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Adopting Nationality

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ADOPTING NATIONALITY

Irina D. Manta* & Cassandra Burke Robertson**

Abstract: Contrary to popular belief, when a child is adopted from abroad by an American citizen and brought to the United States, that child does not always become an American citizen. Many adoptees have not discovered until years later (sometimes far into adulthood) that they are not actually citizens, and some likely still do not know. To address this problem, the Child Citizenship Act of 2000 (CCA) was enacted to automate citizenship for certain international adoptees, but it does not cover everyone. Tens of thousands of adoptees still live under the assumption that they are American citizens when, in fact, they are not. While laws have been proposed to fill the gaps left by the CCA, none have yet passed.

This Article argues that children adopted by U.S. citizen parents are entitled to permanence of nationality. It explores how state and federal authorities deliberately and irrevocably sever the ties of transnational adoptees to their families of origin to promote the interests of the adoptive family. The U.S. adoption framework prioritizes the unity of the adoptive family over maintaining connection to the child’s family of origin. Adoptees often struggle to understand and define their identity on various levels, including their personal, national, and ethnic identities. Citizenship precarity adds an extra layer of psychological difficulty for transnational adoptees, making the child’s position in society even less secure. If a child can be adopted into an American family but not accepted as a member of the American nation, then the child will never have the full stability that adoption is intended to offer.

The United States can and should follow through on the promise of permanence to transnational adoptees by awarding them the status of U.S. nationals. This status would enable them to remain in the United States, travel on a U.S. passport, and fully participate in American society. The United States Code already contains an overlooked provision that awards nationality status to those who, although not formally citizens, nevertheless owe permanent allegiance to the country. Interpreting this statutory language to cover adoptees who do not otherwise qualify for formal citizenship reflects the reality that children adopted into American homes are permanent members of this society. Indeed, we argue that the right to nationality is grounded in the Equal Protection and Due Process Clauses of the United States Constitution. Recognizing nationality will ensure that adoptees—who were brought to the United States through no choice of their own—cannot be removed from it.

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“Naturalization is like adoption: once it has taken effect, the adopted child is legally indistinguishable from a biological one. But, if one can be denaturalized, one can never really become a child of America.”
– Masha Gessen¹

INTRODUCTION

After being adopted by a Midwestern couple at less than two years old, Michael Libberton spent forty years thinking that he was a U.S. citizen like any other.² When he sought to obtain a technical degree in 2016, however, a paperwork issue revealed to his great shock that he had never been a citizen at all.³ His parents had been incorrectly advised in his infancy that they just had to bring him home—a belief subsequently held

1. Masha Gessen, *Trump, “Shitholes,” and the Nature of “Us”*, NEW YORKER (Jan. 12, 2018), <https://www.newyorker.com/news/our-columnists/trump-shitholes-and-the-nature-of-us> (last visited May 1, 2023).

2. Marisa Kwiatkowski, *Adoption of International Children Does Not Guarantee US Citizenship*, USA TODAY (July 1, 2021, 11:00 AM), <https://www.usatoday.com/in-depth/news/investigations/2020/12/16/international-adoption-does-not-guarantee-adoptees-us-citizenship/6310358002/> [<https://perma.cc/3A4L-88SA>].

3. *Id.*

so strongly that the family had let his green card expire.⁴ Libberton ultimately had to seek a citizenship path via his spouse, re-apply for a green card, and even change his name back to his birth name, William Ortiz.⁵

Libberton is believed to be one of at least 15,000 to 18,000 adopted individuals who currently incorrectly think they are Americans⁶ (with some adoption rights groups placing the number closer to 35,000 to 75,000).⁷ He is one of the “lucky” ones in that group, because he has not been deported and has a path forward, albeit a long and costly one. Meanwhile, Emil Albright, a young man from Romania adopted by an American couple at the age of fifteen, discovered eight years after his adoption that he could not apply for a passport.⁸ His adoptive parents mistakenly thought that the completion of the adoption process took care of U.S. citizenship matters.⁹ While Albright currently has a work permit under Deferred Action for Childhood Arrivals (DACA), securing a green card could take six to eight years and might require him to return to Romania.¹⁰

Even more dramatic are the consequences for individuals who plead guilty to criminal charges, as adoptee Anissa Druessedow did in 1993 when nobody said a word about her citizenship or any possible immigration-related consequences of her plea.¹¹ When she entered another guilty plea in 2004—involving an acquaintance returning stolen items without receipts at the store where she worked—U.S. Immigration & Customs Enforcement (ICE) issued a detainer and took custody of her.¹² They told Druessedow that she was not a citizen and that she was subject to an order of deportation.¹³ Her appeal to the Board of Immigration Appeals failed because her parents did not get her naturalized while she was a minor, and she was subsequently sent to Jamaica—a country that she had not seen since the age of six.¹⁴

4. *Id.*

5. *Id.*

6. *Id.*

7. Meghan Holohan, *International Adoption Community Plunged into Worry over Citizenship Crackdown*, TODAY (Sept. 13, 2019, 8:49 AM), <https://www.today.com/parents/international-adoption-parents-worry-about-immigration-t162384> [<https://perma.cc/EEA8-GKQA>].

8. Kwiatkowski, *supra* note 2.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*; see also Sara Jones, Shelly Johnson, Jini Roby & Kari Larson, Opinion, *All Children*

Druessedow, an amputee since her struggle with cancer in her teenage years, now lives in Panama where she cannot secure proper medical care and has no reliable water or electricity in her home.¹⁵ She has not seen her U.S.-born daughter, who is completing school in the United States, in over three years.¹⁶ Druessedow has been threatened by gun and knife in Panama and has had her car stolen; all she wants is to return to what she considers her true home, the United States.¹⁷

While the Child Citizenship Act of 2000 secures rights for many individuals, it does not protect those who were born before March 1, 1983, those whose adoption was never properly finalized, and some of those who entered the United States on a temporary visa.¹⁸ Adoptee rights groups have publicized the injustices resulting from the gap in the law.¹⁹ In 2021, Representatives Adam Smith (D-Washington) and John Curtis (R-Utah) and Senators Roy Blunt (R-Missouri) and Mazie Hirono (D-Hawaii) introduced a bill known as the Adoptee Citizenship Act of 2021, which would have extended protections to a greater number of people by relaxing some of the pre-existing requirements.²⁰ The House of Representatives passed the measure on February 4, 2022, as an amendment to a larger bill, but it is defunct after the Senate failed to adopt the measure.²¹ As a result, thousands of adoptees remain in limbo.

How can it be that individuals who spent sometimes dozens of years in the United States with the blessing of the government, who were given Social Security numbers and drivers' licenses, could find themselves without any kind of legal footing? Should there not be protection for those who acted in good-faith reliance on the belief that they had U.S.

Adopted from Other Countries Should Be U.S. Citizens, DESERET NEWS (Dec. 13, 2021, 9:43 AM), <https://www.deseret.com/opinion/2021/12/13/22832433/utah-adoption-foreign-countries-u-s-citizenship-automatic-deportation> [<https://perma.cc/4TJV-RGBM>].

15. Kwiatkowski, *supra* note 2.

16. *Id.*

17. *Id.*

18. See Gregory D. Luce, *Latest on Adoptee Citizenship Provisions for Intercountry Adoptees*, ADOPTEE RTS. L. CTR. (last updated Feb. 12, 2023), <https://adopteerightslaw.com/adoptee-citizenship-act-status/> [<https://perma.cc/K42Q-TH5U>].

19. See *id.*; *Impacted Adoptee Stories*, ADOPTees FOR JUSTICE, <https://www.adopteesforjustice.org/impacted-adoptee-stories> [<https://perma.cc/Y3MH-HB76>].

20. Press Release, Congressman Adam Smith, House of Representatives Passes Rep. Smith's Adoptee Citizenship Act (Feb. 4, 2022), <https://adamsmith.house.gov/press-releases?id=47F9716F-1146-4557-8AF1-6C28ADD79444&fbclid=IwAR37rfR3BHN3zWleZlIFuo3XrA69yCu97CPLfdyvGemitxtZEfj84nNQuXg> [<https://perma.cc/S62G-GNZP>].

21. Amanda Nguyen, *House Passes Bill to Close Citizenship Loophole for Intercountry Adoptees*, FORBES (Feb. 5, 2022, 9:53 AM), <https://www.forbes.com/sites/amandanguyen/2022/02/05/house-passes-bill-to-close-citizenship-loophole-for-intercountry-adoptees/?sh=2577f34b5ac2> (last visited May 1, 2023); Luce, *supra* note 18.

citizenship, including when it comes to criminal pleas entered without a word of warning on the part of the government?

While we have argued previously that, at a minimum, denaturalization and any other loss of citizenship should be subject to a statute of limitations and the doctrine of estoppel,²² this issue takes on new significance in the adoption context. Adoptees, and especially international adoptees, face special challenges when it comes to developing a sense of self-identity and belonging.²³ The government telling them that they, essentially, were not who they thought they were when it comes to recognition in American society—layered on top of adoptees’ many pre-existing uncertainties about their personal and cultural pasts and selves—risks destabilizing or even shattering the lives they have often struggled to build in the face of tremendous challenges.²⁴

This Article analyzes both the psychological backdrop and legal status of citizenship among transnational adoptees and argues that current U.S. law can fairly be read to offer them greater protection. Part I describes cases and narratives of citizenship precarity among adoptees in the United States. Part II explains how this precarity adds an extra layer of psychological difficulty for transnational adoptees. It explores how state and federal authorities promise permanence throughout the adoption process, deliberately and irrevocably severing the ties of transnational adoptees to their families of origin to promote the interests of the adoptive family. Part III argues that U.S. law can, and should, follow through on the promise of permanence to transnational adoptees. Often-overlooked provisions of U.S. law already create additional protection in the form of American nationality for those who, although not formally citizens, nevertheless possess permanent allegiance to the United States. Extending this nationality protection to adoptees who do not otherwise qualify for formal citizenship would recognize the reality that children adopted into American homes are permanent members of this society. Part IV concludes.

22. See Irina D. Manta & Cassandra Burke Robertson, *Inalienable Citizenship*, 99 N.C. L. REV. 1425, 1425 (2021) [hereinafter Manta & Robertson, *Inalienable*]; see also Cassandra Burke Robertson & Irina D. Manta, *(Un)Civil Denaturalization*, 94 N.Y.U. L. REV. 402, 459 (2019) [hereinafter Robertson & Manta, *(Un)Civil*]; Cassandra Burke Robertson & Irina D. Manta, *Litigating Citizenship*, 73 VAND. L. REV. 757, 785, 805 (2020) [hereinafter Robertson & Manta, *Litigating*].

23. See, e.g., Harold D. Grotevant, Albert Y.H. Lo, Lisa Fiorenzo & Nora D. Dunbar, *Adoptive Identity and Adjustment from Adolescence to Emerging Adulthood: A Person-Centered Approach*, 53 DEV. PSYCH. 2195 (2017) (studying and noting difficulties in identity development in adoptees).

24. See *infra* section II.A.

I. CITIZENSHIP DENIAL FOR ADOPTEES IN THE UNITED STATES

A number of adoptive parents never completed the naturalization process, and their children, “through no fault of their own[,] . . . never received citizenship and are living in uncertainty about their future.”²⁵ For families who were aware of the separate steps to naturalize their adopted children, many hardships halted or prolonged the process, which can be lengthy, costly, and burdensome.²⁶ This resulted in a lot of international adoptees growing up thinking they were American citizens when, in fact, they were not.²⁷

A. *The Child Citizenship Act and Its Problems*

The Child Citizenship Act of 2000 sought to ensure that all parents who completed the adoption process also naturalized their adopted children.²⁸ The goal was “two forms of family unity: psychological, by equalizing the citizenship status of the biological and adopted child; and physical, by removing the threat of deportation from the former [legal permanent resident’s] life.”²⁹ The Act eliminated the need to complete a separate naturalization process as long as (1) the child is under the age of eighteen when brought to the United States, (2) at least one of the adoptive parents is a U.S. citizen, (3) the child is a lawful permanent resident, and (4) when applying to past adoptees, the child was under the age of eighteen when the Act became effective.³⁰ However, this law left out all of the past adoptees whose parents never completed the naturalization process and were over the age of eighteen when the Child Citizenship Act became effective.³¹ Tens of thousands of adoptees have been affected by the

25. Press Release, Congressman Adam Smith, *supra* note 20.

26. *Id.*

27. *Id.*

28. *Id.*

29. Victor C. Romero, *The Child Citizenship Act and the Family Reunification Act: Valuing the Citizen Child as Well as the Citizen Parent*, 55 FLA. L. REV. 489, 492 (2003).

30. See 8 U.S.C.A. § 1431 (West 2020). If a child entered the country as a nonimmigrant and was adopted before age sixteen, they now have to apply for adjustment of status followed by naturalization (unlike before the passage of the Child Citizenship Act, when expeditious naturalization was a path in that scenario). 7 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR & RONALD Y. WADA, IMMIGRATION LAW & PROCEDURE § 97.02 (Matthew Bender rev. ed. 2022). For a discussion regarding the visas via which some transnational adoptees entered the country, see *FAQs, ALL FOR ADOPTEE CITIZENSHIP*, <https://www.allianceforadopteecitizenship.org/faq> [<https://perma.cc/8E43-4F83>].

31. See *ALL FOR ADOPTEE CITIZENSHIP*, *supra* note 30; Press Release, Congressman Adam Smith, *supra* note 20.

loophole in this law.³² The Alliance for Adoptee Citizenship is aware of at least fifty cases of deportation of transnational adoptees,³³ and there may be many others.³⁴

The fact that the final version of the Child Citizenship Act excluded large swaths of individuals was not a coincidence: Congress was uninterested in an earlier version of the bill, promoted by then-Representative William Delahunt (D-Massachusetts), that would have also benefited “adult adoptees who sometimes had already committed crimes.”³⁵ The individuals ultimately affected by this refusal to extend protection are a broad cross-segment of the transnational adoptee population, from individuals who have committed aggravated felonies to ones that simply reside in the United States without proper authorization.³⁶ Of course, but for parental failure to (or ignorance about the need to) fill out paperwork when these individuals were children, there would be no question that they could remain in the United States. This would be true whether they committed a crime—for which they served the requisite time in some cases—or not.³⁷ While crimes can draw rightful moral condemnation, transnational adoptees (both those with and those without a criminal history) are actually punished for the bureaucratic failings of their parents when these adoptees are deported.

The Adoptee Citizenship Act of 2021, introduced by Representatives Adam Smith (D-Washington) and John Curtis (R-Utah), was intended to close the loopholes of the Child Citizenship Act³⁸ to include those past adoptees who were over the age of eighteen when the Child Citizenship Act went into effect as long as their adoption was

32. See Nguyen, *supra* note 21.

33. ALL. FOR ADOPTEE CITIZENSHIP, *supra* note 30.

34. *Cf. id.*

35. DeLeith Duke Gossett, “[Take from Us Our] Wretched Refuse”: *The Deportation of America’s Adoptees*, 85 U. CIN. L. REV. 33, 65 (2017) (calling for greater legislative protections of transnational adoptees).

36. Holland L. Hauenstein, Note, *Unwitting and Unwelcome in Their Own Homes: Remediating the Coverage Gap in the Child Citizenship Act of 2000*, 104 IOWA L. REV. 2123, 2137 (2019).

37. See, e.g., Cassandra Burke Robertson & Irina D. Manta, *A Long-Running Immigration Problem: The Government Sometimes Detains and Departs US Citizens*, CONVERSATION (July 8, 2019), <https://theconversation.com/a-long-running-immigration-problem-the-government-sometimes-detains-and-departs-us-citizens-119702> [<https://perma.cc/M8RQ-6NKV>] (explaining that the law has been clear for over a century “that it is illegal for immigration authorities to deliberately detain or deport U.S. citizens”); *Kwock Jan Fat v. White*, 253 U.S. 454, 464 (1920) (stating that it is preferable for many immigrants to be “improperly admitted” into the United States “than that one natural born citizen of the United States should be permanently excluded from his country”).

38. Press Release, Congressman Adam Smith, *supra* note 20 (explaining that the measure was added to a larger bill called the COMPETES Act that sought to bring manufacturing back to the United States, support American workers, strengthen supply chains, promote international cooperation, and put the United States at the forefront of technology and innovation).

complete by the age of eighteen.³⁹ In June of 2022, the Senate passed a parallel bill, the United States Innovation and Competition Act, which did not include the adoptee citizenship provisions in the America COMPETES Act.⁴⁰ Ultimately, the Adoptee Citizenship Act of 2021 was not passed and is considered dead.⁴¹

In addition to uncertainty about the prospect of the ultimate passage of a law, limitations and exclusions are likely to remain in any future proposal. For example, the House bill as it was introduced stated that the adopted individual must have been admitted to the United States as a legal permanent resident, meaning that the child must have had a green card upon entrance to the United States.⁴² This and other possible conditions⁴³ all but ensure that a significant number of transnational adoptees will remain unprotected in their citizenship status even if such a law passes. Passing a broader bill is unlikely given the current polarized politics in Congress. The best path forward for protecting transnational adoptees may be through the judicial branch rather than the legislative branch.

B. *Citizenship Impermanence in International Adoptees*

The terrorist attacks on the United States on September 11, 2001 (9/11), took place not long after the enactment of the Child Citizenship Act of 2000. The tightening of the American national security apparatus in the aftermath of the attacks magnified the impact of the Act's loopholes.⁴⁴ The number of situations increased in which special paperwork was required and many "adoptees—who had driver's licenses and Social Security numbers, and believed themselves to be US citizens—had to provide proof of citizenship, adoption, and/or naturalization when applying for college, filling out job applications, getting married, or during encounters with the criminal justice system."⁴⁵

This was not the first time that terrorism played a role in the legal

39. *Id.*

40. *See id.*; United States Innovation and Competition Act of 2021, S. 1260, 117th Cong. (as passed by Senate, June 8, 2021).

41. Luce, *supra* note 19.

42. *See id.*

43. *See id.* (noting that adoptions must be fully completed by age eighteen).

44. For a brief overview, see Madeleine Carlisle, *How 9/11 Radically Expanded the Power of the U.S. Government*, TIME (Sept. 11, 2021, 7:00 AM), <https://time.com/6096903/september-11-legal-history/> [<https://perma.cc/T34P-UQJ6>].

45. Eleana Kim & Kim Park Nelson, "Natural Born Aliens": *Transnational Adoptees and US Citizenship*, 7 *ADOPTION & CULTURE* 257, 270 (2019). Another problem faced by transnational adoptees who turn out not to have proper citizenship status is, if they ever need to apply for public benefits, some may be unavailable to them. *See* ALL FOR ADOPTEE CITIZENSHIP, *supra* note 30.

treatment of transnational adoptees (and other immigrants): after the bombing of the World Trade Center of 1993 and the Oklahoma City bombing of 1995, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996 to simplify the deportation of immigrants convicted of crimes.⁴⁶

Below follow some of the stories of adoptees who ran into citizenship troubles shortly before the passage of the Child Citizenship Act but mainly after 9/11. They reflect the great variety of frequently tragic experiences that led to individuals often being sent back to countries to which they had few or no ties left, and where they at times did not speak the language and lacked the rudimentary abilities necessary to survive. Poverty, depression, and even suicide ensued. These stories highlight, on a human level, the continued need for intervention to once and for all remedy the “severe injustice”⁴⁷ left open by current law; indeed, some of this need will remain in even the best-case scenario that Congress passes at least a basic level of protective legislation.

1. *Michael Libberton (William Ortiz)*

Michael Libberton’s situation has been widely discussed in articles and academic discourse on international adoptee and citizenship issues. Libberton was born William Ortiz in Colombia.⁴⁸ He was adopted at just two years old and brought to Illinois in 1978, and both his parents and later Libberton himself assumed he was a U.S. citizen.⁴⁹ In 2016, Libberton began looking into his adoption records when he was applying to welding school and needed more information about his citizen status.⁵⁰

46. See John J. Francis, *Failure to Advise Non-Citizens of Immigration Consequences of Criminal Convictions: Should This Be Grounds to Withdraw a Guilty Plea?*, 36 U. MICH. J.L. REFORM 691, 700–03 (2003). This took place even though the perpetrators of the Oklahoma City bombing were born in the United States and several of the World Trade Center bombers were not immigrants, and it is not clear how an earlier passage of IIRIRA would have made a difference in stopping these plots. See, e.g., *Oklahoma City Bombing*, FBI, <https://www.fbi.gov/history/famous-cases/oklahoma-city-bombing> [<https://perma.cc/X6GQ-8ZDK>] (stating that the two parties responsible for the Oklahoma City bombing were homegrown terrorists Timothy McVeigh—a former U.S. Army soldier—and Terry Nichols). One of the few silver linings of more aggressive deportation practices has been increased interest on the local and philanthropic levels in providing legal defense for the immigrants involved in these kinds of cases. See Michael Kagan, *Toward Universal Deportation Defense: An Optimistic View*, 2018 WIS. L. REV. 305, 311 (2018).

47. See Kim & Park Nelson, *supra* note 45, at 269.

48. Kwiatkowski, *supra* note 2.

49. Alison Bowen, *Michael Libberton Was Brought to Illinois for Adoption from Colombia in 1978. He Found Out Only 5 Years Ago He Isn't a Citizen*, CHI. TRIB. (May 24, 2021, 11:03 AM), <https://www.chicagotribune.com/lifestyles/ct-adoption-overseas-abroad-citizenship-bill-tt-20210519-bezgl7slwfeq7bu5k7txcrkkyu-story.html> (last visited May 1, 2023).

50. Kwiatkowski, *supra* note 2.

When he asked his mother, she explained that she and her husband had been told that they had completed all of the necessary paperwork even though they had not.⁵¹

Libberton's story exposes an important problem with the Child Citizenship Act, and one that would not be fixed by the Adoptee Citizenship Act: Because Libberton's parents thought that all of his adoption paperwork was completed, his adoption did not officially go through until after he was eighteen.⁵² Though Libberton never faced deportation, he explains how it feels to lose his American identity: "You love this country, and it's taken from you Every right you thought you had, you don't have."⁵³ Gregory Luce, Libberton's lawyer, explained that after five years, Michael Libberton was able to complete the naturalization process and became a U.S. citizen in May 2022.⁵⁴

2. *Emil Albright*

In 1999, Cecile Pullman met Emil Albright at a YMCA camp in Vermont.⁵⁵ Albright was eleven and was on a visit to the United States from an orphanage in Romania.⁵⁶ Albright returned to the United States a year later to live with the Pullmans while he attended school on a student visa.⁵⁷ Even though Albright's adoption was finalized in 2003, he was never officially naturalized.⁵⁸ Neither he nor his adoptive family were aware of this until Albright attempted to apply for a passport at twenty-three years old.⁵⁹ Albright has never faced deportation⁶⁰ but is still working on getting his green card,⁶¹ a process which his lawyer said could take six to eight years and would force Albright to go back to Romania

51. Bowen, *supra* note 49.

52. Kwiatkowski, *supra* note 2.

53. *Id.*

54. E-mail from Gregory Luce, Michael Libberton's Lawyer, Adoptee Rights Law Center PLLC, to Leah Gaydos, Research Assistant to Irina D. Manta, Maurice A. Dean School of Law at Hofstra University (June 28, 2022, 09:44 EDT) (on file with authors).

55. Kwiatkowski, *supra* note 2.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. E-mail from Dan Berger, Emil Albright's Lawyer, Curran, Berger & Kludt, to Leah Gaydos, Research Assistant to Irina D. Manta, Maurice A. Dean School of Law at Hofstra University (June 27, 2022, 09:40 EDT) (on file with authors).

61. *See* E-mail from Dan Berger, Emil Albright's Lawyer, Curran, Berger & Kludt, to Leah Gaydos, Research Assistant to Irina D. Manta, Maurice A. Dean School of Law at Hofstra University (Feb. 1, 2023, 07:31 EST) (on file with authors).

for at least some time.⁶²

3. *Anissa E. Druessedow*

Anissa Druessedow has one of the sadder stories among international adoptees. She was born in Jamaica on November 15, 1970, after which her mother abandoned her to her grandmother and later her grandfather's lover.⁶³ Druessedow was sexually abused by her biological mother's boyfriends and her uncles.⁶⁴ She tried to tell her grandfather about the abuse, but he accused her of lying, beat her, and placed her and her siblings in an orphanage in Panama.⁶⁵ Druessedow and her siblings were abused in the orphanage, not fed properly, and used by the orphanage to retrieve donations from the United States.⁶⁶ When she was thirteen, Druessedow was adopted by a U.S. Army sergeant and his wife.⁶⁷ Shortly after moving to the United States, Druessedow fell while playing soccer in gym class and her calf began swelling.⁶⁸ After a visit to the base clinic, she discovered she had cancer and was quickly transported to Walter Reed National Military Medical Center, where her leg was amputated.⁶⁹ Druessedow was able to receive medical treatment and obtain a driver's license, a Social Security number, student loans, and multiple jobs without issues regarding her citizenship.⁷⁰

In 1993, Druessedow pleaded guilty to forgery, criminal possession of a forged instrument, and larceny, and her citizenship status was never questioned.⁷¹ But in 2004, Druessedow was arrested after she had been working at a home décor store and let an acquaintance return stolen items without receipts multiple times.⁷² After she pleaded guilty to third-degree felony grand larceny, ICE issued a detainer and took her into custody.⁷³ This was the first time Druessedow was informed that she was not a U.S.

62. Kwiatkowski, *supra* note 2.

63. Anissa Druessedow, *International Adoption and a Story of Deportation*, LOST DAUGHTERS (Mar. 6, 2015), <http://www.thelostdaughters.com/2015/03/international-adoption-and-story-of.html> [<https://perma.cc/2VPZ-6MBP>].

64. Kwiatkowski, *supra* note 2.

65. Druessedow, *supra* note 63.

66. *Id.*

67. Kwiatkowski, *supra* note 2.

68. Druessedow, *supra* note 63.

69. *Id.*

70. Kwiatkowski, *supra* note 2.

71. *Id.*

72. *Id.*

73. *Id.*

citizen and that she now had an order of deportation against her.⁷⁴ When Druesedow appealed the deportation, the Board of Immigration Appeals found that because Druesedow's parents did not complete her naturalization before her eighteenth birthday, existing adoptee laws could not assist her citizenship claims.⁷⁵ In March 2006, she was deported to Jamaica, a country to which she had not been since she was six years old.⁷⁶

After Druesedow's daughter joined her, the pair moved to Panama where Druesedow found work and got married.⁷⁷ Eventually, Druesedow sent her daughter back to the United States to attend college.⁷⁸ In Panama, electricity and water are not provided consistently; Druesedow has lost her car to theft, lived through having a gun pointed at her head, and suffered threats at knife point.⁷⁹ While dealing with the additional obstacle that her lawyer died, she wants nothing more than to return home to the United States.⁸⁰ Druesedow explains,

It's physically, emotionally, mentally just draining I used to want to fight. I used to want to do things. And now I just, I just want to lay in bed. And my husband is like, "Are you tired?" I'm like, "Yes, I'm tired." And what I really want to say to him is that "I'm tired. I just wish I could die and not wake up."⁸¹

4. *Paul Fernando Schreiner*

Paul Fernando Schreiner, born in Brazil, was adopted at age five by a couple from Nebraska.⁸² Schreiner was not naturalized, but has a Nebraska birth certificate and a Social Security number and has paid U.S. taxes.⁸³ Schreiner lived as and believed he was a U.S. citizen for thirty years.⁸⁴ He was convicted of statutory rape when he was twenty-one for

74. *Id.*

75. *Id.*

76. *Id.*; see also E. Tammy Kim, *Adoptees Have the Same Right to Citizenship as Biological Children*, N.Y. TIMES (Sept. 23, 2021), <https://www.nytimes.com/2021/09/23/opinion/adoption-immigration-korea.html> (last visited Apr. 8, 2023) (statement of Anissa Druesedow) ("If you believe in adopting adorable children, you should believe in adults having the same rights through adoption. . . . I just want to go home.").

77. Kwiatkowski, *supra* note 2.

78. Druesedow, *supra* note 63.

79. Kwiatkowski, *supra* note 2.

80. Druesedow, *supra* note 63.

81. Kwiatkowski, *supra* note 2.

82. Peter Prengaman, *'I'm an American': Deported Adoptee Struggles in Brazil*, AP NEWS (June 5, 2019), <https://apnews.com/article/immigration-rio-de-janeiro-fernando-latin-america-caribbean-ffc5e3753bad4b7f831d7ea47c3603d4> [<https://perma.cc/8NCZ-EPR8>].

83. *Id.*

84. *Id.*

sexual relations with a fourteen-year-old.⁸⁵ After almost eight years in prison, Schreiner moved to Arizona, launched a business, and became involved in his local church.⁸⁶ Shortly after, his pastor received a phone call that Schreiner was in prison again, this time through ICE.⁸⁷ Schreiner had an outstanding deportation order against him and was taken into custody in October 2017.⁸⁸

The Brazilian government fought back against this deportation order, as Brazil believes that adoption is an irrevocable act.⁸⁹ Furthermore, Alexandre Addor Neto, Brazil's consulate general, explained that "[t]he Brazilian government does not issue travel documents for the purpose of deportation of a Brazilian national . . . unless that person freely manifests his or her clear and unequivocal wish to return to Brazil, which was not the case of Mr. Schreiner."⁹⁰ Against the will of both the Brazilian government and Schreiner, he was deported on June 12, 2018.⁹¹ When Schreiner exclaimed that he had no Brazilian passport, an ICE agent replied, "Brazil is a corrupt government and will let you in."⁹²

Just six weeks too old when the law went into effect, Schreiner did not qualify for the protections of the Child Citizenship Act.⁹³ And, due to his criminal history, Schreiner was unable to qualify for citizenship on the basis of having a green card in the United States.⁹⁴ His troubles did not stop after arriving in Brazil.⁹⁵ ICE agents lied to airline officials, stating that Schreiner was a wanted felon in Brazil and providing only a single document, issued by the consulate in Los Angeles, as evidence that Schreiner was even a Brazil national.⁹⁶ Schreiner was held in the Brazilian airport for hours while Brazilian federal police argued with U.S. agents

85. *Id.*; see also BrieAnna J. Frank, *Arizona Man Thought He Paid Price for His Crimes. Then He Was Deported to Brazil*, ARIZ. REPUBLIC (June 26, 2019, 5:13 PM), <https://www.azcentral.com/story/news/politics/immigration/2019/06/25/arizona-man-fighting-deportation-brazil-paul-schreiner-thought-he-paid-price-for-his-crimes/1447119001/> (last visited May 1, 2023).

86. Prengaman, *supra* note 82.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*; see also "I'm an American": Man Adopted by U.S. Parents Deported to Brazil, CBS NEWS (June 5, 2019, 2:03 PM), <https://www.cbsnews.com/news/im-an-american-man-adopted-by-u-s-parents-deported-to-brazil/> [<https://perma.cc/D6YL-HJPJ>].

92. Prengaman, *supra* note 82.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

about whether to allow him to stay,⁹⁷ after which Schreiner was uncuffed and left in the airport alone.⁹⁸

Schreiner has few memories from when he lived in Brazil as a child.⁹⁹ Though born in Brazil, Schreiner has not managed to secure a Brazilian birth certificate, an ID card, or a tax ID number, all of which are needed for him to work.¹⁰⁰ He struggles financially, mentally, emotionally, and physically; barely able to speak Portuguese, he cannot even communicate with the few people with whom he does interact.¹⁰¹ Schreiner's current hope is to obtain a Brazilian passport some day and immigrate to Canada.¹⁰²

5. *Adam Crapser (Shin Song Hyuk)*

Adam Crapser was born in South Korea and originally given the name Shin Song Hyuk.¹⁰³ At age three, he was abandoned with his sister at an orphanage; he apparently cried frequently, played by himself, and always wanted his sister within his line of sight.¹⁰⁴ Only five months later, he was adopted by a strict American family that punished him and his sister often.¹⁰⁵ These punishments included being whipped and having to spend time in a dark basement.¹⁰⁶ Six years later, the couple decided they did not wish to keep the children and separated them.¹⁰⁷ Crapser was sent to a number of foster homes before ending up with another adoptive family in Oregon.¹⁰⁸

Thomas and Dolly Crapser had many adopted children and fostered a

97. *Id.*

98. *Id.* Schreiner emphasized during this ordeal that he never asked to come to the United States and had no choice in the matter. See *Adoptado en EEUU y Deportado, Enfrenta Problemas en Brasil* [Adopted in the US and Deported, He Faces Problems in Brazil], RIO19 (May 6, 2019) (Braz.), <https://rio19.mx/2019/06/05/adoptado-en-eeuu-y-deportado-enfrenta-problemas-en-brasil/> [https://perma.cc/JG62-LQMV]. Schreiner stated: "Soy de todo menos brasileño. . . Soy estadounidense." ("I'm anything but Brazilian. . . I'm American."). *Id.* His adoptive mother emphasized that he should not be punished twice for any wrongs he committed. See *id.*

99. Prengaman, *supra* note 82.

100. *Id.*

101. *Id.*

102. *Id.*

103. Maggie Jones, *Adam Crapser's Bizarre Deportation Odyssey*, N.Y. TIMES (Apr. 1, 2015), <https://www.nytimes.com/2015/04/01/magazine/adam-crapser-bizarre-deportation-odyssey.html> (last visited May 1, 2023).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

lot of others over the years.¹⁰⁹ Their punishments were described as even harsher than Adam Crapser's first adoptive parents' abuse.¹¹⁰ Dolly would hit the kids' heads against door frames and went after Adam with a plank of wood to the head after he disturbed her nap; Thomas duct-taped their mouths shut, burned Adam's hands, and even broke the child's nose after Thomas had problems finding the car keys.¹¹¹ At sixteen, Adam Crapser was kicked out of the house after an argument about using the phone.¹¹² A few weeks later, Crapser broke into his adoptive parents' house to reclaim his rubber shoes and Korean Bible that were some of his only belongings from the orphanage.¹¹³ He was arrested, pleaded guilty to burglary, and served twenty-five months in prison.¹¹⁴ Later on, he was convicted for unlawful firearm possession, a few misdemeanors, and assault.¹¹⁵ In 2013, Crapser violated a protection order of an ex-girlfriend when he sought to telephone his son.¹¹⁶ He did, however, ultimately clean up his life, got married, and took on full-time fatherhood obligations.¹¹⁷

Through all of Adam Crapser's guardians over the years, no one had filed for U.S. citizenship.¹¹⁸ Adam Crapser learned of this and eventually obtained his adoption paperwork from Thomas Crapser and applied for a green card.¹¹⁹ This application, however, brought on an automatic

109. *Id.*

110. *Id.*

111. *Id.*; see also Maureen McCauley Evans, *When Adoption Stories Don't Have Happy Endings*, SLATE (Nov. 22, 2016, 9:38 AM), <https://slate.com/human-interest/2016/11/adam-crapser-and-the-traumas-of-international-adoption.html> [<https://perma.cc/Z3C4-8H6F>] (commenting on the way that trauma—and in Adam Crapser's case in particular, his initial displacement and adoption into an abusive home—can cause individuals to suffer greatly and impose some of the consequences of that pain onto their own children); *id.* (“According to social worker Susan Coyle, untreated trauma in a parent can affect ‘the messaging about self and the world, safety, and danger’ that a child receives, creating lasting damage. Even when the story ends happily, trauma is at the root of adoption.”). Oregon eventually charged the Crapsers with dozens of counts of rape, sexual abuse, and criminal mistreatment against the children. Jones, *supra* note 103.

112. *Id.*

113. *Id.*; see also Camila Domonoske, *As Adoptee in U.S. Awaits Deportation, His Korean Birth Mother Studied English*, NPR (Nov. 17, 2016, 10:43 AM), <https://www.npr.org/sections/thetwo-way/2016/11/17/502413247/as-adoptee-in-u-s-awaits-deportation-his-korean-birth-mother-is-studying-english> [<https://perma.cc/XWH4-XQGK>].

114. Jones, *supra* note 103.

115. *Id.*

116. *Id.*

117. See *id.*

118. *Id.* Crapser has since sued the South Korean government and an adoption agency that he deems responsible for failing to ensure that he would receive American citizenship in the process of being adopted. See *Adoptee Deported by U.S. to Sue South Korea, Adoption Agency*, NBC NEWS (Jan. 23, 2019, 9:54 AM), <https://www.nbcnews.com/news/asian-america/adoptee-deported-u-s-sue-south-korea-adoption-agency-n961776> [<https://perma.cc/6M9R-QFHE>].

119. Jones, *supra* note 103.

background check and an investigation with the Department of Homeland Security, after which Adam Crapser's criminal past opened him up to deportation.¹²⁰ In 2016, Crapser's immigration case came to an end when Judge John C. O'Dell turned down Crapser's request to cancel his deportation removal and Crapser renounced his right to appeal.¹²¹

Crapser worked with Global Overseas Adoptee Link, a nonprofit organization in South Korea, to make ends meet in the first days after deportation.¹²² After being deported in 2016, Crapser faced long odds in South Korea.¹²³ Only able to write his name and recite the Korean alphabet, key tasks presented tremendous complexities: completing documents as part of the process to become an official Korean citizen, opening a bank account, or finding employment.¹²⁴ His birth mother reached out, but due to being low-income and disabled, she is not able to help much; she is currently learning English to speak with him.¹²⁵ Crapser told reporters at the time of his deportation that he was trying to stay positive, but appeared to be frightened at the prospect of being banished to a place where he lacked the basic skills to navigate everyday life.¹²⁶

6. *Joy Kim-Alessi*

Joy Kim-Alessi, born in South Korea, arrived in the United States at just seven months old on a plane filled with babies.¹²⁷ She was adopted by an American family, grew up in California, and believed she was an American citizen until the age of twenty-five, when she was denied a passport.¹²⁸ Fighting for twenty-seven years to get her own citizenship, Kim-Alessi now serves as a Program Director for the Adoptee Rights Campaign.¹²⁹ Kim-Alessi explains the pain and frustration of being

120. *Id.*

121. Alyssa Jeong Perry, *After 37 Years in US, Korean Adoptee Speaks Out About Imminent Deportation*, *GUARDIAN* (Oct. 28, 2016, 7:00 AM), <https://www.theguardian.com/us-news/2016/oct/28/us-immigration-adam-crapser-south-korea-deportation> [<https://perma.cc/UB7B-DSKR>].

122. *Id.*

123. *U.S. Adoptee Adam Crapser Deported from U.S.: Attorney*, *NBC NEWS* (Nov. 17, 2016, 7:43 PM), <https://www.nbcnews.com/news/asian-america/adoptee-adam-crapser-deported-u-s-attorney-n685661> [<https://perma.cc/W4ZQ-CQY9>].

124. Perry, *supra* note 121.

125. *Adoptee Deported by U.S. to Sue South Korea, Adoption Agency*, *supra* note 118.

126. *Id.*

127. Julia A. Seymour, *Adopted but Not Citizens*, *WORLD* (July 24, 2020), <https://wng.org/roundups/adopted-but-not-citizens-1617223029> [<https://perma.cc/UPT2-LG7E>].

128. *Id.*

129. Stephen Stock, Robert Campos, Mark Villarreal & Jeremy Carroll, *Adopted Abroad as Infants*,

adopted but not being naturalized: “We have been brought here by law, by legal standards We are here because of that. We didn’t bring ourselves here. We didn’t broker our own adoptions. We are here legally.”¹³⁰

Kim-Alessi suffered greatly as a result of her experiences. Learning that she was not a citizen felt like living through the trauma of a car crash.¹³¹ A lawyer counseled her at one point not to apply for citizenship because her having voted (when she mistakenly believed herself to be an American citizen) could potentially result in federal criminal charges, and she was unable to attend college because she could not apply for federal aid.¹³² She says she will always wonder what her life could have been like had her American citizenship been recognized all along.¹³³ Kim-Alessi currently advocates for adoptees like herself to give lawmakers insight as to what international adoptees experience in the fight for their citizenship.¹³⁴

7. *Other Adoptees*

Liam (last name unpublished) was born in Brazil and legally adopted in San Francisco, California.¹³⁵ Liam assumed that he was a U.S. citizen up until he was required to get a background check for his job, where he learned that he was never naturalized.¹³⁶ Liam’s adoptive parents had died years prior, so he went to search for records on his own.¹³⁷ He discovered a birth certificate from Brazil with many clues indicating that “his birth parents were fearful to sign any kind of documents releasing parental rights In fact his birth mother simply left a thumbprint on the documents.”¹³⁸ Along with this, Liam was never given a legal document to enter the United States.¹³⁹ As Liam was adopted before 2000, and was

Raised in US, and Now — They May Face Deportation, NBC BAY AREA (Apr. 11, 2020, 4:06 AM), <https://www.nbcbayarea.com/news/local/adopted-abroad-as-infants-raised-in-us-and-now-they-may-face-deportation/5888/> [<https://perma.cc/W6Y2-B9GD>].

130. *Id.*

131. *Id.*

132. *Adoptee Says Learning She Isn’t a US Citizen Was Like the Trauma of a Car Crash*, NBC WASH. (Feb. 4, 2019), https://www.nbcwashington.com/local/adoptee-says-learning-she-isnt-us-citizen-was-like-trauma-car-crash_washington-dc/2094/ [<https://perma.cc/UKM2-HNB4>].

133. *Id.*

134. Kwiatkowski, *supra* note 2.

135. Stock et al., *supra* note 129.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

no longer a minor when the Child Citizenship Act was enacted, he does not qualify for the protections afforded under the Act.¹⁴⁰ For individuals like Liam, one missing document is all it takes to lead to a life “in legal limbo.”¹⁴¹

Monte Haines (Han Ho Kyu) was born in Korea in the early 1970s and was adopted by a family from Iowa.¹⁴² His story is heartbreaking in part because it highlights the human trafficking issues involved in international adoption. Haines explains that he was taken to an orphanage after being lost on his way home and adopted by U.S. citizens six months later through an organization called Holt International that never confirmed his lineage and received forty-five thousand dollars for his “abduction.”¹⁴³ Haines’s family was misled about the naturalization process and never secured his citizenship.¹⁴⁴ Seemingly due to drug charges,¹⁴⁵ Haines was deported in 2009 after living in the United States for more than thirty years.¹⁴⁶ He explains that even today he is “still having a hard time to survive,” as he is barely able to pay his rent or buy food with the five dollars per hour he earns as a bartender in Seoul.¹⁴⁷ Adoptees who, like Haines, are deported, are left purely to their own devices and without any U.S. or local support.¹⁴⁸

Mauricio Cappelli (Mauricio Oviedo Soto) was born in Costa Rica and adopted by U.S. citizen Kurt Cappelli after Kurt married Mauricio’s mother.¹⁴⁹ Kurt assumed that once the adoption was finalized, Mauricio would also gain U.S. citizenship.¹⁵⁰ Mauricio never obtained a U.S.

140. *Id.*

141. *Id.*

142. See Also Known As, *Deported, Not Forgotten Panel*, Nov. 16 2021, YOUTUBE, at 13:50–15:01 (Nov. 19, 2021), <https://www.youtube.com/watch?v=lf7bj6nuh5s> (last visited May 9, 2023).

143. OSH, *An #ImportedAsians POV: Monte Haines*, UNIVERSAL ASIAN (Nov. 15, 2021), <https://theuniversalasian.com/2021/11/15/an-importedasians-pov-monte-haines/?fbclid=IwAR2A4OekFHVQ2iST1ePzHi83aaDFlj7Zil-Agkree18uawzO8cDSWvZf4yg> [<https://perma.cc/9322-R84H>].

144. Cassie Da Costa, *The Faulty Vision of Blue Bayou*, VANITY FAIR (Sept. 16, 2021), <https://www.vanityfair.com/hollywood/2021/09/the-faulty-vision-of-blue-bayou> (last visited May 1, 2023).

145. *United States v. Haines*, No. 4:08-cr-00081-Y (S.D. Tex. Oct. 16, 2001) ECF No. 3.

146. Choe Sang-Hun, *Deportation a ‘Death Sentence’ to Adoptees After a Lifetime in the U.S.*, N.Y. TIMES (July 2, 2017), <https://www.nytimes.com/2017/07/02/world/asia/south-korea-adoptions-phillip-clay-adam-crapser.html> (last visited May 1, 2023).

147. *Id.*

148. *Id.*

149. Sheldon Dutes, *Family Fights to Get Adopted Son Back Home After He Was Deported*, WISN (Dec. 27, 2018, 6:34 PM), <https://www.wisn.com/article/family-fights-to-get-adopted-son-back-home-after-he-was-deported/25686076#> [<https://perma.cc/YH7W-VB9W>].

150. *Id.*

passport, but he had a green card.¹⁵¹ Mauricio traveled to Costa Rica in 2015 with his Costa Rican passport.¹⁵² When he tried returning to the United States, officials found his criminal record, detained him, and sent him back to Costa Rica.¹⁵³ In its investigation of a number of international adoptees' citizenship tragedy stories, *The Intercept* concluded:

The adoptees' stories portrayed widespread incompetence and mismanagement within a number of agencies at the federal and state level, particularly a woeful lack of interagency communication between the U.S. State Department and the United States Citizenship and Immigration Services, better known as USCIS. . . . A staggering number [of adoptees] were denied citizenship due to their adoptive parents failing to file just one document—a certificate of citizenship known as the N-600 form—before they became legal adults.¹⁵⁴

Joao Herbert was born in Brazil and adopted by a family from Ohio.¹⁵⁵ In 2000, he was deported for selling 7.5 ounces of marijuana.¹⁵⁶ In 2004, he died from a gunshot in the “slums” of Campinas, a city north of São Paulo.¹⁵⁷ Allegedly, Herbert was killed by a group for which he had smuggled guns to raise funds to get back to the United States.¹⁵⁸ His story proved part of the impetus for then-Representative William Delahunt (D-Massachusetts) to advance legislation that eventually became the Child Citizenship Act of 2000.¹⁵⁹

Bianca (last name unpublished) was born in then-Yugoslavia and adopted as a toddler by American parents.¹⁶⁰ After her birth parents died, she found discrepancies in her documents: Bianca had two separate visa receipts and her parents had changed her name and age.¹⁶¹ With a government that no longer exists and her birth parents gone, obtaining

151. *Id.*

152. *Id.*

153. *Id.*

154. Daniel A. Medina, *Adopted and Undocumented*, INTERCEPT (Aug. 12, 2018), <https://theintercept.com/2018/08/12/uscis-undocumented-adoptee-immigration-status-adoption-deported/> (last visited May 1, 2023).

155. Jones, *supra* note 103.

156. *Id.*; see also Susan Levine, *A Foreigner at Home*, WASH. POST (Mar. 5, 2000), <https://www.washingtonpost.com/wp-srv/WPcap/2000-03/05/080r-030500-idx.html> [<https://perma.cc/GUW8-ML7H>].

157. Jones, *supra* note 103.

158. *Id.*

159. Gossett, *supra* note 35, at 61–62.

160. Seymour, *supra* note 127.

161. *Id.*

originals was impossible.¹⁶² She lives with a daily “sense of underlying fear” that ICE will find her; she cannot get a driver’s license and she worries that the United States will not renew her passport, forcing her to remain within the borders of the United States.¹⁶³

Phillip Clay was born in Seoul, South Korea and adopted by a family from Philadelphia at eight years old.¹⁶⁴ After many arrests during his struggle with drug addiction, Clay was deported back to South Korea in 2012.¹⁶⁵ He did not speak the language, did not know a single person, and struggled with his mental health alone and without clinical support.¹⁶⁶ On May 21, 2017, Phillip Clay died by suicide.¹⁶⁷ Only forty-two years old at the age of his death, his tragic story became a rallying cry for advocates to call for greater protection for international adoptees.¹⁶⁸

There are many adoptees that have been mentioned in just a single sentence by adoptees’ rights organizations. For example, Joe Nugent was adopted in 1972 and deported back to Morocco forty-nine years later.¹⁶⁹ Mike Davis (Abebe Hailu Davis) was adopted in 1976 and deported back to Ethiopia twenty-nine years later, leaving behind his wife—to whom he is still married—and four children.¹⁷⁰ Crystal Moran was born in El Salvador and adopted by an American family at just three months old.¹⁷¹ She was deported in 2016 and struggles to keep her family together as a mother of five.¹⁷² Susan Williams was born in South Korea and had a troubled childhood after being adopted by an American family.¹⁷³ After being imprisoned, she was deported and has been struggling ever since.¹⁷⁴ Of course, one must assume that untold tragedies remain hidden from the public eye—perhaps sometimes precisely the ones of people who had the

162. *Id.*

163. *Id.*

164. Sang-Hun, *supra* note 146.

165. *Id.*

166. *Id.*

167. *Id.*

168. See Chris Fuchs, *Deported Adoptee’s Death Heightens Calls for Citizenship Bill*, NBC NEWS (June 2, 2017, 1:44 PM), <https://www.nbcnews.com/news/asian-america/deported-adoptee-s-death-heightens-calls-citizenship-bill-n767341> [<https://perma.cc/LR74-VJKP>].

169. Also Known As, *Deported, Not Forgotten: Joe Nugent*, YOUTUBE, at 02:02–04:49 (Jan. 12, 2022), <https://www.youtube.com/watch?v=tpF3jU3EqVY> (last visited May 14, 2023).

170. *Id.*

171. *UnErased: The Deportation of Adoptees in America, Don’t Give Up*, FOCUS FEATURES, TREEFORT MEDIA & LIMINA HOUSE (Sept. 2021) (streamed using Spotify).

172. *Id.*

173. *UnErased: The Deportation of Adoptees in America, Seeking Redemption*, FOCUS FEATURES, TREEFORT MEDIA & LIMINA HOUSE (Oct. 2021) (streamed using Spotify).

174. *Id.*

fewest resources and the least access to advocacy organizations and mass media outlets.

The stories we do have, and the many further tragedies undoubtedly hidden behind them, show how the Child Citizenship Act of 2000—despite its good intentions and its ability to solve a number of problems for international adoptees—left open a lot of situations in which individuals adopted as children do not fit the specific categories protected under the statute. Although the Child Citizenship Act provided stability for some transnational adoptees, its significant gaps in coverage leave others vulnerable to removal from the United States.

II. THE ILLUSORY PROMISE OF PERMANENCE

America was founded on the promise of equal citizenship under the law.¹⁷⁵ This promise, of course, has never been fully realized.¹⁷⁶ But the ideal has remained, and the law has sought to move the reality closer to this original promise. The ratification of the Fourteenth Amendment explicitly protected individuals' right to equal treatment at the hand of state governments.¹⁷⁷ The Supreme Court subsequently interpreted the Fifth Amendment's guarantee of due process to likewise rest on a foundation of equality.¹⁷⁸

America's promise of equality under the law is tightly linked to the role of citizenship in the U.S. political system. At the time of the founding, the United States was unique in its conception of citizenship by choice. The founders of the United States derived their view of citizenship from John Locke's idea of a social contract: government receives its legitimacy from the consent of the people.¹⁷⁹ One historical narrative is that America was founded as a nation of immigrants who were bound to this country by their choice to undertake the roles and responsibilities of citizenship.¹⁸⁰ In

175. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

176. Richelle Joy Geman, Note, *A Push for an Egalitarian Constitution*, 48 HASTINGS CONST. L.Q. 297, 317 (2021) ("The centuries and decades after the drafting of the U.S. Constitution were fraught with injustice, disadvantage, and marginalization—politically, economically, and educationally—of people of color. Our Constitution has yet to truly grapple with this reality.").

177. U.S. CONST. amend. XIV.

178. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) ("[A]s this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.").

179. Josh Blackman, *Original Citizenship*, 159 U. PA. L. REV. 95, 105–07 (2010); see also JOHN LOCKE, TWO TREATISES OF GOVERNMENT AND A LETTER CONCERNING TOLERATION 149–50 (Ian Shapiro ed., Yale Univ. Press 2003) (originally published 1690) (setting out the social contract theory of citizenship).

180. Former President Barack Obama expressed this view in his 2013 Constitution Day speech: "We are a proud Nation of immigrants, home to a long line of aspiring citizens who contributed to

return, the Supreme Court said, the law would recognize only one difference between natural-born and naturalized citizens: that is, the eligibility to serve as President—in every other way, there was to be equality of citizenship.¹⁸¹

Of course, as with other ideals, equality of citizenship has proven to be difficult to fully realize in practice.¹⁸² We have written elsewhere about citizenship precarity, including the risk of denaturalization for political aims,¹⁸³ the difficulty of proving citizenship (especially for those from racial or linguistic minority backgrounds),¹⁸⁴ and the failure to extend constitutional birthright citizenship to individuals born in the United States Territories.¹⁸⁵ We have argued that precarity of citizenship is inconsistent with the founding principles of the United States.¹⁸⁶ In fact, there is a central logical fallacy: if, in the United States system, legitimacy flows from the citizens to the state, then the state lacks the authority to withdraw citizenship status from the people who comprise its very existence.¹⁸⁷

In the upcoming section, we examine the role of citizenship and nationality precarity in transnational adoption. In some ways, the

their communities, founded businesses, or sacrificed their livelihoods so they could pass a brighter future on to their children.” David Agnew, *A Nation of Immigrants: Welcoming New Americans to the United States*, WHITE HOUSE ARCHIVES (Sept. 20, 2013, 5:09 PM) (quoting Barack Obama, President of the United States, Proclamation for Constitution Day, Citizenship Day and Constitution Week (Sept. 16, 2013)), <https://obamawhitehouse.archives.gov/blog/2013/09/20/nation-immigrants-welcoming-new-americans-united-states> [<https://perma.cc/W8HE-3KFU>]; see also Aaron M. Danzig, *The Scope of 42 U.S.C. § 1981: Protection Against Private Alienage Discrimination*, 11 GEO. IMMIGR. L.J. 527, 527 (1997) (“U.S. immigration policy is a paradox. We are a nation of immigrants, founded by immigrants, yet frequently in our nation’s history we have sought to limit both the number of immigrants and the rights of aliens.”).

181. *Knauer v. United States*, 328 U.S. 654, 658 (1946) (“Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country ‘save that of eligibility to the Presidency.’” (quoting *Luria v. United States*, 231 U.S. 9, 22 (1913))).

182. See, e.g., Angélica Cházaro, *The End of Deportation*, 68 UCLA L. REV. 1040, 1053 (2021) (explaining that “for everyone but those born a U.S. citizen, the possibility of exclusion and deportation defines their relationship to the United States as much as, if not more than, the possibility of membership”); see also Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 289, 324 (2015) (explaining that the national myth of the United States as a nation of immigrants turns “indigenous populations into aliens” and overlooks the role of coercion and violence in the establishment of the United States; writing that “[b]ecause we understand the United States to be an ideal political body, its violent foundations must be disavowed.”).

183. Robertson & Manta, (*Un*)*Civil*, *supra* note 22, at 402.

184. Robertson & Manta, *Litigating*, *supra* note 22, at 757.

185. Cassandra Burke Robertson & Irina D. Manta, *Integral Citizenship*, 100 TEX. L. REV. 1325, 1325 (2022) [hereinafter Robertson & Manta, *Integral*].

186. Manta & Robertson, *Inalienable*, *supra* note 22, at 1425.

187. *Id.*

problems of precarity mirror the other contexts we have examined—that is, individuals whose status is subject to removal can never feel secure in the promise of equality under the law. In other ways, however, the case for permanence of adoptees is even stronger, as the state has deliberately and irrevocably severed the ties of adoptees to their families of origin—and thus, as a practical matter, also severed the child’s ties to their country of origin.

A. *How Stability and Permanence Shape Identity Development*

The stability of a permanent placement has long been a goal of all American adoption and child welfare law.¹⁸⁸ Scholars have noted four dimensions to successful permanence in adoption, including intent (that the child’s placement be intended to last indefinitely, with no set endpoint); continuity (that the family relationship will continue over time, regardless of geographical moves or other changes); belongingness (that the child’s sense of belonging to the family is rooted in cultural norms and protected by legal status) and respect (that others will acknowledge and appreciate the child’s place within the family unit).¹⁸⁹ The child’s experience of permanence thus depends both on their own identity development (and sense of belonging) as well as commitment from the adoptive family, recognition by the larger society, and protection by laws surrounding adoption and child welfare.

Transnational adoptees may face higher hurdles both for building that sense of belonging and for obtaining the type of social recognition from outsiders that facilitates that identity development.¹⁹⁰ Transnational adoptees may or may not share an ethnic identity with their adoptive families, meaning that for many transnational adoptees, the development of their “national identity and belonging also connect to questions of race and whiteness,” and intersect with “questions of kinship and place of origin.”¹⁹¹

188. Mark F. Testa, *The Quality of Permanence—Lasting or Binding? Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption*, 12 VA. J. SOC. POL’Y & L. 499, 499 (2005) (“The reaffirmation of legal guardianship as a permanency goal in the Adoption and Safe Families Act of 1997 (ASFA) has prompted a reconsideration of the meaning of permanence.”).

189. *Id.* at 503.

190. Farnad J. Darnella, Ayna B. Johansen, Shedeh Tavakoli & Nikki Brugnone, *Adoption and Identity Experiences Among Adult Transnational Adoptees: A Qualitative Study*, 20 ADOPTION Q. 155, 164 (2017) (“Adult transnational adoptees may experience various social and psychological struggles when addressing their adopted identity.”).

191. Yan Zhao, *Kinned to Be Norwegian: Transnational Adoptees’ Positioning in Relation to Whiteness and the Negotiation of Nationhood*, 25 NATIONS & NATIONALISM 1259, 1260 (2019); see

Adoption itself is also a status integrated into the child's self-identity. Even in the twenty-first century, adoption still retains some perception of being "a marginalized family model" and "a stigmatized condition" in American culture.¹⁹² Transnational adoptees who "struggle with the social stigma of being adopted" are unlikely to have the option to "merely blend into American communities" the way that American-born adoptees can more easily do.¹⁹³ As one scholar has noted in a study of children adopted from China into the United States ("the largest transnational movement of adopted children"), such adoption "speaks insistently to the raced and gendered relations by which individual, family, and national identities are produced and negotiated."¹⁹⁴

The struggle to reconcile family and self-identity can arise regardless of the age at which the child was adopted. For some children and adoptive families, identity formation around language or ethnic identity is raised explicitly from the beginning.¹⁹⁵ But even a child who was adopted in infancy may later feel dissonance in their self-constructed identity.¹⁹⁶

As adoptee Rachel Kim Tschida has explained,

[I]t was actually startling for me when I first realized that I was an immigrant. This might sound crazy but growing up in an American family with American parents, it just never crossed my mind. Yes, logically I knew that I was born in Korea and came to America when I was 6 months old, and my first passport was issued by the Korean government for my first plane ride aboard Northwest Airlines from Incheon to Seattle, and then Seattle to Minneapolis-St. Paul. . . . However, "immigrant" was never part of my self-identity.¹⁹⁷

It was only after hearing of the cases of other adoptees being deported from the United States that Tschida began to consider her identity as an immigrant. Tschida explained that she felt lucky to have adoptive parents

also Darnella et al., *supra* note 190, at 155 (explaining that ethnic identity may be particularly salient "for adoptees facing ethnic discrimination").

192. Darnella et al., *supra* note 190, at 155.

193. *Id.*

194. SARA K. DOROW, *TRANSNATIONAL ADOPTION: A CULTURAL ECONOMY OF RACE, GENDER, AND KINSHIP 2* (2006).

195. *See id.* at 247–48 (discussing how some white families who adopted children from China sought to build connections with Asian adults who could help the children navigate their racial and ethnic identities, while others hired a Chinese nanny and enrolled children in Mandarin classes, explaining that "[c]lass privilege thus becomes a means to offer children cultural and racial identity").

196. Rachel Kim Tschida, *Adoptee Citizenship*, INTERCOUNTRY ADOPTEE VOICES (Dec. 1, 2018), <https://intercountryadopteevoices.com/2018/12/01/adoptee-citizenship/> [<https://perma.cc/Q9R6-CAKL>] ("For many adoptees, their American families, homes, and lives are all they know.").

197. *Id.* (emphasis omitted).

who timely completed the paperwork to ensure her naturalization and she described finding “notes in my mom’s handwriting with reminders like ‘call attorney’ or ‘don’t forget to file naturalization paperwork.’”¹⁹⁸

Law professor Michael Kagan described his daughter’s similar incorporation of an immigrant identity.¹⁹⁹ He adopted his daughter from Ethiopia as a six-month-old baby.²⁰⁰ As a law professor who specialized in immigration law, Kagan was uniquely well situated to ensure that his daughter’s adoption complied with all the prerequisites for citizenship.²⁰¹ But when his daughter was in fifth grade, she heard anti-immigrant rhetoric on the television as part of the 2016 election. Kagan wrote that his daughter expressed fears that she would be deported.²⁰²

Kagan writes that “[i]t had never really occurred to me that my older daughter would feel at risk. There are no legal problems with their adoptions. I know, legally, that there should be no danger. So I tried to reassure her.”²⁰³ Kagan recounted his conversation with his daughter:

I told [my daughter], with as much authority and confidence as I could, “You cannot be deported. They cannot do that.” But she would not be consoled.

“But Daddy, I’m an immigrant.”

“Yes, but you are a citizen. They cannot take that away.”

....

I pulled down my daughter’s file and retrieved her original certificate of citizenship. It had been issued to her when she was still an infant. I still remember taking the oath on her behalf, renouncing any allegiances to foreign princes and potentates with her sitting on my knee in a Department of Homeland Security office. Her baby picture is stapled to the corner, with an embossed U.S. government stamp.

....

I thought the certificate would put her at ease. “See, look! This is you. You are a citizen. They cannot take this away. They cannot deport you. See? Trust me.”

She burst into sobs again. She seemed more upset than before. Her small shoulder shook. “Daddy,” she cried, “it’s just a piece

198. *Id.*

199. MICHAEL KAGAN, *THE BATTLE TO STAY IN AMERICA: IMMIGRATION’S HIDDEN FRONT LINE* 1–3 (2020).

200. *Id.* at 1.

201. *Id.* at 2.

202. *Id.*

203. *Id.* at 1.

of paper. That doesn't even matter. It's just a piece of paper!"²⁰⁴

Tschida, like Kagan's daughter, had to navigate her identity as an adoptee, as a child of an American family, as an immigrant, and as a citizen. Integrating these different aspects of identity can be difficult, especially as a child still learning about the larger world.²⁰⁵ Research on transnational adoptees has found that children at least in part "construct identity through an understanding of their cultural difference."²⁰⁶ As one scholar has pointed out, "transnational adoptees differentiate themselves from not only immigrants but also descendants of immigrants who hold a similar in-between position as to the categories of 'insiders'-'outsiders' and 'sameness'-'strangeness.'"²⁰⁷ It is not surprising that children will be uncertain about how these different dimensions of their identities will affect their stability and their future.

In particular, compliance with adoption legalities and paperwork requirements was never something within the adopted child's control—from the child's perspective, it is an arbitrary matter of luck as to whether the adoptive parents had the resources and wherewithal to ensure their child's naturalization status. Deportation of other adoptees left Tschida wondering "how could an adoptee, someone who was adopted by Americans like me, be deported?"²⁰⁸ Tschida points out that "adoptees had no agency or self-determination in their adoption whatsoever—they didn't choose to be separated from their birth family and be sent from their birth country, nor choose to be adopted by Americans."²⁰⁹ She argues that the withholding of citizenship represents a broken promise, explaining that "[f]or better or worse, the premise of adoption is built upon the promise of offering a 'better life' and 'creating a family'—and the denial of American citizenship is a complete contradiction to this promise."²¹⁰ Ultimately, the fundamental arbitrariness and precarity of citizenship status "adds even greater distress around family stability to adoptees whose very lives were impacted by the separation from their birth families."²¹¹

204. *Id.* at 1–2.

205. *See, e.g.*, Matthew A. Witenstein & L. Erika Saito, *Exploring the Educational Implications of the Third Space Framework for Transnational Asian Adoptees*, 5 *BERKELEY REV. EDUC.* 117 (2015) (discussing the experiences of transnational adoptee children).

206. *Id.* at 118.

207. Zhao, *supra* note 191, at 1275.

208. Tschida, *supra* note 196.

209. *Id.*

210. *Id.*

211. *Id.*

B. Adoption Permanence as Government Policy

The prior section argued that citizenship precarity creates an extra layer of psychological difficulty for transnational adoptees.²¹² That is, not only must they engage in the same process of identity development that domestically adopted children must undergo, but they also face an additional level of insecurity about their legal belonging to the country—a status that they cannot personally control.²¹³ In this section, we further examine the relationship between the government and the adopted child, examining how state and federal authorities promise permanence through the adoption process, regardless of whether or not the formalities of citizenship have been satisfied.

Transnational adoption involves government action at both the state and federal levels, with international treaties adding a third level of complexity. In particular, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, to which the United States is one of more than sixty signatory countries, “provides a framework of rules and procedures for the countries to work jointly to ensure certain intercountry adoption procedures.”²¹⁴ Although this high-level framework is influenced by international agreement, the details of individual adoptions are governed by state and federal law.

The federal government is primarily involved in the immigration process, monitoring and approving adoption agencies, issuing a visa to the child, and approving their entry into the United States.²¹⁵ After approval of the adoption, government involvement largely shifts from federal to state, as the adoption itself is primarily governed by state law.²¹⁶

The intricacy of the adoption regulatory system reflects the intricacy of transnational adoption as a whole. As scholar Shani King has written,

The story of intercountry adoption is a complex story of local, national, and international politics, culture, economics, and individual personal stories. It is a story that involves war and famine, poverty and prosperity. It involves power, oppression,

212. See *supra* section II.A.

213. Of course, this process is not unique to the United States. Research on transnational adoptees in other countries has also identified this same process of identity negotiation, suggesting that it is a larger part of the human psyche. Zhao, *supra* note 191, at 1275 (explaining that “one’s positioning along majoritisation/minoritisation processes provides an important dimension for understanding one’s multiple and fluid national identities and forms of belonging in migration-related diversity”).

214. SARAH B. IGNATIUS & ELISABETH S. STICKNEY, *Hague Convention on Intercountry Adoption*, in IMMIGRATION LAW AND THE FAMILY § 13:35 (2022).

215. Jay Milbrandt, *Adopting the Stateless*, 39 BROOK. J. INT’L L. 695, 705 (2014).

216. *In re Adoption of M.A.J.B.*, 478 P.3d 196, 201 (Wyo. 2020) (“Adoption, while usually a state law matter, has been the subject of substantial federal legislation.”).

ethnicity, race, and gender. The fact that the story is so complex is part of the reason why we still do not have a flawless, comprehensive legal structure to regulate it.²¹⁷

Courts have expressed frustration at how the interplay of state and federal law in transnational adoption can create gaps in legal status.²¹⁸ In one very recent case, for example, a Liberian boy was sent for a visit to his aunt and uncle (both naturalized U.S. citizens) in the United States.²¹⁹ Because he was arriving only for a visit, he did not enter on an immigrant visa—instead, he had a valid but temporary visa that authorized the visit.²²⁰ For reasons not in the record, his parents were unable to take him back quickly and he lived with his aunt and uncle for several years.²²¹ Once it became clear that the situation was unlikely to change, his aunt and uncle petitioned to formally adopt him.²²² The Pennsylvania court considering the adoption petition explained that citizenship was likely to be a problem.²²³ If the adoption proceedings had been started while the boy was still in Liberia, he would have been covered by the Child Citizenship Act.²²⁴ But because he had entered under a non-immigrant visa, that path was not open to him. Nor was it feasible, however, for him to return to Liberia—his birth parents had already relinquished all parental rights.²²⁵ Ultimately, the court concluded that the adoption could go forward as it was in the child’s best interest, and left the question of his potential path to citizenship for a later time, writing simply that the “Child’s immigration status is not before us, but, rather is a consideration for United States State Department and Bureau of Citizenship and Immigration Services under federal immigration law.”²²⁶

In spite of the complexity raised by the intersection of state and federal law, however, there are some guiding principles. The most important of those is the guiding principle of family law more generally—that the “best interest of the child” is supposed to be paramount at all times.²²⁷ Of

217. Shani M. King, *Immigration, Adoption and Our National Identity*, 26 DUKE J. GENDER L. & POL’Y 85, 107 (2019).

218. *In re Adoption of D.G.J.*, 277 A.3d 1204, 1212 (Pa. 2022).

219. *Id.* at 1205.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.* at 1210–11.

224. *Id.*

225. *Id.* at 1211.

226. *Id.* at 1208 n.6.

227. Malinda L. Seymore, *Ethical Blind Spots in Adoption Lawyering*, 54 U. RICH. L. REV. 461, 470–71 (2020) (“The touchstone for modern adoption has long been the best interest of the child . . .”).

course, determining the child's best interest can be difficult, and scholars have noted that there can be an inherent conflict of interest as adoption lawyers "do not represent the child in adoption, instead representing the prospective adoptive parents or birth parents (or sometimes both)."²²⁸ This means that from the beginning, the adoptive parents' desires will influence adoption proceedings, most particularly in the identification of the child for potential adoption. Adoptive parents often search for "a healthy infant who has no memory of their home country" and "no attachment to their birth parents."²²⁹ Thus, from the adoptive parents' perspective, the "best interest of the child" is connected to the child's permanent integration into the adoptive family—and that, in turn, is associated with severing ties and connections to the child's family and country of birth.

Permanence is a second guiding principle that is closely related to the best interest of the child. Of course, permanence begins with the adoptive parents who want to fully integrate the child into their family. But the government also explicitly supports that goal. So, for example, the State Department's website on intercountry adoption refers explicitly to the goal of permanence multiple times in its introduction to the transnational adoption process, stating first that transnational adoption is "one of the Department of State's highest priorities" and that "it should be an option for children in need of *permanent* homes when it is in the best interest of the child and domestic solutions have been given due consideration."²³⁰ In the very next paragraph, the State Department refers to permanence twice in the same sentence, explaining that "[i]ntercountry adoption is the process by which you adopt a child from a country other than your own through *permanent* legal means and then bring that child to your country of residence to live with you *permanently*."²³¹

State adoption law varies, but state policy also favors permanency and often goes even further in severing the adopted child's ties to their home and family of birth to promote the goal of permanence.²³² In a number of

228. *Id.* at 470–71.

229. King, *supra* note 217, at 106.

230. *Intercountry Adoption: Before You Adopt*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/before-you-adopt.html> [<https://perma.cc/U638-U8LV>] (emphasis added).

231. *Id.* (emphasis added).

232. Sarah Katz, *The Value of Permanency: State Implementation of Legal Guardianship Under the Adoption and Safe Families Act of 1997*, 2013 MICH. ST. L. REV. 1079, 1093 (2013) ("[I]n the child-welfare context, the theory has been embraced to support the notion that if children cannot return home, then the best possible alternative is that they swiftly cut ties with their biological family and formalize attachments to their current caregivers, thereby creating permanency.").

states, adoption records are sealed.²³³ Stated rationales for such sealing include “afford[ing] the adoptive child the opportunity to begin life with a caring family who wants to love and raise him or her without the stigmatization of illegitimacy,” and leaving adoptive parents “free to develop a bond with their child without interruption or distraction.”²³⁴ Of course, this policy of secrecy has implications for the child’s ability to integrate the various facets of their self-identity. In particular, “adoptive children may feel a sense of genealogical bewilderment about their past and heritage,” and “may develop uncertainty about their identities, thereby affecting their self-esteem and overall psychological well-being.”²³⁵

The emphasis on establishing permanency and a sense of belonging by severing the adopted child’s prior connections has implications for the child’s sense of national allegiance. Transnational adoption is different from adult immigration because the latter is typically volitional—that is, the adult immigrant chooses to live in the United States and, if they seek to obtain citizenship, such citizenship is the result of personal allegiance. For children adopted transnationally, however, their relationship to their adopted country is fully mediated through their parents. A child under the age of eighteen is not legally authorized to seek citizenship of their own accord. Instead, that citizenship is either foisted on them as a matter of law (if they qualify under the Child Citizenship Act) or it is decided for them by their parents (as in Professor Kagan’s account of taking the citizenship oath on his daughter’s behalf, and swearing that his six-month-old daughter would renounce “any allegiances to foreign princes and potentates” while she sat on his lap in the Department of Homeland Security office).²³⁶

The government’s emphasis on permanence in the evaluation of the child’s best interest in adoption proceedings acts to deliberately sever the child’s original familial and national connection to the land of their birth. When gaps in the citizenship process leave an adoptee vulnerable to deportation after reaching adulthood, the adoptee remains in a very difficult position. Ordinarily, “family serves as a powerful support system in [a person’s] transition into life in a new country,” but the adopted child’s family ties in their birth country were deliberately severed to

233. Dan Tilly, Note, *Confidentiality of Adoption Records in Texas: A Good Case for Defining Good Cause*, 57 BAYLOR L. REV. 531, 539 (2005).

234. *Id.* at 540; see also Brett S. Silverman, *The Winds of Change in Adoption Laws: Should Adoptees Have Access to Adoption Records?*, 39 FAM. CT. REV. 85, 93 (2001).

235. Tilly, *supra* note 233, at 540.

236. See KAGAN, *supra* note 199.

facilitate their adoption in the United States.²³⁷ Their allegiance to their home country has been replaced by an allegiance to the United States, as mediated by their U.S. citizen parents. Their adoptive parents may have taken the steps to ensure their U.S. citizenship, or their adoptive parents may have failed to do so. In some cases, the visa on which the child arrived may have foreclosed the ordinary path to citizenship.²³⁸

In all of these cases, however, the child's familial and cultural connection to the country of their birth has been severed by the government in favor of a permanent connection to the adoptive family. As we discuss in the next Part, United States law creates additional protection for those who, although not formally citizens, nevertheless possess permanent allegiance to the United States. This status would appear tailor-made for the needs of transnational adoptees who were brought to the United States through no choice of their own, and whose "American families, homes, and lives are all they know."²³⁹

III. LEGAL PROTECTIONS FOR TRANSNATIONAL ADOPTEE RIGHTS

It has been hard to achieve a political solution to closing the loopholes left open by the Child Citizenship Act. The Act has not been applied retroactively, leaving individuals born earlier unprotected.²⁴⁰ As discussed above, bills introducing legislative fixes for earlier adoptees have been introduced in several different sessions of Congress but have not passed.

Observers have explained that the issue faces political headwinds for several different reasons.²⁴¹ First, the matter of adoptee citizenship is seen as an immigration issue, and immigration has become politically controversial in recent years.²⁴² Second, the American public "tend[s] to be way more sympathetic to children than adults," and the individuals left out of the Child Citizenship Act are now grown adults.²⁴³ And third, the

237. Conor McNulty, *Family Values: The Child Citizenship Act's Ability to Protect the Foreign-Born Children of U.S. Citizens from Deportation*, 61 B.C. L. REV. E-SUPPLEMENT II.-244, II.-262 (2020).

238. See *In re Adoption of D.G.J.*, 277 A.3d 1204, 1212 (Pa. 2022).

239. Tschida, *supra* note 196.

240. See Rebecca Lei, Note, *Engendering Equality: Derivative Citizenship and the Moral Reading*, 31 S. CAL. INTERDISC. L.J. 379, 389 (2022) ("As the law in effect at the time the person in question is born governs their immigration proceeding, many individuals who are otherwise targeted by these reforms fall through the cracks due to their birth date.").

241. Code Switch, *Waiting in No Man's Land*, NPR (June 29, 2022, 11:13 AM), <https://www.npr.org/transcripts/1107966562> [<https://perma.cc/T9UU-Y9U7>].

242. *Id.*

243. *Id.*

individuals removed from the United States and unable to lawfully return have been convicted of crimes, therefore drawing even less public sympathy.²⁴⁴

There are strong legal, moral, and social reasons to pass legislation closing the citizenship loophole. But even in the absence of full citizenship, we argue that United States law may already protect adoptees by making them U.S. nationals. As U.S. nationals, adoptees—whether or not they have formal citizenship—have the right to work in the United States, to enter and travel freely in the country without a visa,²⁴⁵ to travel abroad using a U.S. passport,²⁴⁶ and to avoid removal from the United States.²⁴⁷ Recognizing nationality for adoptees would also put them in a position to seek citizenship if they so desire.²⁴⁸ All these reasons militate in favor of giving this recognition.

In addition to arguing that adoptees are protected by the nationality provisions of federal immigration statutes, we further argue that there is a constitutional backstop. The Supreme Court's original application of nationality status pre-dated Congress's incorporation of that status into the United States Code. Given this timing, the right to nationality must be founded in something more than statutory authority alone. We argue that two provisions of the United States Constitution, the Equal Protection Clause and the Due Process Clause, provide the basis for recognizing the nationality rights of children adopted into the United States.

A. *Are Foreign-Born Adoptees Already U.S. Nationals Under Current Law?*

The United States Code now defines a “national of the United States” as “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”²⁴⁹ Under U.S. law, all citizens are therefore also U.S. nationals, but not all nationals are citizens. Individuals with “permanent allegiance to the United States” are nationals.²⁵⁰

244. *Id.*

245. GORDON ET AL., *supra* note 30, § 301.1.

246. *Id.*

247. *Id.*

248. *Certificates of Non Citizen Nationality*, U.S. DEP'T OF STATE, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Certificates-Non-Citizen-Nationality.html> [<https://perma.cc/8E65-XGZL>].

249. 8 U.S.C. § 1101(a)(22).

250. *Id.*

How should the statute's requirement of "permanent allegiance" be understood? The United States government currently considers only residents of U.S. territories not statutorily granted citizenship to be nationals.²⁵¹ This application of the concept of "nationality" as something less than citizenship was first adopted in the case of *Gonzales v. Williams*,²⁵² which centered on the treatment of individuals born in "unincorporated" territories.²⁵³

The *Gonzales* case arose shortly after the United States had acquired the territory of Puerto Rico.²⁵⁴ Isabella Gonzales was born in Puerto Rico and sought entry into New York in 1902. Upon her arrival, however, she was denied entry and detained as an "alien immigrant . . . likely to become a public charge."²⁵⁵ Gonzales's attorney made two alternative arguments in seeking her release: first, that the Fourteenth Amendment gave Gonzales birthright citizenship in the United States, and second, if the Court did not recognize the birthright citizenship of individuals born in the territories, then the Court "should hold that they occupied a status somewhere between citizenship and alienage."²⁵⁶ Gonzales's counsel suggested the word "national," which "simply meant the same thing as 'subject,' . . . but was an improvement over that term, because it had 'a less arbitrary sound.'"²⁵⁷ The Supreme Court accepted the second argument and held that Gonzales was not an "alien" under the immigration statute and therefore "the commissioner had no jurisdiction to detain and deport her."²⁵⁸ The Court did not address the more difficult question of citizenship, as nationality was enough to avoid deportation.

However, even though the concept of "nationality" arose in the territorial context, the statute does not explicitly restrict its application to the territories. Others—including adoptees—may also owe "permanent allegiance" to the United States. Indeed, the concept of permanent allegiance recognizes the reality that the allegiance underlying citizenship arises from a larger sense of social belonging and not from bare legal status alone.²⁵⁹

251. 8 U.S.C. § 1408; *see also* Robertson & Manta, *Integral*, *supra* note 185, at 1326–27.

252. 192 U.S. 1 (1904).

253. *Id.* at 15.

254. *Id.* at 7–8.

255. *Id.*

256. Christina Duffy Burnett, "They Say I Am Not an American...": *The Noncitizen National and the Law of American Empire*, 48 VA. J. INT'L L. 659, 672 (2008).

257. *Id.*

258. *Gonzales*, 192 U.S. at 15.

259. *See* MING HSU CHEN, PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA 2, 5 (2020)

1. Courts' Application of Nationality Law

Courts have generally held that one-sided implicit allegiance is insufficient to create national status.²⁶⁰ Thus, for example, a court has held that “the term certainly does not include a person who illegally enters the United States and subjectively considers himself a person who owes permanent allegiance to this country.”²⁶¹ Even taking an oath of allegiance as part of military service does not automatically confer “national” status.²⁶²

There is, however, some support for the idea that voluntary allegiance could satisfy the nationality statute when the evidence of such intent was sufficiently clear.²⁶³ The Fourth Circuit held in *United States v. Morin*²⁶⁴ that a defendant charged with murder for hire could face enhanced charges for killing “a national of the United States, while such national is outside the United States.”²⁶⁵ Prior to his death, the murder victim had applied for citizenship. However, he had not yet obtained it. The Fourth Circuit nonetheless allowed the heightened charge to stand, concluding that “an application for citizenship is the most compelling evidence of permanent allegiance to the United States short of citizenship itself.”²⁶⁶

The Fourth Circuit’s holding has not been followed by other circuits. In *Perdomo-Padilla v. Ashcroft*,²⁶⁷ a removal case in the Ninth Circuit, the defendant argued that he should qualify as a U.S. national.²⁶⁸ He had begun the naturalization process to gain citizenship, but he had not completed it when he was arrested for a marijuana offense.²⁶⁹ The government sought his removal from the country, and the defendant

(explaining that “focusing only on the formal rights of citizenship misses a key component” of citizenship and suggesting that the analysis “should be reframed as a *spectrum* of citizenship” that includes aspects of both formal legal status and informal social belonging).

260. Robertson & Manta, *Integral*, *supra* note 185.

261. *United States v. Sotelo*, 109 F.3d 1446, 148 (9th Cir. 1997).

262. *Ramos-Garcia v. Holder*, 483 F. App’x 926, 934 (5th Cir. 2012) (“This Court, like several of our sister circuits, has rejected the argument that military service and the taking of the oath of allegiance make a person a national of the United States.”); *Dragenice v. Gonzales*, 470 F.3d 183, 189 (4th Cir. 2006) (“[T]he oath administered in connection with military service cannot alone confer national status”); *Reyes-Alcaraz v. Ashcroft*, 363 F.3d 937, 938 (9th Cir. 2004) (holding that “service in the armed forces of the United States, along with the taking of the standard military oath, does not alter an alien’s status to that of a ‘national’”).

263. *United States v. Morin*, 80 F.3d 124 (4th Cir. 1996).

264. 80 F.3d 124 (4th Cir. 1996).

265. *Id.* at 126.

266. *Id.*

267. 333 F.3d 964 (9th Cir. 2003).

268. *Id.* at 965.

269. *Id.* at 966.

argued that because he had gotten far enough along in the naturalization process to submit “an application for naturalization that contained a statement of allegiance to the United States,” he should qualify as a U.S. national and therefore have a right to remain in the country.²⁷⁰ The court, however, disagreed and ordered him removed.²⁷¹ Other circuits followed the Ninth Circuit’s more restrictive approach.²⁷²

Even courts that have not explicitly disagreed with *Morin* have been largely unwilling to extend its holding to other contexts—including to children adopted abroad.²⁷³ Thus, for example, a federal district court in Pennsylvania considered the conflicting holdings in another removal case.²⁷⁴ Like the *Perdomo-Padilla* defendant, the defendant in *Shittu v. Elwood*²⁷⁵ was convicted of a crime in-between filing his naturalization application and becoming naturalized.²⁷⁶ The court concluded that even if the defendant could otherwise have qualified as a “national,” the defendant’s criminal conviction precluded such status, writing that “Shittu’s aggravated felony conviction was sufficient by itself to refute any other evidence of his permanent allegiance to this country.”²⁷⁷ Because “Shittu’s felony conviction objectively demonstrated his lack of allegiance to the United States and its laws and negated any possible inference of permanent allegiance from his naturalization application,” the court held that he was subject to removal after his conviction.²⁷⁸

In a later case, the Fourth Circuit also refused to extend its decision in *Morin* to protect against a removal proceeding. The court stated that *Morin*’s application of nationality to the murder victim arose in a “different context” and should not control the question of immigration removal.²⁷⁹ A dissenting judge criticized the court’s reliance on “different

270. *Id.*

271. *Id.*

272. See *Salim v. Ashcroft*, 350 F.3d 307, 310 (3d Cir. 2003) (“[W]e now join the Court of Appeals for the Ninth Circuit in holding that simply filing an application for naturalization does not prove that one ‘owes a permanent allegiance to the United States.’”); *United States v. Jimenez-Alcala*, 353 F.3d 858, 861 (10th Cir. 2003) (“[T]he term ‘national,’ when used to describe non-citizens, refers only to those born in territories of the United States.”).

273. *Hatkewicz v. Att’y Gen. of U.S.*, 350 F. App’x 667 (3d Cir. 2009).

274. *Shittu v. Elwood*, 204 F. Supp. 2d 876, 880 (E.D. Pa. 2002).

275. 204 F. Supp. 2d 876 (E.D. Pa. 2002).

276. *Id.* at 880.

277. *Id.*

278. *Id.*

279. *Daly v. Gonzales*, 129 F. App’x 837, 840 n.3 (4th Cir. 2005) (“*Morin* concerned the reach of a federal murder statute and is not controlling where, as here, a person’s nationality status determines whether he can enjoy the rights and benefits of United States nationality and avoid deportation.”).

contexts,”²⁸⁰ writing that although he agreed that *Morin* was wrongly decided, the panel lacked the power to overrule it—only the Supreme Court or the Fourth Circuit sitting *en banc* could do so.²⁸¹ He criticized the panel for “interpret[ing] the exact language in the same statute differently in different cases,” quoting the Supreme Court’s language that “[i]t would be an extraordinary principle of construction that would authorize or permit a court to give the same statute wholly different meanings in different cases,” and “it would require a stronger showing of congressional intent than has been made in this case to justify the assumption of such unconfined power.”²⁸²

The Third Circuit declined to follow *Morin* and held that Richard Hatkewicz, an individual adopted from Poland at age three, could not claim U.S. national status.²⁸³ The court ordered Hatkewicz to be deported to Poland at age thirty-six, though noting that it was “not unsympathetic” to Hatkewicz’s plight and that Hatkewicz “does not speak Polish, has no ties to Poland, and has not been back to that country since his adoption” at age three in 1976.²⁸⁴ The court did not explain its reasoning in any significant depth, merely noting that it had previously held that “[n]othing less than citizenship will show ‘permanent allegiance to the United States’ for one who is a citizen of another country.”²⁸⁵ While the courts have made mixed statements regarding the recognition of non-citizen nationals, this Article explains below why adoptees occupy a special status that should make courts lean on the generous side of recognition.

2. *Would Adoptees Qualify as U.S. Nationals?*

Although courts have not been able to reach a coherent explanation of the limits of the nationality statute, we argue that transnational adoptees should have a strong claim that the statute protects them. The statute has not often been applied, as there are few situations in which a person clearly “owes permanent allegiance to the United States” even though they are “not a citizen of the United States.” The U.S. government’s position is that the statute applies only to individuals born in American Samoa or Swain’s Island.²⁸⁶ And, as noted, the Third Circuit has held that

280. *Id.* at 845 (Duncan, J., dissenting).

281. *Id.* at 846.

282. *Id.* at 845 (quoting *United States v. Louisiana (Louisiana Boundary Case)*, 394 U.S. 11, 34 (1969)).

283. *Hatkewicz v. Att’y Gen. of U.S.*, 350 F. App’x 667 (3d Cir. 2009).

284. *Id.* at 669.

285. *Id.* at 671 (quoting *Salim v. Ashcroft*, 350 F.3d 307, 310 (3d Cir. 2003)).

286. *Miller v. Albright*, 523 U.S. 420, 467 n.2 (1998) (“[T]he only remaining noncitizen nationals are residents of American Samoa and Swains Island.”).

“nothing less than citizenship” will suffice for national status.²⁸⁷

These limitations, however, appear flatly inconsistent with the language of the statute. If Congress’s intent were only to reach the U.S. territories, it would have been easy enough to say so. And if “only citizenship” could suffice, then why have a nationality statute at all? The plain language of the statute suggests a broader reading. Dean Rose Cuison Villazor has explained that “the noncitizen national challenges the conception of a binary citizen/noncitizen framing of citizenship.”²⁸⁸ Adopted children would seem to fit firmly in this interstitial category and within the statute’s requirements.

Children adopted from abroad by U.S. citizen parents quickly become children of America. This is not the one-sided or voluntary “allegiance” that courts have been reluctant to recognize—instead, this is a three-sided relationship between the adopted child, the adopted family, and the country that legally recognized the adoption and welcomed the child’s immigration.²⁸⁹ By legally recognizing the child’s new and permanent familial status, the country should be held to legally recognize the child’s new and permanent allegiance to the adoptive country.

Such recognition fits with the historic deference that courts have given to the parent/child relationship. After all, if the state’s power alone was paramount, then “the state could choose a child’s parents from millions of Americans,” regardless of pre-existing relationship.²⁹⁰ Deference to parental authority, on the other hand, “parallels the Fourteenth Amendment’s method for assigning national citizenship: if you are born here, you are ours.”²⁹¹ Family units formed by adoption rather than by birth should be no different—the child belongs both to the adoptive family and to the adoptive country.

Journalist Masha Gessen has compared naturalization to adoption; writing that “once it has taken effect, the adopted child is legally indistinguishable from a biological one.”²⁹² She decried the Trump administration’s denaturalization efforts, stating that “if one can be

287. *Hatkewicz*, 350 F. App’x at 671 (quoting *Salim*, 350 F.3d at 310).

288. Rose Cuison Villazor, *American Nationals and Interstitial Citizenship*, 85 FORDHAM L. REV. 1673, 1723 (2017).

289. With transnational adoption, immigration status is intended to be permanent; in this, it differs from immigration for tourism, work, or other bases. See Emily Ryo, *On Normative Effects of Immigration Law*, 13 STAN. J. C.R. & C.L. 95, 125–26 (2017) (“The core function of immigration law is to confer membership status and to define the basic terms of that membership.”).

290. Jennifer S. Hendricks, *Essentially a Mother*, 13 WM. & MARY J. WOMEN & L. 429, 465 (2007).

291. *Id.*

292. Gessen, *supra* note 1.

denaturalized, one can never really become a child of America.”²⁹³ Gessen was only analogizing adult naturalization to adoption and was not discussing literal transnational adoptions. But her point applies with just as much—or even more—force in the case of transnational adoption. If a child can be adopted into an American family but not accepted as a member of the American nation, then the child will never have the full stability that adoption is intended to offer.²⁹⁴

As discussed above, adoption necessitates a re-framing of self and family identity. Immigration carries with it another re-framing of identity. One scholar has explained that “[m]ost immigrants arrive in their destination country with a firm sense of their national and ethnic identity Once the immigrant is settled in the destination country, a new national identity becomes an option.”²⁹⁵

In the case of transnational adoption, this re-framing is not just possible: it is unavoidable. In some cases, as with Richard Hatkewicz, children are adopted at such a young age that they necessarily lose any psychological connection to their birth country. But even children old enough to carry a memory of a different homeland or a different language will need to develop a new national identity to successfully integrate into their adoptive family. Refusing to recognize the adopted child’s “permanent allegiance” to the United States, on the other hand, establishes a precarity that is inconsistent with the very premise of adoption.

B. Constitutional Protection for Adoptees’ Nationality

Even beyond the nationality statute, the U.S. Constitution may also protect adoptees’ nationality rights. After all, the Supreme Court originally applied nationality status even before Congress integrated that status into the United States Code.²⁹⁶ In authorizing nationality status, the Supreme Court must therefore have been applying something more than mere statutory protection. We argue that two provisions of the United States Constitution, the Equal Protection Clause and the

293. *Id.*

294. Indeed, the stability that grows through permanence may account for why research has found that “naturalization promotes long-term social integration of immigrants into their host society as measured by a variety of outcomes.” Emily Ryo & Reed Humphrey, *Citizenship Disparities*, 107 MINN. L. REV. 1, 4 (2022); Jens Hainmueller, Dominik Hangartner & Giuseppe Pietrantono, *Catalyst or Crown: Does Naturalization Promote the Long-Term Social Integration of Immigrants?*, 111 AM. POL. SCI. REV. 256 (2017).

295. Kay Deaux, *Immigration and Identity Theory: What Can They Gain from Each Other?*, in *IDENTITY AND SYMBOLIC INTERACTION: DEEPENING FOUNDATIONS, BUILDING BRIDGES* 273, 280 (Richard T. Serpe, Robin Stryker & Brian Powell eds., 2020).

296. *Gonzales v. Williams*, 192 U.S. 1, 15 (1904).

Due Process Clause, provide a strong basis for recognizing the nationality rights of children adopted into the United States.

Equal protection arises out of the Fifth and Fourteenth Amendments. The Fourteenth Amendment provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”²⁹⁷ The Fifth Amendment does not explicitly mention equal protection, but in a case striking down segregation policies in Washington, D.C. public schools, the Supreme Court explained that “the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive,” and that “discrimination may be so unjustifiable as to be violative of due process.”²⁹⁸ Equal protection and due process are therefore tightly linked in evaluating constitutional protections.²⁹⁹

Some classifications, particularly race and ethnicity, are considered “suspect” classifications.³⁰⁰ Laws that could potentially disadvantage members of a suspect class are evaluated under strict scrutiny, and such laws are to be “precisely tailored to further a compelling government interest”³⁰¹ to avoid any discrimination. Certain other classifications, such as gender and legitimacy (being born in wedlock), are treated as “semi-suspect” and require that laws based on such classifications be “substantially related to an important governmental interest.”³⁰² Classifications that are neither suspect nor semi-suspect need to pass only

297. U.S. CONST. amend. XIV, § 1.

298. *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Schneider v. Rusk*, 377 U.S. 163, 168 (1964) (“[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is ‘so unjustifiable as to be violative of due process.’” (quoting *Bolling*, 347 U.S. at 499)).

299. *See, e.g.*, *United States v. Vaello Madero*, __ U.S. __, 142 S. Ct. 1539, 1542 (2022) (referring to “the equal-protection component of the Fifth Amendment’s Due Process Clause”); *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015) (“The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always co-extensive, yet in some instances each may be instructive as to the meaning and reach of the other.”).

300. *Plyler v. Doe*, 457 U.S. 202, 217 (1982) (striking down a Texas law that excluded undocumented children from attending public schools).

301. *Id.*; *see also* *Loving v. Virginia*, 388 U.S. 1 (1967) (striking down prohibitions on interracial marriage).

302. Russell W. Galloway, Jr., *Basic Equal Protection Analysis*, 29 SANTA CLARA L. REV. 121, 124 (1989); *see, e.g.*, *Sessions v. Morales-Santana*, 582 U.S. 47, 58 (2017) (“Laws granting or denying benefits ‘on the basis of the sex of the qualifying parent,’ our post-1970 decisions affirm, differentiate on the basis of gender, and therefore attract heightened review under the Constitution’s equal protection guarantee.” (quoting *Califano v. Westcott*, 443 U.S. 76, 84 (1979))); *Trimble v. Gordon*, 430 U.S. 762 (1977) (evaluating an illegitimacy classification); *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53 (2001) (applying heightened scrutiny but nevertheless upholding a statute that applied different citizenship rules for children born abroad to unmarried parents depending on whether the mother or the father was the citizen parent).

rational basis review.³⁰³

Would depriving transnational adoptees of nationality violate equal protection? In a recent case, the Third Circuit has held that denying citizenship to individuals whose adoptive parents failed to file naturalization paperwork for them does not violate equal protection.³⁰⁴ The Third Circuit followed social-security law to conclude that adoptees were not members of a suspect class.³⁰⁵ After deciding to apply rational-basis review's "extremely low" threshold, the court then concluded that "[r]equiring an adoptive parent to apply for citizenship on behalf of his or her child, as opposed to conferring citizenship automatically upon the child," satisfied the standard because it "increases the probability that those who take the time to navigate that process have a real parent-child relationship," it "reduce[s] the likelihood that an adoption will occur solely to obtain citizenship," and it protected "the child's biological, alien parents [from being] cut out of the process of determining their child's citizenship."³⁰⁶

Others have suggested that the citizenship rights of adopted children should be more strongly protected.³⁰⁷ But even if the Third Circuit's analysis applies to citizenship rights, it need not follow that nationality rights would follow suit.

The Supreme Court's analysis from *Plyler v. Doe*,³⁰⁸ in which the Court struck down a Texas law excluding undocumented children from public schools, suggests that adoptees should receive constitutional protections.³⁰⁹ In *Doe*, the Court explained that "the children who are plaintiffs in these cases 'can affect neither their parents' conduct nor their own status.'"³¹⁰ Thus, even if the children could not be considered a suspect class, the Court held that its analysis of the restriction could "appropriately take into account its costs to the Nation and to the innocent

303. Galloway, Jr., *supra* note 302, at 124.

304. *Cabrera v. Att'y Gen.* U.S., 921 F.3d 401, 404 (3d Cir. 2019).

305. *Id.* ("We have applied this standard to distinctions on the basis of adoptive status in the social security context.")

306. *Id.* at 405.

307. Hauenstein, *supra* note 36, at 2149 ("In its current form, the Child Citizenship Act fails to meet equal protection standards set forth by the Supreme Court. In particular, advocates could argue that the Act discriminates against what courts should recognize as a discrete and insular minority deserving of protection."); Ashley Moore, *The Child Citizenship Act: Too Little, Too Late for Tuan Nguyen*, 9 WM. & MARY J. WOMEN & L. 279, 281 (2003) ("There is little argument to be made against Congress' interest in denying non-citizens access to [sic] United States' liberties without meeting certain obligations. However, a child who is a citizen by blood or adoption should not be punished to protect these interests.")

308. 457 U.S. 202 (1982).

309. *Id.* at 202.

310. *Id.* at 220 (quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977)).

children who are its victims.”³¹¹ The Court explained that denying education to the children “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status,” and would “deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.”³¹²

Denying nationality rights to adopted children would have a similar effect. Like the plaintiffs in *Doe*, adopted children did not have a choice about their entry into the United States—or the right to seek naturalization on their accord before age eighteen. Depending on adoptive parents to be willing, able, and legally knowledgeable enough to successfully navigate the citizenship process on their children’s behalf leaves the rights of those children in a precarious balance. And the consequences of denying nationality to these children is very high: adopted children without U.S. nationality can be left stateless if the country of their birth revokes citizenship rights upon adoption, as some do.³¹³ Adopted children without U.S. nationality may be unable to secure a passport, may be subject to deportation to a country with which they have little connection, and may struggle to integrate into their new families.

C. *Fulfilling the Promise to Transnational Adoptees*

When an American couple adopts a child from abroad and legally brings them into and/or keeps them in the country with the explicit or tacit approval of the government, American society makes an implicit promise to that child: that they now have the opportunity to become an integrated part of our polity. These adoptees have no control over the actions of their parents and had to take it on trust that their parents (together with any adoption or other organizations) took the requisite measures to secure their legal status in this country. By issuing them documents such as driver’s licenses or Social Security cards, government entities reinforced and created reliance on the belief that everything was in order.

Often suffering the effects of conflicting identities, transnational adoptees have to fight for their social status in the United States at every stage of development. One of the few things that is supposed to be stable and unshakeable throughout their lives is the fact that legally at least, America has accepted their belonging. And the message that the

311. *Id.* at 224.

312. *Id.* at 223.

313. See Hauenstein, *supra* note 36, at 2145 (“Advocates may argue that through the Child Citizenship Act, Congress has protected one class of adoptees from statelessness while directly exposing another class to its horrors.”).

government sends to the rest of the American immigrant population by not even securing the status of adoptees—brought and/or kept here by American citizens with the explicit or implicit approval of officials—is frightening. Indeed, scholars who researched the relationship between transnational adoption and immigration concluded that considering that transnational adoptees have in some sense held special rights for decades compared to other immigrants, if after all this time “transnational adoptees cannot be secure in their residence and citizenship in the US, then no immigrant can.”³¹⁴

Recognizing the U.S. nationality of adoptees as a statutory and constitutional matter would go a long way toward correcting the status quo. It would declare once and for all that being adopted into an American family makes you not just part of that *family* but part of *America*. Like any American, a transnational adoptee must abide by the law, and breaking the criminal law in particular can result in harsh consequences. Even those consequences, however, would now be the same suffered by any American individual. While secluded, an American prisoner remains a part of this country, and no offense—no matter how grave—can result in his exclusion from the nation as such. Given how many transnational adoptees do not even know that they lack U.S. citizenship, the threat of potential deportation cannot even serve as an additional deterrent from their breaking the law. The current application of citizenship law is rooted not in justice but in politics, and this Article hopes to change that trajectory through its proposal for judicial intervention rooted in both statutory and constitutional text.

CONCLUSION

Adoptees often struggle from the moment they are adopted. These individuals face monumental emotional, physical, and mental challenges when developing their personal identities. Adoptees struggle with receiving information about and finding their birth families. They struggle with medical decisions, due to a lack of information about their pasts and family history. All the while, they frequently receive nothing more than a pitiful look from a government they assumed would protect and support them.

When it comes to international adoptees, the situation worsens. In 2000, the Child Citizenship Act attempted to relieve some of this pressure but left thousands (or more) of adoptees in a lurch. At best, international adoptees who learn in adulthood that they never received U.S. citizenship

314. Kim & Park Nelson, *supra* note 45, at 274.

find ways to naturalize at that time; at worst, international adoptees learn that they were never naturalized (whether after committing a criminal offense or otherwise) and are deported to a country in which they have not spent time since early childhood.

This can be resolved through a new reading of existing law. By recognizing that foreign-born adoptees are already U.S. nationals, we can ensure that people brought involuntarily would be protected just as any other American citizen is. This is, after all, the kind of full entry into the polity that adoption is supposed to enable. It is the only way that an adoptee can, truly and fully, become one of us.

