

The Conditional Nature Of Derivative Citizenship

I. INTRODUCTION

A child¹ born outside the United States to a single American parent comes within the preferred class of "immediate relatives" of American citizens. As a consequence, he is permitted to immigrate to the United States without being subject to numerical restrictions. That child, however, is not automatically a citizen of the United States. Rather, he is a "derivative citizen",² who under present law must first satisfy certain statutory conditions in order to acquire and retain his status as an American citizen. Such "conditional" citizenship and its related problems is vitally important to the thousands of Americans presently residing in foreign countries.³ This article will (1) limit its discussion to the situation where a child is born with only one American parent; (2) examine the historical development of statutory law on the subject; (3) analyze the case law; (4) critically assess the constitutional status of such citizenship; and (5) propose alternatives to the present law.

II. THE AMERICAN CONCEPT OF CITIZENSHIP

A. A PROBLEM OF DEFINITION

In the vernacular, a citizen is a member of a nation, "one who owes allegiance to a government and is entitled to protection from it."⁴ But citizenship has also been described as a "legal construct, an

¹Immigration law defines the term child to mean an unmarried person under twenty-one years of age. This term includes the illegitimate and adopted child, as well as stepchild. 8 U.S.C. § 1101(b)(1) (1970). *See* R. WEINBERG, *ELIGIBILITY FOR ENTRY TO THE UNITED STATES OF AMERICA* 10 (1967).

²Derivative citizenship can also refer to those minor children who have attained citizenship through the naturalization of one or both parents. This article shall limit itself to the law of citizenship as it pertains to citizenship acquired at birth abroad.

³From 1962 to 1971, the nine year period for which data is available, approximately 82,000 persons were born abroad to one American and one alien parent, representing 25% of all American births abroad. H.R. Rep. No. 92-1386, 92d Cong., 2d Sess. 7 (1972).

⁴FUNK AND WAGNALLS' *STANDARD ENCYCLOPEDIA COLLEGE DICTIONARY* 249 (1968)

abstraction, a theory. No matter what safeguards it may be equipped with . . . it can be taken away."⁵ The U.S. Constitution originally failed to define national citizenship.⁶ The Constitution did refer to citizens in various contexts, such as describing qualifications for the Presidency and for Congress,⁷ and granting Congress the authority to "establish a uniform rule of naturalization".⁸ Yet the Constitution said nothing about the acquisition or loss of United States citizenship.⁹ The Preamble begins, "We the people of the United States," and not "We the citizens of the United States". Likewise, the Bill of Rights defines the rights of people, not of citizens.¹⁰

B. THE FOURTEENTH AMENDMENT DEFINITION

The fourteenth amendment was adopted in 1868. Its first clause has been regarded as the "Citizenship Clause" of the Constitution¹¹ and was intended to supply for the first time a comprehensive definition of citizenship.¹² It reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. . . ."¹³ The literal language of the

⁵Bickel, *Citizenship in the American Constitution*, 15 ARIZ. L. REV. 369, 387 (1973). Cf. *Scott v. Sanford*, 60 U.S. (19 How.) 393 (1856).

⁶Gordon, *The Power of Congress to Terminate United States Citizenship*, 4 CONN. L. REV. 611, 613-14 (1972). One explanation is that the Constitution's silence was deliberate and stemmed from a desire to avoid a decision on the issue of the citizenship status of slaves.

⁷U.S. CONST. art. II, § 1, cl. 5 (qualifications for Presidency: natural-born citizen only); art. I, § 2, cl. 2 (qualifications for House of Representatives); art. I, § 3, cl. 3 (qualifications for Senators); art. IV, § 2 (citizens of each state are entitled to all privileges and immunities of citizens in the several states).

⁸U.S. CONST. art I, § 8, cl. 4.

⁹Gordon, *supra* note 6, at 613.

¹⁰Bickel, *supra* note 5, at 370. Bickel asserts that the reason that citizenship is defined nowhere in the Constitution and its collateral documents is that it simply was not important: "[The Framers presented] the edifying picture of a government that bestowed rights on people and persons, and held itself out as bound by certain standards of conduct in its relations with people and persons, not with some legal construct called citizen." The concept of citizenship became significant for the first time when the Supreme Court mistakenly referred to it in the *Dred Scott* decision in order to resolve the controversy over slavery. However, the *Dred Scott* decision gave no definition of citizenship or of its rights and privileges. "It invested the concept with no affirmative meaning. It used the idea negatively, in exclusionary fashion, to indicate who was not [a citizen]." Bickel, *supra* note 5, at 373. See *Scott v. Sanford*, 60 U.S. (19 How.) 393 (1856).

¹¹The fourteenth amendment also provides that "No state may abridge the privileges or immunities of citizens of the United States." But this last reference to "citizens" has not played a significant role since the courts have defined very few privileges and immunities of national citizenship. See 60 ILL. B.J. 690, 691 (1972).

¹²*Rogers v. Bellei*, 401 U.S. 815, 839 (1971); Gordon, *The Power of Congress to Terminate U.S. Citizenship*, 4 CONN. L. REV. 611, 614 (1972).

¹³U.S. CONST. amend. XIV, § 1.

amendment reaffirms the pre-existing principle of *jus soli*, a rule that has been implicitly followed since this country's inception.¹⁴ This rule is simply that a person's place of birth determines his citizenship.¹⁵ *Jus soli* assures the acquisition of American nationality status to all persons born in the United States. The Citizenship Clause also explicitly acknowledges naturalization, another generally recognized way of attaining citizenship.

The principle of *jus soli* is only one of two concepts underlying the acquisition of citizenship. The other concept is *jus sanguinis*. Although it is not expressly referred to in the wording of the fourteenth amendment, *jus sanguinis* has been a part of American law since 1790.¹⁶ The principle of *jus sanguinis* is that a child's citizenship is acquired by descent, *i.e.*, is determined by the citizenship of his parent or parents.¹⁷ The derivative citizen's status is thus created by the rule of *jus sanguinis*, which assures to American citizens the capacity to transmit citizenship to their children born outside the United States.¹⁸

The United States allows acquisition of citizenship by both place of birth and descent so that a child born abroad of an American parent is, by the principle of *jus sanguinis*, a citizen of the United States. The same child may also be a citizen of the country of birth under the laws of that country. Acquisition of another country's citizenship does not affect his American status, unless he voluntarily divests himself of American citizenship.¹⁹ As a result, the child born outside the United States will often be a dual national, a citizen of both countries.²⁰

¹⁴United States v. Wong Kim Ark, 169 U.S. 649, 655-61 (1898).

¹⁵C. GORDON & H. ROSENFELD, 3 IMMIGRATION LAW AND PROCEDURE § 11.5 (1974) [hereinafter cited as GORDON & ROSENFELD]. *Jus soli* is followed by English common law and remains the basic citizenship rule in the modern world. It literally means: "of the soil."

¹⁶Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103-04. There were subsequent enactments in 1795 (Act of Jan. 29, 1795, ch. 20, § 3, 1 Stat. 415), 1802 (Act of Apr. 14, 1802, ch. 28, § 4, 2 Stat. 153, 155), 1855 (Act of Feb. 10, 1855, ch. 71, § 1, 10 Stat. 604), and 1907 (Act. of Mar. 2, 1907, ch. 2534, § 6, 34 Stat. 1228, 1229). *Jus Sanguinis* was also present at this time in England in spite of the common law preference for *jus soli*; due to an increase in both commerce and the mobility of British subjects, a series of statutes enacted as early as 1350 bestowed British nationality on children born abroad to natural-born British subjects. See Weedin v. Chin Bow, 274 U.S. 657, 660, 668 (1927).

¹⁷GORDON & ROSENFELD, *supra* note 15, at § 11.5. Rule of Civil Law and adopted by France and other European countries. It means: "by right of blood." 2 HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 1073 (2d rev. ed. 1945).

¹⁸GORDON & ROSENFELD, *supra* note 15, at § 13.1(a), (b).

¹⁹For a treatment of the area of voluntary expatriation, see Richard R. Gray's article: "Expatriation: A Concept In Need Of Clarification", in this volume.

²⁰J. CABLE, DECISIVE DECISIONS OF U.S. CITIZENSHIP 51 (1967).

III. STATUTORY DEVELOPMENT OF DERIVATIVE CITIZENSHIP

A. POWER OF CONGRESS

The Supreme Court has said that the silence of the original Constitution gives Congress an implicit power to enact legislation concerning all aspects of citizenship.²¹ The Court has recognized in the broadest terms “an implied foreign affairs power of Congress” and included the regulation of citizenship within this power.²² It has also declared that “it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.”²³

B. EARLY LAW — 1790-1907

Congress exercised its power to define citizenship by enacting a series of statutes conferring citizenship by descent to a child born abroad to a single American parent. The first statute was enacted in 1790.²⁴ In patterning the legislation after earlier English statutes, Congress intended to remove any doubt that a child born abroad to an American citizen would acquire the status of a “natural-born citizen”. Congress, however, framed the statute as a limitation, allowing citizenship by descent to only one generation of individuals who were born abroad and did not at any time reside in the United States. It provided that the right of citizenship would not descend to persons whose fathers had never resided in the United States.²⁵ The statute thus required the satisfaction of several conditions prior to permitting the transmittal of citizenship: the child must have had a paternal tie to the United States, his father must have been a citizen of the United States at the time of the child’s birth, and his father must have also resided in the United States some time prior to that birth. The policy behind these prerequisites was to preclude the establishment of successive generations of absentee citizens.²⁶ In 1795, 1802, and 1855, additional statutes were enacted which substantially repeated the language of the first statute and retained its

²¹ *United States v. Wong Kim Ark*, 169 U.S. at 654-55, 668 (1898).

²² *Burnet v. Brooks*, 288 U.S. 378, 396 (1933); *Mackenzie v. Hare*, 239 U.S. 299, 311 (1915). See also Henkin, *The Treaty Makers & the Law Makers*, 107 U. PENN. L. REV. 903, 923 (1959).

²³ *U.S. v. Wong Kim Ark*, 169 U.S. at 668 (1898).

²⁴ Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103, 104.

²⁵ The text of the 1790 Act reads as follows: “. . . the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural-born citizens”.

²⁶ F. VAN DYNE, *CITIZENSHIP OF THE UNITED STATES* 34 (1904); *Weedin v. Chin Bow*, 274 U.S. 657, 667 (1927).

conditions.²⁷

The Act of March 2, 1907,²⁸ reiterated the set of conditions which preceding acts prescribed, namely, the transmitting parent must have been an American citizen father,²⁹ who was a citizen of the United States prior to or at the time of the child's birth,³⁰ and who had resided in the United States prior to such birth.³¹ The statute, however, added the principle of election or choice of citizenship: for the first time conditions subsequent had to be satisfied if the citizen by descent desired to continue to receive the diplomatic protection of the American government. Upon reaching the age of eighteen years, the minor still residing abroad was required to record his intent to reside at some future time within the United States and remain a citizen.³² He was further required to take an oath of allegiance to the United States at the age of twenty-one.³³ Failure to meet these conditions resulted only in loss of diplomatic protection abroad; citizenship status and all other rights of citizenship remained intact.³⁴

C. RECENT LAW — 1934 to 1952

1. LEGISLATIVE POLICY AND THE PROBLEM OF DUAL CITIZENSHIP

As stated previously, the United States has adopted a combination of the principles of *jus soli* and *jus sanguinis*. As a result, a citizen born overseas may be a dual national.

Legal authorities have asserted that such dual citizenship can create the undesirable problems of questionable loyalties and international conflicts.³⁵ American citizenship is not comprised of only

²⁷ Act. of Jan. 29, 1795, ch. 20, § 3, 1 Stat. 415, Act of Apr. 14, 1802, ch. 28, § 4, 2 Stat. 153, 155, Act of Feb. 10, 1855, ch. 71, § 1, 10 Stat. 604. However, the 1802 Statute was defective in that its provisions were confined to cases of children whose parents were citizens in 1802, or had been citizens prior to that time. This retrospective condition was cured by the 1855 Statute which incorporated the earlier conditions retroactively and granted automatic citizenship to those persons who would have qualified for derivative citizenship abroad during the fifty-year period.

²⁸ Act of Mar. 2, 1907, Ch. 2534, § 6, 34 Stat. 1228-29.

²⁹ *Montana v. Kennedy*, 366 U.S. 308, 313 (1961); GORDON & ROSENFELD, *supra* note 15, at § 13.3(a).

³⁰ *Weedin v. Chin Bow*, 274 U.S. 657 (1927); GORDON & ROSENFELD, *supra* note 15, at § 13.4(b), § 13.7.

³¹ Act of Mar. 2, 1907, Ch. 2534, § 6, 34 Stat. 1228-29.

³² *Id.*

³³ *Id.*

³⁴ C. GETTYS, *THE LAW OF CITIZENSHIP IN THE U.S.*, 29-30 (1934).

³⁵ See generally BAR-YAACOV, *DUAL NATIONALITY* (1961); 5 *LOYOLA U. L. REV.* 589, 607 (1972). See also *Rogers v. Bellei*, 401 U.S. 815 (1971); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 187 (1963); *Kawakita v. United States*, 343 U.S. 717 (1952). In *Kawakita*, the Court stated: "Circumstances

privileges and benefits. The individual must also have allegiance which is the "object of fidelity and obedience [that] the individual owes his government in return for protection he receives."³⁶ Loyalty is assumed to be an inherent trait among persons born within the geographical confines of a nation and for that reason citizenship is automatically conferred.³⁷ For the child who inherits American citizenship at birth abroad the assumption is the contrary.

In an effort to reduce the occurrence of dual nationality, Congress began in 1934 to increase the number and severity of conditions for acquiring and retaining derivative citizenship. This congressional action was primarily in response to the rising international conflicts that preceded and precipitated World War II. Congress expressed its concern that dual citizens born abroad would hold "undesirable political affiliations or beliefs that are un-American and a danger to the country".³⁸ The imminent possibility arose of derivative citizens voting in foreign elections, serving in foreign armies against this country, or otherwise "embroiling America in controversies which [such citizens] have with governments of the foreign countries in which they reside."³⁹

Such possibilities prompted Congress in 1934 to amend the 1907 legislation. The Act of 1934⁴⁰ eliminated the paternal citizenship requirement, granting citizenship as long as either parent was an American citizen. Thus, American women had equal ability to transmit citizenship by descent. But in making this change, Congress was fearful that the child of an American mother and an alien father might be born into a household of divided allegiance.⁴¹ The Act therefore introduced a condition subsequent to one obtaining citizenship by descent from either parent which, if unsatisfied, would result in a loss of citizenship. It provided that "the right of citizenship shall not descend" unless the child resided in the United States continuously for at least five years immediately before his eighteenth birthday.⁴² It also required him to take an oath of allegiance within six months after reaching the age of majority.⁴³ Physical presence at this formative age was deemed essential in order to counteract the anti-democratic values the child may have acquired during the time

may compel one who has a dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship." 343 U.S. at 736 (1952).

³⁶Blanco v. Pan-American Life Ins. Co., 221 F. Supp. 219, 227 (S.D. Fla. 1963); 8 DIG. OF INT'L. L. 69 (1967).

³⁷GORDON & ROSENFELD, *supra* note 15, at § 11.4.

³⁸See generally 86 CONG. REC. 11944-45, 13249 (1940).

³⁹86 CONG. REC. 11946 (1940).

⁴⁰Act of May 24, 1934, ch. 344, § 1993, 48 Stat. 797.

⁴¹78 CONG. REC. 7330-33, 7341-42, 7348 (1934).

⁴²Act of May 24, 1934, ch. 344, § 1993, 48 Stat. 797.

⁴³*Id.*

he lived abroad, as well as to instill in him an identification with America.⁴⁴ Thus, for the first time, a residence requirement on foreign-born Americans was imposed. This differed from earlier requirements that the derivative citizen merely state formally his intention to reside in the United States in the future.⁴⁵ In addition, Congress applied the legislation prospectively and thus precluded American mothers from transmitting their citizenship prior to the date of enactment.⁴⁶

The Nationality Act of 1940⁴⁷ was similar to the Act of 1934, but the residence provision for the child was modified to require that the five-year residence condition be fulfilled before the age of twenty-one, instead of eighteen. Additionally, the requirement of taking an oath of allegiance was eliminated. This Act conferred its application retroactively to the effective date of the 1934 Act.

The 1940 legislation, however, placed greater restrictions on the availability of citizenship by descent. It imposed a stringent condition of prior residence upon the citizen-parent desiring to transmit American citizenship, in that the citizen-parent under the 1940 Act must have resided in the United States at least ten years prior to the child's birth abroad.⁴⁸ Statutes preceding the Act of 1940 had not required any definite length of residence: Administrative authorities had ruled that the citizen-parent's temporary visit in this country was sufficient compliance.⁴⁹ In introducing this ten year condition in the 1940 Act, Congress sought to prevent the perpetuation of United States citizenship by citizens who were born abroad and who remained there, or who may have been born in the United States but who went abroad as infants and did not return to this country. Neither these persons nor their foreign-born children were regarded as having a real American background or any interest except that of being protected by the United States while in foreign countries.⁵⁰ A further restriction related to the minimum age at which a citizen-parent could transmit citizenship, in that he must have resided at

⁴⁴86 CONG. REC. 11946-47 (1940).

⁴⁵Note that persons who acquired American citizenship at birth abroad prior to 1934 were not subject to any retention conditions; such persons acquired absolute title to citizenship. See GORDON & ROSENFELD, *supra* note 15, at § 13.5(b).

⁴⁶"Any child *hereafter* born out of the limits and jurisdiction of the United States, whose father or mother . . . at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States. . . ." (Emphasis supplied). Act of May 24, 1934, ch. 344, § 1993, 48 Stat. 797. *Montana v. Kennedy*, 366 U.S. at 312 (1961). A case presently pending which challenges this prospective application is *Valencia Sepulveda v. I.N.S.*, No. 74-1597 (9th Cir., Apr. 8, 1974), *infra* note 72.

⁴⁷Act of Oct. 14, 1940, ch. 876, § 201(c), (g), (h), 54 Stat. 1137, 1138-39.

⁴⁸Act of Oct. 14, 1940, ch. 876, § 201(g), 54 Stat. 1138.

⁴⁹*Matter of V.*, 6 I. & N., Dec. 1, 7 (A.G. 1954).

⁵⁰S. Rep. No. 2150, 76th Cong., 3d Sess. 4 (1940). See also Codification of the Nationality Laws, House Committee Print, 76th Cong., 1st Sess. 14 (1940).

least five of the ten years in the United States after attaining the age of sixteen. Thus a citizen under twenty-one years of age who was married to an alien could not transmit citizenship.⁵¹ By introducing this age limitation, Congress apparently sought to ensure that the citizen-parent would acquire sufficient identification with this country before being permitted to pass on his citizenship.

The Act of 1952,⁵² with some modification to be discussed later, is the current law. It repeals the 1940 statute and liberalizes the requirements governing the retention of derivative citizenship in two respects. First, its retention provisions are retroactive to May 24, 1934.⁵³ Second, in section 301(b) the Act extends the length of time in which the foreign-born citizen can satisfy the residency requirement.⁵⁴ Although the child's presence in this country must commence prior to his attaining the age of twenty-three years, his continual presence in the United States can be satisfied at any time before attaining the age of twenty-eight. In spite of the statute's increased flexibility, burdensome conditions remain in effect. Age discrimination is still a factor; for example, a citizen under nineteen years of age who marries an alien is unable to transmit citizenship.⁵⁵ Moreover, the retention condition of section 301(b) is applicable only for those persons born abroad after May 24, 1934, and therefore discriminates against persons born prior to that date.⁵⁶

2. A SPECIAL CATEGORY:

THE ILLEGITIMATE DERIVATIVE CITIZEN

Under the immigration laws the courts have given the word "child" a broad interpretation in order to preserve the family unit.⁵⁷ The term includes an illegitimate child who claims citizenship status by reason of his relationship to his natural mother who is an American citizen. The applicable laws concerning illegitimate children born abroad are distinct from those of legitimate children and thus constitute a special category within the category of citizens by descent.

The first specific provisions relating to illegitimate children born abroad were those incorporated into the Act of 1940.⁵⁸ The Act conferred citizenship retroactively for all illegitimate persons born

⁵¹ Act of Oct. 14, 1940, ch. 876, § 201(g), 54 Stat. 1138.

⁵² 8 U.S.C. § 1401(a)(7) (1970).

⁵³ 8 U.S.C. § 1401(c) (1970).

⁵⁴ 8 U.S.C. § 1401(b) (Supp. III 1974).

⁵⁵ 8 U.S.C. § 1401(a)(7) (1970) requires at least five of the ten years prior residence to occur after the citizen-parent attains the age of fourteen.

⁵⁶ *Palomo v. Mitchell*, 361 F. Supp. 455 (S.D. Tex. 1972); *Wolf v. Brownell*, 253 F.2d 141 (9th Cir. 1958). GORDON & ROSENFELD, *supra* note 15, at § 13.7.

⁵⁷ 8 U.S.C. § 1101(b)(1) (1970); 1 GORDON & ROSENFELD, *supra* note 15, at § 2.18(b)(4).

⁵⁸ Act of Oct. 14, 1940, ch. 876, § 205, 54 Stat. 1138-40.

prior to its enactment. Its only requirements were: (1) the mother through whom citizenship was transmitted must have been an American citizen and (2) she must have had some period of previous residence in the United States.

Citizenship attained by a child born out of wedlock under the 1952 Act has the added requirement that the prior residence of the citizen-mother be for a continuous period of at least one year.⁵⁹ There are no other conditions precedent or subsequent. The law does not require that the citizen-parent spend ten years here prior to transmitting citizenship or that the child establish physical presence in the United States in order to retain citizenship. As a result, the illegitimate child at present can more easily acquire and retain citizenship by birth abroad than the legitimate child of a citizen-parent.⁶⁰

D. A CHANGE IN POLICY: THE 1972 AMENDMENT

In 1972, a change occurred in legislative attitude toward derivative citizenship and the problem of dual citizenship. Congress amended section 301(b) of the 1952 Act to significantly reduce the requirement for retention of citizenship by descent. The citizen may now comply with the residency requirement by physical presence for a continual period of two years, instead of five, between the ages of fourteen and twenty-eight.⁶¹ The two-year requirement is retroactive to cover all children born abroad after May 24, 1934.⁶² As justification for this liberal trend, Congress recognized that since World War II, more and more Americans were living abroad as employees of United States corporations, the United States Armed Forces, and the Government; moreover, a significant number of citizens married non-citizens while serving abroad. Congress also ac-

⁵⁹8 U.S.C. § 1409(c) (1970).

⁶⁰E. LOWENSTEIN, *THE ALIENS AND IMMIGRATION LAW* 336 (1958). A child born to an American citizen mother obtains an unconditional title to American citizenship and is not required to take any personal action to retain his citizenship. However, the illegitimate child who claims citizenship through his natural citizen father must first be legitimated to effect derivative citizenship. Furthermore, legitimation does not result from adoption, acknowledgement of paternity or anything short of full compliance with the law of the father's residence or domicile. *Peignard v. I.N.S.*, 440 F.2d 757, 759-60 (1st Cir. 1971). Once legitimation from a legally recognized relationship is established, the child is placed in the same position as though he were born legitimate. He therefore is required to fulfill all mandatory conditions relating to derivative citizenship.

⁶¹8 U.S.C. § 1401(b) (Supp. III 1974). Absences from the United States of less than sixty days in the aggregate during this period for which "continuous physical presence" is required does not break the continuity of such physical presence.

⁶²8 U.S.C. § 1401(d) (Supp. III 1974). See GORDON & ROSENFELD, *supra* note 15, at § 13.8.

knowledge that many hardships had resulted from the inflexible requirement of the 1952 Act. It therefore concluded that the intent of the law could be met by a lesser period of residence, thereby alleviating the hardship that was often caused by the separation of children or young adults from their families and the attendant financial burden imposed by such separation.⁶³ Another factor which may have motivated Congress in the direction of liberalized requirements was the lessening of Cold War tensions and the consequent decreased fear of the influence of Communism and other suspect ideologies. As a result, Congress may have perceived the threat of derivative citizens or dual nationals importing foreign ideologies as substantially reduced.

Notwithstanding these recent modifications, the effect of the new amendment is limited. For example, some question remains whether Congress intended to make the liberalized residence requirement retroactive so as to include all persons who have previously lost their citizenship through failure to comply with the physical presence requirements of earlier statutes.⁶⁴ Moreover, the remaining conditions precedent from previous years are left unchanged by the amendment. The citizen-parent must still meet the ten year U.S. residence requirement prior to the child's birth,⁶⁵ with five of those years being after the parent reaches the age of fourteen.⁶⁶

E. STATUTORY SUMMARY

As demonstrated in the above sections, the statutes determining the status of children born abroad have prescribed different conditions for various years, depending on the individual's date of birth. As a result, the 1972 law presently in effect will have relevance only for those persons born after May 24, 1934. As to persons born prior to that date, reference to earlier legislation is necessary.⁶⁷

The present statutory conditions for transmission of American

⁶³H.R. Rep. No. 92-1386, 92d Cong., 2d Sess. 2 (1972).

⁶⁴GORDON & ROSENFELD, *supra* note 15, at § 13.5(a)(5). Although the statute is unclear, the 1972 amendment seems to allow those who never satisfied the five-year requirement to now comply with the shorter amendatory provision. In this instance, citizenship is regarded as having continued from date of birth, notwithstanding an intervening period of alienage. 50 INTERPRETER RELEASES 265-67 (Sept. 1973).

⁶⁵However, an exception to the ten year requirement was later added by amendment. It permits presence abroad in the following capacities to be credited toward satisfying the requirement: (a) honorable service in the U.S. Armed Forces; (b) employment by the U.S. government; (c) employment by an international organization with which the U.S. is associated; (d) as a dependent child in the household of a parent engaged in the foregoing occupations. 8 U.S.C. § 1401(a)(7) (1970); H.R. Rep. No. 2150, 89th Cong., 2d Sess. 2-5 (1966).

⁶⁶8 U.S.C. § 1401(a)(7) (1970).

⁶⁷For a more extensive description of the current law, see Appendix in this article.

citizenship by descent to children born outside the United States after May 24, 1934, are as follows:

- (1) One parent must be American;
- (2) The American citizen-parent must have been physically present in the United States prior to the child's birth;
- (3) The parent must have been thus present for a period not less than ten years, at least five of which were after attaining the age of fourteen;
- (4) The child loses his American citizenship unless he comes to the United States and is continually present here for at least two years between the ages of fourteen and twenty-eight.
- (5) The illegitimate derivative citizen must establish that his mother is an American citizen who has resided in this country for one year prior to the illegitimate child's birth.

IV. STATUTORY ANALYSIS

A. A REVIEW OF LEGISLATIVE POLICY

1. LACK OF UNIFORMITY

The statutory conditions relating to the transmission of citizenship by descent to children born abroad have differed substantially during various time periods since 1790. In recent years, Congress has added conditions of increasing complexity. It is questionable whether the "liberalized" effect of recent statutory changes has outweighed the difficulties introduced by substituting complex conditions for the more simple pre-1934 requirements.⁶⁸ An additional problem is that some of these statutes are retroactive while others are not.⁶⁹

The lack of uniform statutory standards is a direct result of the "date of birth" policy of the Immigration and Naturalization Service. That policy applies the law in effect at the time of an individual's birth in order to determine individual citizenship status. It then determines whether subsequent legislation has retroactively altered the law and whether the individual met the conditions that law prescribes during the time period involved.⁷⁰ As a consequence, a person can be deprived of citizenship by an act or circumstance which is totally beyond his control, namely his date of birth.⁷¹ Although it is

⁶⁸GORDON & ROSENFELD, *supra* note 15, at § 13.6.

⁶⁹See section III of this article.

⁷⁰See *Montana v. Kennedy*, 366 U.S. 308, 312 (1961); *Villanueva-Jurado v. I.N.S.*, 482 F.2d 886, 887 (1973); *Wolf v. Brownell*, 253 F.2d 141-42 (9th Cir. 1957); GORDON & ROSENFELD, *supra* note 15, at § 13.2(b).

⁷¹A recent case now before the Ninth Circuit, *Valencia Sepulveda v. I.N.S.*, challenges this date of birth policy. No. 74-1597 (9th Cir., Apr. 8, 1974). Petitioner was born in Mexico in 1931 to an alien father and American mother. Because of the law then in effect which allowed only American fathers to

clear that Congress intended this result to occur, it is questionable whether this result is consistent with the constitutional mandate of uniformity.⁷² The inconsistent, discriminatory aspects and conflicting rules promulgated in the series of legislation since 1790 presents an urgent need for uniform and simple legislative requirements.

2. HARDSHIP

The purpose for extending exempt non-quota status to derivative citizens is to promote the unity of families of United States citizens.⁷³ To further this purpose, definitions in the Act of 1952 and its amendments have delineated a broad connotation of "child" in order to include the illegitimate child under the immigration laws.⁷⁴ The 1972 legislation relating to retention requirements was also in-

transmit citizenship, petitioner was denied citizenship. Act of March 2, 1907, ch. 2534, § 6, 34 Stat. 1229; it was not until 1934 that an American mother could legally transmit her citizenship. The argument Sepulveda asserts in claiming citizenship is twofold. First, he asserts that the present statutory conditions of the 1952 Act should be construed liberally in order to include him within its coverage in that the conditions relating to the acquisition of American citizenship found in 8 U.S.C. § 1401(a)(7) (1970) should be made retroactive to the date of petitioner's birth. Without such full retroactive application, petitioner argues he would be deprived of due process since it is unreasonable and inequitable to deprive a person of citizenship because of his date of birth. The government responds that it was Congress' intent not to permit the 1952 Act to operate retroactively with respect to its liberalized parental residency requirement. Brief for Respondent at 5, *Sepulveda v. I.N.S.* The government further argues that Congress "spoke" to this matter by enacting a subsequent amendment that allowed this liberalized requirement to apply retroactively only for those children born between 1941 and 1952 and whose citizen-parents had served in this country's armed forces during any part of that period. 8 U.S.C. § 1401(a) (1970). The government concludes that if the acquisition provision was intended to cover all children born before 1952, the later amendment providing for a specific retroactive exception would be meaningless.

Sepulveda also contends that several federal court cases are contrary to the policy of the Immigration Service and have yet to be overruled. One case cited, *In Re Vitale*, 44 F.2d 241, 242 (E.D. N.Y. 1930), held that such rights as one possesses respecting citizenship must be measured as of the date the claimant files his petition, not date of birth. Another case relied on by Sepulveda is *Petition of Mirzoeff*, 196 F. Supp. 230, 232 (S.D. N.Y. 1961). There the court ruled that if one is eligible for citizenship at any time under a law presently in effect, then in the absence of fraud or other factors, his petition for citizenship should be sustained. But these cases do not appear to afford Sepulveda citizenship status since "rights as one possesses" do not exist in this instance even at time of filing. The 1952 Act, the statute in effect at the time of filing, precludes retroactive coverage for persons born prior to May 24, 1934. Sepulveda, since he was born prior to 1934, is precluded from citizenship under the law in effect at the time of his filing.

⁷²The Constitution requires that a "uniform rule of naturalization" be established. U.S. CONST. art I, § 8, cl. 4. It would seem that this language, as well as minimum due process standards of fairness, could be interpreted to call for a single set of statutory requirements for derivative citizenship.

⁷³1 GORDON & ROSENFELD, *supra* note 15, at § 2.18.

⁷⁴*Supra* note 1.

tended to reduce the period of separation of young persons from their families.⁷⁵

Nonetheless, the present retention condition in section 301(b), requiring two years of continuous physical presence in this country, does not go far enough in reducing such hardship. In view of the recent Congressional recognition of the considerably diminished threat which residency abroad poses,⁷⁶ the current requirement does not appear to have reasonable basis. This view is consistent with other countries' legislation relating to derivative citizenship. For example, Great Britain permits derivative citizenship to descend indefinitely without imposing residence qualifications on either the parent or child.⁷⁷ The only requirements are that the transmitting parent be a British citizen and that he register the child's birth at a British consulate within one year of its occurrence. As an alternative to registration the parent may produce proof that at the time of the child's birth he was employed by the government. Other nations' laws similarly provide for exemption from residence conditions, requiring other personal links with the state, its science or its community. Other relevant factors are knowledge of the language of the country and the taking of an oath of allegiance.⁷⁸

B. RECOMMENDED REVISIONS

In view of the hardships and lack of uniformity present in the current law, this writer feels that a statute should be enacted that would repeal all provisions relating to the child born abroad of a single American parent. Full citizenship and its ancillary rights must be afforded in order to reflect a more humane and realistic outlook toward this class of persons. The suggested statute would include the following measures:

(1) Congress should eliminate the restriction as to the minimum age at which the citizen-parent can transmit citizenship. This peculiar feature has resulted from the inflexible conditions which the earlier statutes prescribed and has unreasonably denied the American parent the opportunity to transmit citizenship when he may have lived in the United States for the first eighteen years of his life.⁷⁹

(2) Congress should reduce the ten year prerequisite of physical residence in the United States by the citizen-parent to one year.⁸⁰ In

⁷⁵See section III (D) of this article and *supra* note 63.

⁷⁶See section III (D) of this article.

⁷⁷11 & 12 Geo. 6, ch. 56, § 5(1), BRITISH NATIONALITY ACT of 1948. See BAR-YAACOV at 26, *supra* note 35.

⁷⁸P. WEISS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW, 101-02 (1956).

⁷⁹*Supra* note 55.

⁸⁰The derivative citizen would still carry the burden of establishing his familial

addition, Congress should incorporate the exception to the ten year prerequisite which is currently embodied in the 1952 Act. It provides that those periods of time served by the parent overseas in the U.S. Armed Forces, U.S. Government, or any U.S. affiliated organization be credited toward compliance with the precondition.⁸¹ The shorter length of residency is sufficient time for the transmitter of citizenship to absorb an American identity and indicate some measure of allegiance. It also avoids the current condition's excessively long durational requirement.

(3) Congress should replace the present two year residence requirement for retention with a re-enactment of the qualifying conditions incorporated in the Act of 1907.⁸² This would require that the offspring of an American citizen within a specific time take a formal oath of allegiance to the United States. In addition, he would have to record at an American consulate his intention of becoming, at some future date, a resident of the United States and remaining a citizen thereof.⁸³ These conditions would require neither immediate physical presence in the United States nor any specified duration of residency. The requirement of section 301(b), which calls for the derivative citizen to come here before becoming twenty-eight years of age, could serve as the maximum time in which he must take the oath of allegiance and record his intent to reside. The time "in service of the United States" exception as set forth in (2) above should also apply towards the child's satisfaction of the retention requirement. This proposal would provide some test of allegiance and satisfy the legitimate concerns of the nation that citizens living abroad feel a sense of American identity and intend to retain American citizenship.

(4) The new statute should retroactively apply to all persons who would presently qualify as derivative citizens except for the present limitations on retroactivity. Date of birth, illegitimacy, or other arbitrary distinctions should not provide the basis for separate treatment. This retroactive feature would also bestow derivative citizenship upon those individuals who would qualify, but who previously may have lost their citizenship for failure to comply with the earlier retention conditions.

relationship to his alleged parent before being able to claim citizenship by *jus sanguinis*. For an examination of the procedural difficulties associated with establishing such proof, see LOWENSTEIN, *supra* note 60, at 340, 367; GORDON & ROSENFELD, *supra* note 15, at § 11.8.

⁸¹ 8 U.S.C. § 1401(a)(7) currently incorporates this suggested reform as part of its provisions relating to the ten year residence of the citizen-parent.

⁸² Act of Mar. 2, 1907, ch. 2534, § 6, 34 Stat. 1228-29. See section III (B) of this article.

⁸³ Act of Mar. 2, 1907, ch. 2534, § 6, 34 Stat. 1228-29.

V. CASE LAW AFFECTING DERIVATIVE CITIZENSHIP

A. CONGRESSIONAL POWER TO REVOKE CITIZENSHIP

A number of recent United States Supreme Court cases in the area of citizenship have specifically focused upon the issue of congressional power to unilaterally revoke citizenship. In so doing, they help define the constitutional limits of congressional power in the citizenship area. While some of these cases do not factually deal with children born abroad, the tests and principles enunciated therein could be broadly interpreted as applicable to every form of citizenship status, and therefore govern derivative citizenship and its rules for retention.⁸⁴

1. *PEREZ V. BROWNELL*:

THE "RATIONAL NEXUS" TEST

In the 1958 decision of *Perez v. Brownell*,⁸⁵ Justice Frankfurter, speaking for the majority, concluded that Congress could constitutionally revoke the U.S. citizenship of a native-born American who voted in a foreign election. Frankfurter first noted that the government's inherent "foreign affairs power" encompassed laws relating to citizenship.⁸⁶ The Necessary and Proper Clause of the Constitution permitted congressional exercise of this implied power whenever a "rational nexus" existed between the national foreign affairs interest and the object sought to be achieved by the congressional statute.⁸⁷ Thus, the issue the Court saw in *Perez* was whether:

[T]he means, withdrawal of citizenship, is reasonably calculated to effect the end that is within the power of Congress to achieve, the avoidance of embarrassment in the conduct of our foreign relations . . .⁸⁸

On the basis of this broad test, Justice Frankfurter upheld the power of Congress to dissolve *Perez*' citizenship.⁸⁹

2. *SCHNEIDER V. RUSK*:

THE STRICT DUE PROCESS TEST

Six years later, the Court in *Schneider v. Rusk*⁹⁰ ruled unconstitu-

⁸⁴As stated previously, one of the difficulties which the legitimate child born abroad faces is the ability to preserve as well as to acquire citizenship. The retention condition of section 301(b) of the 1952 Act requires the derivative citizen to be physically present in the United States for a continuous period of a specified length. An additional requirement obligates him to reside in this nation before he reaches twenty-eight years of age. If any of these conditions is not satisfied, American citizenship is irretrievably lost. *Supra* note 52.

⁸⁵356 U.S. 44 (1958).

⁸⁶356 U.S. at 57.

⁸⁷*Id.* at 58-60; see U.S. CONST. art. I, § 8, cl. 18; LOYOLA U. L. REV., *supra* note 35, at 593.

⁸⁸356 U.S. at 60.

⁸⁹LOYOLA U. L. REV., *supra* note 35, at 593.

⁹⁰377 U.S. 163 (1964).

tional a statute providing that a naturalized citizen lost his citizenship by continuous residence for three years in his country of origin.⁹¹ Appellant was born in Germany but later naturalized. She resumed residence in Germany for an indefinite stay. Dealing only with the fifth amendment, the Court held that the statute was discriminatory and thus violated due process under that amendment.

The Court began its opinion by declaring that the rights of citizenship of the native-born and of the naturalized person are equal.⁹² In support, Chief Justice John Marshall was cited for his noted pronouncement in *Osborn v. United States*:

[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights.⁹³

The Court added that since no restriction attached to the length of foreign residence of the native-born, the Constitution allowed none for the naturalized citizen. Any such discrimination aimed at naturalized citizens was automatically unconstitutional under the Due Process Clause of the fifth amendment. "While the fifth amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process".⁹⁴ The Court relied not on the fact that appellant was a naturalized citizen but simply that she was a citizen and therefore was entitled to constitutional protection.⁹⁵

Under an additional due process test of "reasonableness", the Court also concluded that withdrawal of citizenship was not reasonably related to the mere act of living abroad for three years. The Court denied that the combined elements of dual nationality and residency abroad were, in and of themselves, sufficient bases for permitting Congress to remove citizenship. The Court declared that it was illogical to assume that naturalized citizens as a class were less reliable and bore less allegiance to this country than did the native-born. It noted that the discrimination aimed at citizens born abroad drastically limited their rights to live and work abroad. It thus created a "second-class citizenship".⁹⁶ The Court also noted that living abroad in no way demonstrated a lack of allegiance or a voluntary renunciation of nationality. It recognized that absence from this country may have been compelled by family, business, or other

⁹¹ 8 U.S.C. §§ 1101, 1484 (1964).

⁹² 377 U.S. at 165 (1964).

⁹³ *Osborn v. United States*, 22 U.S. (9 Wheat.) 737, 827 (1824) (*dictum*).

⁹⁴ *Schneider v. Rusk*, 377 U.S. at 168; *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

⁹⁵ 377 U.S. at 169.

⁹⁶ *Id.*

legitimate reasons.⁹⁷

The focus of the Court in *Schneider* was therefore a departure from *Perez*. In the earlier case, the Court's test was whether congressional action in removing citizenship related in some way to its broad foreign affairs power. Focusing only on the power and actions of Congress, the Court tipped its scales in favor of Congress. But in *Schneider* the inquiry changed to whether the act of revoking citizenship was reasonably related to the actions of appellant. Utilizing a more sophisticated test than that of *Perez*, the Court balanced the individual's interests in retaining citizenship against the government's purported foreign relations interests and found for the citizen petitioner.

3. *AFROYIM V. RUSK*:

THE BROAD FOURTEENTH AMENDMENT TEST

The Court again supported retention of citizenship in a 1967 decision, *Afroyim v. Rusk*.⁹⁸ In contrast to the *Schneider* decision, *Afroyim* relied only on the fourteenth amendment, not the fifth amendment. Petitioner Afroyim, who had been naturalized in this country, lost his citizenship by voting in a foreign election.⁹⁹ The Court overruled *Perez v. Brownell* and held that Congress had no authority to expatriate under its implied foreign relations power.

Writing for the majority, Justice Black interpreted the fourteenth amendment to bar congressional revocation of an individual's citizenship absent his voluntary renunciation thereof.¹⁰⁰ Examining early American history and other historical sources, Black found no express power under the Constitution to suggest that Congress could strip a person of citizenship.¹⁰¹ Following the reasoning of the *Schneider* Court, Black again turned to the often-considered dictum in *Osborn* and declared that the citizenship rights of all citizens are the same.¹⁰² In support of this principle, he found a positive statement of permanent citizenship in the fourteenth amendment:

All persons born or naturalized in the United States . . . are citizens of the United States. . . . There is no indication in these words of a fleeting citizenship, good at the moment it is acquired but subject to destruction by the Government at any time. Rather the Amendment can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired, this Fourteenth Amendment citizenship was not to be shifted, cancelled, or

⁹⁷*Id.*

⁹⁸387 U.S. 253 (1967).

⁹⁹Act of Oct. 14, 1940, ch. 876, § 401(e), 54 Stat. 1168, 1169.

¹⁰⁰387 U.S. 253 at 268.

¹⁰¹*Id.* at 257.

¹⁰²*Id.* at 261, 266-68.

diluted at the will of the Federal Government, the States, or any other governmental unit.¹⁰³

Accordingly, once a person becomes a citizen, Congress cannot deprive him of that status.¹⁰⁴ The opinion closed on an emphatic note:

We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship. . . .¹⁰⁵

B. *ROGERS V. BELLEI*: THE TREND REVERSES

The first significant decision from the Court directly concerning the constitutional status of derivative citizens was *Rogers v. Bellei*.¹⁰⁶ Plaintiff was born in Italy in 1939 and claimed U.S. nationality by descent through his mother. Although plaintiff had visited the United States on five different occasions, he had not remained in the country more than three months at any time. Bellei registered for the draft but the government deferred his induction because of his employment with NATO.

Bellei periodically renewed his American passport until 1962, on his twenty-third birthday. Thereafter, the government informed him that he had lost his American citizenship by virtue of the retention requirement of section 301(b) of the 1952 Act, which provided that a foreign-born citizen with only one American parent lost his citizenship if he failed to be physically present in the United States for five consecutive years before reaching the age of twenty-eight.¹⁰⁷

Bellei challenged the residency requirement as violative of fifth amendment due process guarantees and the Citizenship Clause of the fourteenth amendment. A three-judge federal district court agreed,¹⁰⁸ ruling that the statute was unconstitutional on the basis of the Supreme Court's rulings in *Afroyim v. Rusk* and *Schneider v. Rusk*. The court rejected the government's argument that *Afroyim* and *Schneider* were restricted to fourteenth amendment citizens born or naturalized within the physical bounds of the United States. Affirmatively holding that derivative citizens came within the amendment's protection, the Court observed that it was inconsistent with the far-reaching holding of *Afroyim* to attribute to Justice Black's language an intention to leave unprotected a broad class of citizens. *Afroyim* was cased in broad terms and drew no distinction among types of

¹⁰³ *Id.* at 262.

¹⁰⁴ *Id.* at 261.

¹⁰⁵ *Id.* at 268.

¹⁰⁶ 401 U.S. 815 (1971).

¹⁰⁷ 8 U.S.C. § 1401(b).

¹⁰⁸ *Bellei v. Rusk*, 296 F. Supp. 1247 (D.C. Cir. 1969); *rev'd*, 401 U.S. 815 (1971); *Afroyim v. Rusk*, 387 U.S. 253 (1967); *Schneider v. Rusk*, 377 U.S. 163 (1964).

citizenship.¹⁰⁹ While the District Court conceded that Congress held a legitimate concern that those who bear American citizenship and receive its benefits demonstrate some nexus to the United States, it concluded that once Congress gave a statutory grant of citizenship it could not then qualify the grant "by creating a second-class citizenship, one that [restricts the right] to live and work abroad in a way that other citizens may."¹¹⁰

In 1971, the Supreme Court reversed the lower court decision by a five-to-four vote and held the retention statute constitutionally valid.¹¹¹ Unlike the earlier cases of *Schneider* and *Afroyim*, the *Bellei* Court considered both the fourteenth and fifth amendments in reaching its decision.

First, the Court found merit to the government's position that foreign-born citizens by descent do not come within the fourteenth amendment's literal definition of "citizen" since they are not "born or naturalized in the United States".¹¹² The Court distinguished the earlier cases of *Schneider* and *Afroyim* on the basis that citizenship in those instances was attained through naturalization inside the country and therefore was covered explicitly by the Citizenship Clause.¹¹³ The Court added:

The central fact, in our weighing of the plaintiff's claim to continuing and therefore current United States citizenship, is that he was born abroad. He was not born in the United States. He was not naturalized in the United States. And he has not been subject to the jurisdiction of the United States. All this being so, it seems indisputable that the first sentence of the Fourteenth Amendment has no application to plaintiff Bellei. He simply is not a Fourteenth Amendment-first-sentence-citizen.¹¹⁴

To buttress the assertion that the derivative citizen was not entitled to fourteenth amendment protection, the Court made reference to the Constitution itself, to show that as originally adopted it contained no definition of U.S. citizenship. It also cited dictum from the 1898 decision in *United States v. Wong Kim Ark*,¹¹⁵ in which it was concluded that since "naturalization by descent" was dependent his-

¹⁰⁹ *Bellei v. Rusk*, 296 F. Supp. at 1251.

¹¹⁰ *Id.* at 1250, 1252 (D.C. Cir. 1969). Concerning the problems the dual national presents, the Court declared:

There is an undeniable danger that children, born and raised abroad, in a foreign home, where English may never be spoken, schooled where English is not taught, celebrating foreign holidays with the family of the non-American parent, will have no meaningful connection with the United States, its culture or heritage.

296 F. Supp. at 1252 (D.C. Cir. 1969).

¹¹¹ *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹¹² U.S. CONST. amend. XIV, § 1.

¹¹³ 401 U.S. at 821-22.

¹¹⁴ *Id.* at 827.

¹¹⁵ *Id.* at 828-29 [citing 169 U.S. 649 (1898)].

torically upon statutory enactment, it was left to proper congressional action and was not covered by the amendment.¹¹⁶

The Court's second ground for sustaining the residency requirement was that it was reasonable and not violative of the fifth amendment's Due Process Clause. Inasmuch as a person born outside the United States owed his citizenship solely to congressional grant, Congress could attach conditions to such citizenship. The Court noted that since Congress had historically added conditions precedent to the grant of citizenship, it could also attach a condition subsequent, so long as the condition was neither arbitrary nor unreasonable under the due process standard. The Court found the condition subsequent imposed here, the residency requirement of section 301(b), to be reasonably related to Congress' concern with the danger presented by dual nationality and disloyalty. Placing particular emphasis on the peculiar influence of the alien father, the Court noted:

The child is reared, at best, in an atmosphere of divided loyalty. We cannot say that a concern that the child's own primary allegiance is to the country of his birth and of his father's allegiance is either misplaced or arbitrary.¹¹⁷

The Court referred to cases which previously recognized that duality created problems for the governments involved and caused the dual national "to do acts which otherwise would not be compatible with the obligations of American citizenship."¹¹⁸ Residence in this country, according to the Court, was therefore not only reasonable but necessary "as the talisman of dedicated attachment".¹¹⁹ The Court also noted that loss of citizenship was not a form of punishment since, in this particular case, Bellei was not left stateless but retained his father's Italian citizenship.¹²⁰

Finally, and perhaps most significant, was the Court's observation that Congress could have denied citizenship completely to persons born outside the United States to American parents. Citing the limitations prior congressional enactments imposed,¹²¹ the Court de-

¹¹⁶ 169 U.S. 649, 688 (1898).

¹¹⁷ 401 U.S. at 832.

¹¹⁸ *Id.* [citing *Kawakita v. United States*, 343 U.S. at 736 (1952).]

¹¹⁹ *Id.* at 834 [citing *Weedin v. Chin Bow*, 274 U.S. at 666-67 (1927).]

¹²⁰ *Id.* at 836.

¹²¹ [Persons] born abroad, even of United States citizen fathers who, however, acquired American citizenship after the effective date of the 1802 Act, were aliens. Congress responded to that situation only by enacting the 1855 statute. . . . But more than 50 years had expired during which, because of the withholding of that benefit by Congress, citizenship by such descent was not bestowed. . . . Then, too, the Court has recognized that until the 1934 Act the transmission of citizenship to one born abroad was restricted to the child of a qualifying American father, and withheld completely from the child of a United States citizen mother and an alien father.

Id. at 830-31.

clared that it was "congressional generosity" which allowed the derivative citizen to bypass the more arduous requirement of naturalization.¹²² The Court therefore concluded that derivative citizenship, resting on conditions imposed by Congress, was not an absolute right.¹²³

VI. A CRITICAL ANALYSIS OF *ROGERS V. BELLEI*

The import of the *Bellei* case is twofold. It holds, first, that children acquiring citizenship by descent do not come within the fourteenth amendment, and, second, that conditions subsequent based on a desire to minimize dual nationality are reasonable and constitutional under the fifth amendment due process clause. In so holding, *Bellei* cuts short the progressive impact of *Afroyim* and *Schneider* by limiting their application to citizens born or naturalized in the United States. The *Bellei* analysis of derivative citizenship and the Constitution, however, has not gone unchallenged.

A. THE FOURTEENTH AMENDMENT ISSUE

Contrary to the majority view that citizenship as defined in the fourteenth amendment did not extend to persons born abroad is the view that the Citizenship Clause did not seek to provide an exclusive definition of citizenship. Instead, its purpose was "to protect existing citizenship rights, not to curtail benefits which previously were recognized" in the earlier statutes conferring citizenship upon the foreign-born.¹²⁴ Moreover, just six years after the enactment of the fourteenth amendment, in *Minor v. Happersett*,¹²⁵ the U.S. Supreme Court declared that the individual who acquired citizenship at birth through a native or natural-born American citizen was, himself, a natural-born citizen; as a consequence, the citizen by descent was clearly within the terms of the amendment and was therefore entitled to citizenship rights upon birth. This position strongly suggests that any conditions subsequent attached to such citizenship would be constitutionally invalid.

Justice Black, in a stinging dissent, also criticized the majority opinion. He characterized it as a "narrow and extraordinarily technical reading" of the fourteenth amendment reference to persons

¹²² *Id.* at 835-36.

¹²³ *Id.* at 836.

¹²⁴ See Gordon, *Who Can Be President of the United States*, 28 MD. L. REV. 1, 13-15 (1968).

¹²⁵ *Minor v. Happersett*, 88 U.S. 162, 167 (1875); GETTYS, *supra* note 34, at 175-76. The text of the 1790 Act is consistent with this view. It reads:

The children of citizens of the United States, that may be born out of the limits of the United States, shall be considered as natural-born citizens.

Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103-04.

“born or naturalized in the United States”.¹²⁶ Rather than the literal territorial interpretation adopted by the Court, Black viewed the word “in” as it appeared in the amendment to mean “naturalized by” or “into the laws of” the United States; he added that “naturalization”, itself, was a generic term and referred to any means of obtaining citizenship through an act of Congress.¹²⁷ The legislative history of the amendment indicates that this wording did, in fact, appear in the original draft of the amendment and is thus consistent with the Black theory.¹²⁸

A 1950 United States Supreme Court decision, *Savorgnan v. United States*,¹²⁹ lends further support to this interpretation. A majority of the Court in that case upheld a statute which provided that an American lost his citizenship when he was “naturalized in any foreign state in conformity with its laws. . . .”¹³⁰ Presented with the question of defining the meaning of the words “naturalized in”, the Court stated that they referred merely to “naturalization into the citizenship of any foreign state. . . [and] not to the place where the naturalization proceeding occurs”; “naturalized in” was therefore understood to mean simply becoming a citizen by the laws of a particular country.¹³¹ If the Court in *Bellei* had followed this earlier reading in *Savorgnan* when interpreting those same words from the fourteenth amendment, *Bellei* would have been a “fourteenth amendment citizen”, having complied with the prescribed conditions precedent. He therefore would have been constitutionally protected from the residence requirement of section 301(b).¹³²

In addition, Justice Black believed that the *Bellei* majority opinion had implicitly overruled the principles announced in *Afroyim* and *Schneider*. According to Black, *Afroyim* held that the fourteenth amendment protected all citizens from involuntary relinquishment of their citizenship rights.¹³³ The *Bellei* decision therefore created an exception to this holding. In so doing, it recognized a “hierarchy of citizenship”. This concept was flatly rejected in *Schneider*, where the Court held that Congress could not apply a different set of laws to a

¹²⁶ 401 U.S. at 843.

¹²⁷ It is interesting to note that Justice Black, who is generally regarded as a strict constructionist, criticizes the majority interpretation as being too literal.

¹²⁸ 401 U.S. at 843 (1971). See CONG. GLOBE, 39th Cong., 1st Sess. 2768 (1866).

¹²⁹ 338 U.S. 491 (1950).

¹³⁰ Act of Mar. 2, 1907, ch. 2534, § 2, 34 Stat. 1228.

¹³¹ 338 U.S. at 499.

¹³² 47 NOTRE DAME LAW. 1056, 1065 (1972). Justice Brennan dissented on similar grounds. Finding a complete lack of rational basis for distinguishing among native-born and derivative citizens, he concluded that the words “born or naturalized in the United States” included those “naturalized through . . . an act of Congress,” thus finding that *Bellei* belonged in this class of naturalized citizens. 401 U.S. at 845.

¹³³ 401 U.S. at 836-37.

person who had previously acquired citizenship simply because he had acquired citizenship through naturalization.¹³⁴ The *Bellei* decision, however, is in marked contrast to this egalitarian position and instead creates three categories related to citizenship: Citizen, non-citizen, and the derivative citizen who is a kind of quasi-citizen.¹³⁵ Only the last category, citizenship by descent, is subjected to the retention requirement in section 301(b).

Black's interpretation of *Afroyim* and *Schneider* is debatable. It is just as likely that the broad principles of those cases were intended to be strictly limited to their facts — applicable to naturalized citizens only — and therefore constitute dictum when applied to citizens by descent. Nonetheless, there is a strong historical basis to indicate that the fourteenth amendment framers intended citizens by descent to come within the purview of the fourteenth amendment.¹³⁶ It follows that if the Constitution defines derivative citizens as "fourteenth amendment citizens", Congress is powerless to deprive such persons of their citizenship.

B. THE FIFTH AMENDMENT DUE PROCESS ISSUE

Assuming, however, some validity to the *Bellei* Court's narrow reading of the fourteenth amendment, substantial doubt remains as to whether section 301(b) complies with due process under the fifth amendment. In focusing its decision upon the scope of the fourteenth amendment Citizenship Clause, the Court failed to satisfactorily overcome this doubt.

In *Schneider v. Rusk*,¹³⁷ the Court set forth a due process test which weighed the plaintiff's right to non-discriminatory treatment against those national interests served by his loss of citizenship. The *Bellei* decision disregarded this judicial balancing test of *Schneider*, and substituted the *Bellei* majority's own vague notions of "fairness".¹³⁸ This latter test was nothing more than a return to the broad "rational nexus" standard utilized in *Perez*, a test which focused on congressional action rather than individual citizenship rights.¹³⁹ As a consequence, the majority opinion easily found that the residency

¹³⁴ "We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive." 377 U.S. at 165.

¹³⁵ LOYOLA U. L. REV., *supra* note 35, at 602. Individual justices have long condemned the statutory distinction between natural-born and naturalized citizens. *Klaprott v. United States*, 335 U.S. 601, 619 (1949) (J. Rutledge); *Knauer v. United States*, 328 U.S. 654 (1946) (J. Douglas).

¹³⁶ The *Happersett* decision, the original draft of the amendment, and the more recent *Savorgnan* interpretation of the words "naturalized in" supply support for this theory.

¹³⁷ 377 U.S. 163 (1964).

¹³⁸ *Rogers v. Bellei*, 401 U.S. at 844 (Black, J., dissenting).

¹³⁹ LOYOLA U. L. REV., *supra* note 35, at 606.

requirement of section 301(b) was reasonably related to the congressional goal of maintaining a citizenry with undivided allegiance.¹⁴⁰ The Court thereby overlooked the fact that *Afroyim* had subsequently overruled *Perez*, and that the *Schneider* balancing test had since replaced the *Perez* test.

If section 301(b) had been submitted to the *Schneider* test, the issues would have been: Is the mere fact of birth and act of residence abroad sufficient justification to statutorily remove plaintiff's citizenship? If not, does section 301(b) run counter to the *Schneider* prohibition against arbitrary and invidious discrimination among citizens?

There are several reasons to assume that the *Bellei* Court's response to these inquiries would have been in the negative. First, the major point of the *Schneider* decision is that foreign residence, per se, has nothing to do with allegiance.¹⁴¹ Congress recognized this fact for years when it permitted the passage of American citizenship to children born abroad of American fathers without any requirement of residence in the United States before its amendment in 1934.¹⁴² Second, recent surveys demonstrate that families abroad consisting of an alien father and an American mother do successfully preserve American culture and values.¹⁴³ In fact, American identity is generally so well retained that it poses major political and cultural problems for the host country.¹⁴⁴ Thus, the Court apparently placed far too much emphasis on conditions which may have existed at an earlier time in the history of our nation but which have considerably less significance in today's interdependent world. These changing conditions were apparent to Congress at the time it drafted the 1972 amendment to section 301(b).¹⁴⁵ In light of these factors the Court

¹⁴⁰ *Id.* at 608.

¹⁴¹ 377 U.S. at 166, 169.

¹⁴² Act of May 24, 1934, ch. 344, §1993, 48 Stat. 797; *Amicus Curiae* Brief for Appellee at 12, *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹⁴³ *Amicus Curiae* Brief for Appellee at 23, *Rogers v. Bellei*, 401 U.S. 815 (1971); R. Metraux, "A Study of Bilingualism Among Children of U.S.-French Parents," 38 THE FRENCH REVIEW, 650 (April, 1965). See also F.R. DULLES, A HISTORICAL VIEW OF AMERICANS ABROAD 11 (1964). It is reported that small American communities are cut off almost completely from the country in which they are situated due to their distinctive "stateside" culture that is preserved. Under such circumstances, it is difficult to give credence to the fear expressed by the Court that dual nationality problems are more "acute" when it is the father who is the alien parent. 401 U.S. at 832. Such a general assumption, presented without data or evidence in support, constitutes an unreasonable presumption founded on sex discrimination. Although a majority of the Court has not declared that sex classifications are in themselves suspect, it has held that classifications based on sex must bear some rational, nonarbitrary relationship to the statutory objective. See *Reed v. Reed*, 404 U.S. 71 (1971); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (plurality opinion).

¹⁴⁴ DULLES, *supra* note 143, at 11.

¹⁴⁵ The circumstances of 1970 are not those of 1934. The revolution in transportation and communication has rendered obsolete whatever validity may have once attached to residence as a test of allegiance.

should have concluded that the requirement Congress imposed was without reasonable basis and thus violative of the due process guarantee.

The *Bellei* Court also failed to recognize that the statute was violative of due process on other grounds. First, the Court assumed that a child born physically within this country was presumptively imbued with sufficient American ties so that his allegiance was not at issue. This would mean, however, that a native-born child of two visiting aliens could return with them to their native land and enjoy American citizenship for the rest of his natural life without further presence in this country. Similarly, a child who became an American citizen through the naturalization of his parents could also return to his native land and retain American citizenship without any physical residence in the United States.¹⁴⁶ Then, too, the foreign-born child of two American citizens or of a citizen and a national of the United States need not have complied with such a residency requirement.¹⁴⁷ The condition subsequent in section 301(b) was therefore not equally applicable to all persons who might foreseeably present a similar threat. Consequently, it constitutes invidious discrimination aimed solely at derivative citizens in violation of due process.

The Court also overlooked the fact that the residency statute imposed substantial limitations upon citizen *Bellei*'s freedom to live and work abroad. To require a foreign-born citizen with a single American parent who wants to keep his citizenship to forcibly alter his established pattern of life, i.e., leave his school, job, family, and pay the expense of relocation, "constitutes the very deprivation of liberty without due process of law which is forbidden by the Fifth Amendment."¹⁴⁸ The recognition of this hardship was another factor prompting Congress to amend the statute in 1972.¹⁴⁹

In addition, the Court did not consider the even harsher result when one is left stateless from a revocation of citizenship by Congress. The *Bellei* Court was not presented with the issue since petitioner possessed Italian citizenship as well as American citizenship. Statelessness remains a realistic possibility, however, for those citizens born abroad in countries which do not recognize the principle of

In a world of jet aircraft, of television via satellite, of unprecedented economic, political, and cultural interdependence, with large numbers of persons serving their governments and private institutions overseas, the fact of residence in one country does not necessarily imply allegiance to that country or preclude allegiance to the country of which they are citizens.

Amicus Curiae Brief for Appellee at 19; *Rogers v. Bellei*, 401 U.S. 815 (1971). See generally E. MCCREARY, *THE AMERICANIZATION OF EUROPE* (1964).

¹⁴⁶ *Amicus Curiae* Brief for Appellee at 11, *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹⁴⁷ 8 U.S.C. § 1401(a)(3), (4). See 13 HARV. INTL. L.J. 151, 160 (1972).

¹⁴⁸ *Amicus Curiae* Brief for Appellee at 4, *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹⁴⁹ *Supra* note 63.

jus soli.¹⁵⁰ This condition of statelessness has been held in strong disfavor by the Court.¹⁵¹ Since section 301(b) does not distinguish those derivative citizens who do not obtain dual nationality at birth, the statute could have the effect of leaving stateless a derivative citizen who does not gain dual nationality at birth. In this respect, the statute is overbroad and violative of due process.

But perhaps most objectionable was the Court's admonition that Congress could remove derivative citizenship completely.¹⁵² This assumption can be challenged on due process grounds under a "fundamental rights" theory. Individual justices of the Court have maintained on some occasions that citizenship constitutes a fundamental right. Chief Justice Marshall in *Osborn* indicated the important nature of citizenship when he stated the limits of Congressional power in the area.¹⁵³ More recently, Justice Douglas stated:

Citizenship, like freedom of speech, press, and religion, occupies a preferred position in our written Constitution because it is a grant absolute in terms. The power of Congress to withhold it, modify it, or cancel it does not exist.¹⁵⁴

A majority of the Court, however, has expressed the contrary theory that American citizenship is a privilege, not a right.¹⁵⁵ Nonetheless, attention must be given to the Court's recent pronouncements that the right to travel abroad¹⁵⁶ and to vote¹⁵⁷ are among the panoply of fundamental rights inherent in the concept of "liberty" under due process of law. The free exercise of these rights is inextricably bound up with that of citizenship. The relationship of these rights and citizenship is particularly significant to the derivative citizen who may wish to maintain foreign residence but must comply with U.S. residency requirements to retain American citizenship. Viewed in this light, citizenship in general ranks among the more fundamental rights. Further indication of its importance is the fact that the original Constitution expressly referred to the right of citizenship, yet omitted the rights to vote and travel.¹⁵⁸ Governmental

¹⁵⁰ See *Laws Concerning Nationality*, U.N. Doc. St/Leg/SerB/4 at 386 (Poland), 439 (Sweden), 443 (Switzerland) (1954).

¹⁵¹ Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.

Perez v. Brownell, 356 U.S. at 64 (Warren, C.J., dissenting opinion). See *Afroyim v. Rusk*, 387 U.S. at 267-68; *Trop v. Dulles*, 356 U.S. 86, 101 (1958) (plurality opinion).

¹⁵² 401 U.S. at 835-36.

¹⁵³ *Osborn v. United States*, 22 U.S. (9 Wheat.) at 827.

¹⁵⁴ *Perez v. Brownell*, 356 U.S. at 84 (Douglas, J., dissenting opinion).

¹⁵⁵ *Morrison v. California*, 291 U.S. 82, 85 (1934).

¹⁵⁶ *Kent v. Dulles*, 357 U.S. 116, 125-27 (1958).

¹⁵⁷ *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972).

¹⁵⁸ *Supra* note 7.

interference with this right should therefore be subject to the stricter standard of whether it promotes a compelling state interest.¹⁵⁹

It would follow, then, that citizenship by descent, as a form of citizenship, is a fundamental and constitutionally based right. Therefore, congressional power with respect to defining citizenship of children born abroad of American citizens should similarly be subject to strict scrutiny. Under this new theory, *Bellei's* derivative citizenship would have automatically vested at birth. The retention condition imposed by section 301(b) on the child would not have withstood the test of a compelling state interest, for the reasons previously stated, including hardship and the lack of threat posed by duality. The statute would consequently have been ruled constitutionally impermissible as a deprivation of liberty under due process of the fifth amendment. Moreover, *Bellei's* American mother would receive the same constitutional protection under this "fundamental right to citizenship" rationale, since her right to transmit American citizenship would also be firmly grounded in the Constitution. As a consequence, the current statutory prerequisite of ten years residency in this country would be an unconstitutional interference with due process.

VIII. CONCLUSION

While the *Bellei* Court did not expressly overrule *Schneider* and *Afroyim*, it clearly limited the meaning of the term "citizenship" as it pertains to citizens by descent. In contrast, the *Schneider* Court asserted a fifth amendment due process standard on behalf of citizenship rights generally and determined that due process outweighed purported national interests. The *Afroyim* Court determined that every fourteenth amendment citizen was entitled to constitutional protection against congressional revocation of citizenship. With the *Bellei* Court, however, the quality of one's citizenship, i.e., a constitutionally viable citizenship, was made to rest on the fortuitous event of being born or naturalized within the geographic limits of the United States.

Bellei, therefore, represents a regressive step in defining the constitutional status of derivative citizens. *Bellei* is not determinative of the issue, however, since it is likely that in the future the Court will again be forced to further construe the constitutional nature of citizenship as it relates to this special class of citizens.

Attempting to predict with certainty the direction the Court will take would be a difficult task. Nevertheless, given the rationale of this last decision, it is not unrealistic to assume that the Court as presently constituted will continue to validate government intrusions

¹⁵⁹ See *Shapiro v. Thompson*, 394 U.S. 618 (1969).

upon the citizenship rights of the foreign-born.

The *Bellei* precedent would justify such a course in two ways. First, under *Bellei* no distinction exists between conditions precedent and subsequent for non-fourteenth amendment citizens. As a result, Congress could require that one who is both a dual citizen and a U.S. derivative citizen make an election in order to retain his American nationality.¹⁶⁰ Congress could also place a limitation on travel to communist countries.¹⁶¹ Indeed, Congress could impose such restrictions on children born abroad of *two* American parents since it has been held that the foreign-born are not within the scope of the fourteenth amendment.¹⁶² Second, Congress can limit its statutory grant of derivative citizenship, according to the *Bellei-Perez* test, so long as it "reasonably" justifies its action by "national interests". This broad test, checked only by individual judicial notions of reasonableness, could allow Congress to completely eliminate citizenship by descent; or, at the very least, continue to enact legislation which creates second-class citizenship for derivative citizens.¹⁶³

In any case, the only appropriate standard the Court should exercise in the future is that of due process under the fifth amendment, the theory being that citizenship constitutes a fundamental right. The burden would shift to the government to prove that reasonable regulatory measures are compelled by national needs reflecting current international realities.

The proper judicial response, however, is not likely to occur in the immediate future. The impetus for change therefore rests with Congress. Congress should continue the trend begun by the 1972 amendment by granting full citizenship rights to the foreign-born. In order to achieve this much needed modernization, a repeal of all statutory conditions in effect since 1952 would be necessary, as proposed above.

At the present, however, derivative citizenship remains a conditional and compromised form of citizenship. In some respects, Congress extends more favored treatment to the illegitimate foreign-born¹⁶⁴ and even the alien immigrant.¹⁶⁵ In addition, the conditions

¹⁶⁰ *Rogers v. Bellei*, 401 U.S. at 832-33; 11 COLUM. J. TRANSNAT'L. L. 304, 316 (1972).

¹⁶¹ COLUM. J. OF TRANSNAT'L. L., *supra* note 160 at 316.

¹⁶² *Amicus Curiae* Brief for Appellee at 11-12, *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹⁶³ See *Rogers v. Bellei*, 401 U.S. at 844 (dissenting opinion); COLUM. J. TRANSNAT'L. L., *supra* note 160, at 316. See also 48 INTERPRETER RELEASES 89 (1971); 5 LOYOLA U. L. REV., *supra* note 35, at 610, which suggests that the departure of *Bellei* from the *Schneider* and *Afroyim* precedents was due to the change in Court composition. The dissenting minority in the two earlier cases joined Justice Blackmun and Chief Justice Burger, the two new members of the Court in *Bellei*. The former dissenters are now the majority.

¹⁶⁴ See section III (C) (2) of this article.

¹⁶⁵ While earlier restrictions on immigration frequently discriminated on grounds

governing derivative citizenship have created unnecessary confusion and uncertainty for those persons directly affected. In this respect, the constitutional status of citizenship and membership in a political society, with the concomitant relationship of allegiance to and protection by that society, becomes not only a political but also an emotional necessity for the individual. One should know at any moment whether or not that relationship exists.¹⁶⁶ As Justice Black declared in *Afroyim v. Rusk*:

Citizenship is no light trifle to be jeopardized at any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world — as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry.¹⁶⁷

Joy Pepi Wiesenfeld

of race and national origin, such provisions were abolished in 1965 by an act which provided: "No person shall receive any preference or priority or be discriminated against in the issuance of an immigration visa because of his race, sex, nationality, place of birth, or place of residence. . . ." 8 U.S.C. § 1152(a) (1970). Moreover, aliens are "persons" under the fourteenth amendment and the Civil Rights Act of 1870. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); 42 U.S.C. § 1981 (1970).

¹⁶⁶ LOWENSTEIN, *supra* note 60, at 369.

¹⁶⁷ 387 U.S. at 267-68.

APPENDIX
PRESENT STATUTORY CONDITIONS FOR ACQUISITION AND RETENTION

Child's Date of Birth	Citizenship of Citizen Parent	Sex of Citizen Parent	Minimum Age of Citizen Parent	Citizen Parents' Residence in U.S. Prior to Child's Birth	Conditions Subsequent for Retention: Child's Presence in U.S.
Mar 2, 1907 to May 23, 1934	Must be American citizen when child is born	Only American fathers can transmit	None	Residence required but no specified period	None to retain citizenship status but to retain diplomatic protection: 1. file declaration of intent to reside at age 18, and 2. take oath of allegiance at age 21
May 24, 1934 to Dec. 31, 1940	Same	American mothers and fathers can transmit	None	Same	To retain citizenship: 1. five years before age 18, and 2. take oath of allegiance at age 21
Jan 13, 1941 to Dec. 23, 1952	Same	Same	age 21 or over	10 years, at least 5 years after age 16	To retain citizenship: five years between ages 13 and 21
Dec. 24, 1952 to Present	Same	Same	age 19 or over	10 years, at least 5 years after age 14, but following periods included: 1. served in U.S. Armed Forces 2. employed by U.S. Gov't. 3. employed by U.S. associated international organization 4. dependent in household of a parent in above service	To retain citizenship; 1. five years before age 28 1972 Amendment: two years before age 28 Probably retroactive for child born after May 23, 1934