The Subcommittee on the Constitution

U.S. Senate Committee on the Judiciary

"Denaturalization and its Constitutional Limits"

June 3, 2026

Testimony of Peter J. Spiro

Charles Weiner Professor of Law

Temple University Law School

Chairman Schmitt, Ranking Member Welch, and distinguished members of the Subcommittee:

Thank you for the invitation to testify before the Subcommittee today about constitutional constraints on denaturalization.

Any consideration of denaturalization must start with the elevated place that naturalization holds in our constitutional culture. As Justice Douglas observed in *Schneider v. Rusk*, "the rights of citizenship of the native born and of the naturalized person are of the same dignity, and are coextensive."[1] Naturalized citizens suffer only one constitutional disability: they are ineligible for the presidency. Otherwise, as Justice Marshall remarked in *Osborn v. Bank of the United States*, the naturalized citizen "becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native."[2]

As co-equals in our constitutional order, naturalized citizens enjoy the same security of status as is enjoyed by native-born citizens. That security is nearly complete. As Justice Black wrote in *Afroyim v. Rusk*, "the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race."[3] It is effectively impossible for Americans to lose their citizenship against their will. Recent legislative efforts to revoke the citizenship of those engaged in terrorist activity have gone nowhere up against these constitutional protections. Security against involuntary termination of citizenship holds for naturalized citizens as it does for those born with the status. *Afroyim* itself, perhaps the most important pronouncement of the Supreme Court regarding the power to terminate citizenship, involved a naturalized citizen.

There is only one respect in which naturalized citizens stand on different footing than those born with citizenship. Because naturalization involves a volitional act on the part of the applicant and because naturalization is subject to eligibility requirements, there is the possibility of unlawful procurement. It is understood that where naturalization is unlawfully procured it can be rescinded.

But that possibility is highly constrained. First of all, the government shoulders a heavy burden in making a case for denaturalization. In line with repeated pronouncements of the Supreme Court and reflecting the sanctity of citizenship

[1] 377 U.S. 163, 165 (1964).
[2] 22 U.S. 738, 827 (1824).
[3] 387 U.S. 253, 268 (1967).

however acquired, denaturalization can only be undertaken where supported by "clear, unequivocal, and convincing evidence which does not leave the issue in doubt."[4] Naturalization "once conferred should not be taken away without the clearest sort of justification and proof."[5]

With respect to the substantive grounds, perhaps most importantly, denaturalization can only be triggered by circumstances incident to the naturalization application itself. Because naturalized citizens enjoy the same security of citizenship as do birthright citizens, there is no projecting forward of naturalization requirements where an individual possessed the statutory qualifications for naturalization at the time of naturalization. To hold otherwise would create a kind of probationary citizenship, a conditional citizenship anathema to our constitutional sanctification of the status.[6]

Proposals to expand denaturalization grounds implicitly concede this baseline. For example, S. 3674 aims to take post-naturalization conduct and relate it back to the naturalization application, through the requirements of good moral character and constitutional attachment. S. 3674 sets a window of ten years for such post-hoc determinations; S. 4105 would purport to tee up denaturalization for any felony conviction undertaken at any time after naturalization. These efforts pose a dangerous threat to the dignity of citizenship, not just citizenship acquired through naturalization but citizenship as an institution.

Naturalization eligibility is conditioned on good moral character and attachment to constitutional principles. But these qualifications are tested at the time of naturalization only. To take post-naturalization criminal activity to reflect an applicant's qualities some years earlier presents an evidentiary exercise that hardly seems intelligible. How can one know modulations in an individual's character over time?

Determinations of illegal procurement consider how the real facts would have affected a reasonable government official properly applying naturalization law at the time of the naturalization application. These proposals to expand denaturalization require the following inquiry: how would the government have determined good moral character or some other qualification if it had known that an applicant was going to engage in certain conduct at some point in the future. That is

---

[4] 320 U.S. 118, 135 (1943).
[5] Id. at 122.
[6] It is worth noting in this context that naturalized citizens have already passed probationary period on the way to naturalization, during the three or five years of permanent residency upon which naturalization is typically conditioned.

crystal-ball justice. This is particularly true where the government's case rests on issues of belief or fraud, spheres in which, as Justice Frankfurter counseled in *Baumgartner*, "proof is treacherous, and objective judgment, even by the most disciplined minds, precarious."[7]

At the very least, the proposals would open the door to arbitrary and inappropriately subjective speculations about a citizen's prior state of mind. Good moral character as an operative legal concept has been defined through the Immigration and Nationality Act and the common law. As the Court observed in its most recent pronouncement on denaturalization, the "entire system . . . is set up to provide little or no room for subjective preferences or personal whims. . . We have never read a statute to strip citizenship from someone who met the legal criteria for acquiring it."[8]

Of course, individuals who as naturalized citizens engage in criminal activity face consequences for that activity in the form of our criminal law. A naturalized citizen who engages in terrorism, or heinous acts of violence, or fraud against the government faces the full and heavy weight of the criminal law in the same way as does the native-born citizen.[9] But post-naturalization conduct cannot impair the individual's citizenship status. The Supreme Court has found categorically that the government may not deprive an individual of citizenship for punitive purposes. As the Court held in *Trop v. Dulles*, "the deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be."[10] *Trop* found the punitive use of citizenship deprivation to transgress the Eighth Amendment prohibition on cruel and unusual punishment. "There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development."[11]

Suggestions that post-naturalization associative activity should call into question qualifications for naturalization at the time of its granting would pose serious

---

[7] Baumgartner v. United States, 322 U.S. 665, 675 (1944).
[8] Maslenjak v. United States, 582 U.S. 335, 351 (2017).
[9] Both S. 3674 and S. 4105 would trigger denaturalization presumptions for much less serious conduct. S. 4105 would provide that any post-naturalization felony conviction would supply prima facie evidence that an individual was not attached to constitutional principles at the time of naturalization. S. 3674 would similarly deem an individual retrospectively disqualified for an "aggravated felony" conviction, which has been defined to include some state misdemeanor theft and assault offenses.
[10] 356 U.S. 86, 92-93 (1958).
[11] Id. at 101.

concerns under the First Amendment. The last major denaturalization campaigns targeted Nazi sympathizers in the 1940's and Communist Party members in the 1950s.[12] In *Schneiderman*, the Supreme Court rejected the government's attempt to strip an individual of his citizenship twelve years after his naturalization on the grounds that his membership in the Communist Party at the time of his naturalization was inconsistent with attachment to constitutional principles. The Court found it necessary to apply an exacting scrutiny of the government's averments, failing which "the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times."[13] As Justice Rutledge argued in concurrence, "[n]o citizen with such a threat hanging over his head could be free. . . . For whatever he might say or whatever any such organization might advocate could be hauled forth at any time to show 'continuity' of belief from the day of his [naturalization], or 'concealment' at that time. Such a citizen would not be admitted to liberty. His best course would be silence or hypocrisy. This is not citizenship."[14]

Make no mistake, if enacted into law, bills such as S. 3674 and S. 4105 would at the least be highly circumscribed by the courts. The Supreme Court may be friendly to the powers of the political branches in the context of immigration. But it takes an altogether more searching posture with respect to citizenship. These proposals, which would dramatically expand the scope of denaturalization, are incompatible with multiple precedents. As with birthright citizenship – the traditional, expansive understanding of which the Court is almost certain to uphold before it recesses in June – naturalized citizenship is too embedded in our constitutional culture to permit such degradation.

In the meantime, legislative proposals relating to denaturalization, coupled with the Trump Administration's aggressive deployment of existing authorities, sends a message to all naturalized citizens – some 25 million of them – that their citizenship is less secure than those of fellow Americans born with the status. Even if few actually suffer denaturalization, the message to all naturalized citizens is that their citizenship is second-class citizenship. We should all be able to agree that

---

[12] See Amanda Frost, You Are Not American: Citizenship Stripping from Dred Scott to the Dreamers (2021); Patrick Weil, The Sovereign Citizen: Denaturalization and the Origins of the American Republic (2013).

[13] 320 U.S. at 159.

[14] 320 U.S. at 167 (Rutledge, J., concurring). Although section 340(c) of the Nationality Act purports to make membership in the Communist Party within five years of naturalization prima facie evidence of lack of attachment to constitutional principles at the time of naturalization, that provision has not been constitutionally tested in the courts.

citizenship is a vaunted institution. The equality it represents is necessary to the functioning of a liberal democracy. Those seeking to police naturalization more aggressively may be seeking to better protect the institution of citizenship. But these efforts are more likely to diminish citizenship than they are to safeguard it.

Thank you again for the invitation to testify today. I look forward to your questions.