upholds the constitutionality of Section 349(c) of the INA. But now the Court says that under this provision, the party claiming that citizenship has been lost has the burden of proving such loss by a preponderance of the evidence. Moreover, a person who commits a statutory act of expatriation is presumed to have committed the act voluntarily, but the presumption may be overcome upon a showing, by a preponderance of the evidence, that the act was not performed voluntarily. The Court expressly rejects the contention that expatriation must be proved by clear and convincing evidence.

The Supreme Court reaffirms and explains its previous holding in **“Afroyim v. Rusk”** that in order to find expatriation, *“the trier of fact must conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship”*.

The court declares that it would not be consistent with **“Afroyim”** *“to treat the expatriating acts specified in the statute as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen”*. As the Court explains: *“In the last analysis expatriation depends on the will of the citizen rather than on the will of Congress and its assessment of his conduct.”*

The Terrazas decision establishes two major points. First, although intent to give up US citizenship could be ascertained either from an individual's specific statements or by inference from his actions and conduct, the "assent" principle of **“Afroyim v. Rusk”** requires that intent to be proved separately from a potentially expatriating (citizenship-losing) action. Congress cannot sidestep the issue of intent by declaring a certain action to be inherently incompatible with keeping US citizenship, and then decreeing that voluntary performance of such an action conclusively proved intent to give up citizenship.

Second, although intent to give up citizenship has to be proved, Congress is free to establish the standard of proof. Specifically, it is OK for such intent to be established via a "preponderance of evidence" standard (as in a lawsuit). It is **not** constitutionally necessary for a loss-of-citizenship case to be treated like a criminal trial, requiring intent to be proved by "clear and convincing" evidence.

Although the "standard of proof" part of the Supreme Court's decision is reached by a 5-4 majority, all nine justices (including two who had been in the minority on the **“Afroyim”** case) uphold the principles in **“Afroyim”**. Further, eight of the nine justices (in three separate opinions) agree that Congress cannot designate an action as automatically resulting in loss of citizenship: even if such an action were voluntarily performed, it would still be necessary to show that the individual did so with the intent of giving up citizenship. "Vance" in this case is Cyrus Vance, who is Secretary of State under President Carter. (444 U.S. 252 (1980))

1982 **THE “NUMBER OF CHILDREN BORN ABROAD AS U.S. CITIZENS”**: In response to a request from a Member of Congress, the State Department in 1982 prepares a report on the citizenship status of children born abroad. This shows that in 1981, approximately 40,000 children had been born abroad to U.S. citizen parents. Of these: 21,600 (54%) acquired U.S. citizenship at birth abroad because both parents were U.S. citizens; 14,400 (36%) via only one U.S. citizen parent; but 4,000 (10%) had been denied U.S. citizenship at birth because a U.S. citizen parent had not met the current transmission requirements. Thus in 1981, one out of every ten children born abroad to a U.S. citizen parent was denied U.S. citizenship at birth. Some of these babies were undoubtedly born stateless too, although their actual number is unknown because this is not a specific target in this study. The State Department estimates that about 2 million U.S. citizens were living abroad in the private sector in 1981.

1983 "SOME CHILDREN BORN ABROAD TO A U.S. CITIZEN PARENT CAN'T BE CLAIMED AS A DEPENDENT ON U.S. TAX RETURNS": The Wall Street Journal reports in its European Edition on Thursday, June 23, 1983, that:

- "A U.S. citizen living in England since he was nine and wed to an English woman can't claim their English-born son as a dependent for U.S. taxes, the IRS ruled privately. To be so listed, a dependent who isn't a U.S. citizen or national must live in the U.S. or a "contiguous" country. And the foreign-born child of a citizen and an alien isn't a citizen unless the U.S. parent lived here before the birth for 10 years, at least five after the age of 14."

1985 THE "OVERSEAS AMERICAN CHILDREN'S CITIZENSHIP EQUITY ACT OF 1985": This is a bill introduced in the House of Representatives during the 99th Congress by Bill Alexander (D-Ark), the Chief Deputy Majority Whip. It proposes to reduce the prior residence time of a U.S. citizen parent to two years in the aggregate to automatically transmit U.S. citizenship to a child born abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (*June 12, 1985: HR 2739*).

"RICHARDS V. SECRETARY OF STATE ET AL.": This Court of Appeals case (one step below the Supreme Court) isn't as relevant today as it was in 1985, in light of the State Department's current and more permissive policy on loss of US citizenship. (*752 F.2d 1413 (9th Cir. 1985)*)

William Richards became a Canadian citizen in 1971. At the time he did this, the Canadian naturalization oath included a clause renouncing prior allegiances. Accordingly, a lower court concluded that Richards had lost his US citizenship.

Richards argued that he had acquired Canadian citizenship only because he needed said citizenship in order to get a job with the Boy Scouts of Canada. Although he conceded that he had made an explicit statement of renunciation of US citizenship as part of the Canadian naturalization procedure, he contended that this action on his part was not voluntary because he had been under "economic duress" at the time.

The Ninth Circuit Court of Appeals rejects Richards' economic duress argument, observing that he had worked in Canada for several years as a teacher without being a Canadian citizen, and that there was no evidence that he had been forced to leave his teaching job or that he had made any effort to find a job that would not have required him to obtain Canadian citizenship and renounce his US citizenship.

The lower court found (and the Ninth Circuit agrees) that Richards knew and understood the significance of the renunciatory language in the Canadian naturalization documents. Although Richards would have preferred to keep his US citizenship, such a wish is not sufficient to negate the presumption that he had chosen, in the end, to give up that citizenship. "We cannot accept a test", the Ninth Circuit stated in its opinion, "under which the right to expatriation can be exercised effectively only if exercised eagerly."

It should be noted that Canada no longer requires new citizens to give up their other citizenships. The renunciatory language in the Canadian naturalization oath was ruled illegal by a Canadian court in 1973, on technical grounds and was subsequently removed -- and Canada has allowed dual citizenship without any restrictions at all since 1977. Hence, the *Richards* case is generally not relevant to Americans who became Canadian citizens after that time.

Further, the State Department's post-1990 policy on loss of US citizenship specifically says that taking a "*routine oath of allegiance*" to a foreign country will *not* normally be interpreted as showing an intent to give up US citizenship. Contrast the ruling in this case with a very different ruling in the 1991 Marc Rich case, discussed below.

1986 THE "IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1986": This legislation amends Section 301(g) (8 U.S.C. 1401(g)) of the INA to conform to the requirements of various Supreme Court decisions on loss of US citizenship. *Several members of AARO and FAWCO, including Kathleen de Carbuccia, Lucy Laederich and Tom Rose, play major roles in encouraging passage of this new legislation. (Act of November 14, 1986; PL 99-653)*

- The most significant change is to the preamble of Section 349 of the Immigration and Nationality Act (8 USC § 1481) making it clear that an action, in order to result in loss of citizenship, needs to be performed voluntarily and with the intention of giving up US citizenship. This change brings the law into line with the Supreme Court's ruling in "*Vance v. Terrazas*"
- There are also revised conditions under which foreign military service can result in loss of citizenship. Previously, a person could lose US citizenship through foreign military service unless said service were approved in advance by US officials. Also, a US citizen who entered a foreign military service prior to age 18 could lose his US citizenship if he had been given an option by said foreign country to leave its army at age 18, and failed to do so. All this is replaced by a new provision, under which foreign military service will result in loss of US citizenship only if performed voluntarily and with intent to relinquish US ties- and, additionally, only if the person served as an officer, and/or if the foreign army were engaged in hostilities against the US. Note that the Supreme Court had previously ruled, in "*Mandoli v. Acheson*" that coerced foreign military service could not result in loss of US citizenship.
- Previously, if a US citizen was also a citizen of a foreign country, had spent one or more periods of time in that country totalling at least ten years, and performed any of the listed actions that could result in loss of US citizenship, the action in question would be conclusively presumed to have been performed voluntarily and without duress (i.e., the person in question would not have a legal right to present contrary evidence in a court case). This provision had been put on shaky ground as a result of the "*Terrazas*" ruling, and it is now repealed.
- Prior to this new law, a naturalized citizen who moved away from the U.S. and set up permanent residence abroad within five years following naturalization risked revocation of his citizenship -- on the grounds that his promise (made on the citizenship application) to reside permanently in the U.S. after naturalization had been made in bad faith. This five-year period is now reduced to one year. (In 1994, this provision will be repealed altogether.)

1987 THE "OVERSEAS AMERICAN CHILDREN'S CITIZENSHIP EQUITY ACT OF 1987": This bill is introduced in the House of Representatives during the 100th Congress by Bill Alexander (D-Ark), the Chief Deputy Majority Whip. This proposal is to reduce the prior residence time of a U.S. citizen parent this time to just one year in the aggregate to automatically transmit U.S. citizenship to a child born abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (*May 28, 1987: HR 2535*).

"MERETSKY V. U.S. DEPARTMENT OF JUSTICE, ET AL.": The U.S. Court of Appeals for the District of Columbia upholds the ruling of the District Court, which affirmed the Department of State's issuance of a Certificate of Loss of Nationality ("CLN") against Meretsky, concluding that appellant had voluntarily and intentionally renounced his U.S. citizenship in order to become a citizen of Canada. Meretsky appeals his loss of citizenship to the Board of Appellate Review, which affirms the State Department's conclusion that Meretsky had performed an expatriating act "with the intent to relinquish citizenship." Meretsky then brings an action in Federal district court under 8 U.S.C. 1503, seeking a declaratory judgment that he had not indeed lost his U.S. citizenship. Finding no material facts in dispute, and on cross motions for summary judgments, on December 30, 1985 the court upholds the issuance of the CLN. The Ninth Circuit rejects an argument that the

appellant had become a Canadian citizen to avoid economic hardship, ruling “[t]he cases make it abundantly clear that a person’s free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, to advance a career or other relationship, to gain someone’s hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen’s free choice to renounce his citizenship results in the loss of that citizenship.” (259 U.S. App. D.C. 487; 816 F.2d 791 (1987)).

“KAHANE V. SHULTZ”: the U.S. District Court for the Eastern District of New York rules that a United States citizen with dual citizenship in Israel did not intend to relinquish his U.S. citizenship when he committed the expatriating act of accepting a seat in the Israeli Knesset, where acts and statements emphasize beyond doubt that the individual wanted to remain an American citizen, such intent being manifested both before and after he joined Israeli Parliament. (1987, ED NY - 653 F Supp 1486).

1989 THE “OVERSEAS AMERICAN CHILDREN’S CITIZENSHIP EQUITY ACT OF 1989”: This proposal is once again introduced in the House of Representatives during the 101st Congress by Bill Alexander (D-Ark), This initiative would reduce the prior residence time of a U.S. citizen parent to one year in the aggregate to automatically transmit U.S. citizenship to a child born abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (March 14, 1989; HR 1380).

“CONGRESSIONAL HEARINGS ON OVERSEAS AMERICAN ISSUES”: On November 8, 1989, the House of Representatives, Committee on Foreign Affairs, Subcommittee on International Operations, holds special hearings on overseas American issues and invites overseas Americans to testify. Andy Sundberg, of ACA in Geneva, presents a list of such problems, including the following:

- **THE “DILEMMA OF AN UNWED AMERICAN MOTHER”**: A single American woman, who is expecting a child, faces a difficult choice. She could marry the father and legitimize the child’s birth, or she could remain unmarried and ensure that the child acquired American citizenship at birth. She had to choose one or the other. She has grown up overseas, and has not lived enough years in the United States to qualify to transmit citizenship to a child born abroad. Both her mother and her father are U.S. citizens and her father had been performing useful services to the private sector of the United States. Had her father been working for the U.S. Government, she would not have had any problem. She’s lucky she has even this choice. The law makes it five times easier for an unmarried mother to transmit citizenship to a child born abroad than a mother married to an alien. What is the message here?
- **THE “SON OF A WORLD WAR II VETERAN HAS A STATELESS CHILD”**: A young man living in Holland was recently informed by the U.S. Consulate that his child does not qualify for U.S. citizenship. Since the father had grown up abroad, studied abroad, and married abroad he had not accumulated the requisite number of years of prior residence in the United States to qualify to transmit U.S. citizenship to his child. He went overseas in the first place as a military dependent because his father, a World War II veteran, was then serving in the U.S. Army. When his father retired, he chose to live in Germany, where he then began working for an American insurance company. The young man’s alien wife did not transmit her citizenship to the child either. This grandson of a World War II veteran is deemed stateless.

THE “UN CONVENTION ON THE RIGHTS OF THE CHILD”: This new international Human Rights Convention is adopted unanimously by the General Assembly of the United Nations on 20 November 1989. (Note: Although the United States votes in the General Assembly to adopt this Convention, as of August 2011 the U.S. Congress has still not ratified this Convention). The Convention states:

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- *"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." (Article 2)*
- *"States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention." (Article 4)*
- *"The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless." (Article 7)*
- *"States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference." (Article 8)*

1990 THE "FIRST WORLD CONFERENCE OF AMERICANS LIVING ABROAD": On July 5 & 6, 1990, ten Members of the U.S. Congress travel to Paris to meet with private sector Americans living in Europe. The Congressional delegation is led by Representative Mervyn Dymally (D-CAL). Several State Department officials led by Betty Tamposi, Assistant Secretary for Consular Affairs, also participate. Overseas American groups participating include AARO, FAWCO, ACA, the European Council of American Chambers of Commerce, Democrats Abroad and Republicans Abroad. Two hundred U.S. citizens living in the private sector participate. Several panels discuss overall policy toward overseas Americans, business competitiveness, taxation, citizenship, social security, Medicare, education and voting rights. At the conclusion of the conference, Congressman Dymally proposes that:

- *An **Inter-Agency Group** should be set up to address the problems identified by Americans living overseas;*
- *A **Congressional Task Force** should be created to study the problems of overseas Americans;*
- *A **Joint Overseas Committee** should act as a lobbying group to respond to the Task Force, and should present issues directly to President George H.W. Bush; and*
- *A **Follow-Up Meeting** should be held in Washington next year.*

1991 THE "OVERSEAS AMERICAN CHILDREN'S CITIZENSHIP EQUITY ACT OF 1991": This legislation is introduced once again in the House of Representatives during the 102nd Congress by Bill Alexander (D-Ark), It would reduce the prior residence time in the United States of a U.S. citizen parent to one year in the aggregate to automatically transmit U.S. citizenship to a child born abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (May 22, 1991: HR 2429).

NEW "CONGRESSIONAL HEARINGS ON OVERSEAS AMERICANS": Congressman Howard Berman (D-CA), Chairman of the Subcommittee on International Operations, of the Committee on Foreign Affairs, invites overseas Americans to testify on 21 June 1991. Andy Sundberg, representing ACA, testifies on *"Citizenship, Closing Of Consulates, Employment of U.S. Citizens at U.S. Embassies & Consulates, And Other Matters"*. Three issues he addresses are:

- **1. THE "EMPLOYMENT OF U.S. CITIZENS AT EMBASSIES AND CONSULATES ABROAD":** *"Another issue concerns the question of why U.S. citizens are not eligible to be locally hired abroad to work in a U.S. Embassy or a U.S. Consulate. Ms. Lauralee Peters, Deputy Assistant Secretary of State for Personnel, in a letter addressed to ACA dated June 15, 1990, stated that Section 408 of the Foreign Service Act of 1980, as amended, "gives the Secretary of State authority to employ only two categories of people under local compensation plans abroad: Foreign National employees, and United States citizens who are family members of Government employees. That provision has been interpreted as precluding the employment of other American citizens in Foreign National positions." Ms. Peters adds in her letter, "The Department believes Congress' intent, in making an exception to allow American family members to be employed in FSN jobs, was to provide employment opportunities abroad for spouses and other dependents of U.S. Government employees. We heartily support that provision, in that it provides job opportunities for Foreign Service dependents, and thus serves as a recruitment tool for our employees going to countries where 21 dependent employment on the local market is difficult to obtain. The Department of Defense has similar legislation for its dependents."*
- **ACA'S COMMENTS ON THE INELIGIBILITY OF U.S. CITIZENS TO WORK FOR THE U.S. GOVERNMENT ABROAD:** *"ACA wonders why it is necessary to make any distinctions at all in terms of who is eligible and who is not eligible to work for the U.S. Government outside of the United States? What is the purpose of setting up FSN posts that allow individuals of any nationality other than American, to be able to be paid by taxpayer dollars, and to make exceptions for some U.S. citizens to also be eligible for these same "FSN" positions, and then to simply render all other U.S. citizens ineligible. It seems peculiar to legislate this way, and to say to civilian taxpayers, that you alone cannot work in jobs where your own tax dollars are being expended. This prohibition has already led to some very bizarre results. In several instances, U.S. citizens have voluntarily relinquished their U.S. citizenship so as to be eligible, thereafter, to work for the U.S. Government. Surely this is an absurdity. We would welcome an initiative by this subcommittee to amend this legislation so that the U.S. Government becomes an equal opportunity employer for all positions abroad at U.S. Embassies and Consulates, to the extent that this is possible without breaching any bilateral treaties or agreements. We request that this subcommittee undertake the amendment of Section 408 of the Foreign Service Act of 1980, as amended, to bring about full "equality of employment opportunity for all U.S. citizens".*
- **2. "EEOC VS ARAMCO & BOURSELAN VS ARAMCO":** *On the 26th of March, the Supreme Court, in a 6-3 decision, rules that Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion or national origin, wasn't meant to apply outside the USA and its territories. The case was brought initially by Mr. Ali Bourselan, a naturalized U.S. citizen who was born in Lebanon. He alleges that he was harassed by his supervisors and eventually fired because of his race and religion while working in Saudi Arabia for ARAMCO. According to the Equal Employment Opportunity Commission (EEOC), which intervened on behalf of Mr. Bourselan, more than 2,000 U.S. firms operate 21,000 subsidiaries in about 121 foreign countries worldwide.*
- **ACA'S COMMENTS ON "EEOC VS ARAMCO":** *Since this Supreme Court ruling, two bills have been introduced in the House which would extend Title VII to citizens working abroad for U.S. companies. ACA supports this extension of protection of U.S. law prohibiting discrimination against employees on the basis of race, color, religion, or national origin, and invite the Members of this subcommittee to co-sponsor legislation in this direction.*

- **3. "UNITED STATES, ET AL., PETITIONERS V. MARCUS S. SMITH ET AL":** *The Federal Employees Liability Reform and Tort Compensation Act of 1988 addresses the rights of U.S. citizens to sue the U.S. Government for tort claims, and limits the relief available to persons injured by Government employees acting within the scope of their employment. In such cases, the Act provides that "the remedy against the United States under the Federal Tort Claims Act (FTCA) is exclusive of any other civil action or proceeding for money damages." In certain cases, the FTCA allows a person alleging injury by a Government employee, acting within the scope of his/her employment, to seek tort damages against the Government. There is an exception, however, which bars such recovery for injuries sustained outside the country. Mr. Marcus Smith, a U.S. Army Sergeant stationed in Italy, claimed that Dr. William Marshall, who was serving on the medical staff of the U.S. Army Hospital in Vicenza, Italy, was negligent during the birth of his son, Dominique in 1982. This child was born with massive brain damage. The suit was brought in the United States District Court for the Central District of California in 1987. The Government intervened, and sought to have itself substituted for Dr. Marshall as the defendant under the relevant provisions of the Gonzalez Act, 10 U.S.C. §1089. This Act provides that in suits against military medical personnel for torts committed within the scope of their employment, the Government is to be substituted as the defendant and the suit is to proceed against the Government under the FTCA. The Catch 22 here is that once the FTCA is invoked, the prohibition of claims for injuries committed outside the country becomes operative. Mr. Marcus, the FTCA language notwithstanding, tried nevertheless to seek damages from the particular Government employee who caused the injury. The Court by an 8-1 majority held "that the Liability Reform Act bars this alternative mode of recovery." Justice Stevens, in dissent, said that the majority ruling is not consistent with the intent of Congress. According to Mr. Stevens, "For claims not covered by the FTCA, such as for those claims arising in foreign countries, the Gonzales Act authorized medical personnel to be insured or indemnified by the Federal Government. By that arrangement, Congress protected Government doctors from personal liability for services performed in the course of their overseas duties, and at the same time, preserved the common law remedy for American victims of medical malpractice." Mr. Stevens concludes that "the question is whether the Liability Reform Act withdrew the remedy for malpractice claims arising outside of the United States that had been expressly preserved by subsection (f) of the Gonzalez Act. The net result of this Supreme Court ruling is that U.S. citizens living overseas can no longer expect to win any tort suits against the U.S. Government for negligent acts committed overseas by doctors or other Government employees.*
- **ACA'S COMMENTS ON "UNITED STATES VS MARCUS SMITH":** ACA requests that legislation be introduced by Members of this Subcommittee that would amend the "Liability Reform Act of 1988" in such a way as to permit U.S. citizens living abroad to regain the common law right to seek redress for torts committed overseas by individuals working for the U.S. Government overseas.

"SENATOR JAY ROCKEFELLER ELIMINATES THE OBSTACLES TO LOCAL HIRING OF U.S. CITIZENS IN THE PRIVATE SECTOR BY U.S. EMBASSIES AND CONSULATES": When Senator Jay Rockefeller (D-WV) subsequently learns of this discrimination against the local hiring of U.S. citizens in the private sector overseas for employment by the State Department, he introduces legislation to change this law. It is eventually adopted and become law. The State Department drags its heels in implementing this change because it will make it more difficult now to always give preference to wives and other dependents of U.S. State Department employees for such positions. Eventually, when the new conditions are finally in place, these local hires will be called "Rockies" in honor of their Congressional sponsor.

ANOTHER "BILL TO AMEND U.S. CITIZENSHIP LEGISLATION": Congressman Norman Minetta (D-CA), who was born in San Jose, California to Japanese immigrant parents who

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were not U.S. citizens at the time, and who was later interned for several years in the Heath Mountain internment camp near Cody, Wyoming, along with thousands of other Japanese immigrants and Japanese Americans during World War II, has long had an interest in citizenship legislation. Together with five co-sponsors he proposes to amend Section 301 of the Immigration and Nationality Act to provide the children of female U.S. citizens born abroad before May 24, 1934 and their descendants with the same rights to citizenship at birth as children born of male citizens abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (November 26, 1991: HR 4007).

"ACTION AND DELTAMAR V. RICH": Marc Rich, defendant in a multi-million-dollar business lawsuit, contends that the Federal District Court which had heard his case lacks jurisdiction because he (Rich) had given up his US citizenship in 1982 when he became a naturalized citizen of Spain. The Spanish naturalization oath he took included an explicit renunciation of US citizenship.

The Second Circuit Court of Appeals observes, however, that "[D]espite his naturalization as a Spanish citizen, Rich continued to behave in a manner consistent with American citizenship. . . . Rich continued to use his American passport despite renunciation of American citizenship. . . ."

Although Rich asserted that his Spanish naturalization conclusively established his intent to relinquish US citizenship, the court says there "must be proof of a specific intent to relinquish United States citizenship before an act of foreign naturalization or oath of loyalty to another sovereign can result in the expatriation of an American citizen. . . . Despite mouthing words of renunciation before a Spanish official", the court continues, Rich "brought a Swiss action as an American national, travelled on his American passport, and publicized himself in a commercial register as a United States citizen."

Accordingly, the Second Circuit rules that despite Rich's actions, he had retained his US citizenship because he had never truly intended to relinquish it. (951 F.2d 504 (2nd Cir. 1991))

1992 THE "OVERSEAS AMERICAN CHILDREN'S CITIZENSHIP EQUITY ACT OF 1992": This bill is introduced once again in the House of Representatives during the 102nd Congress by Bill Alexander (D-Ark), this time with Congressman Ben Gilman (R-NY) as a co-sponsor), This initiative would reduce the prior residence time of a U.S. citizen parent to one year in the aggregate to automatically transmit U.S. citizenship to a child born abroad. It is referred to the Committee on the Judiciary, but does not leave the Committee. (March 25, 1992: HR 4561).

A "NEW OVERSEAS AMERICAN CHILDREN'S CITIZENSHIP EQUITY ACT OF 1992": This new bill is introduced in the House of Representatives during the 102nd Congress by Bill Alexander (D-Ark). This time the proposal is to eliminate entirely all prior residence time in the United States and thereby enable all children born abroad to a U.S. citizen parent to be automatically a U.S. citizen at birth. It is referred to the Committee on the Judiciary, but does not leave the Committee. (October 6, 1992: HR 6189).

1994 THE "IMMIGRATION AND NATIONALITY TECHNICAL CORRECTIONS ACT OF 1994": This new law amends several sections of the Immigration and Nationality Act, and takes effect on March 1, 1995.

- Amended Section 322 permits children born overseas of a U.S. citizen parent to be eligible for a certificate of citizenship if either a U.S. citizen parent or a U.S. citizen grandparent had been physically present in the United States for at least five years, two of which after the age of 14, prior to the child's birth abroad. This provision also applies to a child adopted abroad.
- Amended Section 301 (h) gives back U.S. citizenship to a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the

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United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

- *Amended Section 324 (d) (1) allows former U.S. citizens, who lost their citizenship through failure to meet the former conditions of physical presence in the United States to retain their citizenship, to regain their citizenship without having to file an application for naturalization. The law also allows U.S. citizen parents to apply for U.S. citizenship from abroad for their foreign-born children under the age of 18, provided the child is physically present in the United States pursuant to a lawful admission when the citizenship is granted. (The Immigration and Nationality Technical Corrections Act of 1994.)*

1995 **"THE UNITED STATES FINALLY SIGNS THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD"**: On 16 February, the United States finally signs the 1959 U.N. Convention on the Rights of the Child. However, along with Somalia, the United States is still one of only two countries in the world that have not yet ratified this Convention. It has been claimed that opposition to the Convention stems primarily from political and religious conservatives. For example, the Heritage Foundation sees it as threatening national control over domestic policy and the Home School Legal Defense Association (HSLDA) argues that the CRC threatens home-schooling.

1998 **"MILLER VS. ALBRIGHT"**: The Supreme Court, in a 6:3 decision, holds that it is constitutional for Section 309 of the Immigration and Nationality Act (8 U.S.C. Section 1409) to give U.S. citizen mothers more rights to transmit U.S. citizenship to a child born out of wedlock abroad than to U.S. citizen fathers. There are three separate opinions on the majority side and two opinions on the dissenting side. (*Decided April 22, 1998*).

Lorelyn Miller was born in the Philippines to an American father and a Philippine mother (who were not married). She later moved to the US and applied for a US passport, but was turned down on the grounds that she was not a US citizen. Her father signed an affidavit acknowledging his paternity, but this was rejected because he had not signed it prior to Miller's 21st birthday.

Section 309(a) of the Immigration and Nationality Act (8 USC § 1409) (a) says that a non-US-born child born out of wedlock to an American father and a foreign mother can qualify for US citizenship if the father's paternity is established prior to the child's 18th birthday. Prior to 1986 however, this section was operative until the child's 21st birthday, and Miller was able to claim the benefit of the earlier version of the law (though even this didn't help her).

By contrast, *section 309(c) of the INA (8 USC § 1409) (c)* requires no explicit acknowledgment of parenthood in the case of a non-US-born child born out of wedlock to an American mother and a foreign father. A child in this case obtains US citizenship as long as the mother had, at some time prior to the child's birth, been physically present in the US for a continuous period of at least one year. (Note that this requirement is less demanding than the physical presence rule which would apply if the child's parents were married. Go figure.)

Miller challenges *INA § 309(a)*, claiming that it was unconstitutional to deny her US citizenship because her American parent was her father, rather than her mother. The Supreme Court disagrees and upholds the law on a 6-3 vote.

The nine justices write several separate opinions in this case.

- Justices **Stevens** and **Rehnquist** feel the law is reasonable, because when a child is born out of wedlock, the **mother generally has a stronger and more obvious connection to the child than the father does.**

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- Justices **Scalia** and **Thomas** feel that the courts have no power to intervene in the situation at all; only Congress (not the courts) can determine the criteria for citizenship of individuals born outside the US.
- Justices **Ginsburg**, **Souter**, and **Breyer** dissent, arguing that Miller is entitled to US citizenship because the law is unconstitutionally discriminatory on the basis of sex.
- Justices **O'Connor** and **Kennedy** feel the law is unconstitutionally discriminatory, but these two justices decline to rule for Miller because they believe the party being discriminated against is not Miller, but her father. Miller, they rule, is not entitled to sue over discrimination against her father. If her father had brought the action, on the other hand, these two justices say they would have struck down the law (which, if the other justices had held to their positions, would have given Miller a 5-to-4 majority in her favor).

Madeleine Albright is Secretary of State in the Clinton administration.

1999 **“U.S. V. AHUMADA AGUILAR”**: Ricardo Ahumada Aguilar is the Mexican-born illegitimate son of a Mexican mother and an American father (who left the mother shortly before Ahumada's birth and who had no subsequent contact with mother or son). The mother eventually married a US citizen and immigrated to the US with her son. She made repeated unsuccessful attempts to locate the father of her child, eventually discovering that he had died.

Ahumada was convicted in the US of cocaine possession and was deported. He was subsequently convicted on charges arising from two subsequent illegal entries to the US. Ahumada argued that he is not guilty of illegal entry because he was in fact a US citizen. The trial court rejected this argument because there was no evidence that Ahumada's biological father had ever satisfied the requirements of *INA § 309(a)* (*8 USC § 1409(a)*), in that his father had never agreed to provide financial support, and his paternity had never been formally acknowledged.

A three-judge panel of the Ninth Circuit Court of Appeals reverses the trial court's ruling and vacates Ahumada's conviction. The appeals court rules that the more stringent citizenship requirement for an illegitimate child of an American father -- as opposed to an illegitimate child of an American mother -- constitutes unacceptable discrimination on the basis of gender. In effect, the appeals court rules that Ahumada is a US citizen after all -- which means that both his deportation and subsequent charges of entering the US illegally are null and void.

The appeals court relies on the sharply divided Supreme Court decision in *“Miller v. Albright”* concluding that Ahumada has standing to challenge the gender discrimination of *INA § 309(a)* because his American father (unlike Miller's) was dead and thus could not mount a challenge himself.

Subsequent to this decision, the Supreme Court upholds *INA § 309(a)* in *“Nguyen v. INS”*; and in 2001, the Supreme Court vacates the Ninth Circuit's decision in *Ahumada* and sends the case back for further consideration.

On 1 July 2002, however, the Appeals Court again vacates Ahumada's conviction for illegal entry to the US. The citizenship question has, of course, been settled by the Supreme Court, but the Ninth Circuit finds (via a entirely different line of reasoning) that serious flaws in the government's handling of Ahumada's original deportation could reasonably have led him to believe that he could in fact legally attempt to return to the US. Whether this latest decision in the *Ahumada* case will survive further appeal (to the full Ninth Circuit, or to the Supreme Court) remains to be seen. *189 F.3d 1121 (9th Cir. 1999)*; *vacated and remanded, 533 U.S. 913; on remand, 295 F.3d 943 (2002)*

2000 **THE “CHILD CITIZENSHIP ACT OF 2000 (THE DELAHUNT ACT)”**: This act, which takes effect on 27 February 2001, modifies the Immigration and Nationality Act by making it easier for minor children of U.S. citizens (both foreign-born and adopted abroad) to become citizens of the U.S. The law has the following effects:

- *A child adopted abroad becomes a U.S. citizen immediately upon entry into the U.S. as a lawful permanent resident; and*
- *(b) A child born abroad to parents, one or both of whom are U.S. citizens, but who is not recognized as a U.S. citizen for various reasons, can also benefit from the new law, i.e. that child also becomes a U.S. citizen immediately upon entry into the U.S. as a lawful permanent resident.*

It is also possible to have a child born abroad naturalized as a US citizen before his/her 18th birthday by another procedure. Under *Section 322 of INA*, the citizen-parent files form N-600K from abroad and sends it to the USCIS office in Phoenix Arizona. When the form is approved, the citizen-parent travels to a designated USCIS office in the US with the child (an immigrant visa is not necessary in this case) for an interview and swearing-in as a US citizen.

This procedure requires that either the child’s American parent or grandparent must have resided at least five years in the U.S., at least two of which were after the parent’s 14th birthday. This procedure is also useful for children adopted by U.S. parents living abroad. (*PL 106-365 signed on 30 October 2000*).

“TWO NEW OPTIONAL PROTOCOLS TO THE U.N. DECLARATION OF THE RIGHTS OF A CHILD”: On 25 May, two new optional protocols to this Declaration are adopted by the UN General Assembly. The U.S. Government has signed and ratified both of these protocols.

The first, the **“Optional Protocol on the Involvement of Children in Armed Conflict”**, requires governments to ensure that children under the age of eighteen are not recruited compulsorily into their armed forces, and calls on governments to do everything feasible to ensure that members of their armed forces who are under eighteen years of age do not take part in hostilities. This protocol will enter into force on 12 July 2002; currently, 142 states are party to the protocol and another 23 states have signed but not ratified it.

The second, the **“Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography”**, requires states to prohibit the sale of children, child prostitution and child pornography. It will enter into force on 18 January 2002; currently, 145 states are party to the protocol and another 22 states have signed but not ratified it.

2001 **“NGUYEN V. INS”**: The Supreme Court, as in the previous **“Miller v. Albright”** case, holds that a child born overseas to unwed parents (an American father and a foreign mother) is not a U.S. citizen unless paternity is established before an established age (in this case 18). This child had been brought to the U.S. before his sixth birthday and raised by his father. However, after a criminal conviction, deportation was ordered. The accused resists claiming U.S. citizenship. His citizenship is denied by the Court because his paternity had not been established prior to his 18th birthday. The Court upholds the existing interpretation of the law, once again affirming that Congress has the power to define citizenship outside the citizenship dictated by the 14th Amendment (citizenship by birth). (*533 U.S. 53 (2001)*).

Tuan Anh Nguyen was born in Vietnam as the illegitimate son of an American father (Joseph Boulais) and a Vietnamese mother. Shortly before his 6th birthday, he was brought to the US and was raised by his father.

After two felony convictions, Nguyen was judged to be deportable, but he challenged this determination by claiming he had US citizenship via his father. The INS rejected Nguyen’s claim to citizenship because the requirements of *INA § 309(a) (8 USC § 1409 (a))* had not

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been satisfied. (Boulais did have a DNA test and obtained a Texas state court ruling identifying him as Nguyen's father, but this did not happen until 1998, well after Nguyen's 18th birthday.)

A three-judge panel of the Fifth Circuit Court of Appeals (citing *“Miller v. Albright”*) dismissed Nguyen and Boulais' claim that *INA* § 309(a) was impermissibly discriminatory on the basis of gender. Note that this ruling was in direct contradiction to the Ninth Circuit ruling in the *“Ahumada”* case, but this is OK because different federal circuits are not obligated to follow each other's precedents.

The Nguyen case was accepted for review by the US Supreme Court, and oral arguments are heard by the court in early January 2001. In June 2001, the Supreme Court upholds the lower court ruling, denying Nguyen's claims to citizenship in a 5-4 decision. Justices Rehnquist, Kennedy, Stevens, Scalia, and Thomas held that the sex discrimination in *INA* § 309(a) satisfies the degree of scrutiny required by the equal protection clause of the 14th Amendment. (It would appear that Justice Kennedy has changed his mind between his dissent in Miller and his joining with the majority in Nguyen.) Justices O'Connor, Souter, Ginsburg, and Breyer dissent.

2002 THE “21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT”: Section 322 of the Immigration and Nationality Act is amended to make it easier for a child born and residing outside the United States to acquire U.S. citizenship. The change recognizes problems that may arise due to the death of the qualifying parent. In the case of the death of such a parent this application can now be made on behalf of the child by a citizen grandparent or citizen legal guardian if the citizen parent has died during the preceding five years. (*Public Law 107-273, dated November 2, 2002.*)

2008 “OVERSEAS NATURALIZATION PROCEDURES FOR CHILDREN OF A US MILITARY PARENT”: On 28 January 2008, President Bush signs into law the *“National Defense Authorization Act for Fiscal Year 2008”* (H.R. 4986 / *Public Law 110-181*). Section 674 of this new law, in the section *“Other Matters”*, contains language modifying naturalization procedures for children of US military stationed abroad.

The modification of *Section 322(d) of the Immigration and Naturalization Act (INA)* provides that

- children of US citizen members of the military who are accompanying their parent abroad on official orders can file for naturalization from overseas and can proceed with the entire process overseas without being required to travel to the United States. The normal procedure for non-citizen children of Americans residing overseas to be naturalized requires entry to the US for the actual naturalization. This is still the requirement for children of American civilians residing abroad. The relevant USCIS fact sheet specifies that Section 322(d) benefits are available only to biological and adopted children of U.S. citizen members of the U.S. armed forces; they are not available to step-children of the U.S. citizen parent

THE “HEROES EARNING ASSISTANCE AND RELIEF TAX (HEART) ACT”: This legislation, introduced on 16 May 2008 by Congressman Charles Rangel (D-NY), amends the Internal Revenue Code to provide tax benefits and incentives for military personnel. It is to be funded in part by heightened taxation of persons renouncing U.S. citizenship. It is signed into law by President George W. Bush on 17 June 2008. (*Public Law No. 110-245*).

- **“TAX CONSEQUENCES OF CITIZENSHIP RENUNCIATION”:** *The change generally subjects certain U.S. citizens who relinquish their U.S. citizenship, and certain long-term U.S. residents who terminate their U.S. residence, to a tax on the net unrealized gain in their property as if such property were sold for fair market value on the day before the expatriation or residency termination (“mark-to-market tax”). Gain from the deemed sale is taken into account at that time without regard*

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to other Code provisions. Any loss from the deemed sale generally is taken into account to the extent otherwise provided in the Code, except that the wash sale rules of section 1091 do not apply. Any net gain on the deemed sale is recognized to the extent it exceeds \$600,000 (\$1.2 million in the case of married individuals filing a joint return, both of whom relinquish citizenship or terminate residency). The \$600,000 amount is increased by a cost of living adjustment factor for calendar years after 2005.

- **“INDIVIDUALS COVERED BY THIS CHANGED CITIZENSHIP RENUNCIATION LAW”**: The mark-to-market tax applies to U.S. citizens who relinquish citizenship and long-term residents who terminate U.S. residency (collectively, “covered expatriates”). The definition of “long-term resident” under the proposal is the same as that under present law. As under present law, an individual is considered to terminate long-term residency when the individual either ceases to be a lawful permanent resident (i.e., loses his or her green card status), or is treated as a resident of another country under a tax treaty and does not waive the benefits of the treaty.
- **“EXCEPTIONS TO AN INDIVIDUAL’S CLASSIFICATION”**: Exceptions as a covered expatriate are provided in two situations. The first exception applies to an individual who was born with citizenship both in the United States and in another country; provided that (1) as of the expatriation date the individual continues to be a citizen of, and is taxed as a resident of, such other country, and (2) the individual was not a resident of the United States for the five taxable years ending with the year of expatriation. The second exception applies to a U.S. citizen who relinquishes U.S. citizenship before reaching age 18½, provided that the individual was a resident of the United States for no more than five taxable years before such relinquishment.

2009 “INTERNATIONAL CHILD ABDUCTION PREVENTION ACT OF 2009”: A bill is introduced in the House by Rep. Christopher H. Smith (R-NJ) that would

- *Ensure compliance with the 1980 Hague Convention on Civil Aspects of International Child Abduction and*
- *Permit an American parent to obtain a passport abroad for an under-14 minor without signed consent of alien parent.*

It is referred on 16 July 2009 to the House Committees on Foreign Affairs, on Ways & Means, on Financial Services, on the Judiciary, and on Oversight & Government Reform. On 14 September 2009, it is referred to Judiciary Subcommittees on Crime, Terrorism, and Home Security; and on Immigration, Citizenship, Refugees, Border Security, and International Law. (16 July 2009; HR 3240). It is not adopted by the Congress.

2011 “FLORES-VILLAR V. UNITED STATES”: On June 13, the Supreme Court, by a vote of four to four (because Justice Kagan had been recused), allows a lower court’s decision to stand rejecting the argument that a federal law which establishes different standards for children born out of wedlock outside of the United States to obtain U.S. citizenship, depending on whether the child’s mother or father was a U.S. citizen, is unconstitutional.

The case involves Ruben Flores-Villar, who was born in Tijuana, Mexico, but was raised by his father and grandmother, both American citizens, in San Diego. His mother was Mexican, and his parents were not married.

Mr. Flores-Villar tried to avoid deportation by claiming American citizenship. The United States Court of Appeals for the Ninth Circuit, in San Francisco, rejected this claim under a law that spells out different requirements for mothers and fathers whose children are born abroad and out of wedlock to a partner who was not an American citizen.

The law, since amended, allows fathers to transmit citizenship to their children only if the fathers had lived in the United States before the child was born for a total of 10 years, five of them after age 14. Mothers were required to have lived in the United States for a year before their child was born.

The amended law kept the general system but shortened the prior U.S. residency requirement for fathers, from ten years to five years. Mr. Flores-Villar's father was only 16 when his son was born, making it impossible for him to fulfil the part of the law requiring five years of residency after age 14.

Mr. Flores-Villar argued that the differing treatments violates Constitutional equal protection principles. The Supreme Court had previously said that sex-based classifications are permissible only if they serve important governmental goals and are substantially related to achieving those goals.

In 2001, the Supreme Court had upheld a law that imposed differing requirements in a similar situation. In that case, "*Nguyen v. Immigration and Naturalization Service*", a closely divided court said that American fathers of children born out of wedlock abroad had to get a court order establishing paternity or swear to it under oath for their children to obtain American citizenship. American mothers were not subject to that requirement.

Mr. Flores-Villar said that decision turned on biological factors concerning the establishment of paternity that are not present in his case, *Flores-Villar v. United States*, No. 09-5801.

"THE THIRD OPTIONAL PROTOCOL OF THE U.N. DECLARATION OF THE RIGHTS OF THE CHILD": The third optional protocol, which will allow children and/or their representatives to file individual complaints for violation of the rights of children, is adopted in December, and will be opened for signature in 2012.



THE CURRENT STATUS OF U.S. CITIZENSHIP LAWS

The Supreme Court, and other Federal Courts, through their interpretations of the Constitution and current U.S. legislation in its most recent cases, has created the following guidelines for U.S. citizenship.

- The 14th Amendment completely controls the status of U.S. citizenship and prevents the involuntary cancellation of citizenship.
- All persons born in the United States are citizens of the United States.
- This applies to children born to legal and illegal residents.
- This does not apply to children of foreign citizens employed in any diplomatic or official capacity.
- Congress has the power to define acts of expatriation (i.e., loss of citizenship).
- A person must voluntarily relinquish U.S. citizenship.
- Congress may revoke citizenship involuntarily if it has been obtained unlawfully.
- Congress has the power to define citizenship outside birth in the U.S.
- Congress can set different citizenship requirements for children born to American mothers versus American fathers.
- Congress can require that U.S. citizenship must be established by a certain age for it to be recognized.

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OAA
Overseas American Academy
157 Route du Grand Lancy,
1213 Onex, Geneva, Switzerland
Tel: (41-22) 792 1659
andy@sundberg.com

