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The Political Case for Confining Birthright Citizenship to Its Original Meaning

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KEY TAKEAWAYS

Universal birthright citizenship is poor public policy that is not constitutionally mandated.

Despite repeated promises to end the policy of granting universal birthright citizenship, President Trump has yet to take action.

Rendering citizenship policy consistent with the original understanding of the Constitution would significantly benefit America's economy and national security.

A previous *Legal Memorandum* explored the legal case for a much more limited application of birthright citizenship than is practiced under current U.S. policy[1] and ultimately concluded that the Fourteenth Amendment's Citizenship Clause was intended to afford—and was originally understood as affording—birthright citizenship *only* to those U.S.-born children whose parents were, like the freed slaves, subject to the complete jurisdiction of the United States. In a modern immigration context, this would mean that the Constitution only mandates birthright citizenship for the U.S.-born children of citizens, nationals, and lawful permanent residents (also known as immigrant aliens or green card holders).

This *Legal Memorandum* will analyze the political justifications for reconsidering the nation's long-standing policy of granting birthright citizenship to almost all children born on U.S. soil—regardless of

the immigration status of the parents. These political justifications can be boiled down to three main concerns: the electorate, the economy, and national security. It will also explore the legislative history of relevant statutes regarding immigration and nationality in order to ascertain whether Congress adopted statutory definitions of citizenship that are much broader than the constitutional definition.

Finally, this memorandum will sift through the legislative history of the changes in the statutory definition of "citizen" to determine whether there is room for the executive branch to act according to a more restrictive definition. It ultimately concludes that, while the statutory definition of "citizen" is not as clear as it was prior to 1940, the ambiguity enables the President to enforce the law according to a good faith interpretation of what Congress intended.

I. Political Justifications for Reconsidering Current U.S. Policy

There are three main policy-based justifications for a meaningful re-examination of the federal government's current practice of granting universal birthright citizenship: political expediency, economic reality, and national security. From the viewpoint of political expediency, President Trump repeatedly promised throughout his election campaign and during his presidency to "end birthright citizenship" as part of a broader focus on immigration policy reform. These promises appear to have spurred voter turnout in his favor, and Americans in general tend to have a favorable view of efforts to reduce illegal immigration.

Further, granting citizenship to the U.S.-born children of illegal aliens compounds already significant illegal immigration–related economic burdens on the American taxpayer. Economic considerations also arise in the context of the so-called birth tourism industry, which encourages foreign nationals to give birth to U.S. citizen children through the promise of gaining the financial advantages of citizenship while avoiding corresponding duties. Finally, the birth tourism industry in particular raises serious national security concerns. The United States should be incredibly wary of the prospect of hundreds of thousands—even millions—of "citizens" raised in hostile nations, all of whom will soon be able to vote in U.S. elections, hold U.S. government jobs, and even join the U.S. military.

A. President Trump Repeatedly Pledged to End Universal Birthright Citizenship.

President Trump's position that the Fourteenth Amendment does not mandate universal birthright citizenship predates his 2016 presidential campaign.[2] He affirmed both during and after the Republican primaries that, as President, he would work to end the current U.S. policy of granting citizenship to the U.S.-born children of illegal aliens. This position and pledge of action comprised a key part of then-candidate Trump's plan for immigration reform, which likely played a substantial role in his ultimate victory.[3]

The President's campaign promises were unambiguous: Universal birthright citizenship is poor public policy that is not constitutionally mandated—and ending it would be a significant part of his overall plan for immigration reform. For example, during the early days of his Republican primary campaign, then-candidate Trump released a 1,900-word document outlining his three core principles for immigration reform, which included ending universal birthright citizenship as a component of "defend[ing] the laws and constitution."[4]

Then-candidate Trump doubled down on this plan after journalists and other presidential candidate hopefuls responded negatively to it or insisted that such a policy would require a constitutional amendment, subsequently reaffirming his position in interviews with CNN's Chris Cuomo and Fox News' Bill O'Reilly.[5] He continued throughout the primaries—including during campaign rallies,[6] media interviews,[7] and even during an official televised debate with other GOP candidates[8]—to denounce birthright citizenship for the children of illegal immigrants and promise to seek an end to it as president. Despite these promises, during his two years in office, President Trump has remained largely silent—and completely inactive—on the issue of birthright citizenship, focusing instead on promises to end President Obama's Deferred Action for Childhood Arrivals program and build additional miles of wall along the southern border.

B. Universal Birthright Citizenship Imposes Significant State and Federal Economic Burdens.

The current U.S. policy of granting unquestioned universal birthright citizenship to virtually all children born within its geographical boundaries is economically detrimental in three major ways:

1. The policy incentivizes and rewards illegal immigration, which contributes substantially to the overall economic burden imposed on U.S. taxpayers.

2. The policy has single-handedly created the birth tourism industry, a burgeoning market ripe with opportunities for foreign nationals to exploit public benefits in the United States.

3. Because the U.S.-born children of both illegal and nonimmigrant aliens can later sponsor the immigration of their family members to the United States in a seemingly endless process of "chain migration," the majority of the nation's annual immigration flow is family-based and operates entirely independent of economic considerations or labor needs.

Financial Incentives and Rewards of Illegal Immigration. Every year, an estimated 250,000 to 400,000 children are born in the United States with at least one parent who is illegally present in the country.[9] While the precise percentage of children born with two illegal alien parents is unknown, similar statistical indices indicate that somewhere between one-half and two-thirds of these children are likely born without *either* parent having legal—much less citizen or immigrant alien—status.[10]

Under current U.S. policy, the federal government recognizes each of these children as U.S. citizens—despite the illegal status of their parents and the fact that the vast majority of them also acquire citizenship in their parents' native country.[11] The economic burden imposed on U.S. taxpayers as a direct result of this universal birthright citizenship policy often begins from the very first moments of life for these U.S.-born children of illegal aliens, with state and the federal governments picking up the tab for the cost of the physical births. Federal law requires almost all hospital emergency departments to treat all patients in active labor regardless of their legal status or ability to pay for services.[12] Medicaid's "pregnancy care" provision covers the public cost of delivery or post-partum care for uninsured or low-income individuals in these instances, meaning that ultimately U.S. taxpayers foot the bill.[13]

According to one estimate, births to illegal alien mothers covered by Medicaid likely cost the federal government $1.24 billion in 2017.[14] This estimate assumes that the percentage of illegal alien mothers without insurance is roughly the same as the percentage of citizen mothers without insurance, but illegal alien-headed households are significantly more likely

than are citizen-headed households to fall below the poverty line and take advantage of public welfare services.[15]

The costs of the physical births of the U.S.-born children of illegal aliens are just the beginning of a long set of economic burdens imposed on both the state and federal governments by the nation's current universal birthright citizenship policy. Although illegal aliens themselves cannot access major welfare benefits, they can—and often do—obtain these benefits on behalf of their citizen children, enabling the benefits to indirectly support the entire family.[16] These payments effectively act as welfare for the entire illegal alien–headed household by subsidizing the costs of bearing and raising children.[17]

Nationwide, illegal alien–headed households are twice as likely as households headed by native-born citizens to receive at least one type of major federal welfare benefit.[18] At least one analysis of federal welfare use estimated that illegal alien–headed households receive a cumulative annual benefit of over $10 billion from major programs like Medicaid and the Supplemental Nutrition Assistance Program (SNAP), with another $3.5 billion lost to Medicaid fraud associated with illegal immigration.[19] These estimates are consistent with decades-old analyses by the United States General Accounting Office (since renamed as the U.S. Government Accountability Office), which estimated that $1.1 billion in federal year 1995 were spent on various food and nutrition benefits for the U.S.-born children of illegal immigrants, with a then-estimated illegal alien population of 5 million (compared to today's estimate of well over 10 million).[20]

This is just the cost born by the federal government. State taxpayers pick up the tab for another estimated $5.5 billion in major welfare services to illegal alien–headed households *and* $2 billion lost to associated Medicaid fraud.[21] The states do not bear an equal burden in this regard, but instead a small number of states where the greatest percentages of illegal aliens reside are disproportionately affected. Indeed, the 10 states estimated to have the largest populations of illegal aliens account for nearly *three-quarters* of the total national population of illegal aliens.[22] Compounding this problem, illegal alien–headed households in these 10 states also tend to receive welfare benefits at disproportionately higher rates than in states with smaller illegal alien populations.[23]

Unfortunately, it is often the case that, even in the 10 states most heavily affected by illegal immigration, the economic burdens fall disproportionately on a small number of individual counties. Take Los Angeles County, for example. In 2014, County Supervisor Michael D. Antonovich issued a press release regarding the data collected by the Department of Public Social

Services, which indicated that during the 2013 fiscal year the county issued $639 million in welfare and food stamp benefits to illegal aliens on behalf of their citizen children.[24] This included $112 million under the state's CalWORKS welfare program and $200 million in state-issued CalFRESH food stamps.[25] The County spent roughly *20 percent* of its public welfare funds on illegal immigrants, presenting a constant drain on its financial resources.[26] Further, these data did not include the hundreds of millions of dollars the county spent on public education and health care for illegal alien–headed households.

It is undeniable that many illegal aliens came to the United States in order to better their lives and the lives of their children and would desire to ultimately become American citizens. It is evident, however, that illegal immigration places a tremendous economic burden on U.S. taxpayers, and that the benefits of having U.S. citizen children incentivize and encourage this economically burdensome phenomenon.

Birth Tourism. The United States' current birthright citizenship policy has directly led to the creation of a burgeoning birth tourism industry that encourages—and even directly assists—foreign nationals in taking financial advantage of U.S. taxpayers. Birth tourism refers to the phenomenon of pregnant foreign women coming to the United States for the sole purpose of giving birth on U.S. soil, thereby making their children U.S. citizens under current U.S. policy.[27] These birth tourists often use one of the hundreds of companies that cater to upper-middle-class women from China, Nigeria, Russia, and Turkey, and that tout the substantial economic and social benefits that come from having a U.S. passport holder in the family.[28] While the exact number of birth tourists who secure U.S. citizenship for their children every year is unknown, estimates generally range from 30,000 to nearly 80,000.[29] This number appears to be growing at a significant rate, and some reports indicate that in 2016, as many as 60,000 birth tourists came to the U.S. from China alone.[30]

Although many of these maternity hotels are legitimate businesses that operate within the confines of U.S. law, the industry is rife with opportunities for fraud. One 2015 federal investigation into a birth tourism company catering to Chinese women uncovered a scheme in which the company funneled hundreds of women to public hospitals and coached them in how to obtain reduced rates for indigent mothers.[31] The women (who often had substantial financial assets on hand) typically paid only a fraction of their bills, which averaged around $25,000 per woman.[32] This led to large financial losses for the hospitals, including one hospital in particular that provided services for over 400 births linked to the scheme over only a two-year period.[33]

As with other financial costs associated with illegal immigration, birth tourism fraud disproportionately impacts a small number of states such as Florida, which since 2000 has experienced a *200 percent increase* in births by foreign nationals who live outside the United States.[34] The Jackson Health System of Miami—where almost one in 10 patients who gave birth in 2017 were birth tourists—recently reported that only 72 percent of international maternity patients pay for their services with insurance or through a pre-arranged package.[35] It is possible that the other 28 percent of international maternity patients pay the entire cost up-front or in later installments, but it is very likely that at least part of this remaining percentage is attributable to fraud schemes.

One of the major motivating forces behind birth tourism is the draw of foreign parents to significantly reduced costs of an American education for their child.[36] Even though the vast majority of birth tourists return to their native country with their U.S.-born children, these children are considered U.S. citizens with equal access to public schools, in-state college tuition, low-interest student loans, and tax-exempt student loan payments. While it is unknown just how many U.S.-born, foreign-raised children take advantage of free public schools and reduced-rate college tuition every year, the number is not "zero" and appears destined to rise in tandem with the increasing numbers of foreign women giving birth to citizen children for precisely these purposes.[37]

The financial consequences of this are not insubstantial, either. In Florida and California—two states at the center of the birth tourism industry—taxpayers shell out roughly $9,000 and $10,500, respectively, per public school student, per year.[38] If even 1 percent of the estimated 60,000 U.S.-born children of birth tourists took advantage of a four-year high school education in the United States, taxpayers would be on the hook for approximately $24 million—without any recuperation in costs by parents or relatives paying taxes into the system.

Meanwhile, the difference in the cost of a college education for a student who qualifies as "in-state" as opposed to the cost for a strictly foreign-based student is staggering. A recent *Forbes* article, for example, points out that the difference in tuition at Arizona State University for the 2016–2017 academic year was over $18,000.[39] Again, if even 1 percent of U.S.-born children of birth tourists take advantage of these lower rates at public universities without having ever paid into the tax system—the whole justification for lower "in-state" tuition—the cost to U.S. taxpayers will be in the tens of millions of dollars. That cost also comes without the promise that the student will remain in the United States after receiving such dramatically reduced education costs.[40]

Chain Migration. Chain migration—the phenomenon of immigrants residing in the U.S. sponsoring the immigration of family members, who can then sponsor the immigration of other family members in an essentially perpetual "chain" of sponsorship—is the biggest source of legal immigration in the United States.[41]

This means that our national policy of who may and may not permanently enter the United States is based largely on the desires of a select group of naturalized citizens, without taking into account the needs or desires of the country writ large. Chain migration also contributes to the aging of the immigration stream, as 24 percent more "family migrants" today are over the age of 50, compared to family migrants in the early 1980s.[42] Research into the precise fiscal impacts of chain migration is scarce, but at least one recent report concluded: "[A]t a minimum it is fair to say that...new realities...demand a review of whether a growing inflow of older immigrants is either sustainable or helpful to our country."[43]

Universal birthright citizenship compounds this problem by creating hundreds of thousands of new citizens with significant ties to other countries, who can later sponsor hundreds of thousands of relatives for lawful permanent residence—including, in some circumstances, the illegal immigrant parents themselves.[44] Under this framework, those who successfully manage to break U.S. laws and cheat the immigration system stand to benefit substantially from their illegal actions.

C. Universal Birthright Citizenship Raises Serious National Security Concerns.

The United States must seriously consider how its current birthright citizenship policy risks exploitation by hostile nations. This is particularly true in light of the rapidly increasing number of foreign nationals giving birth on U.S. soil without any intention or legal ability to remain domiciled in the country or otherwise have their presumptively U.S.-citizen children retain meaningful ties with the American people.

There is little dispute that countries like China and Russia routinely attempt to undermine U.S. elections, influence public opinion, and engage in acts of political or economic espionage against the United States.[45] China, in particular, targets and uses Chinese-born naturalized U.S. citizens who gained access to sensitive—and sometimes highly classified—information.[46] This is even more concerning in light of evidence uncovered in recent indictments regarding birthright citizenship that indicates that birth tourism companies cater to mid-level Chinese government officials and

advertise "priority access to U.S. government jobs" as a major benefit of U.S. citizenship for their children.[47] Moreover, the growing number of Chinese-raised U.S. citizens who will soon enjoy unfettered access to the U.S. university system could present serious national security problems given recent Chinese attempts to use naturalized U.S. citizen college students of Chinese descent to conduct acts of espionage.[48]

As the United States has sought to increase restrictions on the 350,000 or so Chinese nationals admitted to U.S. universities every year, it is hardly surprising that China would seek to exploit the nation's birthright citizenship policies to accomplish the same espionage goals.[49] Certainly, this scheme is even riper for abuse when we treat as citizens individuals who have no meaningful connection to the United States and who are raised in China as Chinese nationals, allowing them to freely return to the United States at any point to vote, enlist in the military, or work for the United States government.

Bestowing citizenship on large numbers of individuals so strongly susceptible to divided loyalties—or even complete disloyalty—is dangerous. Even at current rates of birth tourism growth, within two decades there will likely be over *1 million* Chinese-raised U.S. citizens with the right to vote in U.S. elections, serve in the U.S. military, hold public office, and work for the government. Certainly, many of the birth tourist children who return to live in the United States may ultimately do so in good faith and for the same reasons millions of immigrants continue to flock to the world's beacon of liberty: to fully invest in and become part of a free, prosperous, and democratic society. But if Russia quite successfully created fictitious U.S. citizens and mimicked Americans on social media, how much damage could the Kremlin do with even a few hundred "bona fide" American citizens who spent their formative years being instilled with Russian patriotism and forming intense relationships with the Russian people?[50] Similarly, if China has seen success in recruiting and using naturalized U.S. citizens or Chinese nationals, how much more dangerous would its operations be with access to hundreds of thousands of individuals who, for all intents and purposes, view themselves as loyal Chinese citizens?

This is not to suggest that all dual nationals, naturalized citizens, or U.S. citizens who spent significant parts of their childhood living abroad are ipso facto of suspect or divided loyalty. It is certainly not to suggest that the United States repeat the egregious and unconstitutional errors of World War II and categorically view with suspicion U.S. citizens of a particular ethnic background or whose families immigrated to the United States from a particular country.[51] It is simply to point out that the nation's current

policy of universally granting birthright citizenship to individuals who lack any meaningful ties to the United States provides substantial opportunities for abuse by motivated enemies.[52]

Again, the problem is not just that these U.S. citizen children retain dual nationality or have parents who are citizens of a particular nation. The problem is that they are largely raised subject to the complete jurisdiction and control of another sovereign power and are completely integrated as part of the people of a foreign nation without any significant ties to the United States. It is very difficult to understand how these individuals, having failed to spend any amount of their lives becoming part of the American community, could view themselves as "American" in any meaningful way. After all, we would not expect a child raised in the United States as a United States citizen to view himself or herself as fundamentally anything but an American, and the same reasoning would appear applicable to any child raised in any other foreign country as a citizen of that country. Despite this reality, the United States government currently recognizes these individuals as citizens and imbues them with the full array of corresponding rights and privileges.

Whereas naturalized citizens are required to embed themselves in American society via permanent domicile in the United States and swear an oath of allegiance renouncing all "fidelity to any foreign...state or sovereignty," these children of birth tourists are permitted to spend years—sometimes decades—under an allegiance to foreign powers before ever again setting foot on U.S. soil.[53]

Moreover, the Supreme Court over the past 60 years has made it almost impossible in practice for a person to be stripped of his or her U.S. citizenship through even the most overt acts of allegiance to a foreign sovereign.[54] The individual in question must not only commit "an expatriating act," but must also be proved to have intended to relinquish U.S. citizenship by committing that act. Because the practical ability to strip citizenship from those who willingly subject themselves to the complete jurisdiction of foreign powers is now almost nonexistent, it is vital that U.S. birthright citizenship policy not encourage the creation of such situations in the first place.

A final consideration for national security concerns related to universal birthright citizenship is the growth of international terrorist organizations and the ways in which such organizations may similarly exploit the policy for purposes of long-term terrorism plans. Consider the case of Yaser Esam Hamdi, who was born in Baton Rouge, Louisiana, to Saudi Arabian nationals living temporarily in the United States as the result of a work visa issued to Hamdi's father.[55] The family returned to Saudi Arabia when Hamdi was a

toddler, and Hamdi did not return to the United States for the next 20 years. As the child of Saudi Arabian citizens, Hamdi was himself a Saudi Arabian citizen. He maintained no ties with the United States. As an adult, Hamdi traveled to Afghanistan, joined the Taliban, and took up arms against the Kurdish Northern Alliance—ultimately fighting against U.S. forces after the 2001 invasion.

In late 2001, Hamdi—armed with an AK-47—surrendered to Northern Alliance forces during a battle near Konduz.[56] He was transferred to a military prison and interrogated by a U.S. counter-terrorism team, which determined Hamdi was an enemy combatant. He was then transferred to the U.S. Naval base in Guantanamo Bay, Cuba. However, U.S. officials learned that Hamdi was born in Louisiana and raised the issue that this made him a U.S. citizen, so he was transferred to a military detention center in Norfolk, Virginia. Hamdi had no tie to the U.S. except the accident of his birth and, according to his attorney, "always thought of himself as a Saudi citizen."[57] Yet despite having taken up arms with Taliban forces against the United States and its allies, Hamdi was treated in court as a United States citizen, entitled to all of the due-process protections of the Constitution. This, certainly, was not the intention of the Framers and ratifiers of the Fourteenth Amendment, writing on the heels of a bloody Civil War to save the Union. More importantly, the Hamdi case underscores the possibility of disastrous consequences that can develop as the result of an unnecessarily broad birthright citizenship policy.

Citizen status can also be used to bypass the Student and Exchange Visitor Information System, which helps ensure that "those who seek to harm our nation are excluded from entering" on student visas, and "provides a mechanism for student and exchange visitor status violators to be identified so that appropriate enforcement action is taken."[58] This is particularly concerning given recent incidents of foreign nationals arriving in the United States on student visas, only to use their United States residency as a cover for terrorist plots.[59]

II. What the Chief Executive Can—and Cannot—Do Regarding Birthright Citizenship Policy

Article I of the U.S. Constitution vests significant powers in Congress regarding immigration and foreign affairs, including the power to establish a uniform rule of naturalization, to regulate foreign commerce, to prohibit the migration and importation of persons, and to make all laws necessary and proper for carrying out those powers. The Constitution does

not expressly vest the President with powers regarding immigration—but the Supreme Court has long held that Congress may delegate policymaking powers to the executive branch through statutes that provide an intelligible principle to sufficiently guide the exercise of discretion.[60] Congressional delegation of policymaking power gives the executive branch significant authority in the realm of immigration, particularly because of the Supreme Court's adoption of the so-called plenary power doctrine.

Under this doctrine, the federal courts will generally decline to review immigration policies even when they facially classify individuals based on nationality, race, gender, or other protected statuses.[61] It is not at all clear, however, that the Court would apply the plenary doctrine to questions regarding congressional or executive branch interpretations of the Citizenship Clause, as citizenship by birth is not a matter of immigration or naturalization policy, but of constitutional right. Given that the plenary power doctrine was developed and strengthened during the same period in which the Court nevertheless delved deeply into the parameters of birthright citizenship in *United States v. Wong Kim Ark*, it should be presumed that the modern Court—which has worked to limit and even erode the doctrine—will likely address the question on the merits should an appropriate case come before it.[62]

Irrespective of the Court's hypothetical answer to whether either branch of government can adopt a narrower interpretation of the Fourteenth Amendment, there exists a separate legal and policy-based question of how much discretion the President has in interpreting the statutes he must enforce. This question is even more complicated when the interpretation of a statute, as here, requires an interpretation of the Constitution. The executive branch clearly plays a role in constitutional and statutory interpretation, insofar as that interpretation is necessary to carrying out the executive function: Agencies can only execute the laws or develop authorized policies if they first determine what the law actually is and what policies they are authorized to develop.[63]

Certainly, this interpretive function should be done in a good faith effort to execute laws in a manner consistent with Congressional intent. Where it is clear that particular statutes have a particular meaning that applies in a given context, the executive branch should not seek to undermine Congress by enforcing laws in an intentionally contrary manner. However, the fact that various secretaries of state have, even after the ratification of the Fourteenth Amendment, held a number of differing opinions about the confines of birthright citizenship and have directed executive branch officials to act accordingly shows that this has traditionally been within the prerogative of the executive branch.[64]

It was, indeed, the executive branch under President Franklin D. Roosevelt that spearheaded efforts to make the statutory definition of citizenship more ambiguous. The statutory definition of "citizen" found in the Civil Rights Act of 1866 co-existed for over 70 years with the constitutional definition of "citizen" found in the Fourteenth Amendment.[65] The earliest understandings of the federal courts and constitutional law scholars were that these two definitions either worked together as two explanations of the same principle—or were at the very least presumptively compatible with each other.[66] Even post–*Wong Kim Ark*, legal scholars justified narrow interpretations of the Supreme Court's holding on the basis that the statutory definition of citizen still existed and informed their understanding of the limits to which the Court could have adopted principles of *jus soli*.[67]

This changed with the passage of the Nationality Act of 1940, which explicitly repealed the language of the Civil Rights Act as codified in Section 1992 of the Revised Statutes of the United States and replaced it with a definition mirroring that found in the Fourteenth Amendment.[68] The Nationality Act was the result of years of work by numerous executive branch officials and agencies to reform and clarify the myriad U.S. immigration and nationality laws. It culminated in the release of a "Draft Nationality Code" and explanatory report, with the Draft Code largely forming the body of the Nationality Act as introduced in Congress.[69]

Both the commentary in the report and the congressional testimony of executive branch officials indicate that the Roosevelt Administration held a broad interpretation of the Supreme Court's holding in *Wong Kim Ark*. While they considered the citizenship of U.S.-born children of non-resident aliens to be a serious national security problem, they believed that *Wong Kim Ark* essentially forced the U.S. government to recognize them as citizens.[70] It is hardly surprising that the Draft Nationality Code reflected this view, as its principal author—Richard W. Flournoy—authored a *Yale Law Review* article in 1923 expressing profound disagreement with preeminent international law scholars who held a more limited view of *Wong Kim Ark* as applied to the U.S.-born children of non-domiciled aliens.[71]

It is not at all clear, however, that this executive branch view of the statutory definition was adopted by the Congress that actually passed the Nationality Act.[72] Nor is it clear that subsequent Congresses continued to utilize this language for the express purpose of adopting the Roosevelt Administration's specific view of birthright citizenship.[73] On its face, the language of the Nationality Act simply mirrors the Fourteenth Amendment, suggesting that Congress merely intended for the statutory definition of birthright citizenship to mirror whatever is mandated by the Fourteenth

Amendment—nothing more restrictive, certainly, but nothing broader, either. While the executive branch's Draft Code contained explanatory comments outlining its view that *Wong Kim Ark* extended mandatory birthright citizenship to all children born in the United States, Congress—the only branch constitutionally authorized to make law—*did not* adopt these explanatory comments into the statutory language and otherwise remained officially silent on its reasons for the change in language.

Perhaps most importantly, the meaning of the Fourteenth Amendment's language cannot be separated from its historical relationship to the Civil Rights Act.[74] Even where the language of the Civil Rights Act is repealed, it must necessarily continue to inform the meaning of the language of the Fourteenth Amendment. Absent explicit Congressional intent or instruction to the contrary, then, a statute using the language of the Fourteenth Amendment to define birthright citizenship must logically continue to be consistent with the Civil Rights Act.[75]

Additionally, there is no clear alternative understanding of the statutory definition of citizenship. Where the legislative history of the Civil Rights Act and Fourteenth Amendment evidences a concerted effort by Congress to define citizenship in a very specific way for the express purpose of excluding certain individuals from birthright citizenship, the legislative history of the Nationality Act with respect to birthright citizenship is convoluted, at best. This was almost certain to be the case because the Nationality Act was a comprehensive effort to make the myriad immigration and nationality laws more cohesive and accessible, and therefore did not have the singular focus of the Fourteenth Amendment's Citizenship Clause.[76]

Indeed, the major concern of the legislation was modifying the laws governing the acquisition of nationality at birth *only* for those born in the unincorporated territories and in foreign countries.[77] This was because of a general agreement that the "citizenship of persons born in the United States and incorporated territories is determined by the Fourteenth Amendment."[78] This again strongly suggests that the only official consensus on the statutory definition of birthright citizenship for birth on U.S. soil was that it should reflect the limits and breadth of the Fourteenth Amendment in a general sense. In a sense, Congress was not concerned with solidifying an interpretation of *Wong Kim Ark* and instead simply "punted" by inserting a definition that mirrored the Fourteenth Amendment.[79] In so many words, Congress said, "Whatever the Fourteenth Amendment says, that's what we say, too."

Not only did Congress appear to have punted, but it gave every indication that it, too, viewed the U.S.-born children of non-resident aliens as

being of suspect citizenship based on a suspect allegiance to the United States.[80] None other than Representative Samuel Dickstein (D–NY), Chairman of the committee that spent almost a year analyzing and redrafting the language, expressed that one of the primary reasons underlying the recodification of U.S. nationality laws was that:

> There are [people] who, through the accident of birth and circumstances have been born in the United States of alien parents, yet can claim citizenship and return at any time, regardless of character or political affiliations or beliefs, that are un-American and a danger to the country.
>
> Not only these alien Americans, but others who now are able to claim citizenship, will be definitely expatriated, for example [sic] deserters from military or naval forces who have been convicted by court martial, those who serve in foreign armies, those voting in the political elections of foreign countries, and others. Children of alien parents or naturalized parents whose parents return to their native land and become naturalized or repatriated. In short, this bill would put an end to dual citizenship and relieve this country of the responsibility of those who reside in foreign lands and only claim citizenship when it serves their purpose.[81]

The view of these "alien Americans" was such that Congress undertook to strip citizenship from those who already relied upon it *because they relied upon it only as a means of taking advantage of the benefits without any of the connected duties*—much like the children of birth tourists today. The Immigration and Nationality Act of 1952 further broadened the bases for which such individuals could be stripped of any claims of citizenship.[82]

The Supreme Court has since struck down most of these provisions, making it almost impossible for the United States to strip a person of U.S. citizenship absent an affirmative act of allegiance to another sovereign that a person committed with the express purpose of relieving himself of American citizenship.[83] The fact remains, however, that Congress essentially viewed these individuals as de facto owing meaningful allegiance to a foreign power (and therefore only a qualified allegiance to the United States). Further, Congress's underlying rationale for enforcement of immigration laws was to treat such individuals as either never qualifying for or almost immediately losing their U.S. citizenship.

Ultimately, Congress can and should clarify what is meant by the statutory definition of citizenship—and whether it was intended to broaden the parameters of birthright citizenship presented by the Fourteenth

Amendment and explained in *Wong Kim Ark*. It would be wise for Congress to re-adopt the language of the Civil Rights Act of 1866 and further clarify that the U.S.-born children of illegal and nonimmigrant aliens are still subject to foreign powers, disqualifying them from birthright citizenship because they are not "subject to the jurisdiction" of the United States for purposes of the Fourteenth Amendment.

In the meantime, because there is no one clear answer to the question of what Congress intended by revising the statutory language to reflect the language of the Fourteenth Amendment, the President may arguably enforce the statutory definition in accordance with a good faith interpretation that it is consistent with the original meaning of the Fourteenth Amendment. In other words, he could instruct relevant federal agencies to no longer issue passports or social security numbers to individuals who claim to be United States citizens but were born in the United States to illegal or nonimmigrant aliens.

In such a situation, it may be wise to also instruct these agencies to refrain from applying this definition in a retroactive manner—where individuals have previously relied on United States policy to be treated as citizens, and the United States has, in fact, treated them as citizens, they should still be entitled to the security of that presumptive citizenship. For new claims of citizenship, however, this interpretation of the statutory definition could and should be applied.

Some considerations to account for in the application of this statutory definition would be to avoid rendering individuals stateless, as well as to ensure that the application does not create generations-long classes of permanent resident non-citizens.[84] Both of these scenarios could be avoided through the application of U.S. national status to those born in the United States who are not subject to its complete jurisdiction but do not otherwise obtain a foreign nationality at the time of birth.

In the case of illegal aliens, the second generation of U.S.-born illegal aliens could be considered U.S. nationals, and the third generation could be considered citizens. This would be in keeping with the premise that those who are permanently domiciled in the United States—in this case, for multiple generations—presumptively intend to stay and maintain ties equivalent to citizenship. The original "sin" of illegal immigration need not be held against subsequent generations that are both unlikely to obtain birthright citizenship in another country or to maintain meaningful allegiance to a foreign power.

Conclusion

The Citizenship Clause, as originally and properly understood, does *not* mandate the citizenship of individuals born in the United States to parents who owe the country only a qualified allegiance, such as by being illegally or temporarily present in the country. While Congress can certainly expand the parameters of birthright citizenship beyond those specified in the Constitution—as it has for individuals born abroad of citizen parents—it has not explicitly done so here. The current law merely repeats the language of the Fourteenth Amendment, and presumably means the same thing.

The President may, as chief executive, reasonably interpret what the law is before determining how to oversee its execution. This is particularly the case when, as here, interpreting the applicable statute involves interpreting the corresponding constitutional provision. Rendering the national citizenship policy consistent with both the original understanding of the Constitution and the plain text of the statute would significantly benefit the United States from both an economic and national security standpoint. It would also fulfill President Trump's repeated promises to his constituents regarding his immigration policies.

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Endnotes

1. Amy Swearer, *The Citizenship Clause's Original Meaning and What It Means Today*, Heritage Foundation Legal Memorandum No. 243 (May 14, 2019).
2. In 2011, long before declaring his intent to run for office, President Trump published the book *Time to Get Tough: Making America #1 Again*. This was republished in 2015 under the new title *Time to Get Tough: Make America Great Again*. In both editions, Trump decried the absurdity of America's current birthright citizenship policy, calling it "the root cause of all the welfare payments to illegal aliens," and noting that the Fourteenth Amendment "was not intended to guarantee untrammeled immigration to the United States." *See* Donald J. Trump, Time to Get Tough: Make America Great Again 140 (2015).
3. *See* James G. Gimpel, *Immigration Policy Opinion and the 2016 Presidential Vote*, Ctr. Immgr. Studies (Dec. 2017), https://cis.org/sites/default/files/2017-12/gimpel-2016-vote.pdf; Philip Klinker, *Yes, Trump's Hard-Line Immigration Stance Helped Him Win the Election—But It Could Be His Undoing*, L.A. Times (Apr. 17, 2017), https://www.latimes.com/opinion/op-ed/la-oe-klinker-immigration-election-20170417-story.html; Harry Enten & Perry Bacon, Jr., *Trump's Hardline Immigration Stance Got Him to the White House*, FiveThirtyEight (Sept. 12, 2017), https://fivethirtyeight.com/features/why-polls-showing-daca-as-popular-even-among-republicans-dont-tell-the-whole-story/.
4. Trump Campaign, Immigration Reform that Will Make America Great Again (archived), https://assets.donaldjtrump.com/Immigration-Reform-Trump.pdf.
5. *Transcript: Early Start—Trump Goes After Bush on Iraq; Bangkok Bombing Manhunt Widens; Deadly Police Shooting Ignites Protests*, CNN (Aug. 20, 2015), http://www.cnn.com/TRANSCRIPTS/1508/20/es.02.html; *Transcript: Donald Trump's Immigration Plan*, Fox News (Aug. 18, 2015), http://www.foxnews.com/transcript/2015/08/19/donald-trump-immigration-plan.html.
6. *See* Amy Davidson Sorkin, *The Anchor-Baby Question at the G.O.P. Debate*, The New Yorker (Sept. 15, 2015), https://www.newyorker.com/news/amy-davidson/the-anchor-baby-question-at-the-g-o-p-debate.
7. *See The Bill O'Reilly Blues*, Fox News (Nov. 11, 2015), http://video.foxnews.com/v/4608339663001/?playlist_id=930909812001#sp=show-clips; Meet the Press, *Trump: Birthright Citizenship Not in the Constitution*, NBC News (Aug. 14, 2016), https://www.nbcnews.com/meet-the-press/video/trump--birthright-citizenship-not-in-the-constitution-599319619848.
8. *See Transcript: Top-Tier CNN Republican Debate 2015*, CBS News (Sept. 17, 2015), https://www.cbsnews.com/news/transcript-top-tier-primetime-cnn-gop-republican-debate-2015/.
9. *See, e.g.*, Jeffrey S. Passel & Paul Taylor, *Unauthorized Immigrants and Their U.S.-Born Children*, Pew Research Ctr (Aug. 11, 2010), https://www.pewresearch.org/wp-content/uploads/sites/5/reports/125.pdf; Steven A. Camarota et al., *Births to Illegal Immigrants in the U.S.*, Ctr. Immgr. Studies (Oct. 2018), https://cis.org/sites/default/files/2018-10/camarota-imm-births-18_1.pdf.
10. For example, in 2016, a Migration Policy Institute analysis calculated that there were 4 million U.S.-born children residing in the United States with at least one parent who was unauthorized. Julia Gelatt & Jie Zong, *Settling In: A Profile of the Unauthorized Immigrant Population in the United States*, Migration Policy Inst. (Nov. 2018). Of those 4 million children, 1.3 million were estimated to live with two parents who were both unauthorized, while another 909,000 children lived with only one parent who was unauthorized. *Id.* at 4. Presumably, for at least some of those 909,000 U.S.-born children living with only one parent who is unauthorized, the second biological parent may be a legal alien or U.S. citizen. The remaining 1.8 million U.S.-born children had one parent who was a legal immigrant, but it is unclear whether the study used the term "legal immigrant" to encompass non-lawful permanent residents, whose children would not qualify for birthright citizenship under the original meaning of the Fourteenth Amendment.
11. The vast majority of countries, including the United States, recognize some degree of jus sanguinis citizenship, by which children born abroad of citizen parents are themselves citizens at birth. *See* U.S. Office of Personnel Management, Citizenship Laws of the World (March 2001), https://www.multiplecitizenship.com/documents/IS-01.pdf. If the U.S.-born children of illegal aliens roughly reflect the demographic distributions of all illegal aliens residing in the United States, it would rarely—if ever—be true that a child born in the United States to illegal aliens does not also at birth attain the nationality of his or her parents. For example, 80 percent of all illegal aliens in the United States are from Ecuador, El Salvador, Guatemala, Honduras, Mexico, the Philippines, South Korea, and Vietnam, all of which automatically consider the U.S.-born children of citizens to retain the citizenship of their parents. *Compare id. with* Bryan Baker & Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, Dept. of Homeland Security Office of Immigr. Studies (Mar. 2013), https://immigration.procon.org/sourcefiles/illegal-immigration-population-2012.pdf. The same is true for the countries of origin for the vast majority of birth tourists: China, Nigeria, Russia, and Turkey. *Id.* It should be pointed out that, although China generally prohibits dual nationality and considers the act of overtly obtaining foreign citizenship to strip a person of Chinese citizenship, this policy is not applied in cases of children born abroad to birth tourists. This is because, under Chinese law, children born abroad of Chinese nationals only fail to obtain Chinese citizenship when both parents have "settled abroad" and the child obtained foreign nationality at birth. *See Nationality Law of the People's Republic of China*, Embassy of the People's Republic of China (last accessed July 12, 2019), http://www.china-embassy.org/eng/ywzn/lsyw/vpna/faq/t710012.htm. In other words, as long as the children of birth tourists are properly registered with the Chinese government upon return to China, they retain both American and Chinese citizenship, even if the Chinese government does not officially recognize the child as anything but a Chinese citizen. Notably, any concerns about statelessness for the U.S.-born children of illegal or nonimmigrant aliens could be dealt with by providing U.S. nationality to U.S.-born children of aliens who cannot otherwise acquire nationality in another country.

12. *See* Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd (2012).
13. This is accomplished through mandated Disproportionate Share Hospital (DSH) payments. *Medicaid Disproportionate Share Hospital (DSH) Payments*, Ctrs for Medicare & Medicaid Servs. (last visited Aug. 29, 2019), https://www.medicaid.gov/medicaid/finance/dsh/index.html.
14. Matthew O'Brien et al., The Fiscal Burden of Illegal Immigration on United States Taxpayers (2017), Federation for Am. Immigr. Reform 41 (Sept. 2017).
15. *See* Steven A. Camarota, *Welfare Use by Legal and Illegal Immigrant Households: An Analysis of Medicaid, Cash, Food, and Housing Programs*, Ctr. for Immigr. Studies (Sept. 2015), https://cis.org/sites/cis.org/files/camarota-welfare-illegals_1.pdf.
16. *See* O'Brien et al., *supra* note 14.
17. When taxpayers pick up the costs associated with one or two members of a family, the entire family benefits under the economic principle of fungibility. Consider, for example, a scenario in which an illegal alien family with one child has two more citizen children eligible for a total of $1,000 a month in various welfare benefits like SNAP, Temporary Assistance for Needy Families (TANF), and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Because the costs would otherwise be borne by the illegal alien parents and not the citizen children, it is actually the illegal alien parents who receive what amounts to a $12,000 annual salary increase for the basic provision of the entire five-person household. The $1,000 a month increase is not hypothetical, but fairly reflective of the reality of average benefits received. The average SNAP benefit per person in 2018 was $126 per person per month, the median family of three received $447 per month in TANF benefits in 2018, the average WIC recipient received about $40 in benefits per month, and the average Medicaid benefit for children was roughly $200 a month. Center on Budget and Policy Priorities, *A Quick Guide to SNAP Eligibility and Benefits* (updated Oct. 16, 2018), https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits.
18. Camarota, *supra* note 15.
19. *See* O'Brien et al., *supra* note 14. While the report analyzed the total fiscal burden of illegal immigration generally, the estimates for costs related to birthright citizenship alone were staggering: $4.2 billion in Medicaid for the U.S.-born citizen children of illegal aliens; $1 billion in Medicaid births; $1.9 billion in "food stamps" under SNAP; $1 billion under WIC; and $1.7 billion in "child-only" applications for TANF. *See id.* at 11–13, 21–22. The $10 billion estimate does not include programs that are also generally available to non-citizen illegal alien children, such as the subsidized school lunch programs.
20. *See* United States General Accounting Office, Illegal Aliens: Extent of Welfare Benefits Received on Behalf of U.S. Citizen Children, GAO/HEHS-98-30 (Nov. 1997) [hereinafter GAO Report].
21. O'Brien et al., *supra* note 14.
22. *Id.* at 3. This is consistent with the findings of the 1997 GAO report, which determined that "[m]ost illegal aliens receiving AFDC or Food Stamp benefits on behalf of U.S. citizen children are located in only a few states." *See* GAO Report, *supra* note 20, at 8.
23. *See* Camarota, *supra* note 15.
24. Press Release, Supervisor Michael D. Antonovich, County Spent Nearly $639 Million in the Past Year to Support Families of Illegal Aliens (Aug. 22, 2014), http://michaeldantonovich.com/2014/08/22/county-spent-nearly-639-million-in-the-past-year-to-support-families-of-illegal-aliens/.
25. *Id.*
26. *Id.*
27. *See* Jennifer Medina, *Arriving as Pregnant Tourists, Leaving with American Babies*, N.Y. Times (Mar. 28, 2011), https://www.nytimes.com/2011/03/29/us/29babies.html.
28. *See* Cynthia McFadden et al., *Birth Tourism Brings Russian Baby Boom to Miami*, NBC News (updated Jan. 10, 2018), https://www.nbcnews.com/news/us-news/birth-tourism-brings-russian-baby-boom-miami-n836121; Rick Cabrera, *Women From All Over the World Come to El Paso to Give Birth*, ABC-7 KVIA (updated Aug. 24, 2016), https://www.kvia.com/news/only-on-abc-7-women-from-all-over-the-world-come-to-el-paso-to-give-birth/56409697; Calum MacLeod, *Chinese Flock to USA to Give Birth to U.S. Citizens*, USA Today (updated Apr. 1, 2015), https://www.usatoday.com/story/news/world/2015/04/01/china-usa-birth-tourists-business-strong/24887837/.
29. *See* Steven A. Camarota, *There Are Possibly 36,000 Birth Tourists Annually*, Ctr. for Immigration Studies (Apr. 28, 2015); Glenn Kessler, *"Birth Tourists" and "Anchor Babies": What Trump and Bush Got Right*, Wash. Post (Aug. 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/08/25/birth-tourists-and-anchor-babies-what-trump-and-bush-got-right/?utm_term=.4acfbdf22dfb.
30. *See* Iuliia Stashevska, *South Florida Sees A Boom in Russian 'Birth Tourists'*, USA Today (Mar. 22, 2019), https://www.usatoday.com/story/travel/destinations/2019/03/22/south-floridas-russian-birth-tourism-boom/3244087002/; Jon Feere, *Birth Tourists Come From Around the Globe*, Ctr. for Immigr. Studies (Aug. 26, 2015), https://cis.org/Feere/Birth-Tourists-Come-Around-Globe.
31. *See* Andrew Blankstein et al., *Feds Raid California 'Maternity Hotels' for Birth Tourists*, NBC News (Updated Jan. 9, 2018), https://www.nbcnews.com/news/us-news/feds-raid-l-maternity-hotel-birth-tourists-n315996.
32. *Id.*
33. *Id.*
34. Cynthia McFadden et al., *supra* note 28.
35. *Id.*

36. *See, e.g.*, Benefits of Giving Birth in the United States of America with Doctores Para Ti, Doctores Para Ti (last accessed July 16, 2019), https://doctoresparati.com/home.html (listing "the opportunity of a high quality education" as a main benefit of birthright citizenship, and noting that citizens "have the right to apply for federal student aid, which provides access to scholarships, grants, and other financial aid programs" to pay for college in the United States); *Reasons for Going to the United States to Have Children*, LaPangBaba (last accessed July 16, 2019) (translated via Google Translate), http://www.lapangbaba.com/archives/552.html (enticing individuals to their birth tourism services by explaining that children born in the United States enjoy free elementary and high school education and that citizens receive low-interest student loans while saving "tens of millions of yuan" on a college education compared to foreign students); Jennifer Pak, *How Specialist Agencies Help Chinese Mothers Give Birth in the U.S.*, Market Place (Mar. 7, 2019), https://www.marketplace.org/2019/03/07/agencies-help-pregnant-mothers-in-china-give-birth-in-the-us/ (interviewing two Chinese birth tourism agents, both of whom report that free or significantly reduced cost access to American education systems is a primary motivating factor for their clients).
37. It is unquestionable that demand for an American education is growing exponentially among Chinese families. The number of Chinese citizens studying in the United States has more than tripled since 2008, reaching well over 360,000 students during the 2017–2018 school year. Rupa Shenoy, *The U.S. May Face Obstacles in the Global Race for Chinese Students*, Public Radio International (Feb. 5, 2019), https://www.pri.org/stories/2019-02-05/us-may-face-obstacles-global-race-chinese-students. Tens of thousands of Chinese teenagers also attend U.S. secondary schools every year, though most who are here for the purpose of graduating with a United States diploma are relegated to private schools, as F-1 visas limit public school access to one-year exchange programs. But for non-citizens, these exchange programs cost money, and public schools can actually subsidize the costs per citizen-student through fees associated with foreign nationals. *See* Brook Larmer, *The Parachute Generation*, N.Y. Times (Feb. 2, 2017), https://www.nytimes.com/2017/02/02/magazine/the-parachute-generation.html. There is no reason to believe that, given the extraordinary lengths foreign nationals already go to in order to secure an education in the U.S., those born with the additional benefits of U.S. citizenship will not largely take advantage of a free education. *See, e.g.*, Molly Hensley-Clancy, *More Chinese Students Are Coming to U.S. High Schools to Get Into American Colleges*, Buzzfeed News (Aug. 10, 2017), https://www.buzzfeednews.com/article/mollyhensleyclancy/lots-more-chinese-students-are-coming-to-the-us-for-high.
38. *Public Education Costs per Pupil by State Rankings*, Room 241 (updated Apr. 6, 2018), https://education.cu-portland.edu/blog/classroom-resources/public-education-costs-per-pupil-by-state-rankings/.
39. *See* Andy Semotiuk, *How International Students Can Fund Their Education in America*, Forbes (May 10, 2018), https://www.forbes.com/sites/andyjsemotiuk/2018/05/10/foreign-students-and-the-pursuit-of-their-dreams-in-america/#9a9fb074f652.
40. This is increasingly the case amongst Chinese nationals who study abroad, with as many as nine in 10 returning to China after graduation to seek work—up from just two in 10 at the turn of the 21st century. *See* Youyou Zhou, *Chinese Students Increasingly Return Home After Studying Abroad*, Quartz (July 29, 2018), https://qz.com/1342525/chinese-students-increasingly-return-home-after-studying-abroad/; *see also* Luke Kelly, *How China Is Winning Back More Graduates from Foreign Universities Than Ever Before*, Forbes (Jan. 25, 2018), https://www.forbes.com/sites/ljkelly/2018/01/25/how-china-is-winning-back-more-graduates-from-foreign-universities-than-ever-before/#45d5170b5c1e. This trend will likely continue for the foreseeable future, as China's improved domestic job market remains relatively stable, and certain booming industries—like the technology sector—offer increasingly competitive and desirable careers to Chinese graduates. *See* Michelle Toh, *How to Land a Job in China's Booming Tech Sector*, CNN (July 25, 2017), https://money.cnn.com/2017/07/25/technology/china-tech-employers-jobs/index.html; Alec Ash, *How China's Tech Revolution Threatens Silicon Valley*, The Atlantic (May 14, 2018), https://www.theatlantic.com/business/archive/2018/05/chinas-silicon-valley/559871/.
41. "Family-sponsored immigrants" accounted for almost two-thirds of all lawful immigrant admissions in 2017, with over 748,000 admissions, compared to only 137,855 employment-based admissions; 120,256 refugee-status admissions; and 51,592 "diversity visa" admissions. *See* Jens Manuel Krogstad & Ana Gonzales-Barrera, *Key Facts About U.S. Immigration Policies and Proposed Changes*, Pew Research (May 17, 2019), https://www.pewresearch.org/fact-tank/2019/05/17/key-facts-about-u-s-immigration-policies-and-proposed-changes/.
42. Jessica Vaughan, *Immigration Multipliers: Trends in Immigration*, Ctr. for Immigr. Studies (Sept. 2017).
43. *Id.* at 6.
44. Parents who entered the United States illegally are deemed "inadmissible" for a period of three or 10 years, depending on the length of illegal presence, but those who merely overstayed their otherwise valid visas and remain unlawfully in the United States may apply for an "adjustment of status" on the basis of their citizenship child's sponsorship.
45. While the Mueller Report did not find any evidence that President Trump colluded with Russia to "steal" the 2016 election, it is clear that the Russian government made concerted efforts to undermine the integrity of the election and generally sow disruptive divisions within the American populace. *See* Mueller Report at I(A)(2), https://assets.documentcloud.org/documents/5955997/Muellerreport.pdf. Moreover, similar and equally concerning disinformation campaigns have been noted prior to the 2016 election and in other countries. *See* Minority Staff Report of the Senate Committee on Foreign Relations, Putin's Asymmetric Assault on Democracy in Russia and Europe: Implications for U.S. National Security, S. Prt. 115-21 (Jan. 10, 2018), https://www.foreign.senate.gov/imo/media/doc/FinalRR.pdf. Consider also that the Chinese government has gone so far as attempting to indoctrinate United States kindergarteners with pro-Communist propaganda, providing over $158 million in funding for more than 100 U.S.-based "Confucius Institutes." These institutes—essentially run by the Chinese government—attempt to change U.S. perceptions on China, particularly with regard to the country's status as an economic and national security threat. Institute directors and teachers sign contracts with the Chinese government to "conscientiously safeguard national interests" and report regularly to the Chinese embassies in the United States. A recent report by the Senate Permanent Subcommittee on Investigations highlighted numerous concerns that these institutes are part of a broader plan by China to undermine the integrity of American academic research and educational institutions. *See* Permanent Subcommittee on Investigations, China's Impact on the U.S. Education System, Staff Report (2019), https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf.

46. In 2016, for example, Kun Shan Chun—a naturalized U.S. citizen from China—pled guilty acting as an agent of the Chinese government. Chun worked for almost two decades as an FBI electronics technician, held top secret security clearance, and maintained access to sensitive and classified information. The Chinese government recruited him to use his position to collect and transmit to Chinese officials sensitive information regarding the FBI's internal structure and use of surveillance technologies. Press Release, Department of Justice, FBI Employee Pleads Guilty in Manhattan Federal Court to Acting in the United States as an Agent of the Chinese Government (Aug. 1, 2016), https://www.justice.gov/usao-sdny/pr/fbi-employee-pleads-guilty-manhattan-federal-court-acting-united-states-agent-chinese. Similarly, in 2018, former CIA officer Jerry Chun Shing Lee, a naturalized U.S. citizen from China, was arrested and charged with espionage for agreeing to give China highly classified information related to the Agency's covert operations in China. *See* Pete Williams, *Ex-CIA Officer Jerry Chun Shing Lee Charged With Conspiring to Spy for China*, NBC News (May 9, 2018), https://www.nbcnews.com/news/china/ex-cia-officer-jerry-chun-shing-lee-charged-conspiring-spy-n872721. Lee's actions are suspected of playing a significant, perhaps even primary, role in the agency's devastating loss of more than a dozen assets between 2010 and 2012. Julian E. Barnes, *Ex-CIA Officer Suspected of Conspiring With China Is Expected to Plead Guilty*, N.Y. Times (Apr. 30, 2019), https://www.nytimes.com/2019/04/30/us/politics/jerry-lee-cia-guilty-plea.html. *See also* Mark Magnier, *US Federal Court Finds Chinese-American Engineer Shih Yi-chi Guilty of Exporting Military-Grade Semiconductors*, South China Morning Post (July 2, 2019), https://sg.news.yahoo.com/us-federal-court-finds-chinese-232927728.html (reporting on the conviction of Shih Yi-chi, a naturalized American citizen of Chinese descent and former UCLA professor of engineering, for illegally accessing and exporting to his former Chinese company American technology used in missile guidance systems, fighter jets, electronic warfare, and radar systems).

47. *See Reasons for Going to the United States to Have Children*, *supra* note 36 (boasting that U.S.-born children "can be given priority to the U.S. government [jobs].... Many key positions, such as official military affairs, defense diplomacy, high-tech and core laboratories, are strictly limited to citizens."). Naturalized Americans with ties to China have also been involved in numerous acts of economic espionage, such as the stealing of trade secrets. *See* Lee Jeong-ho, *Chinese-American Engineer Charged With Stealing US $120 Million Worth of Trade Secrets*, South China Morning Post (Feb. 15, 2019), https://www.scmp.com/news/china/diplomacy/article/2186330/chinese-american-engineer-charged-stealing-us120-million-worth; Ellen Nakashima, *U.S. Charges American Engineer, Chinese Businessman With Stealing GE's Trade Secrets*, Wash. Post (April 24, 2019), https://www.washingtonpost.com/world/national-security/us-charges-american-engineer-chinese-businessman-with-stealing-ges-trade-secrets/2019/04/23/cb32c78a-65f5-11e9-82ba-fcfeff232e8f_story.html?utm_term=.74e0bf17cb38; *Former Sandia Scientist Gets 1 Year in Prison*, Albuquerque Journal (Nov. 24, 2014), https://www.abqjournal.com/501170/former-sandia-get-1-year-in-prison.html (reporting on Jianya Huang, a naturalized U.S. citizen from China who pled guilty to lesser charges of taking his U.S. government-owned laptop to China after being suspected of stealing data on behalf of the Chinese government).

48. *See* Zachary Cohen & Alex Marquardt, *U.S. Intelligence Warns China Is Using Student Spies to Steal Secrets*, CNN (updated Feb. 1, 2019), https://www.cnn.com/2019/02/01/politics/us-intelligence-chinese-student-espionage/index.html; U.S. Department of Justice, *Higher Education and National Security: The Targeting of Sensitive, Proprietary and Classified Information on Campuses of Higher Education* (Apr. 2011), https://www.fbi.gov/file-repository/higher-education-national-security.pdf/view.

49. For example, in June 2019, the State Department rolled back a previous policy that allowed all Chinese citizens to secure five-year student visas, instead restricting Chinese graduate students in certain "sensitive" research fields to one-year renewable student visas. Alexandra Yoon-Hendricks, *Visa Restrictions for Chinese Students Alarm Academia*, N.Y. Times (July 25, 2019), https://www.nytimes.com/2018/07/25/us/politics/visa-restrictions-chinese-students.html. This move came after reports that the Trump Administration recently considered putting a stop to all student visas for Chinese nationals, and lawmakers introduced bills that would prohibit the federal government from issuing student or research visas to anyone employed or sponsored by the Chinese military. *See* Emily Feng, *Visas Are the Newest Weapon in U.S.–China Rivalry*, NPR (Apr. 25, 2019), https://www.npr.org/2019/04/25/716032871/visas-are-the-newest-weapon-in-u-s-china-rivalry; Michael Burke, *Trump Considered Halting Student Visas for Chinese Nationals: Report*, The Hill (Oct. 2, 2018), https://thehill.com/homenews/administration/409436-trump-considered-halting-student-visas-for-chinese-nationals-report; *U.S. Lawmakers Want to Tighten Visas for Chinese Students and Researchers*, Reuters (May 14, 2019), https://www.cnbc.com/2019/05/15/us-lawmakers-want-to-tighten-visas-for-chinese-students-researchers.html.

50. *See, e.g.*, Scott Shane, *The Fake Americans Russia Created to Influence the Election*, N.Y. Times (Sept. 7, 2017) (detailing Russian efforts to create fake social media accounts that purported to be U.S. citizens supporting genuine U.S. interests). The Mueller investigation, while again finding no collusion between the Trump Administration and Russia, did result in 16 indictments against Russian individuals and organizations for their part in social media disinformation campaigns. These indictments lay out facts about Russian attempts to pose as citizens and create fake U.S. personas, in particular via the notorious "troll farm" known as the Internet Research Agency. *See* Indictment, United States v. Netyksho et al., Case No. 1:18-cr-00215-ABJ (D.D.C. July 13, 2018), https://www.justice.gov/file/1080281/download.

51. The Ringle Report, long hidden from the public and from the courts because of its likelihood to seriously undermine the Roosevelt Administration's arguments in favor of internment, determined that the "large majority [of even Japanese-born alien residents] are at least passively loyal to the United States." While there were both Japanese resident aliens and U.S. citizens of Japanese dissent who were "either deliberately placed by the Japanese government or actuated by a fanatical loyalty to that country" and posed serious risks of sabotage or espionage, their numbers were estimated to be only "about 300 in the entire United States." Moreover, most of these individuals were either already in U.S. custody or were well-known to U.S. intelligence services and would be "immediately placed in custodial detention" once apprehended. Ringel Report on Japanese Internment, Serial No. 01742316 (Dec. 30, 1941), https://www.history.navy.mil/research/library/online-reading-room/title-list-alphabetically/r/ringle-report-on-japanese-internment.html.

52. Of note, the Ringle Report explicitly indicated that the "most potentially dangerous element" were "those American citizens of Japanese ancestry who have spent the formative years of their lives, from 10 to 20, in Japan and have returned to the United States to claim their legal American citizenship within the last few years." *Id.* at Section I(f). Echoing the very real and growing problems inherent with universal birthright citizenship, the report continued: "These people are essentially and inherently Japanese and may have been deliberately sent back to the United States by the Japanese government to act as agents. In spite of their legal citizenship and the protection afforded to them by the Bill of Rights, they should be looked upon as enemy aliens and many of them placed in custodial detention." *Id.* This inherently suspect allegiance was considered incredibly problematic at the time, even given the much smaller numbers of such citizens: The sheer scale of the problem today as compared to the "600 or 700" individuals in the Los Angeles area during WWII should give the nation even greater cause for concern. Also worth noting is the Ringle Report's emphasis on avoiding turning anti-espionage efforts into race-based pogroms. The problem was not the individual's race, and the report rightly indicates that the "Japanese problem" was no different than the problem faced by "dangerous German, Italian, or other subversive sympathizers and agitators who are deemed dangerous to the internal security of the United States." *Id.* at Section I(h); Section III. In the end, the report's focus—similar to this memo's focus—is on the inherent national security risks that come with treating as citizens individuals who grow up meaningfully subject to a foreign power.
53. This was not always the case. Long-standing policy was that U.S.-born children whose parents repatriated or naturalized abroad must, upon reaching the age of 18, file their intent to remain United States citizens, swear an oath of allegiance, and take up permanent residence within the country.
54. A U.S. citizen may even run for and be elected to public office in a foreign country—even serve as the head of a foreign state, swearing an oath of allegiance to support and defend that state—so long as the U.S. citizen ran voluntarily and with the intention of relinquishing U.S. citizenship. Moreover, the State Department's policy in most cases is to presume that U.S. nationals intend to retain their U.S. citizenship, even after swearing allegiance to foreign powers. *Advice About Possible Loss of U.S. Nationality and Seeking Public Office in a Foreign State*, U.S. Dept. of State (last updated Mar. 12, 2019), https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Loss-US-Nationality-Foreign-State.html. A U.S. citizen may not have his or her citizenship revoked even when voluntarily serving in the armed forces of another country, as long as that country is not engaged in hostilities against the United States. *Id.* This applies even to those serving voluntarily as commissioned officers, as long as the person did not intend the military service to be an act of relinquishing his or her U.S. citizenship—and, as with service in a foreign government, intent to relinquish citizenship is not presumed for those serving in foreign militaries not engaged in hostilities with the United States. *Advice About Possible Loss of U.S. Nationality and Foreign Military Service*, U.S. Dept. of State (last accessed July 26, 2019), https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Loss-US-Nationality-and-Foreign-Military-Service.html.
55. *See* Matthew Dolan, *American-Born Taliban Fighter Jailed in Norfolk*, Virginia Pilot (Apr. 6, 2002), https://web.archive.org/web/20020803144425/http://www.pilotonline.com/military/ml0406tal.html.
56. Although Hamdi's father disputed allegations that Hamdi went to Afghanistan as a militant fighter against the United States, military records indicate that Hamdi confirmed his status as an enemy combatant. Brief for the Respondents at 4, Hamdi v. Rumsfeld, 542 U.S. 507 (2004) (No. 03-6696).
57. *See* Eric Lichtblau, *U.S., Bowing to Court, to Free 'Enemy Combatant,'* N.Y. Times (Sept. 23, 2004), https://www.nytimes.com/2004/09/23/politics/us-bowing-to-court-to-free-enemy-combatant.html.
58. U.S. Immigration and Customs Enforcement, *National Security Investigations Division: Student and Exchange Visitor Program* (last updated July 3, 2019), https://www.ice.gov/national-security-investigations-division.
59. Consider the case of Khalid Aldawsari, a Saudi Arabian citizen who entered the United States in 2008 on a student visa in order to use his educational pursuits as a cover to research and carry out potential terror attacks against U.S. targets. According to the criminal Complaint, SEVIS information was used to help monitor Aldawsari once he was flagged as a suspected terrorist—a use thoroughly consistent with SEVIS's purpose of maintaining records of nonimmigrants, such as changes in address, study programs, or program sponsors. *See* Criminal Complaint, United States v. Aldawsari, No. 5:11-MJ-017 (N.D. Texas, Feb. 23, 2011), http://www.washingtonpost.com/wp-srv/world/documents/khalid-aldawsari-complaint-affidavit.html; Press Release, Dept. of Justice, Saudi Student Sentenced to Life in Prison for Attempted Use of Weapon of Mass Destruction (Nov. 13, 2012), https://www.justice.gov/opa/pr/saudi-student-sentenced-life-prison-attempted-use-weapon-mass-destruction.
60. *See, e.g.,* Gundy v. United States (2019) (quoting Mistretta v. United States, 488 U.S. 361, 372 (1989) ("[W]e have held, time and again, that a statutory delegation is constitutional as long as Congress 'lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.'").
61. *See generally*, David A. Martin, *Why Immigration's Plenary Power Doctrine Endures*, 65 Okla. L. Rev. 29 (2015).

62. The plenary power doctrine is often considered to have been first articulated just nine years before *Wong Kim Ark* in the 1889 case of Chae Chan Ping v. United States 130 U.S. 581 (1889). There, the Supreme Court both affirmed the inherent power of the federal government to regulate immigration and reasoned that the questions of whether and how to exclude immigrants "are not questions for judicial determination." *Chae Chan Ping*, 130 U.S. 581, at 609. Four years later, a mere five years before *Wong Kim Ark*, the Court in Fong Yue Ting v. United States, 149 U.S. 698 (1893) extended the doctrine to give Congress broad authority over not just refusing entry at the border, but the deportation of even longtime resident noncitizens. Beginning in the early 2000s, however, the Court began to add significant limitations on this doctrine, continuing to acknowledge some degree of deference to the presumed expertise of the executive branch in the area of immigration law but couching it within the framework of "ordinary principles of judicial review." *See* Peter J. Spiro, *Explaining the End of Plenary Power*, 16 Geo. Immigr. L.J. 339, 341–345 (2002) (examining then-recent Supreme Court decisions regarding the executive branch's immigration policies and concluding that the Court "seems not to have cut the government any more slack than in other administrative contexts" and that "it is difficult to reconcile the tone and approach of these decisions with the continued vitality of the plenary power doctrine as invoked through the decades."); Jessica Portness, COMMENT: *Until the Plenary Power Do Us Part: Judicial Scrutiny of the Defense of Marriage Act in Immigration After Flores-Villar*, 61 Am. U. L.. Rev. 61 1825, Part I(A) (2012) (exploring the evolution of the plenary power doctrine and noting that the Supreme Court's decision in Flores-Villar v. United States, 131 S. Ct. 2313 (2011) "could signify the 'steady erosion' of the plenary power doctrine.").

63. *See* Frank H. Easterbrook, *Presidential Review*, 40 Case Western Reserve L. Rev. 905 (1989).

64. *See, e.g.*, John Bassett moore, 3 A Digest of International Law as Embodied in Diplomatic Discussions, Treaties and Other International Agreements, International Awards, the Decisions of Municipal Courts, and the Writings of Jurists § 373 (1906) (highlighting various analyses of birthright citizenship by different secretaries of state in the decades following the ratification of the Fourteenth Amendment), https://babel.hathitrust.org/cgi/pt?id=hvd.32044083358044;view=1up;seq=290.

65. For an analysis of how the language of the Civil Rights Act of 1866 interacts with and informs the definition of citizenship in the Fourteenth Amendment, see Swearer, *supra* note 1, at 2–6.

66. *See id*. at 6–8, 11.

67. *See, e.g.*, Henry Campbell Black, Handbook of American Constitutional Law 633–34 (3d ed. 1910) (referring in footnote 6 to Section 1992 and relying on this statute to reason: "This jurisdiction 'must at the time be both actual and exclusive.'...So if a stranger or traveler passing through the country, or temporarily residing here, but who has not himself been naturalized and who claims to owe no allegiance to our government, has a child born here, who goes out of the country with his father, such child is not a citizen of the United States, because he was never subject to its jurisdiction. But the children, born within the United States, to permanent resident aliens, who are not diplomatic agents or otherwise within the excepted classes, are citizens. And this is true even where the parents belong to a race of persons (such as the Chinese) who cannot acquire citizenship for themselves by naturalization."); Hannis Taylor, A Treatise on International Public Law 220 (1901) (analyzing Section 1992 in tandem with the Fourteenth Amendment and concluding: "It appears, therefore, that children born in the United States to foreigners here on transient residence are not citizens, because by the law of nations they were not at the time of their birth 'subject to the jurisdiction [of the United States].'"); John Westlake, International Law 219–20 (1904) ("The true conclusions from these data appear to be that when the father has domiciled himself in the Union he has exercised the right of expatriation claimed for him by congress, and that his children afterwards born there are not subject to any foreign power within the meaning of section 1992 but are subject to the jurisdiction of the United States within the meaning of the fourteenth amendment, therefore are citizens; but that when the father at the time of the birth is in the Union for a transient purpose[,] his children born within it have his nationality, and probably without being allowed an option in favour of that of the United States. And these conclusions appear to be in accordance with the practice of the United States executive department."); William Edward Hall, A Treatise on International Law 236 (1917) (Citing the interaction of the Fourteenth Amendment and Section 1992 to support the assertion that, in the United States, "it would seem that the children of foreigners in transient residence are not citizens, but the children of foreigners, who are in more prolonged residence, fall provisionally within the category of American citizens.").

68. Arguably, though, while the executive report called for the explicit repeal of Section 1992, neither the bill itself nor the Report of the House Committee on Immigration and Naturalization contained similar language of repeal, and the House report in particular could be read as merely consolidating the language with the Fourteenth Amendment. H.R. Rep. No. 2396, at 5 (1940), https://babel.hathitrust.org/cgi/pt?id=umn.31951p00679505s&view=1up&seq=46.

69. Compare House report with executive report. Importantly, however, Congress independently sought input from a variety of individuals and groups with (presumably) a variety of opinions on the parameters of birthright citizenship.

70. *See* Nationality Laws of the United States: Message from the President of the United States Transmitting A Report Proposing A Revision and Codification of the Nationality Laws of the United States, Prepared at the Request of the President of the United States, By the Secretary of State, the Attorney General, and the Secretary of Labor, at 7 (1938), https://babel.hathitrust.org/cgi/pt?id=mdp.39015059519226&view=1up&seq=9; Hearing before the House Subcommittee of the Committee on Immigration and Naturalization at 36–37 (Feb. 12, 1940) (Mr. Flournoy) (explaining to the Subcommittee his view that the U.S.-born children of aliens temporarily resident in the U.S., who are then raised in a foreign country, are considered U.S. citizens under the Fourteenth Amendment even though these children are "in no true sense American").

71. *See* Richard W. Flournoy, Jr., *Dual Nationality and Election*, 30 Yale L. J. 545, 552 (1921).

72. Indeed, while the record is largely silent as to the views of individual Congressmen on the parameters of birthright citizenship, where it does appear, at least one Congressman expressed apparent shock at the breadth of the executive branch's interpretation of the Constitution. Hearing before the House Subcommittee of the Committee on Immigration and Naturalization at 37 (Feb. 12, 1940) (Rep. Rees). As the late Justice Antonin Scalia noted, however, courts ought to be primarily concerned with what Congress actually said in the text of the law, and not with discerning some hidden intent behind the plain meaning of the words. *See, e.g.*, Antonin Scalia, Judicial Adherence to the Text of Our Basic Law, Speech at Catholic University of America (Oct. 18, 1996) ("You will never hear me refer to original intent, because I am first of all a textualist, and secondly an originalist. If you are a textualist, you don't care about the intent, and I don't care if the Framers of the U.S. Constitution had some secret meaning in mind when they adopted its words. I take the words as they were promulgated to the people of the United States, and what is the fairly understood meaning of those words.").
73. The Immigration and Nationality Act of 1952, which comprises the foundation of current federal immigration and nationality law, makes no indication of Congressional intent regarding birthright citizenship except to say: "This bill carries forward substantially those provisions of the Nationality Act of 1940 which prescribe who are citizens by birth." H.R. Rep. No. 1365, at 76 (1952), https://babel.hathitrust.org/cgi/pt?id=mdp.35112102288133;view=1up;seq=1301.
74. *See* Swearer, *supra* note 1, at 3–6. The Fourteenth Amendment was a congressional effort to effectively constitutionalize the provisions of the earlier Civil Rights Act of 1868, and the legislative history makes clear that the constitutional definition of citizenship provided in the Amendment was, at the very least, consistent with and informed by the statutory definition of citizenship provided in the Act.
75. This explicit congressional intent is almost impossible to determine given the complexity of the bill and its focus on naturalization and immigration as opposed to birthright citizenship. Indeed, as Representative Earl Michener (R–MI) noted to the Subcommittee of the House Committee on Immigration and Naturalization: "[T]his bill, H.R. 9980, contains 98 pages. The report accompanying the bill contains 164 pages. Of course, no member of the Committee on Rules has read the entire bill or the report." Congressional Record, Wednesday, Sept. 11, 1940, House of Representatives at 11940 (statement of Rep. Michener), https://www.govinfo.gov/content/pkg/GPO-CRECB-1940-pt11-v86/pdf/GPO-CRECB-1940-pt11-v86-4-2.pdf.
76. Submission Letter of Secretary of State Cordell Hull, Attorney General Homer Cummings & Secretary of Labor Francis Perkins, dated June 1, 1932, in Congressional Record at 11944 (Sept. 11, 1940) https://www.govinfo.gov/content/pkg/GPO-CRECB-1940-pt11-v86/pdf/GPO-CRECB-1940-pt11-v86-4-2.pdf.
77. *Id*. at 11945.
78. *Id*.
79. This understanding of the congressional record is supported by the report of the House Committee on Immigration and Naturalization, which asserted that the "proposed code represents a studied effort to draft a measure that would conform to the constitutional requirement." H.R. Rep. No. 2396, at 2 (1940), https://babel.hathitrust.org/cgi/pt?id=umn.31951p00679505s&view=1up&seq=3.
80. Consider, for example, the general attitude toward citizenship and expectations of would-be citizens found in the report of the House Committee on Immigration and Naturalization, which expresses the committee's opinion that the proposed bill would "protect the United States against adding to its body of citizens persons who would be a potential liability rather than an asset." *Id*. If anything, Congress seemed particularly concerned with limiting the breadth of citizenship laws and having more control over their application—not broadening their scope.
81. Congressional Record, Wednesday, Sept. 11, 1940, House of Representatives at 11944 (Rep. Dickstein), https://www.govinfo.gov/content/pkg/GPO-CRECB-1940-pt11-v86/pdf/GPO-CRECB-1940-pt11-v86-4-2.pdf.
82. *See* Immigration and Nationality Act of 1952, Public Law 414 (June 27, 1952) § 349(a)(10) (deeming a person to have lost his or her U.S. citizenship by "departing from or remaining outside of the jurisdiction of the United States in time of war or during a period declared by the President to be a period of national emergency" when the purpose of that act is to evade military service).
83. *See, e.g.*, Trop v. Dulles, 356 U.S. 86 (1957) (striking down as unconstitutional a provision of the Nationality Act of 1940 that stripped citizenship from those who desert from the U.S. military in a time of war and holding that not only is citizenship not subject to the general powers of the federal government, but that even if it were, loss of citizenship in this case would violate the Eighth Amendment as "cruel and unusual punishment"); Schneider v. Rusk, 377 U.S. 163 (1964) (striking down as unconstitutional a provision of the Immigration and Nationality Act of 1952 that stripped citizenship of naturalized citizens who resided for three years in their country of origin, on the basis that it violated the Fifth Amendment by discriminating against natural born and naturalized citizens); Afroyim v. Rusk, 387 U.S. 253 (1967) (striking down Section 401(e) of the Nationality Act of 1940 as unconstitutional and holding that, even where a citizen votes in a foreign election, Congress "has no power under the Constitution to divest a person of his United States citizenship absent his voluntary renunciation thereof").

84. The United States is not a signatory or ratifier of any of the United Nations treaties relating to the prevention of statelessness, and the domestic legal effect of the Universal Declaration of Human Rights—which acknowledges only that individuals have the right to a nationality and to be free from arbitrary losses of nationality—is, at best, hotly contested. *See, e.g.*, Gary Born, *Customary International Law in United States Courts*, 92 WASH. L. REV. 1641, Part I (2017) (discussing the various views on the status of customary international law in U.S. courts). Nonetheless, there are both genuine humanitarian and political reasons for ensuring that the United States' citizenship policy refrains from rendering individuals stateless. First, basic principles of individual liberty and human dignity ought to weigh against depriving a person of the ability to avail himself or herself of any legal or diplomatic protections of any country. This is consistent with both the purpose and the original meaning of the Fourteenth Amendment. *See, e.g.*, Speech of Hon. John M. Broomall, of Pennsylvania, on the Civil Rights Bill (Mar. 8, 1866), https://babel.hathitrust.org/cgi/pt?id=yale.39002053501418;view=1up;seq=7 (introducing the final version of the Civil Rights Act of 1866 to the House of Representatives and reasoning that the former slaves must be recognized as citizens: "Civilized man must of necessity be a citizen somewhere. He must owe allegiance to some Government. There is some spot upon the earth's surface upon which it is possible for him to commit treason."). Second, it may be preferable from a practical perspective to avoid adding more levels of potential controversy or legal attack to a policy decision that would undoubtedly be plagued by these problems even when presented in the most straightforward way possible.