ARTICLES

A MOST UNNATURAL BODY OF LAW… HOW THE COMPLEXITIES OF OPERATION JANUS AND DENATURALIZATION ILLUSTRATE THE NEED FOR COMPREHENSIVE IMMIGRATION REFORM

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In Edward Everett Hale's acclaimed short story, "*The Man Without a Country*," the titular character, United States Army Lieutenant (Lt.) Phillip Nolan, renounces his country during his trial for treason.[1] The presiding judge convicts Lt. Nolan of treason and sentences him to spend the rest of his life in exile aboard U.S. Navy warships, with no right to set foot on U.S. soil ever again.[2]

While Hale's story is decidedly fiction, the present-day effect of the United States Government's action to rescind an individual's citizenship, through a process called *denaturalization*, amounts to the same punishment endured by Lt. Nolan. Once denaturalized, the individual has no legal right to enter the United States without advance permission in the form of an official travel document issued by the government.[3]

The denaturalization process only applies to *naturalized* U.S. citizens—that is, foreign nationals who acquired U.S. citizenship through the various immigration systems such as employment, family, asylum, or service in the U.S. Armed Forces.[4] In 2008, a Customs and Border Protection (CBP) officer identified more than 200 foreign nationals who were subject to deportation orders entered by immigration judges, but who later used a different biographic identity, such as an alias name or fabricated date of birth, to attain U.S. citizenship.[5] After further research into this issue, the U.S. Justice Department launched Operation Janus, the official initiative to investigate these cases and commence denaturalization proceedings against the naturalized U.S. citizens, if necessary.[6] Operation Janus has now become a joint initiative between the Justice Department and the United States Citizenship and Immigration Services (hereinafter "USCIS"), the federal agency that reviews and adjudicates citizenship applications.[7]

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[1] Edward Everett Hale, *The Man Without a Country*, 12 ATLANTIC MONTHLY, no. 74, Dec. 1863, at 665, 666–67.

[2] *Id.* at 667–68.

[3] Denaturalization automatically returns the individual to lawful permanent resident status before the culmination of deportation proceedings. *See infra* Part III.A.

[4] Immigration and Nationality Act of 1952 § 340(a), 8 U.S.C. § 1451(a) (2016) [hereinafter INS].

[5] DEP'T OF HOMELAND SEC., OFF. OF INSPECTOR GEN., OIG-16-130, *Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records* 1 (Sept. 8, 2016), https://www.oig.dhs.gov/assets/Mgmt/2016/OIG-16-130-Sep16.pdf.

[6] *Id.* at 1–2.

[7] For more information about USCIS, *see About Us*, U.S. CITIZENSHIP AND IMMIGR. SERVS., https://www.uscis.gov/aboutus (last updated Mar. 3, 2018).

Although the first denaturalization case filed pursuant to Operation Janus concluded quite recently in January 2018, the major media outlets have dedicated a negligible amount of time to covering the Operation.[8] And while both the naturalization and denaturalization processes are exceedingly important and relevant to the overall state of the country's immigration policies and demographics, the media and Congress allot very little coverage or national discussion to these two subjects when discussing the need for—or the proposed parameters of—immigration reform. Instead, nearly all of the attention is paid to the more hot-button issues of unauthorized immigration, the impact of criminal actions on immigration eligibility, and how the country should address the population of unauthorized foreign nationals who were brought to the U.S. by their parents.[9]

This oversight in omitting the denaturalization process from the national immigration reform discussion is extremely problematic since the current state of denaturalization proceedings is unnecessarily complex, ill-administered, and wasteful of both federal government resources and taxpayer money. Since other related immigration policies still consume the nation's attention and will likely continue to do so for the foreseeable future, a close examination of how to improve denaturalization regulations and administrative and judicial processes is warranted.

To do so, Part I provides an in-depth explanation of the current laws and regulations governing the naturalization process.[10] Part II highlights a number of peculiar points in these laws and how these statutes are used in the real-world application of immigration law.[11] Part III discusses the current denaturalization laws and regulations, as well as provides an analysis of several pertinent court and administrative cases.[12] Lastly, Part IV

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[8] *What is Operation Janus, Which has Taken Citizenship of First Naturalised Indian American?,* FIN. EXPRESS (Jan. 10, 2018, at 6:26 PM), https://www.financialexpress.com/world-news/what-is-operation-janus-which-has-taken-citizenship-of-first-naturalised-indian-american/1009821/.

[9] *See* Emily C. Callan, *Is the Game Still Worth the Candle (or the Visa)? How the H-1B Visa Lottery Lawsuit Illustrates the Need for Immigration Reform*, 80 ALB. L. REV. 335, 337 (2017) ("[I]mmigration continues to be a hot-button issue for the country as a whole. However, [during the 2016 election cycle], the media coverage rarely provided an in-depth explanation of [H-1B visas] . . . ."); *see also* Frank Camp, *Immigration Such a Hot-Button Issue in 2016 Election That a Stunning Percentage Will Only Vote for Candidate They Agree With on the Matter*, INDEP. J. REV. (Sept. 12, 2015, 1:26 PM), http://ijr.com/2015/09/417923-new-polling-dats-suggests-immigration-may-confusing-issue-2016-election/ ("Immigration—specifically illegal immigration—has, without doubt, been one of the most divisive issues of the 21st century.").

[10] *See infra* Part I.

[11] *See infra* Part II.

[12] *See infra* Part III.

provides suggestions for improvements to both the naturalization and denaturalization laws and processes.[13]

Naturalization accords to the recipient the country's citizenship and citizenship carries with it some of the most sacred privileges a sovereign can bestow: the right to vote, work, and live undisturbed within the country's borders; the right to free passage in and out of the country; and particular to the United States, the right to life, liberty, and the pursuit of happiness.[14] The nature and importance of these privileges clearly warrant strong protection, and as such, the denaturalization process must receive the close and careful attention it deserves from lawmakers, judges, and the American public.[15]

I. SPEAKING THE LANGUAGE, PASSING THE TEST, AND TAKING THE OATH: A PRIMER ON NATURALIZATION LAW

In 2017 alone, USCIS received nearly 750,000 naturalization applications from foreign nationals petitioning to become U.S. citizens.[16] To best provide a comprehensive understanding of how USCIS reviews and adjudicates these requests, the following section presents a brief explanation of the legal requirements for naturalization and the logistics of the application process.

A. General Requirements for Naturalization

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[13] *See infra* Part IV.

[14] Emily Kendall, *Amending the Constitution to Save a Sinking Ship? The Issues Surrounding the Proposed Amendment of the Citizenship Clause and "Anchor Babies,"* 22 BERKELEY LA RAZA L.J. 349, 350–51 (2012).

[15] *Id.*

[16] U.S. CITIZENSHIP AND IMMIGR. SERVS., *Number of Form N-400 Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location – January 1 – March 31, 2017*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2017_qtr2.pdf. *See also* U.S. CITIZENSHIP AND IMMIGR. SERVS., *Number of Form N-400 Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location – April 1 – June 30, 2017*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2017_qtr3.pdf; U.S. CITIZENSHIP AND IMMIGR. SERVS., *Number of Form N-400 Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location –July 1 – September 30, 2017*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Naturalization%20Data/N400_performancedata_fy2017_qtr4.pdf.

A lawful permanent resident[17] who has been a permanent resident for five years may apply for naturalization.[18] If the resident received his or her green card through marriage to a U.S. citizen, this period is shortened to three years.[19] The applicant must be at least eighteen years old at the time of filing the naturalization application[20] and he or she must have lived in their state of residence for at least three months prior to filing the application.[21] Additionally, the applicant must have been physically present in the U.S. for at least thirty months out of the five-year residency period or eighteen months if the residency was based upon marriage to a U.S. citizen.[22] Finally, the applicant must demonstrate that he or she is able to speak, read, write, and understand English;[23] that he or she has a knowledge and an understanding of U.S. history and its government;[24] that he or she possesses good moral character;[25] and that he or she is attached to the principles of the U.S. Constitution.[26]

In theory, these requirements seem straightforward and easy to fulfill. However, as with many aspects of immigration law, the reality is that there is very rarely a "simple" naturalization case that comes across an attorney's desk. For example, many foreign nationals inadvertently break the continuity of residence requirement, which is the formal name that describes the requirement that a naturalization applicant must continuously reside in the U.S. for a period of five years after becoming a lawful permanent resident.[27] Absences from the U.S. for a period of six continuous months or longer are presumed to "break" the residency period, and in many cases[28] foreign nationals are not eligible to file for naturalization if they reside outside of the U.S. for longer periods of time.[29]

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[17] Lawful permanent resident is the legal term that describes a foreign national who possesses a green card.

[18] 8 U.S.C. § 1427 (2006).

[19] *Id.* § 1430.

[20] *Id.* § 1427.

[21] *Id.*

[22] *Id.* §§ 1427, 1430.

[23] *Id.* § 1423.

[24] *Id.*

[25] *Id.* § 1427.

[26] *Id.*

[27] *Id.* § 1427(a).

[28] *Id.* § 1427(b).

[29] *Id.*

Furthermore, the good moral character requirement can also be problematic for foreign nationals who have criminal records.[30] While particularly serious crimes and aggravated felonies such as murder, armed robbery, and rape will clearly discredit an applicant's claim of good moral character, the regulations give the USCIS officer who reviews the naturalization case a wide range of discretion in deciding whether more menial crimes, such as alcohol-related offenses, show that the applicant lacks good moral character.[31] Since there is currently no avenue to obtain a preliminary opinion on how a certain crime will impact the good moral character determination, every year thousands of foreign nationals receive the unwelcome surprise of a denial of their naturalization applications due to a past transgression.[32]

B. The Naturalization Process from Soup to Nuts: Application to Oath

The first step in the naturalization process is filing the Form N-400 application with USCIS.[33] Shortly after USCIS receives the application, the agency sends the applicant a biometrics notice instructing the applicant where and when to appear at a local agency office in order to provide their fingerprints.[34] These fingerprints are then run through the various U.S. state and federal criminal databases.[35] Several months (or even years) later, USCIS will schedule the applicant for a naturalization interview.[36]

At these interviews, which are conducted under oath, the USCIS officers question the applicants on their immigration background, good moral character, attachment to the U.S. Constitution, and willingness to take an Oath of Allegiance to the country.[37] During the interviews, the officers also administer the English language proficiency test and the civics test.[38] If necessary, applicants are given two opportunities to pass these

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[30] *See* Kevin Lapp, *Reforming the Good Moral Character Requirement for U.S. Citizenship*, 87 IND. L.J. 1571, 1573 (2012).

[31] *See id.* at 1606–12.

[32] Please note that the denials are not categorized by their reason for denial, which could also include the applicant's failure to meet the continuous or physical residency requirements, the applicant's inability to pass the English language proficiency test, or the discovery that the applicant is a U.S. citizen by birth and thus ineligible for naturalization.

[33] U.S. CITIZENSHIP AND IMMIGR. SERVS., *A Guide to Naturalization* 32, https://www.uscis.gov/sites/default/files/files/article/chapter5.pdf (last updated Nov. 2016).

[34] *Id.* at 35.

[35] *Id.*

[36] *Id.*

[37] *Id.* at 36.

[38] *Id.* at 37.

tests.[39] If an applicant fails either of the tests, he or she will be able to retake the test between sixty and ninety days later.[40] Additionally, elderly or mentally infirm applicants may apply for a waiver of the testing requirement.[41]

At the conclusion of the interview, the applicant receives a Form N-652 informing them of the officer's decision to grant, continue, or deny the naturalization.[42] If the case is continued, it is simply put on hold for a period of time to either allow the officer to more closely examine a certain aspect of the case, or to allow the applicant to retake one of the necessary tests.[43] If the case is denied, the applicant receives a written explanation detailing the reason for denial.[44] If the officer grants naturalization, the applicant's final step toward becoming a U.S. citizen is attending the oath ceremony.[45] Occasionally the oath ceremony may be administered the same day as the interview, but it is normally administered at a later date.[46]

At the oath ceremony, USCIS will request that the applicant surrender his or her permanent resident card ("green card") because once naturalization is complete the card effectively becomes null and void.[47] Each naturalization applicant must recite the Oath of Allegiance in order to become a U.S. citizen, which is recited at the ceremony in front of a USCIS officer.[48] If the applicant holds any hereditary titles from a different country, the applicant will relinquish that title during the ceremony.[49] Once the recitation is complete, the officer will provide the now U.S. citizen with their Certificate of Naturalization.[50] The citizen can use the Certificate of Naturalization to update his or her citizenship status with the Social Security Administration and to apply for a U.S. passport.[51]

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[39] *See* 8 C.F.R. §§ 312.5(a), 335.3(b) (2018).

[40] *Id.*

[41] *Id.*

[42] U.S. CITIZENSHIP AND IMMIGR. SERVS., *supra* note 33, at 37.

[43] *Id.*

[44] *Id.*

[45] *Id.* at 38.

[46] *Id.*

[47] *Id.*

[48] *Id.* at 38–39. Please note that a waiver or modification of the oath requirement may be made due to disability or religious training and/or beliefs.

[49] *Id.* at 39.

[50] *Id.*

[51] *Id.*

II. CLEAR AS MUD – WADING THROUGH SOME OF THE MUDDIEST WATERS IN IMMIGRATION LAW

The aforementioned naturalization requirements may seem clear and easy to satisfy. However, as with any applicantion for an immigration-related benefit, the Code of Federal Regulations and the Immigration and Nationality Act contain so many "what-ifs" and "but-thens" that even the most seasoned immigration attorneys can feel their heads turn on a particular case. As discussed in the following section, the pool of naturalization laws contains some of the muddiest waters on this side of the Potomac.

A. The Fourteenth Amendment Codified at 8 U.S. Code § 1401(b)

The Fourteenth Amendment to the U.S. Constitution provides, "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."[52] The casual reader of that passage may think that it is straightforward. However, the phrase "and subject to the jurisdiction thereof" has proven to be quite problematic, especially in the context of children who are born in the United States while their mothers are present in the country without immigration authorization.[53]

Leaving that debate aside, this same phrase is germane to the instant discussion because it has been interpreted to mean that children who are born in the United States to parents who are present in the country *as foreign diplomats* are *not* considered natural-born citizens, and therefore must complete the naturalization process in order to attain U.S. citizenship.[54] Due to issues involving diplomatic immunity, these children and their foreign diplomat parents are considered *not* subject to the jurisdiction of the United States, which is why the children do not meet the Fourteenth Amendment's requirements.[55] Interestingly, these children of foreign diplomats *are* considered to be lawful permanent residents (green card holders) at birth.[56]

B. Laws Affecting the Citizenship Status of Native Americans

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[52] U.S. CONST. amend. XIV, § 1 (emphasis added).

[53] *See, e.g.*, Kendall, *supra* note 14.

[54] 8 C.F.R. § 101.3(a)(1) (2018).

[55] United States v. Wong Kim Ark, 169 U.S. 649, 678–79 (1898).

[56] 8 C.F.R. § 101.3(a)(1) (2018).

The Indian Citizenship Act of 1924 granted full U.S. citizenship to the indigenous peoples of the United States (now more commonly referred to as Native Americans).[57] A separate act was necessary to achieve what the Fourteenth Amendment should have already conferred due to the Supreme Court's decision in *Elk v. Wilkins*.[58] In this case, the Court concluded that even though the Native American plaintiff was born in the U.S., at the time of his birth he owed allegiance to his tribe rather than to the country, and therefore he was not "subject to the jurisdiction" of the U.S. at birth.[59]

The laws governing the immigration-related rights of Native Americans have become friendlier in the twenty-first century, as evidenced by the statute that accords lawful permanent residency to Native Americans who are born in Canada.[60] Specifically, a Native American born in Canada, upon proof that he or she possesses at least 50% Native American blood, cannot be denied admission to the U.S., and is entitled to evidence of lawful permanent resident status.[61]

C. The MAVNI Program: Fast-Tracking Naturalization Eligibility in Exchange for Serving in the U.S. Armed Forces

Military Accessions Vital to the National Interest, more commonly referred to as "MAVNI", is a program that allows foreign nationals who are legally present in the U.S. to join the U.S. Armed Forces in exchange for immediate eligibility for U.S. citizenship (recall that the vast majority of citizenship applicants must first meet the eligibility requirement of spending three or five years in the U.S. in lawful permanent resident status before filing their citizenship applications).[62] The program is available to foreign nationals who possess either skills in certain healthcare professions, or critical language skills such as fluency in Farsi, Arabic, Russian, Chinese, or Punjabi.[63]

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[57] Indian Citizenship Act, ch. 233, 43 Stat. 253 (1924) (codified as amended at 8 U.S.C. § 1401(b) (2012)).

[58] Elk v. Wilkins, 112 U.S. 94 (1884).

[59] *Id.* at 109.

[60] 8 C.F.R. § 289.1 (2018).

[61] *Id.* § 289.2 (2018).

[62] U.S. DEP'T OF DEF., *Military Accessions Vital to National Interest (MAVNI) Recruitment Pilot Program*, https://dod.defense.gov/news/MAVNI-Fact-Sheet.pdf. For residency requirements as lawful permanent resident prior to applying for citizenship, *see* 8 U.S.C. § 1427 (2012).

[63] U.S. DEP'T OF DEF., *supra* note 62.

A MAVNI enlistee is immediately eligible to apply for naturalization under the wartime enlistment of 8 U.S.C. § 1440, INA 329 and Executive Order 13269 of July 3, 2002 without completing any minimum period of active-duty military service.[64] As soon as the enlistee reports for basic training, they may submit their naturalization application to USCIS.[65] It is not uncommon for USCIS to approve the application before the enlistee finishes basic training.[66] However, this immediate eligibility does not apply to any of the enlistee's dependents, who may also be residing in the United States.[67] In order to remain in the country with proper immigration authorization, these dependents must secure their own pathways to permanent residency and citizenship (typically through sponsorship from the enlistee).[68]

D. Surprise! The Fourteenth Amendment Does Not Apply to Individuals Born on U.S. Military Bases

Perhaps the most surprising aspect of naturalization law is that, contrary to popular belief, U.S. military bases are *not* considered U.S. soil for the purpose of birthright citizenship guaranteed by the Fourteenth Amendment.[69] The Foreign Affairs Manual states, "[a] child born on the premises of such a facility is not subject to the jurisdiction of the U.S. and does not acquire U.S. citizenship by reason of birth."[70]

This interpretation of the Fourteenth Amendment is thoroughly explained in *Thomas v. Lynch*.[71] In this case, the plaintiff was born in 1986 on a U.S. military base in Germany while the plaintiff's naturalized U.S. citizen father was a member of the U.S. armed forces.[72] The plaintiff himself was admitted to the U.S. as a lawful permanent resident in 1989.[73]

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[64] U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, *F and M Nonimmigrants and Mavni: A Guide For Designated School Officials* (May 23, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/mavniFactsheetDSO1.pdf.

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] 7 FAM § 1113(c)(1).

[70] *Id.*

[71] Thomas v. Lynch, 796 F.3d 535, 540 (5th Cir. 2015) (quoting Downes v. Bidwell, 182 U.S. 244 (1901)).

[72] *Id.* at 536–37.

[73] *Id.* at 537.

In 2013, the Department of Homeland Security initiated deportation proceedings against the plaintiff due to his status as a lawful permanent resident with three criminal convictions, including convictions for an aggravated felony and a crime of domestic violence.[74] The plaintiff received a deportation order and appealed the decision claiming that he was a U.S. citizen by virtue of his birth on a U.S. military base, and therefore he could not be deported.[75] The Fifth Circuit Court disagreed and reasoned:

> In fact, the Citizenship Clause of the Fourteenth Amendment…'has an express territorial limitation which prevents its extension to every place over which the government exercises its sovereignty.'…Therefore, we held that "'[i]t is . . . incorrect to extend citizenship to persons living in United States territories simply because the territories are subject to the jurisdiction or within the dominion of the United States, because those persons are not born "in the United States" within the meaning of the Fourteenth Amendment.'[76]

Thus, current jurisprudence provides that due to the territorial limitation found in the Fourteenth Amendment, the Amendment itself does not confer birthright citizenship upon those born on U.S. military bases.[77]

E. Citizenship and Reproductive Technology

In one regard, citizenship and naturalization law in the United States is a great example of how lawmakers keep up with the times. As breakthroughs in reproductive technology continue to come at a rapid pace, Congress has performed quite admirably by updating the applicable citizenship regulations and laws to account for such advancements.[78] In December 2015, updates were made to the Foreign Affairs Manual (FAM) to include a new and very detailed section explaining the acquisition of U.S. citizenship at birth for children born through a variety of assisted reproductive technologies.[79]

The FAM outlines three general categories affected by reproductive technology advancements: children born abroad to a U.S. citizen gestational mother who is also the legal mother at the time she gives birth (also categorized as "birth mother but not genetic mother"); children born

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[74] *Id.*

[75] *Id.*

[76] Thomas v. Lynch, 796 F.3d 540 (5th Cir. 2015) (quoting Nolos v. Holder, 611 F.3d 279, 283 (5th Cir. 2010)).

[77] *Id.*

[78] *See, e.g.*, *id.*; Nolos v. Holder, 611 F.3d 279 (5th Cir. 2010) (holding that birthright citizenship is not conferred upon those born on U.S. military bases); Valmonte v. INS, 136 F.3d. 914 (2d Cir. 1998).

[79] 7 FAM 1110 app. D (Dec. 12, 2015).

abroad to a surrogate, who is the genetic issue of a U.S. citizen mother and/or U.S. citizen father; and children born abroad through the anonymous donation of sperm and/or egg donors.[80] Each of these categories has multiple variants and possible combinations of parentage, each of which has their own implication on acquisition of U.S. citizenship at birth.[81]

III. THE MEN [AND WOMEN] WITHOUT COUNTRIES: A REVIEW OF DENATURALIZATION LAW AND CASE HISTORY IN THE UNITED STATES

As previously stated, denaturalization is the formal legal process by which the U.S. government strips a naturalized U.S. citizen of his or her citizenship.[82] Many natural-born Americans are likely unaware that their government previously stripped citizenship from American women who married foreign-born men in the early twentieth century.[83] While that particular law has since been repealed,[84] the denaturalization landscape suffers from the same affliction presently affecting nearly all immigration laws: Congress and federal agencies continue to pass more laws and regulations further complicating an already complex process.[85]

A. Denaturalization Law in the United States

The U.S. government only pursues denaturalization proceedings in federal court.[86]

Denaturalization may be pursued on either civil or criminal grounds.[87] To denaturalize a citizen on civil grounds, the government must prove through clear, convincing, and unequivocal evidence that the person illegally procured his or her naturalization or that the naturalization was obtained through the concealment of a material fact or willful misrepresentation.[88] Additionally, a separate military-related ground for revoca-

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[80] *Id.*

[81] *Id.*

[82] 8 U.S.C. § 1451 (2006).

[83] PATRICK WEIL, THE SOVEREIGN CITIZEN: DENATURALIZATION AND THE ORIGINS OF THE AMERICAN REPUBLIC 55–59 (Univ. Pa. Press ed. 2013).

[84] *Id.* at 55–56.

[85] *Id.*

[86] 8 U.S.C. § 1451(a) (2018).

[87] *Id.*

[88] *Id.* § 1451.

tion is available where the individual attained citizenship based upon military service but was subsequently discharged under less than honorable conditions before completing five years of honorable service.[89]

Another ground for denaturalization is the subsequent discovery that the citizen held a membership or affiliation with a subversive, communist, or anarchist organization within five years of naturalization.[90] Proof of such membership or affiliation is deemed *prima facie* evidence that the citizen was not attached to the principles of the U.S. Constitution and was not well-disposed to the good order and happiness of the U.S. at the time of taking the oath of allegiance.[91]

The criminal ground for denaturalization requires the government to prove beyond a reasonable doubt that the citizen knowingly procured naturalization unlawfully.[92] A guilty finding on this charge also carries a possible prison sentence of up to twenty-five years depending on the circumstances and reason for the procurement.[93] Importantly, many of the standard defenses to both civil and criminal charges such as laches, waiver, statute of limitations, and equitable estoppel are *not* available in denaturalization cases.[94]

For individuals who are denaturalized because of concealment or material misrepresentation, the denaturalization concomitantly applies to any dependent spouse or child who derived citizenship from the main applicant.[95] Interestingly, the loss of citizenship returns the person to lawful permanent resident status and then the Department of Homeland Security must initiate separate deportation proceedings in order to remove the person from the country.[96]

B. Notable Denaturalization Cases

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[89] *Id.*

[90] *Id.* § 1451(c).

[91] *Id.*

[92] 18 U.S.C. § 1425(a) (2018).

[93] *Id.*

[94] *See, e.g.,* INS v. Pangilinan, 486 U.S. 875, 883–84 (1998); United States v. Rebelo, 358 F. Supp. 2d 400, 407–13 (D.N.J. 2005); United States v. Reve, 241 F. Supp. 2d 470, 478 (D.N.J. 2002).

[95] 8 U.S.C. § 1451(d) (2018).

[96] 8 C.F.R. § 340.1(g)(4) (2018) (removed and reversed).

Authoritarian leaderships have implemented aggressive denaturalization campaigns to illustrate their totalitarian power.[97] The Soviet Union stripped citizenship from more than 1.5 million people and the Nazi leadership denaturalized 40,000 citizens.[98] Perhaps because of the extensive use of denaturalization by such regimes, the concept is widely viewed as cruel, even bordering on barbaric. Notably, during the twentieth century, the U.S. government denaturalized more than 22,000 citizens.[99] However, many of these cases involved naturalized citizens who were later discovered to be members of the Nazi regime and participants in the persecution of Jews during the Holocaust.[100] The following represents only a small sample of denaturalization cases in the last century.

1. Emma Goldman – The First Citizen Denaturalized on Political Grounds

Ms. Goldman's denaturalization case is noteworthy because it arguably serves as the progenitor for many subsequent cases based upon political opinion (i.e. an adherence to anarchism or communism). Born in Lithuania, Ms. Goldman immigrated to the United States in 1885.[101] She met and married a Russian-born naturalized American citizen, from whom she derived her own citizenship, and whom she also divorced shortly thereafter.[102] Ms. Goldman became known as the "most prominent anarchist of the era," and was involved in several anarchist plots, including an attempted assassination on a well-known capitalist[103] and the Homestead Strike.[104]

Due to her involvement in these and other activities, the U.S. government wanted Ms. Goldman deported as quickly as possible.[105] At her deportation hearing she refused to answer the immigration officials' questions regarding her anarchist beliefs and argued that her status as a U.S. citizen exempted her from the provisions of the Anarchist Exclusion Act.[106] Utilizing a different tactic, the Department of Labor decided that

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[97] WEIL, *supra* note 83, at 3.

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.* at 57.

[102] *Id.*

[103] *Id.*

[104] *Id.* at 58.

[105] *Id.* at 57.

[106] *Will Fight Deportation: Emma Goldman And Berkman Hailed as Martyrs in Chicago*, N.Y. TIMES, Dec. 1, 1919.

the revocation of Ms. Goldman's husband's citizenship in 1908 automatically revoked hers due to her derivative status.[107] After initially pledging to fight the ruling, Ms. Goldman ultimately did not pursue an appeal and was deported to Finland in 1920.[108]

2. Fyodor Federenko – The First Denaturalized Nazi

Mr. Federenko was born in the Ukraine in 1907 and was drafted into the Red Army in 1941.[109] He was subsequently captured by the German army and sent to the Treblinka concentration camp where he served as a prison guard from 1942 to 1943.[110] After the war, when the U.S. Congress passed the Displaced Persons Act in 1948,[111] Mr. Federenko began seeking permanent residence in the U.S. as a displaced person.[112] In 1949, he misrepresented his wartime activities on his visa application by stating that he had been a farmer in Poland before the war and was deported to Germany to perform forced labor in a factory.[113] Any mention of his activities in the Red Army or his position at Treblinka was completely omitted from his visa application.[114]

Mr. Federenko was admitted for permanent residence in the U.S. and lived in Connecticut for the next thirty years.[115] He was naturalized on April 23, 1970.[116] Approximately seven years later, the U.S. government filed a District Court action to denaturalize Mr. Federenko upon the discovery of his activities as a prison guard at Treblinka.[117] The court conceded that Mr. Federenko had lied about his wartime activities, but ruled that the Government had not met its burden of proof to establish that he had committed war crimes.[118] The case was appealed to the Supreme Court which ruled in favor of the Government, reasoning, because Mr.

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[107] WEIL, *supra* note 83, at 57.

[108] *Soviet Ark Lands its Reds in Finland,* N.Y. TIMES, Jan. 18, 1920.

[109] Fedorenko v. United States, 449 U.S. 490, 494 (1981).

[110] *Id.*

[111] *Id.* at 495; Displaced Persons Act of 1948, ch. 647, 62 Stat. 1009 (1948).

[112] *Fedorenko*, 449 U.S. at 495–97.

[113] *Id.* at 496.

[114] *Id.* at 496–97.

[115] *Id.*

[116] *Id.* at 497.

[117] *Id.* at 497–98.

[118] *Id.* at 500–01.

Federenko lied on his displaced persons visa application, he illegally procured his U.S. residency and resultant U.S. citizenship.[119] After the verdict, Mr. Federenko was denaturalized and deported to the Soviet Union, where he was executed by the Soviet government.[120]

3. Jakiw Palij – Denaturalized but Not Deported

Mr. Jakiw Palij served as a prison guard at the Trawniki forced labor camp during World War II.[121] In 1949, he relocated to the U.S. and was admitted into the country by lying on his immigration papers, stating that he worked on his father's farm during the war.[122] He became a citizen in 1966 and led a largely uneventful life until 2001 when the investigation into his wartime background began.[123] At that time, investigators appeared at his home and interviewed him concerning his true whereabouts and activities during the war.[124] Afterward, he signed a statement confirming his service at the camp and the U.S. government denaturalized Mr. Palij two years later.[125]

However, as of the publication of this article, Mr. Palij remains a free man living in the United States as the government's yearly attempts to deport him continue to fail since other countries refuse to accept him.[126] Specifically, Germany, Poland, and Ukraine will not admit Mr. Palij into their countries and will not issue him travel documents.[127] Without another country's agreement and cooperation to accept him, Mr. Palij remains in the United States for the indefinite future.[128] It is worthy to note

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[119] *Id.* at 515.

[120] Felicity Barringer, *Soviet Reports It Executed Nazi Guard U.S. Extradited*, N.Y. TIMES, July 28, 1987, at A3.

[121] Debbie Cenziper & Scott Nover, *Former Guard at Nazi Camp is the Last Remaining War Collaborator Ordered Out of the United States. Authorities Want Him Gone Before He Dies*, WASH. POST (Dec. 16, 2017), https://www.washingtonpost.com/national/nazi-guard-94-is-the-last-remaining-war-collaborator-ordered-out-of-the-united-states-authorities-want-him-gone-before-he-dies/2017/12/16/296321ba-de8e-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.4feb5319f0ca.

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id*.

[128] The U.S. is unable to imprison Nazi war criminals because their crimes were not committed in the United States and were not committed against American citizens. *See id.*; *see also* Mark Moore, *Trump Administration Vows to Deport Nazi Living in Queens*, N.Y. POST (Nov. 20,

that the Trump administration has publicly committed itself to successfully deporting Mr. Palij, but to date he continues to reside in Queens, New York.[129]

4. Baljinder Singh AKA Davinder Singh – First Citizen Denaturalized as Part of Operation Janus

Baljinder Singh (a/k/a Davinder Singh) is the first citizen who has been denaturalized through the efforts of Operation Janus.[130] In 1991, Mr. Singh arrived in the U.S. from Hong Kong with no passport or other government-issued travel or identification document in his possession.[131] He was placed in deportation proceedings and petitioned for asylum under the false name of Davinder Singh.[132] The U.S. Government released Mr. Singh on bond, but when he failed to appear to his next court hearing in January 1992, the judge entered an order for his deportation.[133]

The following month, in February 1992, Mr. Singh filed another asylum application under the name Baljinder Singh.[134] Before a final decision was reached on that application, he married a U.S. citizen and became a lawful permanent resident by filing an adjustment of status application based on this marriage.[135] On this application, Mr. Singh did not disclose his alias of Davinder Singh or his immigration history.[136] In 2006, he was naturalized under the name Baljinder Singh and has since resided in New Jersey.[137]

Mr. Singh's case was identified through Operation Janus as one of the instances where a foreign national received an order of deportation but then used a different identity to obtain a green card and/or citizenship.[138] On January 5, 2018, Mr. Singh became the first citizen to be denaturalized

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2017, 2:12 PM), https://nypost.com/2017/11/20/trump-administration-vows-to-deport-nazi-living-in-queens/.

[129] Moore, *supra* note 128.

[130] Press Release, U.S. Dep't of Justice: Office of Pub. Affairs, *Justice Department Secures First Denaturalization as a Result of Operation Janus* (Jan. 9, 2018), https://www.justice.gov/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus.

[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

as a result of Operation Janus when the U.S. District Court for the District of New Jersey issued an order revoking his naturalization.[139] Mr. Singh is now once again a lawful permanent resident and is presently awaiting the initiation of formal deportation proceedings.[140]

IV. CLEANING UP THE MESS: HOW INCLUDING NATURALIZATION LAW IN COMPRESSIVE IMMIGRATION REFORM WILL INCREASE EFFICIENCY

Naturalization is almost never mentioned in the context of comprehensive immigration reform, as the national conversation is dominated by more controversial issues of chain migration, merit-based systems, and concerns over what to do with the current unauthorized population.[141] However, as the foregoing discussion highlighted, the current state of both naturalization and denaturalization regulations and procedures are just as complex (if not more so) than the other immigration-related topics that receive significantly more attention. Accordingly, naturalization law should be included in every discussion and proposed legislation that addresses comprehensive immigration reform, as omitting this critical aspect to our nation's immigration system would result in continued inefficiency and unnecessary costs to the U.S. government, and ultimately to taxpayers.

First, legislation should reexamine, and possibly discontinue, the current practice that automatically reverts a denaturalized U.S. citizen back to a lawful permanent resident. This process requires the U.S. government to complete two separate and lengthy legal processes— the denaturalization process in federal court and then the deportation proceeding in immigration court.[142] Undoubtedly, this duplication of legal processes has contributed to a tremendous backlog in our immigration court system as it requires double the expenditure of time, money, and court resources which are already in drastically short supply.[143]

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[139] *Id.*

[140] *Id.*

[141] *See* Emily C. Callan, *A Funny Thing Happened on My Way to the Border . . . How the Recent Immigration Executive Orders and Subsequent Lawsuits Demonstrate the Immediate Need for Comprehensive Immigration Reform*, 47 U. BALT. L. REV. 1 (2017).

[142] 12 USCIS-PM L(1) (2018).

[143] *See* Paul Bedard, *Top Judge: Backlog of Illegal Immigration Court Cases Over 1 Million, Delayed Deportations 684,000*, WASH. EXAMINER (May 1, 2018, 11:29 AM), https://www.washingtonexaminer.com/washington-secrets/top-judge-backlog-of-illegal-immigration-court-cases-over-1-million-delayed-deportations-684-000.

Instead, Congress should consider adopting a more streamlined process that would combine the denaturalization case with the subsequent deportation proceedings. This could easily and swiftly be accomplished by amending the existing law to allow the government to plead both outcomes, i.e., request that the judge both denaturalize the citizen and also enter the order of deportation. By proverbially killing two birds with one stone, Congress will help clear out the overcrowded immigration court docket while simultaneously saving taxpayer money and government resources.

Additionally, Congress may also consider streamlining the naturalization process. Since applicants must complete so many steps (filing the application, providing fingerprints, sitting for the exams, undergoing the interview, and attending a taking the oath ceremony), it is of little wonder that the backlog in adjudicating naturalization applications has increased 100.05% in just the last two years.[144] In reference to the President's campaign promise of building a wall along the country's southern border, this precipitous and extreme backlog has become known as the "Second Wall" that is blocking permanent residents from attaining citizenship.[145] By eliminating extra steps in the process, such as by allowing hopeful citizens to sit for the exam and undergo an interview the same day they submit their applications, USCIS would be able to cut out several unnecessary steps and more quickly adjudicate the hundreds of thousands of pending applications.

CONCLUSION

It seems that the Trump administration has every plan to continue with Operation Janus for the foreseeable future.[146] Just recently on June 13, 2018, the White House announced that the administration is creating an office within USCIS that will assist the Justice Department in its efforts to identify and investigate naturalized citizens who have used multiple identities during the course of their immigration history.[147] The new office

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[144] *See* Steve Choi, *NPNA: Naturalization Backlog Up 100.05% in Two Years, 2 Million Immigrants Apply to Naturalize, 734,000 Stuck in the Pipeline*, CITIZENSHIP NEWS (Feb. 7, 2018), https://citizenshipnews.us/n/529/NPNA-Naturalization-Backlog-Up-10005-In%C2%A0in-Two-Years.

[145] *Id.*

[146] *See* Tal Kopan, *Trump Admin Creates New Office to Investigate Citizenship Fraud*, CNN (June 13, 2018, 4:00 PM), https://www.cnn.com/2018/06/13/politics/citizenship-fraud-office/index.html.

[147] *Id.*

will open in California and is the physical manifestation of Operation Janus's goal—to detect and denaturalize those who have defrauded the immigration system.[148]

This foregoing explanation of Operation Janus, the current state of naturalization and denaturalization proceedings in the U.S., and the brief survey of notable cases have clearly illustrated the overwhelming need for naturalization concerns to be included within any comprehensive immigration reform. It is ardently hoped that Congress will soon take the necessary steps to streamline and simplify the naturalization and denaturalization processes. By doing so, the U.S. government will save the taxpayers from expending more money, and prevent naturalized citizens from suffering more headaches.

[148] *Id.*