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## Rejecting Citizenship

Rose Cuison-Villazor  
*Rutgers Law School (Newark)*

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# REJECTING CITIZENSHIP

*Rose Cuison-Villazor\**

PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA. By *Ming Hsu Chen*. Stanford: Stanford University Press. 2020. Pp. xi, 215. \$28.

## INTRODUCTION

Citizenship for undocumented immigrants is once again on the horizon. Just a few weeks after President Donald Trump left the White House, and several years since the last time Congress failed to pass comprehensive immigration reform,<sup>1</sup> President Joe Biden announced that he will push for legislation to provide millions of undocumented immigrants with a path to become U.S. citizens.<sup>2</sup> Senator Bob Menendez and Representative Linda Sanchez subsequently introduced the Citizenship Act of 2021, which seeks to create different ways that immigrants, documented and undocumented alike, may earn citizenship.<sup>3</sup> The next few months in Washington, D.C., will bear witness to whether President Biden's promise will be realized.

The potentially millions of people newly eligible for U.S. citizenship would join thousands of lawful permanent residents (LPRs) who apply for naturalization each year. Among LPRs, the desire to become citizens has been robust. Indeed, naturalizations have increased over the last few years. In 2019, for example, 843,593 individuals became naturalized, an 11 percent increase

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\* Interim Co-Dean, Professor of Law, and Chancellor's Social Justice Scholar, Rutgers Law School (Newark). Thank you to Linda Bosniak, Ming Chen, Deep Gulasekaram, Alan Hyde, Kevin Johnson, Gretchen Smith, and Leti Volpp and participants at workshops at Rutgers Law School; the University of California, Berkeley, School of Law; University of California, Davis, School of Law; University of Colorado School of Law; and University of Connecticut School of Law for their comments and feedback on earlier versions of this piece. I am also grateful to Samantha Hing, Patrick Johnson, Alexandra Tran, and Diana Wood for their excellent research assistance. Finally, I am thankful to the excellent editing and feedback from Brooke Simone, Aditya Vedapudi, and the editors of the *Michigan Law Review*.

1. Elaine Kamarck, *Can Biden Pass Immigration Reform? History Says It Will Be Tough*, BROOKINGS INST. (June 22, 2021), <https://www.brookings.edu/blog/fixgov/2021/06/22/can-biden-pass-immigration-reform-history-says-it-will-be-tough> [perma.cc/C8XP-GWUM].

2. Press Release, White House, President Biden Outlines Steps to Reform Our Immigration System by Keeping Families Together, Addressing the Root Causes of Irregular Migration, and Streamlining the Legal Immigration System (Feb. 2, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/02/fact-sheet-president-biden-outlines-steps-to-reform-our-immigration-system-by-keeping-families-together-addressing-the-root-causes-of-irregular-migration-and-streamlining-the-legal-immigration-syst> [perma.cc/AP7K-MY8C].

3. U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021); U.S. Citizenship Act, S. 348, 117th Cong. (2021).

from the 761,901 individuals who were naturalized in 2018.<sup>4</sup> And that 2018 figure is also higher than the number of people—707,265—naturalized in 2017.<sup>5</sup>

In *Pursuing Citizenship in the Enforcement Era*, Professor Ming Chen<sup>6</sup> examines the rise in citizenship applications and conducts an in-depth analysis of the reasons why LPRs naturalize. Given the Trump administration's heightened enforcement of immigration laws, it is no surprise that citizenship applications climbed. As Chen thoughtfully explains in her book, citizenship applications increased because of what she describes as "citizenship insecurity" felt by noncitizens (p. 3). Chen critiques the federal government's immigration regime, which led many immigrants, undocumented and documented alike, to feel vulnerable. Accordingly, Chen claims that green-card holders applied for formal citizenship in greater numbers than previous years (p. 1). Notably, the Trump administration's enforcement also impacted substantive citizenship and the ability of noncitizens to become better integrated into society. Chen therefore argues for less immigration enforcement and more governmental efforts to promote citizenship, which would further a socially cohesive society "fueled by shared purpose and values."<sup>7</sup>

As *Pursuing Citizenship* illustrates, the desire for citizenship among eligible immigrants is undoubtedly on the rise. However, Chen's book tells only one side of this story. As this Review argues, the story regarding the pursuit of citizenship must be examined alongside the story of how individuals—citizens and noncitizens alike—are refusing citizenship. This Review conducts this examination by drawing attention to those noncitizens who have rejected or are rejecting<sup>8</sup> citizenship.<sup>9</sup> As it explains, many LPRs who are eligible to become U.S. citizens do not, in fact, take the final step and apply for naturalization.<sup>10</sup>

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4. See OFF. OF IMMIGR. STAT., U.S. DEP'T OF HOMELAND SEC., 2019 YEARBOOK OF IMMIGRATION STATISTICS 51 tbl.20 (2019), [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook\\_immigration\\_statistics\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/yearbook_immigration_statistics_2019.pdf) [perma.cc/VXP5-DZRC] [hereinafter YEARBOOK 2019]; see also Brittany Blizzard & Jeanne Batalova, *Naturalization Trends in the United States*, MIGRATION POL'Y INST. (July 11, 2019), <https://www.migrationpolicy.org/print/16541#.XkntmS3Mzs0> [perma.cc/QBK4-6VE4].

5. See YEARBOOK 2019, *supra* note 4.

6. Professor of Law, University of Colorado Law School.

7. See p. 6.

8. In this Review, I use the terms "rejecting" and "rejection" of citizenship to refer to ways in which persons who are eligible to become U.S. citizens choose not to naturalize for various reasons. "Rejection" also refers to U.S. citizens who have decided to renounce their citizenship. See *infra* Part II (discussing noncitizens and U.S. citizens rejecting citizenship).

9. By "citizenship," I am referring to *formal* citizenship or citizenship as membership in the polity. See p. 7 (referring to formal citizenship and its ongoing importance); see also LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* 30–31 (2006) (discussing citizenship as formal legal status).

10. See ANA GONZALEZ-BARRERA, MARK HUGO LOPEZ, JEFFREY S. PASSEL & PAUL TAYLOR, PEW RSCH. CTR., *THE PATH NOT TAKEN: TWO-THIRDS OF LEGAL MEXICAN IMMIGRANTS ARE NOT U.S. CITIZENS* 19 (2013), [https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2013/02/Naturalizations\\_Jan\\_2013\\_FINAL.pdf](https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2013/02/Naturalizations_Jan_2013_FINAL.pdf) [perma.cc/DFL3-ALNV] ("According to the Pew

In 2019, for example, there were more than one million LPRs who were presumptively eligible to naturalize.<sup>11</sup> Yet only 830,560 applied that year.<sup>12</sup> Immigrants are not the only ones refusing citizenship: other noncitizens such as American Samoans—who are not U.S. citizens despite the “American” in their name—have chosen to reject citizenship.<sup>13</sup> U.S. citizens also are renouncing their citizenship in increasing numbers.<sup>14</sup>

Limited attention has been paid to the ways in which noncitizens refuse formal citizenship.<sup>15</sup> Most legal scholarship has, like Chen’s book, focused on the desire for citizenship and the ways in which those who seek it experience various barriers.<sup>16</sup> But as Professors Robin Lenhardt and Jennifer Gordon

Hispanic survey, about four-in-ten (45%) say the primary reason for not naturalizing is either personal (26%) or administrative barriers (18%).”)

11. In 2014, there were 1,016,518 lawful permanent residents in the United States. RYAN BAUGH, U.S. DEP’T OF HOMELAND SEC., U.S. LAWFUL PERMANENT RESIDENTS: 2016, at 1 tbl.1 (2017), [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/fy16\\_lawful-permanent-residents.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/fy16_lawful-permanent-residents.pdf) [perma.cc/E3CE-TWPZ] [hereinafter 2016 STATISTICS] (reporting on the number of LPRs between 2014 and 2016). These LPRs would be presumptively eligible to apply for naturalization in five years if they continuously resided in the United States for five years and satisfy other naturalization requirements. 8 U.S.C. § 1427.

12. YEARBOOK 2019, *supra* note 4. In 2019, 843,593 people became naturalized. *Id.* at 52. The reason why *more* people became naturalized than applied that year is because many of the approved applications were likely filed the previous year. See Miriam Jordan, *Wait Times for Citizenship Have Doubled in the Last Two Years*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/2019/02/21/us/immigrant-citizenship-naturalization.html> [perma.cc/68PE-5D2S].

13. *Fitisemanu v. United States*, 1 F.4th 862, 867 (10th Cir. 2021); *Tuaua v. United States*, 788 F.3d 300, 309–10 (D.C. Cir. 2015).

14. See *infra* Part II.

15. See Alan Hyde, Ray A. Mateo & Bridgit Cusato-Rosa, *Why Don’t They Naturalize? Voices from the Dominican Community*, 11 LATINO STUD. 313, 313–14 (2013) (stating the need for more scholarly attention to naturalization, including low rates of citizenship).

16. Ample scholarship exists on obstacles that noncitizens face in their quest for naturalization, including racial restrictions, see IAN HANEY LÓPEZ, *WHITE BY LAW* (10th anniversary ed. 2006), gender-based rules, see Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 443–47 (2005) (exploring the impact of citizenship rules on women), the lack of good moral character and habitual drunkard provision, see Jayesh M. Rathod, *Distilling Americans: The Legacy of Prohibition on U.S. Immigration Law*, 51 HOUS. L. REV. 781 (2014), and financial costs of naturalization, see Angela M. Banks, *The Curious Relationship Between “Self-Deportation” Policies and Naturalization Rates*, 16 LEWIS & CLARK L. REV. 1149, 1201 (2012) (“The cost-benefit theory of naturalization posits that noncitizens do not naturalize because they do not see the benefits of U.S. citizenship outweighing the costs.”). Other scholars, particularly those that engage with critical race theory (CRT), have critiqued the racialization of citizenship and denial of equal treatment of U.S. citizens, especially those of color. See, e.g., Devon W. Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633, 635–37 (2009) (examining *Ozawa v. United States*, 260 U.S. 178 (1922), and *United States v. Thind*, 261 U.S. 204 (1923), in which the Supreme Court denied citizenship claims by Japanese and South Asian immigrants); SAM ERMAN, *ALMOST CITIZENS: PUERTO RICO, THE U.S. CONSTITUTION, AND EMPIRE* (2019); MARTHA S. JONES, *BIRTHRIGHT CITIZENS* (2018); LÓPEZ, *supra*, at 30. Although such CRT scholarship has deepened our understanding of second-class citizenship, few scholars have challenged the desire for formal citizenship. See Jennifer Gordon & R.A. Lenhardt, *Citizenship Talk: Bridging the Gap Between Immigration and Race Perspectives*, 75 FORDHAM L. REV. 2493, 2504 (2007) (“[T]he failure of citizenship status to ensure equality

have pointed out, more critical attention should be paid to the ways in which formal citizenship is acquired.<sup>17</sup> This Review takes up that work by canvassing examples of citizenship rejection and raising questions that have implications for our understanding of citizenship. Why would noncitizens and U.S. citizens who stand to benefit from U.S. citizenship choose to remain or become noncitizens? What do their decisions to reject citizenship suggest about the value of citizenship? By asking these questions, this Review aims to highlight an underexplored dimension of citizenship.

Specifically, the Review aims to make four points. The first is to counter the view that citizenship is always beloved and chosen. To be sure, as Part I discusses, *Pursuing Citizenship* makes a strong case for why noncitizens choose to naturalize, particularly when an administration is engaged in heightened immigration enforcement. But as the Review's second point contends, contrary to conventional wisdom, citizenship is not always desired or viewed as ideal. Part II describes individuals who find citizenship unnecessary, questionable, and undesirable. These include LPRs who choose not to naturalize, American Samoans who reject birthright citizenship, and U.S. citizens who abandon citizenship. The Review's third point is that the rejection of citizenship illuminates underappreciated critical views about how citizenship is acquired. Using ideas borrowed from critical race theory (CRT),<sup>18</sup> Part III challenges the conventional view of citizenship as a means of inclusion and equality and shows how citizenship has served as a tool of oppression and subordination. Fourth and finally, this Review raises questions that consider the normative and theoretical implications of the repudiation of citizenship. This includes building on the concept of "unbundling citizenship," which I have explored elsewhere,<sup>19</sup> to encourage revisiting what membership in the American polity should look like.

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and certain basic benefits to racial minorities has not led CRT scholars to reject formal citizenship status or legal rights as mechanisms for achieving racial justice.”)

17. See Gordon & Lenhardt, *supra* note 16, at 2504–05.

18. I use CRT here to refer to the intellectual movement that has called for a critical examination and transformation of the relationships among race, racism, and power. For a deeper understanding of critical race theory, see *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995) and *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado & Jean Stefancic eds., 3d ed. 2013). By applying CRT to the study of how formal citizenship is acquired, this Review shows how the United States has deployed citizenship to racially exclude immigrants and people of color historically as well as today. See *infra* Part III.

19. Rose Cuison-Villazor, *American Nationals and Interstitial Citizenship*, 85 *FORDHAM L. REV.* 1673, 1711–1723 (2017) (introducing the concept of “interstitial” citizenship, which refers to the ways in which some noncitizens have rights of citizenship despite their noncitizen status, and exploring the concept of “unbundling citizenship,” which alludes to how citizenship rights may be disaggregated). Although the interstitial citizens I wrote about included current and former and U.S. territorial residents (American Samoans and Filipinos respectively), the fact that citizenship has been unbundled at the outset prompts an inquiry into the possibility of broader application to other noncitizens. That is, given that citizenship rights can be disaggregated, one question that the rejection of citizenship raises is whether noncitizens should be able to choose what rights of citizenship they desire.

## I. PURSUING CITIZENSHIP

*Pursuing Citizenship in the Enforcement Era* provides a powerful account of the struggles that many noncitizens and their families faced during the increased immigration enforcement of the Trump era. Through interviews with noncitizens between 2016 to 2018, coupled with analysis of data from the U.S. Citizenship and Immigration Services (USCIS) and other sources, Chen illuminates the nuanced perspectives and experiences of noncitizens and their families, which contextualize her policy insights. Overall, Chen's work deepens our understanding of citizenship.

This Part explains three key contributions of *Pursuing Citizenship*. Descriptively, the book offers a deeper understanding of why noncitizens pursue citizenship. Normatively, Chen maintains that the acquisition of formal citizenship is important for gaining substantive citizenship. Finally, as a prescriptive matter, the book calls on the federal government to strengthen pathways to formal citizenship.

First, Chen adds to the citizenship literature by explaining in both quantitative and qualitative terms what might have been obvious to many immigrants during Trump's presidency: immigrants lived in a state of fear due to the administration's immigration enforcement system (p. 76). During the election year, noncitizens, particularly Latinos, applied for citizenship in significant numbers.<sup>20</sup> In 2016, 972,151 individuals submitted naturalization applications, compared to 783,062 in 2015—an increase of more than 189,000 applications in just one year.<sup>21</sup> The number of citizenship applications rose higher still in 2017 to 986,851.<sup>22</sup> *Pursuing Citizenship* bolsters these numbers with compelling and sympathetic narratives formed through interviews of noncitizens. Noncitizens, as she notes, belong in different categories within a spectrum of immigration statuses, including those who are undocumented, those who enjoy deferred action for childhood arrivals (DACA), those with temporary visas, and those who are LPRs (p. 5). Recognizing these different categories highlights the social reality that there is a continuum of experiences with respect to citizenship, which complicates the citizen–noncitizen binary (pp. 4–5). However, as her interviews underscore, increased immigration enforcement ignored the spectrum of citizenship and essentially hardened the

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20. Julia Preston, *More Latinos Seek Citizenship to Vote Against Trump*, N.Y. TIMES (Mar. 7, 2016), <https://www.nytimes.com/2016/03/08/us/trumps-rise-spurs-latino-immigrants-to-naturalize-to-vote-against-him.html> [perma.cc/UBQ9-2ZHF].

21. KATHERINE WITSMAN, U.S. DEP'T OF HOMELAND SEC., U.S. NATURALIZATIONS: 2016, at 1 (2017), [https://www.dhs.gov/sites/default/files/publications/Naturalizations\\_2016.pdf](https://www.dhs.gov/sites/default/files/publications/Naturalizations_2016.pdf) [perma.cc/Y44P-LULG] (reporting an increase from 783,062 petitions in 2015 to 972,151 in 2016); see also Blizzard & Batalova, *supra* note 4.

22. U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. DEP'T OF HOMELAND SEC., NUMBER OF N-400 APPLICATIONS FOR NATURALIZATION BY CATEGORY OF NATURALIZATION, CASE STATUS, AND USCIS FIELD OFFICE LOCATION: OCTOBER 1–DECEMBER 31, 2016 (2017), [https://www.uscis.gov/sites/default/files/document/data/N400\\_performancedata\\_fy2017\\_qtr1.pdf](https://www.uscis.gov/sites/default/files/document/data/N400_performancedata_fy2017_qtr1.pdf) [perma.cc/QF6R-TRME] (reporting 986,851 total applicants).

citizen–noncitizen divide, which in turn forced many noncitizens to seek citizenship (p. 6). As Chen elegantly explains, “legal status” as an LPR is basically a “social construct” and is rendered, from a legal perspective, virtually meaningless (p. 6). Many LPRs experienced “citizenship insecurity” and faced barriers to being considered full Americans (p. 3). Chen notes that immigrants of color, particularly darker-skinned immigrants, became even more vulnerable during the Trump era (pp. 32–34). The administration’s heightened enforcement increased the necessity for formal citizenship because LPRs and others with lawful status, such as those on student and H1B visas, became vulnerable to being detained and removed (p. 34). LPRs thus considered citizenship an “insurance policy” against immigration removals and closure of the borders (p. 2)—offering possibly the only means of remaining in the United States in the age of enforcement (p. 28)—while also providing benefits such as the right to vote (p. 2).

Second, Chen’s book is valuable for its contributions to normative views of the purpose of citizenship and how those purposes have been hampered by increased immigration enforcement. Recognizing that citizenship and immigration law creates distinctions among various categories, documented and undocumented alike, Chen writes that the purpose of citizenship is “to build a national community” (p. 35). The insecurity that stems from amplified immigration enforcement, however, obstructs the integration of immigrants that is necessary for building national community. Indeed, it furthers “[c]itizenship inequality” among immigrants and “obscures other claims to belonging” (p. 37). Under the enforcement scheme, noncitizen LPRs become “semi-citizens” who are inferior to those who are full formal citizens with guaranteed substantive citizenship (p. 30). These barriers to belonging could lead noncitizens to view “citizenship as a transactional decision rather than an opportunity to cultivate meaningful ties to a nation” (p. 6).

Finally, Chen’s third key contribution is her policy prescriptions. As she explains, her project is to strengthen pathways to formal citizenship for noncitizens, including those whom she refers to as semi-citizens. As Chen narrates, citizenship “confers legitimacy, socialization, [and] investment” (p. 7)—advantages that should be available to all who are eligible and desire citizenship. But she notes that different groups of immigrants receive “different levels of institutional support,” leading to varied outcomes (pp. 8–9). For example, refugees and noncitizens in the military have higher naturalization rates than their civilian counterparts because they receive more support from the government, which facilitates and encourages naturalization (p. 8). To be sure, Chen does not argue that all immigrants must apply for citizenship; she has no problems with noncitizens who do not want to be citizens (p. 45). Rather, she believes that citizenship should be opened to more noncitizens. In particular, she advocates for noncitizens on temporary visas to have the option to declare citizenship and unlock the benefits of citizenship (p. 44). She also contends that the federal government should provide critical institutional

support and take the lead in integrating immigrants.<sup>23</sup> By partnering “with local governments and non-profit organizations,” the federal government would be able to better integrate immigrants, help them become citizens, and promote the substantive rights of citizenship.<sup>24</sup>

In sum, Chen offers a strong defense of formal citizenship, particularly in contexts where immigration enforcement is prioritized, because of its impact on noncitizens’ sense of equality and community membership. Citizenship is significant, Chen writes, because “anything less than formal belonging is insufficient when borders are fortified by expanding immigration enforcement and rising nationalism” (p. 7). Accordingly, citizenship must be encouraged, and the federal government ought to promote the pursuit of citizenship (p. 118).

## II. REJECTING CITIZENSHIP

As Part I explained, the desire for citizenship has been robust in recent years and many, including Chen, argue that the government must do more to encourage citizenship. But, as this Part discusses, not everyone wants citizenship. To the contrary, as Section II.A explains, many LPRs choose not to apply for naturalization. Section II.B explains some of the reasons why LPRs have opted not to apply. Section II.C discusses another group of noncitizens—American Samoans—who have explicitly rejected citizenship in favor of their noncitizen national status. Finally, Section II.D connects this refusal of citizenship to the choices made by U.S. citizens to abandon their citizenship. Collectively, these examples highlight underappreciated critical views about citizenship.

### A. *Legal Permanent Residents and Naturalization Rates*

Determining the extent to which LPRs desire or reject citizenship begins with an analysis of data collected by USCIS. USCIS has data on how many individuals have naturalized since 1907<sup>25</sup> as well as on how many LPRs applied for citizenship and how many of those applications were denied.<sup>26</sup> On the whole, such data provides a useful starting off point for analyzing how many LPRs desired citizenship over time, as well as any changes in application rate.<sup>27</sup>

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23. See p. 15.

24. See p. 10.

25. See YEARBOOK 2019, *supra* note 4. It should be mentioned that the number of people who naturalized includes only those who were eligible to submit applications in the first place. Thus, barriers to eligibility for citizenship affected the actual numbers. For example, between 1907 and 1952, various Asian American immigrants were racially prohibited from naturalizing. See p. 23.

26. See YEARBOOK 2019, *supra* note 4.

27. It is important to note, however, that the people who *actually* became U.S. citizens in one particular year might not have applied for citizenship that same year. Due to bureaucratic delays in the processing of citizenship applications, some LPRs may have had to wait more than one year for their applications to be approved. Blizzard & Batalova, *supra* note 4. This explains



For instance, as mentioned earlier, the number of citizenship applications increased dramatically between 2015 to 2017. Chen's interviews support the notion that the citizenship bump has to do with Trump running for office and later his election. Since 2017, however, the number of people applying for citizenship has decreased. In 2018, during President Trump's third year in office, 149,683 fewer people than the previous year applied for citizenship.<sup>28</sup> The number further decreased in 2019, when only 830,560 applied (compared to 837,168 in 2018).<sup>29</sup> With the Trump administration still engaging in its heightened immigration enforcement,<sup>30</sup> this decrease in citizenship applications counters the assumption that amplified immigration enforcement would drive more people to naturalize. Instead, the lower numbers suggest that despite experiencing what Chen refers to as "citizenship insecurity," many LPRs opted out of the naturalization process and maintained their vulnerability.

Research conducted by the Center for Migration Studies (CMS), a non-partisan research organization, offers additional insight. Using data collected by the U.S. Census Bureau's American Community Survey (ACS) in 2010 and 2019, CMS estimated and analyzed both the naturalized population and the eligible-to-naturalize population.<sup>31</sup> Analyzing these different data sets, CMS shared various findings confirming that many noncitizens are choosing not to naturalize. Specifically, CMS estimated that by 2019, 23.1 million of the 31.2 million immigrants in the United States had naturalized, which represented 74% of the eligible-to-naturalize population.<sup>32</sup> Explained differently, a surprising 26% of those who were eligible for naturalization—more than 8 million LPRs—chose not to apply. It should also be noted that naturalization rates

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some discrepancies in the annual tabulations, such as in 2019 when 830,560 naturalization applications were filed but 843,593 people became U.S. citizens. YEARBOOK 2019, *supra* note 4.

28. See YEARBOOK 2019, *supra* note 4 (showing that 837,168 applications were filed in 2018 compared to 986,851 applications in 2017).

29. *Id.*

30. See John Gramlich, *How Border Apprehensions, ICE Arrests and Deportations Have Changed Under Trump*, PEW RSCH. CTR. (Mar. 2, 2020), <https://www.pewresearch.org/fact-tank/2020/03/02/how-border-apprehensions-ice-arrests-and-deportations-have-changed-under-trump> [perma.cc/MQ9U-U6NT].

31. DONALD KERWIN, ROBERT WARREN & CHARLES WHEELER, CTR. FOR MIGRATION STUD. OF N.Y., MAKING CITIZENSHIP AN ORGANIZING PRINCIPLE OF THE U.S. IMMIGRATION SYSTEM 22 (2021), <https://cmsny.org/wp-content/uploads/2021/06/Making-Citizenship-an-Organizing-Principle-of-the-US-Immigration-06-02-2021.pdf> [perma.cc/5H5B-2HJ7] [hereinafter CMS REPORT]. The naturalized population includes those who became U.S. citizens and reported that information to the Census Bureau. See *id.* The eligible-to-naturalize group included LPRs that arrived before 2014 and noncitizens who arrived in 2014 who were eligible to naturalize, minus estimates of undocumented immigrants (because they are not eligible to naturalize) *Id.* at 22–23. CMS combined the naturalized and eligible-to-naturalize populations to estimate the "legal foreign-born population" by 2019. *Id.* at 23.

32. *Id.* at 1.

differed by country of origin: Japan, Mexico and Canada had the lowest naturalization rates (47%, 60%, and 61%), whereas Vietnam, the Philippines and Poland had the highest naturalization rates (88%, 85%, and 84%).<sup>33</sup>

No doubt, some might say that a 74% naturalization rate is quite high, and thus, we need not be concerned that over one quarter of eligible LPRs are refusing citizenship. But just as Chen has carefully analyzed the reasons why LPRs have pursued citizenship, it is also important to understand why LPRs are *not* naturalizing so as to better understand the role that citizenship plays in our society. Sections II.B and II.C take a closer look at the reasons for not naturalizing as well as some of the differences based on national origin.

### B. Reasons for Not Naturalizing

There are various reasons why noncitizens who are eligible to naturalize opt against doing so. First, language barriers appear to be a chief reason why many LPRs are not naturalizing. In order to become a naturalized citizen, the applicant must demonstrate “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage.”<sup>34</sup> In a 2012 study conducted by the Pew Hispanic Center, 26% of the people surveyed (all of whom were Latinx) cited their limited English proficiency and other personal barriers to explain why they have not submitted their citizenship applications.<sup>35</sup> A 2021 study by CMS further supports this claim.<sup>36</sup> Those who are fluent in English had a naturalization rate of 48%; those who did not speak English well had a naturalization rate of 11%.<sup>37</sup>

Second, the cost of naturalization has been cited as another factor affecting an LPR’s decision not to naturalize. The Pew Hispanic Center study reported that 18% of those surveyed explained that administrative barriers, like the financial costs of naturalization (which in 2011 was \$680<sup>38</sup>) prevented them from applying.<sup>39</sup> The 2021 CMS study expands on the relationship between income level and naturalization rate, finding that “80 percent of [the] eligible-to-naturalize [population] live in households with income higher than

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33. *Id.* at 32 tbl.7.

34. 8 U.S.C. § 1423(a)(1). Note that there are exceptions to this requirement. *See id.* § 1423(b).

35. GONZALEZ-BARRERA ET AL., *supra* note 10, at 6.

36. CMS REPORT, *supra* note 31, at 23.

37. *Id.*

38. Today, the filing fee for a naturalization application (Form N-400) is \$640 plus an \$85 biometric fee. U.S. CITIZENSHIP & IMMIGR. SERVS., DEP’T OF HOMELAND SEC., FORM G-1055, FEE SCHEDULE 10 (2021), <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf> [perma.cc/SP8D-DQEE]. On August 3, 2020, the Trump administration issued a rule that sought to increase the naturalization filing fee to \$1,170. *See* 8 C.F.R. § 106.2(b)(3) (2021); *see also* Immigrant Legal Res. Ctr. v. Wolf, 491 F. Supp. 3d 520, 526 (N.D. Cal. 2020).

39. *See* GONZALEZ-BARRERA ET AL., *supra* note 10, at 7.

125 percent of the poverty level.”<sup>40</sup> When income level is intersected with language skills, differences in naturalization rates based on national origin emerge. For instance, 75% of immigrants from India who speak only or mostly English naturalize, while only 25% of Mexican immigrants with that level of English proficiency apply for citizenship.<sup>41</sup> The difference, CMS deduces, could be explained by the fact that Indians have a higher median household income of \$142,900 versus \$58,500 for Mexican immigrants.<sup>42</sup>

LPRs have expressed other reasons for eschewing citizenship, which, similar to the motivations for pursuing citizenship that Chen highlights, demonstrate the citizenship continuum. For example, some have shared a concern about losing their cultural identity by becoming U.S. citizens.<sup>43</sup> As one noncitizen explained, “I would feel that if I get the American citizenship, I would feel a little less Italian.”<sup>44</sup> Others emphasized “I am Dominican”<sup>45</sup> and “I’m very much attached to my Britishness and my love and pride in being British,” indicating a fear of identity loss should they naturalize.<sup>46</sup>

Other noncitizens have expressed that they are quite content with being green-card holders. One LPR stated that “I really have everything that I need” and “I am treated pretty much just like a citizen.”<sup>47</sup> Indeed, more than one quarter of those interviewed by the Pew Hispanic Center had not yet applied or were simply not interested in applying for citizenship.<sup>48</sup> Noncitizens explain that they “just don’t see the advantage” of being naturalized<sup>49</sup> or “ha[ve] no interest in becoming . . . American citizen[s].”<sup>50</sup> While some are merely uninterested in citizenship, other noncitizens have shared their dissatisfaction with the United States, which diminishes any desire to naturalize. One noncitizen who expressed opposition to the United States’ foreign policies—in particular, its expanded use of drone strikes—pointed out that “[i]t’s not as glamorous to be a U.S. citizen anymore.”<sup>51</sup> This negative view of the United States is shared by many immigrants; a 2018 Pew Research study revealed that

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40. CMS REPORT, *supra* note 31, at 26.

41. *Id.*

42. *Id.*

43. Hyde et al., *supra* note 15, at 314.

44. Kirk Semple, *Making Choice to Halt at Door of Citizenship*, N.Y. TIMES (Aug. 25, 2013), <https://www.nytimes.com/2013/08/26/nyregion/making-choice-to-halt-at-door-of-citizenship.html> [perma.cc/8UKJ-U2VP].

45. Hyde et al., *supra* note 15, at 324.

46. See Semple, *supra* note 44.

47. *Id.*

48. GONZALEZ-BARRERA ET AL., *supra* note 10, at 6.

49. Semple, *supra* note 44.

50. *Id.*

51. *Id.*

many Latinos saw their lives and situations worsened due to the Trump administration's policies.<sup>52</sup> This negative view was heightened among foreign-born Latinos,<sup>53</sup> a group that includes nationalities with some of the lowest naturalization rates.<sup>54</sup>

Lastly, it is possible that many noncitizens choose not to naturalize because doing so would lead to the automatic loss of citizenship in another country. The American naturalization process requires an LPR to take an oath of allegiance to the United States and renounce their allegiance to other states.<sup>55</sup> Some countries allow dual citizenship, and taking the U.S. oath of allegiance is not viewed as the severance of national bonds between the new U.S. citizen and the foreign country.<sup>56</sup> In others, however, taking an oath of allegiance leads to the mandatory loss of citizenship. For example, Japan does not allow its citizens to hold dual nationalities,<sup>57</sup> which may arguably explain their low naturalization rate of 47%.<sup>58</sup> It should be noted, though, that China also forbids dual nationality and the taking of an oath of citizenship elsewhere automatically leads to the loss of Chinese citizenship.<sup>59</sup> Yet China has an above-average naturalization rate of 75%.<sup>60</sup> These differences in naturalization rates warrant closer examination to determine what is driving the lower rate among Japanese immigrants.

In sum, as this Section highlights, thousands of LPRs who are eligible to become U.S. citizens opt out of doing so. Their stories offer an important reminder that unlike the LPRs featured in *Pursuing Citizenship*, citizenship is

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52. MARK HUGO LOPEZ, ANA GONZALEZ-BARRERA & JENS MANUEL KROGSTAD, PEW RSCH. CTR., MORE LATINOS HAVE SERIOUS CONCERNS ABOUT THEIR PLACE IN AMERICA UNDER TRUMP 8 (2018), [https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2018/10/Pew-Research-Center\\_Latinos-have-Serious-Concerns-About-Their-Place-in-America\\_2018-10-25.pdf](https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2018/10/Pew-Research-Center_Latinos-have-Serious-Concerns-About-Their-Place-in-America_2018-10-25.pdf) [perma.cc/6YEG-W44J].

53. *Id.*

54. Abby Budiman, *Key Findings About U.S. Immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants> [perma.cc/N76G-NVRR].

55. 8 C.F.R. § 337.1 (2021).

56. See Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1415 (1997) (“[M]any naturalized citizens . . . maintain dual nationality by failing to nullify their original nationality where . . . home countries themselves do not cancel the citizenship . . .”).

57. Jessie Yeung, *These Asian Countries Are Giving Dual Citizens an Ultimatum on Nationality—and Loyalty*, CNN (Mar. 15, 2021), <https://www.cnn.com/travel/article/asia-dual-citizenship-intl-hnk-dst/index.html> [perma.cc/FYA6-QBQV]; Hideyuki Sano, *Japanese Court Rejects Expatriates' Bid to Cling to Citizenship*, REUTERS (Jan. 21, 2021, 4:01 AM), <https://www.reuters.com/article/us-japan-lawsuit-citizenship/japanese-court-rejects-expatriates-bid-to-cling-to-citizenship-idUSKBN29Q0YL> [perma.cc/NP2W-MC3Z].

58. CMS REPORT, *supra* note 31, at 30.

59. See Jessica Leal, Note, *Stateless with Nowhere to Go: A Proposal for Revision of the Right of Return According to the International Covenant on Civil and Political Rights*, 46 GEO. WASH. INT'L L. REV. 677, 693 (2014) (discussing China's policy against dual nationalities).

60. See CMS REPORT, *supra* note 31, at 30.

not a status that all view as ideal. Indeed, as Part III later explains, when situated against the broader framework of CRT, their reasons for refusing citizenship illuminate that citizenship is far from the normative idyllic status that it has been painted to be.

### C. *American Samoans and Preference for Noncitizen National Status*

It is not only LPRs who are rejecting citizenship. American Samoans residing in the territory have rejected the conferral of birthright U.S. citizenship, instead preferring to maintain their U.S. national status.<sup>61</sup> As this Section explains, their reasons for rejecting citizenship are different from the reasons articulated in the previous Section. However, the overall point that they are making—that citizenship is not what they want—demonstrates the need to look more deeply into what citizenship represents.

American Samoa became a U.S. territory in 1900 after Samoan high chiefs ceded their lands to the United States.<sup>62</sup> Unlike other U.S. territories, persons born in American Samoa do not become U.S. citizens; instead, they are noncitizen nationals at birth, occupying a status that I have previously described as interstitial citizenship.<sup>63</sup> They have some of the core rights of U.S. citizenship, including the right to travel to the U.S. “mainland.”<sup>64</sup> But they are also much like LPRs. As noncitizen nationals, they cannot vote in federal elections, serve on a jury, sponsor noncitizen family members to immigrate to the United States, run for office, or apply for jobs limited to U.S. citizens.<sup>65</sup> They are eligible to apply for U.S. citizenship but must do so by leaving American Samoa and continuously residing in one of the fifty states or another U.S. territory, paying the requisite fees, establishing good moral character, and taking the oath of allegiance.<sup>66</sup> All of this despite having “American” in their name.

Recently, some American Samoans residing in the U.S. mainland sued the United States for what they deemed unequal treatment, contending that they should be recognized as birthright citizens under the Citizenship Clause of the Fourteenth Amendment.<sup>67</sup> Relying on *Wong Kim Ark v. United States*, in

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61. Michelle Broder Van Dyke, *Why Some American Samoans Don't Want U.S. Citizenship*, NBC NEWS (Dec. 17, 2019, 1:04 PM), <https://www.nbcnews.com/news/asian-america/why-some-american-samoans-don-t-want-u-s-citizenship-n1103256> [perma.cc/FS3B-7C4S].

62. For discussion of how American Samoa became part of the United States, see Ross Dardani, *Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899–1960*, 60 AM. J. LEGAL HIST. 311, 320–21 (2020).

63. Cuison-Villazor, *supra* note 19, at 1676, 1678.

64. *Id.* at 1676.

65. *Id.* at 1675–76; *Family Immigration*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html> [perma.cc/PS8R-UQEJ].

66. 8 U.S.C. §§ 1427, 1448 (providing the requirements for naturalization, which apply to all noncitizens); *N-400, Application for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/n-400> [perma.cc/967E-DR6X].

67. U.S. CONST. amend. XIV, § 1, cl. 1. The plaintiffs contended that their noncitizen national status inflicts harm upon them because, among other things, they are unable to vote in federal, state or local elections, face economic discrimination because of their inability to apply

which the Supreme Court held that birth in the United States leads to the acquisition of U.S. citizenship, the plaintiffs argued that as persons born in a U.S. territory, they should be considered U.S. citizens at birth.<sup>68</sup>

Surprisingly for many, the people of American Samoa—through their elected local leaders—opposed the individuals’ suits, arguing in both cases that they did not want to become U.S. citizens.<sup>69</sup> In amicus briefs, they expressed a preference for their national status and argued that a ruling declaring them citizens under the Citizenship Clause would violate the American Samoans’ sovereignty and cultural traditions as well as infringe upon their right of self-determination.<sup>70</sup> Specifically, in a recent brief arguing against the Citizenship Clause’s application to the territory, the elected leaders of American Samoa argued that the conferral of citizenship threatens the “American Samoan way of life, *fa’a Samoa*.”<sup>71</sup> This includes their social and governmental structure, which limits some leadership positions in the upper house of the American Samoan legislature to male chiefs (*matai*) as is customary in their culture.<sup>72</sup> Additionally, land in American Samoa is communally owned and restricted to persons of at least 50 percent American Samoan ancestry.<sup>73</sup> The brief argued that the extension of the Citizenship Clause to American Samoans might draw constitutional inquiry into these governmental and land ownership systems that are based on their culture and way of life.<sup>74</sup>

Additionally, the brief contended that birthright citizenship is a choice that American Samoans ought to be able to make. Highlighting that democracy is based on the consent of the governed, the brief framed the extension of

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for federal and some state jobs, and face difficulty sponsoring their family members to enter the United States.

68. *Fitisemanu v. United States*, 1 F.4th 862 (10th Cir. 2021); *Tuaua v. United States*, 788 F.3d 300, 301, 304 (D.C. Cir. 2015).

69. Intervenor Defendants’ Opening Brief at 24–32, *Fitisemanu*, 1 F.4th 862 (No. 20-4017), 2020 WL 1969702 [hereinafter *Fitisemanu* Intervenor Defendants’ Brief] (stating that judicial imposition of birthright citizenship would violate American Samoans’ right to self-determination); Brief in Opposition by Respondents Am. Samoa Gov’t & the Off. of Congresswoman Aumua Amata of Am. Samoa at 2, *Tuaua v. United States*, 579 U.S. 902 (No. 15-981), 2016 WL 2754087 (“[E]xtending birthright citizenship to people who do not want it violates every legal principle of self-determination, sovereignty, and autonomy.”).

70. See *Fitisemanu* Intervenor Defendants’ Brief, *supra* note 69, at 17–32; Brief for the Intervenor or, in the Alternative, *Amici Curiae* the Am. Samoa Gov’t and Congressman Eni F.H. Faleomavaega at 2, *Tuaua*, 788 F.3d 300 (No. 13-5272), 2014 WL 4199267 [hereinafter *Tuaua* Amici Curiae Brief].

71. *Fitisemanu* Intervenor Defendants’ Brief, *supra* note 69, at 17.

72. *Id.* at 18–21.

73. See *id.* at 20–22.

74. *Id.* at 17–28. The question of birthright citizenship in American Samoa is not new. Through a political status commission held in 2006, American Samoans voiced their preference to maintain their noncitizen national status. FUTURE POL. STATUS STUDY COMM’N OF AM. SAMOA, FINAL REPORT 66 (2007) (on file with author) (recommending that “American Samoa not seek U.S. citizenship for its people at this time” (cleaned up)).

the Citizenship Clause to American Samoa as tantamount to the “judicial imposition of birthright citizenship.”<sup>75</sup> Pointing out that the American Samoan people have not reached consensus on citizenship, the brief thus argued that the people must have the opportunity to choose their political relationship with the United States; in other words, each individual must be able to determine their own status.<sup>76</sup> While historical records demonstrate that American Samoans initially desired citizenship and indeed thought that they *were* citizens,<sup>77</sup> these briefs indicate a strong preference among the inhabitants of American Samoa to keep their current status for both cultural and political reasons.<sup>78</sup>

These reasons for opting out of citizenship relate in some ways to the cultural reasons espoused by LPRs who believe that citizenship means giving up their identity. It is important to highlight, however, one critical difference. Unlike LPRs, American Samoans as U.S. nationals do not have any concerns about being removed from the United States, which, as *Pursuing Citizenship* explained, is typically a primary motivation for seeking citizenship (p. 40). And like U.S. citizens, American Samoans have the right to travel to and from the United States because American Samoa is a U.S. territory.<sup>79</sup> But that does not make their refusal to become U.S. citizens less important. From the perspective of American Samoans, the rejection of birthright citizenship is about preserving the choice to *become* a citizen and resisting “autocratic subjugation.”<sup>80</sup> They do not want to be compelled to become citizens, even if it means lesser rights.<sup>81</sup>

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75. *Fitisemanu* Intervenor Defendants’ Brief, *supra* note 69, at 24 (cleaned up).

76. *See id.* at 28.

77. REUEL S. MOORE & JOSEPH R. FARRINGTON, *THE AMERICAN SAMOAN COMMISSION’S VISIT TO SAMOA: SEPTEMBER–OCTOBER 1930*, at 53 (1931) (“After the American Flag was raised in 1900 the people [of American Samoa] thought they were American citizens.”); *see also* Dardani, *supra* note 62, at 336–40 (detailing how American Samoans in the 1920s expressed their desire for U.S. citizenship, which Congress ultimately did not confer upon them).

78. *Fitisemanu* Intervenor Defendants’ Brief, *supra* note 69, at 17–32; *Tuaua* Amici Curiae Brief, *supra* note 70, at 23–35 (contending similarly that the extension of the Citizenship Clause to American Samoa would constitute an imposition of citizenship and threaten the American Samoan way of life and culture).

79. Jennifer Sinco Kelleher, *American Samoa Culture Plays Role in US Citizenship Ruling*, AP NEWS (June 16, 2021), <https://apnews.com/article/american-samoa-cultures-government-and-politics-ecb28f949187601ae97e65ae2d7ff7de> [perma.cc/98HL-YH9G].

80. Fili Sagapolutele, *ASG Prevails in the 10th Circuit Court Appeal of Citizenship Case*, SAMOA NEWS (June 16, 2021, 12:52 PM), <https://www.samoanews.com/local-news/asg-prevails-10th-circuit-court-appeal-citizenship-case> [perma.cc/H9J7-6JVV].

81. Thus far, the American Samoan people have prevailed, with both the D.C. Circuit and Tenth Circuit ruling in their favor. Ultimately, the issue of whether American Samoans have the choice to determine birthright citizenship raises broader questions about the ongoing application of the *Insular Cases* to the U.S. territories. A fulsome analysis of whether the Citizenship Clause extends to American Samoa or whether the *Insular Cases* should continue to govern this issue is beyond the scope of this Review.

## D. U.S. Citizens Renouncing Their Citizenship

Finally, it is not only noncitizens who are refusing citizenship. There are also U.S. citizens who have voluntarily renounced or sought to abandon their status.<sup>82</sup> For example, American emigrants have renounced citizenship at staggering rates. In 2020, 6,705 Americans renounced their citizenship and moved to another country, which represents a 260% increase from the prior year when 2,577 U.S. citizens gave up their citizenship.<sup>83</sup> By comparison, in 2010, that number was just over 1,500.<sup>84</sup>

The chief reason many have cited for renunciation of citizenship is the need to avoid paying taxes.<sup>85</sup> Other reasons include the ability to represent

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82. These voluntary renunciations should be distinguished from situations when a U.S. citizen is essentially compelled to renounce their citizenship. *E.g.*, Neil Gotanda, *Race, Citizenship, and the Search for Political Community Among "We the People,"* 76 OR. L. REV. 233, 242–43 (1997) (discussing the Renunciation Act of 1944, which was passed to induce Japanese Americans who had been interned to renounce their citizenship).

83. See Quarterly Publication of Individuals, Who Have Chosen to Expatriate, as Required by Section 6039G, 86 Fed. Reg. 8,251 (Feb. 4, 2021); *Americans Gave Up Citizenship in Record Numbers in 2020, Up Triple From 2019, Reports Tax Specialists Americans Overseas*, CISION: PR NEWSWIRE (Feb. 4, 2021, 8:23 PM), <https://www.prnewswire.com/news-releases/americans-gave-up-citizenship-in-record-numbers-in-2020-up-triple-from-2019-reports-tax-specialists-americans-overseas-301222817.html> [perma.cc/ZV9U-W3KS].

84. *Americans Are Renouncing Their US Citizenship. Here Is Why*, CS GLOB. PARTNERS (Dec. 9, 2020), <https://cslobalpartners.com/news/americans-are-renouncing-their-us-citizenship-here-is-why> [perma.cc/82JC-KVUP]. To be sure, as Ruth Mason argues, there are millions of U.S. citizens residing abroad, and thus, in general, the number of citizens renouncing their citizenship is relatively small. See Ruth Mason, *Citizenship Taxation*, 89 S. CAL. L. REV. 169, 228 (2016). Nevertheless, the point is that the number of U.S. citizens who are abandoning citizenship is increasing every year, illuminating that the value that citizenship brings to those Americans warrants closer scrutiny.

85. See Andreas Kuth, *U.S. Expats Can't Renounce Their Citizenship Fast Enough*, BLOOMBERG (Aug. 31, 2020, 3:00 AM), <https://www.bloomberg.com/opinion/articles/2020-08-31/why-thousands-of-u-s-expats-are-renouncing-their-citizenship> [perma.cc/3SEU-JX4H]. A recent lawsuit by a group calling themselves “accidental Americans” illuminate that one of the reasons for renouncing citizenship is to avoid tax obligations. See Hamza Ali, *'Accidental Americans' Sue Over Fee to Renounce U.S. Citizenship*, BLOOMBERG TAX (Dec. 9, 2020, 10:13 AM), <https://news.bloombergtax.com/daily-tax-report/accidental-americans-sue-over-fee-to-renounce-u-s-citizenship> [perma.cc/K9NC-SHZ4].



another country in the Olympics,<sup>86</sup> to comply with the requirements of another country's nationality laws,<sup>87</sup> to run for or maintain a political position in a foreign government,<sup>88</sup> and to protest U.S. government policies or actions, such as the Trump administration's decisions.<sup>89</sup> Many of these reasons for abandoning citizenship demonstrate the unimportance of U.S. citizenship in certain people's eyes. U.S. citizenship is viewed by some as a liability preventing them from engaging in a preferred activity rather than as a coveted privilege.<sup>90</sup>

It should be noted that renouncing one's citizenship is not easy: a person must leave the United States,<sup>91</sup> expressly and voluntarily intend to abandon their citizenship,<sup>92</sup> and pay a hefty fee of \$2,350.<sup>93</sup> Without this physical departure and express statement of abandonment, they would still be deemed a U.S. citizen. For example, in 1994 political activist Juan Mari Brás attempted to renounce his U.S. citizenship while in Venezuela as a statement of support for the liberation of Puerto Rico from the United States. The State Department initially granted Mari Brás's renunciation but later reversed its decision, stat-

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86. See, e.g., Kimmy Yam, *Tennis Star Naomi Osaka Gives Up U.S. Citizenship to Represent Japan at Tokyo Olympics*, NBC NEWS (Oct. 11, 2019, 1:31 PM), <https://www.nbcnews.com/news/asian-america/tennis-star-naomi-osaka-gives-u-s-citizenship-represent-japan-n1065111> [perma.cc/4UL6-KLYY] (explaining that Osaka was required by a 1985 Japanese law requiring dual citizens to "make a 'declaration of choice,' renouncing one of their citizenships before their 22nd birthday"); Melanie Ho, *Olympic Hopefuls Seek HK Passports*, S. CHINA MORNING POST (May 28, 2008), <https://web.archive.org/web/20120404125134/http://olympics.scmp.com/Article.aspx?id=376&section=events> [perma.cc/D2FA-SPF9] (noting that to compete in Olympic equestrian events, showjumpers Jennifer Lee and Aram Gregory applied for Hong Kong passports that require naturalization without dual citizenship).

87. See Yam, *supra* note 86.

88. See Reuters Staff, *U.S.-Born Caucasian to Run for Taiwan Parliament*, REUTERS (Feb. 4, 2009, 11:20 PM), <https://www.reuters.com/article/us-taiwan-parliament-idINTRE5140NO20090205?edition-redirect=in> [perma.cc/RU3E-XRC2]; Allison Kaplan Sommer, *Yesh Atid's Dov Lipman to Relinquish U.S. Citizenship to Serve in Knesset*, HAARETZ (Jan. 23, 2013), <https://www.haaretz.com/.premium-rabbi-renounces-u-s-passport-for-knesset-1.5225972> [perma.cc/JYH9-49AS]; RFE/RL's Radio Azadi, *Karzai's Brother Renounces U.S. Citizenship to Enter Afghan Politics*, RADIOFREEEUROPE/RADIOLIBERTY (Jan. 24, 2013, 1:57 PM), <https://www.rferl.org/a/afghanistan-mahmud-karzai-enters-politics/24882541.html> [perma.cc/5FC8-C567].

89. Alaa Elassar, *A Record Number of People Are Giving Up Their US Citizenship, According to New Research. Here's Why*, CNN (Aug. 10, 2020, 5:54 AM), <https://www.cnn.com/2020/08/09/us/us-citizenship-renounced-data-trnd/index.html> [perma.cc/F79W-YFRW].

90. See Peter Wayner, *Encryption Expert Says U.S. Laws Led to Renouncing of Citizenship*, N.Y. TIMES (Sept. 6, 1998), <https://archive.nytimes.com/www.nytimes.com/library/tech/98/09/cyber/articles/06encrypt.html> [perma.cc/W3TD-NYEU].

91. 8 U.S.C. § 1483(a) ("[N]o national of the United States can lose United States nationality under this chapter while within the United States or any of its outlying possessions . . .").

92. *Id.* § 1481(a)(5) (providing a list of permissible methods for the voluntary renunciation of citizenship, including appearing before a U.S. consular or diplomatic officer in a foreign country).

93. 7 U.S. DEP'T OF STATE, FOREIGN AFFAIRS MANUAL § 1269 (2021), <https://fam.state.gov/fam/07fam/07fam1260.html> [perma.cc/5K2S-JSYF].

ing that because he later returned to Puerto Rico, he did not intend to renounce his citizenship.<sup>94</sup> Mari Brás's case underscores the difficulties of renouncing one's citizenship and, in particular, the inability to do so if one wants to continue residing in the United States.

Once citizenship is successfully abandoned, the decision cannot be revoked.<sup>95</sup> This is highlighted by *Davis v. District Director*, a 1979 case involving an individual who renounced his citizenship and lived abroad.<sup>96</sup> The court found that Gary Davis had voluntarily renounced his citizenship decades earlier, which made him a noncitizen who needed a visa to enter the United States<sup>97</sup> and therefore deemed him inadmissible upon entry.<sup>98</sup> Importantly, choosing to abandon U.S. citizenship is essentially a declaration of a conscious decision to reject the right to enter and travel to the United States. The gravity of such a decision only underscores the significance of the high rate of recent citizenship renouncements.

Overall, former U.S. citizens—thousands of them—have indicated that U.S. citizenship is not something that they want or need. Although their reasons for rejecting citizenship are also distinct from LPRs and American Samoans, such reasons again illustrate that citizenship is not always a desirable status and that, for many, it poses a significant disadvantage.

### III. CRITIQUING CITIZENSHIP

By describing the individuals who are refusing citizenship and their underlying reasons for doing so, Part II provides a counternarrative to Part I's emphasis on LPRs' pursuit of citizenship.<sup>99</sup> As Part II explains, for some per-

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94. See EFRÉN RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY: THE JUDICIAL AND SOCIAL LEGACY OF AMERICAN COLONIALISM IN PUERTO RICO* 174 (2001). For additional discussion of Mari Brás's case, see Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437, 490–92 (2002). Other Puerto Ricans have similarly sought to renounce their U.S. citizenship while residing in Puerto Rico. See Lisa Napoli, *The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico*, 18 B.C. THIRD WORLD L.J. 159, 188–89 (1998).

95. The Immigration and Nationality Act provides exceptions regarding loss of nationality or citizenship for those who are within six months of turning eighteen years old. 8 U.S.C. § 1483(b). Otherwise, the act of renouncing citizenship is irrevocable. *Renunciation of U.S. Nationality Abroad*, U.S. DEP'T OF STATE BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Renunciation-US-Nationality-Abroad.html> [perma.cc/Y2BL-KK4U] (“[T]hose contemplating a renunciation of U.S. citizenship should understand that the act is irrevocable . . . and cannot be canceled or set aside absent a successful administrative review or judicial appeal.”).

96. *Davis v. Dist. Dir., Immigr. & Naturalization Serv.*, 481 F. Supp. 1178 (D.D.C. 1979).

97. *Id.* at 1183.

98. *Id.* at 1180. Davis subsequently tried to re-enter the United States, claiming that under international human rights law, he has the “right . . . to return to his country.” *Id.* (quoting G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 13(2) (Dec. 10, 1948)).

99. Exclusion from citizenship comes with great costs, as citizenship provides a package of rights, benefits, and privileges: the right to freely travel the world and return to the United

sons, citizenship represents a loss of cultural identity and unwanted assimilation. For others, it means the stripping of self-determination. In this Part, I argue that these reasons for resisting citizenship highlight an underattended dimension of citizenship—its subordinating side. No doubt, citizenship is understood, as Chen and other scholars have argued, as a tool for achieving equality. But as this Part contends, citizenship may also be viewed as a tool of oppression.

In particular, this Part situates the rejection of citizenship within a broader history of race and citizenship. Using critical race theory (CRT) as the theoretical framework, this Part provides context to individuals' decisions to refuse citizenship. As Section III.A explains, viewing citizenship through the lens of CRT allows for an examination of how race, racism, and power intersect to define who belongs in the United States. Section III.B then contends that citizenship has facilitated racial oppression and subordination. Formal citizenship has not only been denied to people of color, but it has also been imposed upon powerless individuals and groups to facilitate the expansion of the American empire. Finally, Section III.C connects the previous Sections to the contemporary rejection of citizenship and argues that these less sanguine perspectives on formal citizenship prompt an opportunity to rethink what membership in the U.S. polity might look like.

#### A. Critical Race Theory and Citizenship

CRT has received significant attention recently, with misinformation regarding this theoretical approach proliferating.<sup>100</sup> Accordingly, what this Review means by CRT warrants a brief explanation. As this Review uses the term, CRT refers to the body of scholarly writings and the movement that interrogates the relationships between race, racism, and power.<sup>101</sup> It seeks to broaden the examination of law by looking at various factors, including history, political interests, and economics, among others.<sup>102</sup> It has several insights, including that racism is not an aberration but embedded within the legal landscape;

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States, the right to remain, the right to pass down citizenship to children born abroad, the right to petition noncitizen family members to immigrate to the United States, the right to vote, the right to serve on a jury, and more. To be sure, as scholars have discussed, the acquisition of citizenship does not necessarily lead to the equal enjoyment of citizenship rights. Still, formal citizenship comes with a plethora of rights that many noncitizens do not enjoy. Accordingly, people without those rights have been relegated to a lower status and subordinated legally and socially.

100. Fabiola Cineas, *What the Hysteria over Critical Race Theory Is Really All About*, VOX (June 24, 2021, 10:50 AM), <https://www.vox.com/22443822/critical-race-theory-controversy> [perma.cc/2ERA-VZV5] (analyzing the recent efforts by right-wing political operators to demonize CRT in an effort to stymie progress on racial justice issues).

101. See Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/article/what-is-critical-race-theory.html> [perma.cc/UDV3-JPCZ] (examining the foundations of CRT in attempting to better understand the ways in which the law “sustained” racial inequity and hierarchy); *supra* note 18 and accompanying text.

102. See Fortin, *supra* note 101.

that formal equality, including civil rights, fails to meaningfully advance racial justice; and that changes that advance racial minorities are enacted only if they promote the interests of white elites (a phenomenon known as “interest convergence”).<sup>103</sup>

As a body of law that determines who may be a formal member of the United States,<sup>104</sup> citizenship is an important site for CRT analysis. The Supreme Court has noted that citizenship “is regarded as the highest hope of civilized men” and that “nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country.”<sup>105</sup> These powerful words evince the normative view that citizenship is always welcomed and desirable. *Pursuing Citizenship* similarly puts forth a strong defense of formal citizenship, noting that “[c]itizenship confers legitimacy, socialization, investment, mobilization, and a sense of [] belonging” (p. 7). These notions were already challenged in Part II, but a CRT lens provides a closer interrogation of these presumptions about citizenship.

To be sure, the use of CRT to probe more deeply into the meaning of citizenship is not new and has indeed been robust.<sup>106</sup> But CRT scholarship has focused more on the denial of citizenship and resulting unequal or second-class citizenship as opposed to the acquisition of formal citizenship.<sup>107</sup> Focusing on the substantive dimension of citizenship as an equality-enabling mechanism, however, elides how citizenship has also facilitated racial inequality and oppression, as discussed in the ensuing Section.

### B. Subordination through Citizenship

Viewing citizenship from a CRT perspective underscores the extent to which citizenship has been deployed as a tool for racial subordination. This Section highlights two such examples: the ways in which citizenship was denied on the basis of race, and the ways in which citizenship was forced upon those who did not want citizenship.

103. See Derrick A. Bell, Jr., Comment, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); see also David Shih, *A Theory to Better Understand Diversity, and Who Really Benefits*, NPR (Apr 19, 2017, 11:49 AM), <https://www.npr.org/sections/codeswitch/2017/04/19/523563345/a-theory-to-better-understand-diversity-and-who-really-benefits> [perma.cc/6DZ3-D346] (detailing interest convergence and its potential role in civil rights victories).

104. Citizenship may be acquired by birth in the United States or abroad if at least one parent is a U.S. citizen. It may also be obtained through naturalization and extended by Congress to other groups. See 8 U.S.C. §§ 1401(a)–(e), (g)–(h); *id.* § 1429; see also *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 170 (1892) (addressing Congress’s role in bringing new citizens into the political community by admitting states into the Union).

105. *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

106. See *supra* note 16 and accompanying text; see also Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as “Foreigners,” and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 353–58 (1997) (analyzing the ways in which Asian Americans and Latinos are treated like noncitizen foreigners despite being citizens).

107. See Gordon & Lenhardt, *supra* note 16, at 2504.

## 1. Racial Exclusion from Citizenship

At the outset, the United States used race as a basis for denying citizenship. One method for acquiring citizenship is birth on U.S. soil, or the common law doctrine of *jus soli*. As this Section illustrates, the supposedly “neutral” rule of *jus soli* has been selectively applied, leading to racially exclusionary outcomes.

To begin, the Supreme Court held in *Dred Scott v. Sandford* that the Framers did not intend for the “enslaved African race . . . to be included” in the meaning of citizenship.<sup>108</sup> It did so despite the widely accepted principle of *jus soli*. This decision helped to legally perpetuate the enslavement of Black people in slave states, as the denial of citizenship meant the inability to sue for freedom.<sup>109</sup> It also stripped the citizenship of free Blacks born in the United States whom Northern states considered to be citizens.<sup>110</sup> In both situations, the loss of citizenship meant the facilitation of legal inequality and subordination of Black people.

The Fourteenth Amendment’s Citizenship Clause effectively overturned *Dred Scott* and sought to establish that people born in the United States were citizens by birthright.<sup>111</sup> However, the Supreme Court has since recognized that the Citizenship Clause does not extend to all persons born on U.S. soil. In *Elk v. Wilkins*, the Supreme Court held that American Indians born as members of a tribe could not be considered citizens under the Citizenship Clause.<sup>112</sup> As Bethany Berger has examined, this denial of birthright citizenship to American Indians was rooted in racism, with the federal government contending that John Elk, a member of the Winnebago tribe, was a “savage” and that people whose “ideas of government w[ere] the simplest and rudest”

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108. 60 U.S. (19 How.) 393, 410 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

109. *Dred Scott*, 60 U.S. at 406.

110. See JONES, *supra* note 16 (discussing states that considered free Black people citizens); see also AMANDA FROST, YOU ARE NOT AMERICAN: CITIZENSHIP STRIPPING FROM DRED SCOTT TO THE DREAMERS 22–23 (2021) (examining the legal implications of *Dred Scott* for free Blacks).

111. See *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (construing U.S. CONST. amend. XIV, § 1, cl. 1).

112. 112 U.S. 94, 102 (1884) (holding that Native Americans born within territorial limits of the United States were not “born in the United States and subject to the jurisdiction thereof,” within the meaning of the first section of the Fourteenth Amendment”). Congress subsequently enacted a statute that conferred citizenship upon American Indians. See *Indian Citizenship Act of 1924*, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b)). For an exploration of the intersection of race, citizenship, and tribal membership, see Bethany R. Berger, *Race, Descent, and Tribal Membership*, 4 CALIF. L. REV. CIR. 23 (2013), and Bethany R. Berger, *Red: Racism and the American Indian*, 56 UCLA L. REV. 591 (2009).

did not deserve citizenship.<sup>113</sup> This denial of birthright citizenship enabled American Indians' racial and political inequality.<sup>114</sup>

Other indigenous groups have also found themselves excluded from the protective reach of the Citizenship Clause. As discussed in Section II.C, persons born in American Samoa are not U.S. citizens by birth.<sup>115</sup> This is also the case for those born in the Philippines or Puerto Rico.<sup>116</sup> As recently as 2010, courts have relied on the *Insular Cases*,<sup>117</sup> a line of cases in which the Supreme Court determined which constitutional rights apply in unincorporated territories,<sup>118</sup> to hold that Filipinos born in the Philippines when it was still a U.S. territory did not acquire citizenship under the Citizenship Clause.<sup>119</sup> For these plaintiffs and others, the denial of birthright citizenship had adverse consequences, including deportation from the United States.

The decision that the Citizenship Clause does not apply in the U.S. territories meant that conferral of citizenship rested with Congress, whose wielding of power was also tinged with racism. As Sam Erman writes, Congress did not extend citizenship in the Philippines because of widespread views that Filipinos were racially inferior.<sup>120</sup> This racism also influenced Congress's decision to not extend U.S. citizenship to Puerto Ricans in 1900.<sup>121</sup> Eventually, Congress did extend citizenship to persons born in the U.S. territories (except

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113. Bethany R. Berger, *Birthright Citizenship on Trial: Elk v. Wilkins and United States v. Wong Kim Ark*, 37 CARDOZO L. REV. 1185, 1191, 1235 (2016). The issue of the conferral of citizenship on American Indians intersects with multiple other factors such as sovereignty, land rights, culture, and family rights that are beyond the scope of this Review.

114. See *id.* at 1234–36.

115. Cuison-Villazor, *supra* note 19, at 1676.

116. See ERMAN, *supra* note 16, at 27–34 (discussing the acquisition of Puerto Rico and the Philippines and the denial of U.S. citizenship to residents of those territories).

117. Juan R. Torruella, *Ruling America's Colonies: The Insular Cases*, 32 YALE L. & POL'Y REV. 57, 58 n.3 (2013) (collecting cases); see also Jose P. Mafnas Jr., *Applying the Insular Cases to the Case of Davis v. Commonwealth Election Commission: The Power of the Covenant and the Alternative Result*, 22 U.C. DAVIS J. INT'L L. & POL'Y 105 (2016).

118. For examinations of the *Insular Cases*, see FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION, AND THE CONSTITUTION (Christina Duffy Burnett & Burke Marshall eds., 2001); ERMAN, *supra* note 16; and Christina Duffy Burnett, *Untied States: American Expansion and Territorial Deannexation*, 72 U. CHI. L. REV. 797, 800–01 (2005).

119. *Nolos v. Holder*, 611 F.3d 279 (5th Cir. 2010) (per curiam) (holding that because the alien's parents did not acquire U.S. citizenship status by virtue of their birth in the Philippines when it was a U.S. territory, the alien could not have derived U.S. citizenship from them); *accord Valmonte v. Immigr. & Naturalization Serv.*, 136 F.3d 914 (2d Cir. 1998); *Rabang v. Immigr. & Naturalization Serv.*, 35 F.3d 1449 (9th Cir. 1994).

120. ERMAN, *supra* note 16, at 7.

121. See *id.* at 36–44.

for those born in American Samoa)<sup>122</sup> and conferred citizenship upon American Indians.<sup>123</sup> Yet as some have pointed out, the fact that this citizenship is statutory shows its vulnerability: what Congress has given, Congress can take away.<sup>124</sup>

In addition to *jus soli*, citizenship may also be acquired via naturalization. This method has also been used as an instrument for racial subordination and exclusion. The first naturalization statute, passed by Congress in 1790, limited citizenship to free white men.<sup>125</sup> After the Civil War, naturalization was extended to those of African descent<sup>126</sup> but still excluded all other nonwhite people. The Supreme Court affirmed this binary construction of citizenship in *Ozawa v. United States* and *United States v. Thind* when it held that a Japanese man (Ozawa) and a South Asian man (Thind) were not “white” and therefore could not naturalize.<sup>127</sup> In so holding, citizenship became a bulwark for racialized belonging, relegating Asian immigrants to the status of foreigners and promoting whiteness as the color of citizenship. As these two cases demonstrate, the institution of citizenship served as tool of oppression, facilitating the racial exclusion of noncitizens from membership in the United States.

It should be noted that citizenship subordinated individuals based not only on race but also on gender. As Leti Volpp has documented, marriage, race, and gender converged in ways that led to the divestment of married women’s citizenship.<sup>128</sup> Until 1855, a woman who immigrated to the United States was allowed to naturalize and keep her citizenship regardless of her husband’s citizenship.<sup>129</sup> Between 1855 and 1907, however, Congress passed laws that divested women of their U.S. citizenship if they married noncitizens, including those residing in the United States who were racially ineligible to naturalize.<sup>130</sup> Although the 1922 Cable Act restored the U.S. citizenship of women who married noncitizens, that law applied only to women who married men who were racially eligible to become citizens.<sup>131</sup> At the time, only white or Black immigrants were permitted to naturalize. It was not until 1931 that women who lost their citizenship due to their marriage to Asian men (who

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122. Andrew Hammond, *Territorial Exceptionalism and the American Welfare State*, 119 MICH. L. REV. 1639, 1662 & nn.127–128 (2021). Individuals born in American Samoa acquire the status of noncitizen nationals instead of U.S. citizenship. See *supra* Section II.C.

123. Indian Citizenship Act of 1924, ch. 233, 43 Stat. 253 (codified at 8 U.S.C. § 1401(b)).

124. See, e.g., Lisa Maria Perez, Note, *Citizenship Denied: The Insular Cases and the Fourteenth Amendment*, 94 VA. L. REV. 1029, 1067–78 (2008).

125. Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103 (repealed 1795).

126. Naturalization Act of 1870, ch. 254, § 7, 16 Stat. 254, 256 (repealed 1940).

127. *Ozawa v. United States*, 260 U.S. 178, 198 (1922) (holding that the words “white person” are synonymous with the word “Caucasian”); *United States v. Thind*, 261 U.S. 204, 214–15 (1923) (holding that a South Asian man from the Caucasus Mountains did not fit the popular meaning of “white”).

128. See Volpp, *supra* note 16.

129. See *id.* at 420–22.

130. See *id.*

131. See *id.* at 422–25.

were racially barred from becoming citizens) could reacquire their citizenship.<sup>132</sup> As this history shows, citizenship operated as a method of not only promoting racial hierarchies but also punishing certain interracial marriages. Further, as the 2017 case of *Sessions v. Morales* shows, these gendered dimensions of citizenship are far from relics of the past, with the federal government being forced to adopt a gender-neutral citizenship statute only a few years ago.<sup>133</sup>

In sum, citizenship has played a critical role in denying membership to persons on the basis of race and gender. This denial of citizenship relegated populations of people of color and women to second-class membership or non-membership in the United States and, accordingly, categorically denied them rights.

## 2. Compelled Citizenship

Another way that citizenship operated to subordinate people of color is exemplified by the extent to which citizenship was compelled or coerced to further the loss of sovereignty and to facilitate political and racial subordination of indigenous peoples. Specifically, this Section discusses how Native Hawaiians and some American Indians became U.S. citizens. Much has been written about their racialization and subjugation into the American polity;<sup>134</sup> this Review provides snapshots of their experiences that specifically focus on how citizenship facilitated this racial and political subordination.

The history of Hawai'i's forcible incorporation into the United States illustrates how citizenship can be imposed. Native Hawaiians, once part of a sovereign nation, lost their independence in 1895 after their monarch, Queen Liliuokalani, was illegally overthrown by non-Hawaiians supported by the U.S. government.<sup>135</sup> Three years later, Congress passed the Newlands Resolution, which annexed Hawai'i as a territory of the United States, and the islands became "subject to the sovereign dominion thereof."<sup>136</sup> The resolution also led to the cession of Native Hawaiian lands to the federal government. In 1900, two years after Hawai'i's annexation, Congress extended citizenship to Native

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132. See *id.* at 443–46.

133. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689, 1701 (2017) (noting that the citizenship law in question, which treated unwed fathers differently from unwed mothers, "date[d] from an era when the lawbooks of our Nation were rife with overbroad generalizations about the way men and women are").

134. See, e.g., HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* (rev. ed. 1999); ARIELA J. GROSS, *WHAT BLOOD WON'T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA* (2008).

135. For additional exploration of the unlawful overthrow of the Kingdom of Hawai'i, see Mililani B. Trask, *Historical and Contemporary Hawaiian Self-Determination: A Native Hawaiian Perspective*, 8 ARIZ. J. INT'L & COMPAR. L., no. 2, 1991, at 77, 79.

136. Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States (Newlands Resolution), no. 55, § 1, 30 Stat. 750 (1898).



Hawaiians.<sup>137</sup> Unsurprisingly, given the unlawful overthrow of their monarchy and loss of their lands, many Native Hawaiians wanted neither to become part of the American empire nor to be granted citizenship.<sup>138</sup> As Mililani B. Trask aptly explained, the conferral of “American citizenship on Hawaiians [was done] unilaterally [and] without [their] consent.”<sup>139</sup> The construct of citizenship, forced upon Native Hawaiians, essentially ensconced their nonconsensual absorption into the United States.<sup>140</sup>

This history of Native Hawaiians’ compelled citizenship aligns with the loss of sovereignty and citizenship troubles faced by American Indian tribes.<sup>141</sup> When Europeans established colonies, American Indians were commonly recognized as citizens of their own independent nations or tribes. It was therefore common for governments to enter into treaties with various tribes.<sup>142</sup> However, in 1823 the Supreme Court held in *Johnson v. M’Intosh* that American Indians lost their sovereignty upon Europeans’ arrival and thereafter became subject to the dominion of the United States.<sup>143</sup> The opinion, however, did not address the question of their citizenship, instead noting that governing American Indians “as a distinct people[] was impossible,”<sup>144</sup> suggesting that they were not citizens of the United States.

Indeed, there were different ways that American Indians could acquire U.S. citizenship, many of which were far from voluntary. In some instances, the federal government offered citizenship as part of its strategy of removing American Indian tribes from their homelands and forcing their assimilation into American society.<sup>145</sup> As we know, the United States government pushed

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137. J. Kēhaulani Kauanui, *Colonialism in Equality: Hawaiian Sovereignty and the Question of U.S. Civil Rights*, 107 S. ATL. Q. 635, 642 (2008). Note that around this time, Congress chose not to extend citizenship to Filipinos, Puerto Ricans, and Guamanians, illuminating the inconsistent treatment of these indigenous peoples. Volpp, *supra* note 16, at 414–15.

138. See Kauanui, *supra* note 137, at 642 (stating that the annexation occurred “despite massive indigenous opposition”).

139. Trask, *supra* note 135, at 92.

140. In 1993, Congress recognized the illegality of the overthrow of the Kingdom of Hawai’i and issued an apology, which acknowledged that Hawai’i was once an independent nation recognized by the United States and that the U.S. government participated in the “suppression of the inherent sovereignty” of the Hawaiian people. Joint Resolution of Nov. 23, 1993, Pub. L. No. 103-150, 107 Stat. 1510, 1511, 1513.

141. Similar to the discussion of Native Hawaiian history, the discussion of American Indian tribes and struggles with citizenship will be abbreviated.

142. Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples*, 15 HARV. BLACKLETTER L.J. 107, 111 (1999) (explaining the various ways that citizenship was conferred upon American Indians).

143. 21 U.S. (8 Wheat.) 543, 574 (1823) (holding that at the Founding, American Indians’ “rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it”).

144. *Johnson*, 21 U.S. at 590.

145. Porter, *supra* note 142, at 111.

American Indian tribes to the west;<sup>146</sup> members who wanted to remain in place were allowed to do so and given citizenship if “tribal lands [were] sold, individual allotments issued, and the tribe’s status dissolved.”<sup>147</sup> As this example reveals, citizenship was not something American Indians desired of their own free will. Instead, it was used to force American Indians to either leave their tribal lands and move west or abandon their way of life and assimilate into American society.

This policy of tying citizenship to forced assimilation—or using coerced citizenship as a “reward” for forced assimilation—continued throughout the nineteenth century. The federal government believed that breaking up tribal lands and allotting them to individual members would transform “savages” into “civilized” people.<sup>148</sup> Accordingly, in 1887 Congress passed the Dawes Act, which did just that: divided up tribal lands and conferred U.S. citizenship on those given allotted lands.<sup>149</sup> The American Indian tribes did not have much say or power to stop the breaking up of their lands; thus, they were essentially stripped of their lands and given the “prized” status of individual land ownership and citizenship. The U.S. government used citizenship to facilitate subordination of land rights and people.

In sum, both the denial and the forced imposition of citizenship have enabled the oppression of women and people of color, contrary to the positive path to belonging that Part I narrates. The denial of citizenship relegated populations of people of color and women to second-class membership or non-membership in the United States and, accordingly, categorically denied them rights. Conversely, Native Hawaiians and American Indians were made citizens to assimilate them more effectively into the dominant culture. In both cases, citizenship functioned as a means of subordination rather than empowerment.

### C. *Theorizing Citizenship*

Recognizing this racialized history provides context for the current resistance to citizenship. Situating race at the center of the history of formal citizenship suggests the need to be careful about essentializing citizenship and underscores that not everyone has had the same experience with citizenship. The racial exclusion from citizenship discussed in Section III.B emphasizes the need to reconsider today’s “colorblind” naturalization laws and requirements, such as the English test, that result in differential naturalization rates for Latinos. The claim by American Samoans that the extension of the Citizenship Clause to their U.S. territory would deny them their right of self-determination is deepened by understanding the imposition of citizenship on

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146. *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 625–27 (1970).

147. Porter, *supra* note 142, at 112.

148. *See id.* at 112–18.

149. Indian General Allotment (Dawes) Act, ch. 119, 24 Stat. 388 (1887) (codified in scattered sections of 25 U.S.C.) (repealed 2000).

Native Hawaiians and some American Indians. The refusal of LPRs to become U.S. citizens makes sense when placed within the broader role that citizenship played in creating racial hierarchies and privileging whiteness. The decision of some U.S. citizens to abandon their membership similarly echoes critical views about citizenship. Overall, the connection between the contemporary refusal of citizenship in Part II and CRT explored in this Part prompt initial questions about the implications for our understanding of citizenship that I hope to explore in future work. These questions are organized around three themes.

First, what is the purpose of citizenship? That is, should citizenship be considered an organizing principle in the United States that furthers a sense of belonging, as Chen argues in *Pursuing Citizenship*? Where does the racialized history of citizenship fit within this commonly held view of citizenship?

Second, what is the relationship between the rejection of citizenship and citizenship based on consent? On one hand, consensual citizenship is understood as a fundamental principle of American democracy. On the other hand, the history of compelled citizenship indicates that for some people who became members of the United States, citizenship was nonconsensual.

Third, what should membership in the United States look like? As this Review argues, it is important to question the traditional methods of becoming a citizen—via statute or the Citizenship Clause. Doing so illuminates that citizenship has a less positive orientation than typically expected, and it also points to the need to expand the meaning of membership and notions of belonging. This expanded meaning might include extending certain rights of citizenship to noncitizens,<sup>150</sup> which, as I have previously argued, has been made available to interstitial citizens. For example, might we consider a “drop-down” model of citizenship, in which individuals could choose what rights they desire (such as the right to stay in the United States or the right to serve on a jury), put such rights in their “cart,” and “check out” to essentially acquire the types of membership they would like to have? Or perhaps we should focus on ensuring that the path to acquiring citizenship is cleared of all manifestations of oppression and inequality so that citizenship would indeed facilitate equality and true membership. These three themes are only the beginning of a line of inquiry that ultimately is designed to help us better understanding all of citizenship’s dimensions.

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150. For example, some rights of citizenship may be extended to DACA recipients before they become citizens. For an exploration of the meaning of citizenship for DACA and Dreamers, see *WE ARE NOT DREAMERS: UNDOCUMENTED SCHOLARS THEORIZE UNDOCUMENTED LIFE IN THE UNITED STATES* (Leisy J. Abrego & Genevieve Negrón-Gonzales eds., 2020).

## CONCLUSION

From a descriptive and normative account, citizenship is understood as an ideal status—one that noncitizens surely want if given the opportunity.<sup>151</sup> The ongoing advocacy for citizenship for Dreamers, DACA recipients, and unauthorized immigrants reflect citizenship’s desirability.<sup>152</sup> After all, citizenship comes with a host of rights, privileges, and benefits.<sup>153</sup>

Undoubtedly, the need to understand why noncitizens have pursued citizenship is crucial not only for appreciating the meaning of citizenship<sup>154</sup> but also for developing legal and policy approaches to helping immigrants integrate into the United States. But as this Review contends, it is equally important to explore why noncitizens and citizens alike have rejected citizenship in order to gain a nuanced and fulsome understanding of the value of citizenship and what it means to belong to the United States.

The most pressing question posed by opting out of naturalization is whether citizenship should continue to be encouraged. The ongoing need to provide a path to permanent membership for millions of undocumented immigrants today clearly suggests the importance of ensuring security in citizenship for these vulnerable noncitizens. Ultimately, this Review reveals gaps in our understanding of citizenship that demand attention.

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151. See Andrew Kent, *Citizenship and Protection*, 82 *FORDHAM L. REV.* 2115, 2115 (2014) (discussing Chief Justice Earl Warren’s description of citizenship as “man’s basic right” because “it is nothing less than the right to have rights”).

152. See Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 *NEV. L.J.* 101 (2013).

153. See *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 171–72, 185 (1963).

154. Several scholars have explored and continue to examine the meaning of citizenship. See, e.g., BOSNIAK, *supra* note 9.