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Denying Citizenship: Immigration
Enforcement and Citizenship Rights in the
United States

Emily Ryo*

Ian Peacock[†]

*University of Southern California, eryo@law.usc.edu

[†]UCLA Department of Sociology, ipeacock@ucla.edu

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Abstract

In the current era of intensified immigration enforcement and heightened risks of deportation even for long-term lawful permanent residents, citizenship has taken on a new meaning and greater importance. There is also growing evidence that citizenship denials in their various forms have become inextricably linked to immigration enforcement. Who is denied citizenship, why, and under what circumstances? This article begins to address these questions by developing a typology of citizen denials and providing an empirical overview of each type of citizenship denial. Taken together, the typology of citizenship denials and the accompanying empirical overview illustrate the close connection between immigration enforcement and citizenship rights in the United States.

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Immigration Enforcement and Citizenship Rights in the United States**

Emily Ryo
Professor of Law & Sociology (by courtesy)
University of Southern California
Gould School of Law
699 Exposition Blvd.
Los Angeles, CA 90089
eryo@law.usc.edu

Ian Peacock
Ph.D. Candidate
UCLA Department of Sociology
Haines Hall, 264
375 Portola Plaza
Los Angeles, CA 90095
ipeacock@ucla.edu

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ABSTRACT

In the current era of intensified immigration enforcement and heightened risks of deportation even for long-term lawful permanent residents, citizenship has taken on a new meaning and greater importance. There is also growing evidence that citizenship denials in their various forms have become inextricably linked to immigration enforcement. Who is denied citizenship, why, and under what circumstances? This article begins to address these questions by developing a typology of citizen denials and providing an empirical overview of each type of citizenship denial. Taken together, the typology of citizenship denials and the accompanying empirical overview illustrate the close connection between immigration enforcement and citizenship rights in the United States.



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INTRODUCTION

During a naturalization ceremony in 2012, the former Secretary of State Madeleine Albright, a naturalized citizen herself, exhorted (Marshall, 2012): “When you return home tonight, do what I did, and put your citizenship document in the safest and most secure place you can find It is the most important piece of paper you will ever get because it represents not just a change in legal status but a license to a dream.” In the current era of stepped-up immigration enforcement and heightened risks of deportation even for long-term lawful permanent residents, citizenship may have taken on an arguably more immediate and pressing role in the lives of immigrants—namely, as a shield against detention and deportation. At the same time, as we discuss later in this article, there is growing evidence that citizenship denials in their various forms have become inextricably linked to immigration enforcement, constituting two sides of a same coin. For the purposes of this article, we define citizenship denials as not only formal rejections of naturalization petitions by the state, but also revocations of citizenship and other state actions that deny the full exercise of citizenship rights.

The foregoing discussion suggests that the time is ripe for the development of a systematic field of research that focuses on the questions of who is denied citizenship, why, and under what circumstances. What is at stake with citizenship denials? Even a cursory review of rights and privileges attendant to U.S. citizenship underscores its importance.¹ U.S. law extends

¹ This is not to suggest that citizenship rights are equally protected among all citizens. A rich body of research, for example, has documented the nature of second-class citizenship among

the right to vote and eligibility to hold certain offices only to citizens. Citizenship opens up access to wide-ranging jobs and public benefits. Citizenship also confers a variety of social advantages. For example, citizens sponsoring relatives to immigrate to the United States receive a higher priority than similarly situated lawful permanent residents. More abstractly, as Hannah Arendt (1973) put it, citizenship assures individuals “the right to have rights” and provides what Anthony Giddens (1991) called “ontological security.”

In light of the growing significance of citizenship in the shifting immigration enforcement landscape, this article undertakes two main tasks. First, the article develops a typology of contemporary forms of citizenship denials in the United States that focuses on both what we call “formal denials of citizenship” and “effective denials of citizenship.” The typology also considers both noncitizens and U.S. citizens as targets of state action. This classification strategy yields four distinct types of citizenship denials that we explore in this article. Second, the article provides an empirical overview of what we currently know about each distinct type of citizenship denial. Our analysis starts with the year 2013, which marks the beginning of the Obama administration’s second term. This empirical examination focuses on such fundamental characteristics of various types of citizenship denials as their prevalence, changing patterns over time, and denial rates.

Taken together, the typology of citizenship denials and the accompanying empirical overview illustrate the close connection between immigration enforcement policies and citizenship rights. For example, an enforcement policy that casts the net wide for all

those with criminal records—a disproportionately poor and black population (see, e.g., Miller & Stuart, 2017).

unauthorized migrants may increase the number of U.S. citizens who experience a serious curtailment—or as we argue, an effective denial—of their citizenship rights. One example of this phenomenon is the collateral effect of parental detention and deportation on U.S. citizen children. Drawing attention to these kinds of interconnections, we call for a better integration of two bodies of research—research on citizenship and research on immigration enforcement—that have developed in relative isolation from one another despite their theoretical and empirical overlaps. Such an integration promises to advance a more complex and nuanced understanding of the multitude of ways that the state delineates and reifies the boundaries of membership inclusion and exclusion.

BACKGROUND

Our decision to focus our empirical exploration on the contemporary period starting in 2013 is based on two interrelated reasons. First, the goal of ensuring data consistency and comparability across years dictates that we limit our focus to a relatively recent time period, as the government’s data collection and data reporting practices have changed over time. Specifically, for two of the four types of citizenship denials that we explore in this article, consistent government data exists beginning only in 2013. Second, understanding the changing enforcement policy landscape is an important task in considering the empirical trends on citizenship denials. Constraining our empirical focus to a discrete time period allows us to concretely examine the specific enforcement policy context in which citizenship denials are occurring. Below, we provide a brief discussion of this shifting policy landscape in the contemporary era.

Discretion has played an important role in the development and implementation of immigration enforcement policy in the United States (Cox & Rodríguez, 2015; Wadhia, 2015).

Discretion broadly refers to decisions by law enforcement officers, prosecutors, and other government officials to pursue (or to not pursue) enforcement action, given practical limitations on government resources and the balance of equities in certain cases. In 1996, however, certain changes in immigration law ended the use of this discretionary power as it had existed. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA), both enacted in 1996, subjected noncitizens—including lawful permanent residents—convicted of certain offenses to mandatory detention and deportation. These offenses are known as “aggravated felonies,” though this label is a misnomer given that the list includes offenses that are neither aggravated nor a felony under state criminal statutes, such as a simple battery or shoplifting conviction (Ryo & Peacock, 2018, p.7). Together, the IIRIRA and AEDPA expanded the categories of individuals who could be detained and deported, and limited the exercise of judicial discretion and the availability of relief from removal.

Operating against this backdrop, the Obama administration issued a set of immigration enforcement memoranda delineating its policy on prosecutorial discretion and deferred action. Most notably, the then Secretary of the Department of Homeland Security (DHS) Jeh Johnson (2014) issued in 2014 a memorandum clarifying and narrowing the DHS enforcement priorities. This 2014 memorandum also broadened the circumstances under which immigration enforcement officials could exercise prosecutorial discretion to prevent the removal of certain immigrants even if those immigrants fell within one of the enforcement priority categories (Rosenblum, 2015, p.7-8). Broadly speaking, this policy prioritized enforcement action against individuals who posed national security threats, those convicted of certain types of crimes, and recent border crossers. Consequently, interior removals fell between 2009 and 2016, while

border removals stayed high and increased during the same period (Chishti, Pierce & Bolter, 2017).

With respect to immigration enforcement priorities and prosecutorial discretion, the Trump administration's formal policy differs sharply from that of the Obama administration. In January 2017, President Trump announced a massive expansion in interior immigration enforcement (Executive Order, 2017). A few weeks later, the then DHS Secretary John Kelly (2017) issued a memorandum outlining an implementation plan that directed DHS personnel to arrest and apprehend any noncitizen "whom an immigration officer has probable cause to believe" has violated the immigration laws. This language effectively rendered all noncitizens an enforcement priority (American Immigration Lawyers Association, 2017). The same approach has defined the Trump administration's border enforcement strategy widely known as the zero-tolerance policy, which required the prosecution of all migrants apprehended at the border, with no exceptions for asylum seekers or those with children (Congressional Research Service, 2019). Common across these enforcement policies are questionable and untested assumptions about the deterrence power of harsh policy measures (see Ryo, 2019). The same deterrence assumption has motivated President Trump's call for abolition of birthright citizenship as an enforcement strategy, whereby he characterized birthright citizenship as "a magnet for illegal immigration" (Lyons, 2019).

CITIZENSHIP AND ENFORCEMENT

The foregoing discussion of the changing enforcement policy landscape focuses on government action against individuals who lack citizenship and are in violation of immigration laws. In practice, however, the relationship between enforcement policy and citizenship rights is much more complex, as our typology of citizenship denials shows. Investigating these

complexities requires a better theoretical and empirical integration of research on citizenship on the one hand, and research on enforcement on the other. We briefly discuss the existing body of research in these respective areas before introducing our typology of citizenship denials.

Existing Research

Research on citizenship has a long and rich tradition that straddles multiple disciplinary boundaries. For example, historians and legal scholars have analyzed the legal exclusion of Blacks from citizenship, as well as the struggles of other racial minorities and women to gain citizenship rights before the mid-twentieth century (see, e.g., Smith, 1999; Haney López, 2006; Irving, 2016). And social scientists have examined issues such as the determinants of naturalization and the effects of naturalization on a host of social, political, and economic behavior and outcomes of immigrants and their families (see, e.g., Jones-Correa, 2001; Fox & Bloemraad, 2015; Bloemraad & Sheares, 2017; Hainmueller et al., 2018; Catron, 2019). On the whole, a great deal of research on citizenship has centered on issues of integration, assimilation, and belonging.

Likewise, research on immigration enforcement is voluminous and characterized by deep multi-disciplinary roots. For example, historians and legal scholars have produced a large body of work on the origins and the operation of enforcement policies, as well as the nature of legal battles over those enforcement policies in federal courts (see, e.g., Lytle Hernández, 2010; Kanstroom, 2010; Motomura, 2014). Social scientists have investigated the efficacy of enforcement policies and the determinants of border crossing behavior and decision-making (see, e.g., Ryo, 2013; Massey, Duran & Pren, 2016), the behavior and motivations of those charged with enforcing policy (see, e.g., Donato & Rodríguez, 2014; Vega, 2018), and the effects of various enforcement policies on the economic and social wellbeing of immigrants and their

families (see, e.g., Menjívar & Abrego, 2012; Amuedo-Dorantes & Arenas-Arroyo, 2019).

Common across these studies is a united focus on analyzing issues related to legal noncompliance and state responses intended to deter and crack down on legal noncompliance.

Although the respective emphases of research on citizenship and research on enforcement have differed in important ways, the two bodies of research also have notable commonalities. For example, the two fields share a common interest in how international migration might be shaping our conceptions of sovereignty rights and the meaning of membership in a polity. The two bodies of research also share a longstanding commitment to understanding the “spillover” effects of individual interactions with the state on families and communities over time and across territorial boundaries. Yet with notable exceptions (see, e.g., Anderson, Gibney & Paoletti, 2011), the citizenship literature and the enforcement literature have developed in relative isolation from one another. Recent policy developments in the United States, however, have brought into sharp relief the close connection between immigration enforcement policies and citizenship rights.

For example, emerging news stories suggest that recent escalations in immigration enforcement efforts are disrupting settled understandings and expectations of naturalized citizens (Mejia, 2018; Wessler, 2018). An Immigration and Customs Enforcement (ICE) program called Operation Second Look has begun to scrutinize hundreds of thousands of naturalization files for possible denaturalization proceedings.² In its 2019 budget overview and justification to Congress, ICE requested increased staffing funds to support the review of an estimated 700,000

² Operation Second Look grew out of a Citizenship and Immigration Services (USCIS) program started under the Obama administration called Operation Janus.

naturalization files (U.S. ICE, 2019). According to the Office of Immigration Litigation (Bianco, Bullis & Liggett, 2017, p.7): “As the Department of Justice renews its commitment to immigration enforcement and the President has directed all executive departments and agencies ‘to employ all lawful means to enforce the immigration laws of the United States,’ civil denaturalization will play a prominent role in securing the integrity of our immigration system.”

Typology of Citizenship Denials

How narrowly or broadly should we conceptualize citizenship denials? What are the contemporary forms of citizenship denials in the United States that have become closely linked to immigration enforcement? Before presenting our typology of citizenship denials that address these questions, it is important to acknowledge that the term citizenship is multifaceted and invokes many different meanings—including a host of non state-centric conceptions such as citizenship as identity and belonging, and citizenship as political participation and civic engagement (see, e.g., Bosniak, 2006; Shachar et al., 2017). Our typology focuses predominantly, though not exclusively, on (1) citizenship as a legal status and as a set of attendant rights, and (2) the role of the state in denying that legal status or abrogating the citizenship rights of certain individuals or groups of individuals.

Considering both the nature of actions taken by the state and the subgroup of individuals involved leads us to a typology that prioritizes two key dimensions of citizenship denials: the *type of state action* and the *target of state action* involved. The two key types of state action that we consider in the typology are “formal denials” and “effective denials.” In terms of the targets of those state actions, we consider both citizens and noncitizens. A cross-tabulation of these two key dimensions produces the two-by-two typology shown in Figure 1.



[Figure 1 about here]

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We begin by discussing the two different types of formal denials presented in the typology. The first formal type of denial involves denials of naturalization applications that have been filed by noncitizens with the USCIS. While delays in the processing of naturalization applications are also important to consider,³ this article focuses only on cases in which the government rendered a decision. The second type of formal denial targets U.S. citizens, which results in the loss of citizenship through denaturalization proceedings that strip citizenship from individuals who had been previously granted U.S. citizenship.

Unlike formal denials of citizenship, effective denials do not result in a loss of legal status. Instead, effective denials of citizenship involve state actions that curtail, derogate, or interfere with the exercise of full citizenship rights by certain segments of the U.S. population. The two key groups that are the subjects of effective denials are U.S. citizen children whose parents have been detained or deported, and individuals who have been unlawfully detained or deported from the United States by immigration officials despite their U.S. citizenship.

In the case of citizen children, they are not the targets of immigration enforcement action themselves, but their citizenship rights are substantially curtailed due to enforcement action against their parents (Enriquez, 2015). By contrast, citizens who have been detained or deported are the direct targets of immigration enforcement action. Yet like the citizen children post parental detention or deportation, the unlawfully detained or deported citizens do not lose their formal legal status as citizens; instead, they suffer from diminished or devalued citizenship

³ Some commentators have described the growing backlogs in the naturalization application processing as a “second wall” that prevents eligible applicants from becoming U.S. citizens and voters (Iníguez-López, 2018).

rights. The indirect or unofficial nature of citizenship denials experienced by these two groups is why we refer to these denials as effective, rather than formal, denials.

AN EMPIRICAL OVERVIEW OF CITIZENSHIP DENIALS

The empirical overview of each type of citizenship denial that we present below draws on a variety of data that we compiled and analyzed for the purposes of this article. Appendix A describes in detail these and other datasets that we examined in preparing this empirical overview. We encountered numerous challenges in undertaking this task, and our empirical overview is only a basic and incomplete sketch. A major obstacle to conducting empirical research in this area is data scarcity. The data issue comes in a variety of flavors, some of which we highlight here.

Although the DHS publishes reports on basic demographic characteristics of persons who naturalize (see, e.g., U.S. DHS, 2018a), the DHS does not collect or if it does collect, then it does not release even the most basic aggregate-level information such as gender and countries of origin of individuals whose naturalization applications have been denied. The Freedom of Information Act (FOIA) requires federal government agencies to make non-exempt government records available to the public upon request. Although FOIA has been celebrated as “an indispensable tool in protecting the people’s right to know” (Pozen, 2017, p.1098 (internal quotations omitted)), in practice it is often difficult to obtain meaningful data from the DHS and its component agencies through FOIA due to delays, objections, and refusals to comply with requests.

Even when data are available, meaningful analysis may not be possible because the data often lack adequate documentation or contain inexplicable inconsistencies. For example, data produced or reported by different component agencies within the DHS may contain different or

conflicting statistics. In addition, data released to different requesters by the same component agency may vary in their content and contain conflicting statistics even when the requests were identical. Wherever relevant, we describe some of these and related challenges in conducting empirical analysis. We do so to underscore both the uncertain nature of the state of our current knowledge on citizenship denials, and to highlight the pressing need for greater governmental transparency and accountability in this area.

With each type of citizenship denial, we offer a brief overview of the relevant legal process or policy context. This overview is followed by a discussion of basic descriptive statistics. We conclude each subsection by highlighting some of the most important unanswered questions with respect to each type of citizenship denial.

Denial of Naturalization Applications

Under the Immigration and Nationality Act (INA), naturalization applicants must, among other things, be at least 18 years of age; have lived in the United States for at least five years as a lawful permanent resident (or three years for active members of the armed forces or spouses of U.S. citizens); be of “good moral character”; demonstrate the ability to read, write, and speak in English; and possess a knowledge of the fundamentals of U.S. history and government (see generally U.S. DHS, 2018b). A failure to satisfy all of the requirements can lead to the application being denied.

If denied, the immigration officer must provide reasons for the denial in a written notice of denial to the applicant (Gustafson et al., 2019, § 45:2035). The applicant then may request a hearing from an immigration officer and also seek a judicial review of the decision in federal

district court.⁴ The applicant may also seek a judicial intervention in the event the USCIS has failed to adjudicate the application within 120 days of the naturalization interview (on judicial review in naturalization cases, see Morawetz, 2007). Scholars have noted that among the eligibility requirements, the “good moral character” requirement has become a critical exclusionary tool “to deny naturalization to applicants with minor criminal histories” (Lapp, 2012, p.1593; see also Das, 2011). This is because while the term “good moral character” is not statutorily defined, since 1990 Congress has enacted hundreds of statutory bars to a finding of good moral character based on criminal conduct (Lapp, 2012).

Empirical studies of decision-making about naturalization applications are rare. Jens Hainmueller and Dominik Hangartner (2013) study naturalization denials in Switzerland, which used to allow closed ballot voting in municipalities by local citizens on naturalization applications. This study finds that naturalization decisions vary dramatically with immigrants’ attributes, and denial rates of applicants from the former Yugoslavia and Turkey are significantly higher compared to the denial rates of observably similar applicants from richer European countries like Germany or the United Kingdom. To our knowledge, the only empirical study of naturalization denials in the United States is a study by David North (1987), which examined the decision-making process of the Immigration and Naturalization Service, the predecessor agency to the DHS. One of the key findings of this study is that the implementation of the naturalization

⁴ 8 U.S.C. § 1421(c) provides that such a judicial review “shall be de novo, and the court shall make its own findings of fact and conclusions of law and shall, at the request of the petitioner, conduct a hearing de novo on the application.”

procedures differs greatly between district offices, which results in widely varying naturalization denial rates across district offices.

Figure 2 presents recent trends in naturalization filings between fiscal years 2013 and 2018 (military and nonmilitary applications combined). The number of naturalization applications generally increased between 2013 and 2017, reaching a peak of 986,412 applications in 2017 before dropping down to 837,423 in 2018. The number of approved applications hit a low of 654,509 in 2014 but picked up again in the following year and stayed over 730,000 in all subsequent years. The number of pending applications increased dramatically between 2015 and 2018, more than doubling from 367,009 in 2015 to 738,991 in 2018. Finally, Figure 2 shows that the number of denied applications generally increased between 2013 and 2018, although this increase was much more moderate compared to the increase in pending applications.

[Figure 2 about here]

We pause here to note that given the aggregated nature of the USCIS data, it is difficult to draw inferences about whether the trends shown in Figure 2 reflect temporal changes in decision-making in the adjudication process, a compositional effect, or both. By compositional effect, we mean changes in the number of approved, denied, and pending cases that result from yearly shifts in the composition of cases due to cases rolling over from year to year. Cases that are not adjudicated in any given year appear as “pending” and they carry over onto the next year for adjudication. This means that the pool of cases that are eligible for adjudication in any given year includes cases that rolled over from previous year(s) and new filings. Disentangling the compositional effect from temporal changes in decision-making in the adjudication process

requires individual-level data with filing dates. The first author filed a FOIA request with the USCIS for these data, but the USCIS has not responded.

Figure 3 presents denial rates, shown as a percentage of naturalization applications that were denied each year. We calculated this percentage by dividing the total number of denials by the sum of denials and approvals in each year. Figure 3 shows that in 2013, of all naturalization applications for which the USCIS reported a final outcome, about 9.66 percent of the applications were denied. The percent of applications denied declined slightly between 2013 and 2014 but increased in subsequent years, reaching a high of 10.9 percent in 2018. It is worth noting that while the yearly increase in denial rate has been relatively small, the increase in denial rate in the future could be more substantial insofar as cases that are likely to result in ultimate denials are systematically overrepresented in pending cases.

[Figure 3 about here]

In sum, tens of thousands of naturalization applications are denied every year, with denial rates generally increasing over time since 2013. Currently, the federal government does not make available data that allows researchers to investigate fundamental issues related to these denials. Chief among these issues are: What are the reasons for the naturalization denials and what explains the increasing denial rates over time? Which group of applicants are more likely to be denied and why? Conversely, are the characteristics of individual USCIS naturalization examiners predictive of grant/denial decisions? What happens to individuals whose applications have been denied—do they continue to live in the United States, or do they return to their origin countries? If they continue to reside in the United States, do their self-identities, sense of agency, and the level of trust in the government change post denial? How commonly do



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individuals appeal their denial decisions and how often do they win their appeals? Are appeal rates and appeal successes related to the appellants' race, gender, or socioeconomic status?

Answers to these and related questions will provide greater insights into the dynamic and evolving relationship between enforcement policies and citizenship rights. Individuals who are denied naturalization arguably face heightened risks of enforcement action insofar as the reasons for the denial of their naturalization applications also constitute grounds for removal. Even if the denial reasons do not constitute grounds for removal, individuals who are denied naturalization face future ongoing threats of enforcement action given their lack of citizenship status. In these ways, naturalization denials may act as a direct and indirect pipeline to detention and deportation. For these reasons, much more research is needed to understand who seeks naturalization but fails to obtain it, why, and with what individual and societal ramifications. Such studies will serve as a critical complement to the rich body of existing research on which groups are likely to naturalize and with what consequences.

Denaturalizations

The second type of formal citizenship denial involves denaturalization. Although the number of denaturalization cases are small compared to the number of naturalized cases, denaturalizations warrant a special scrutiny and investigation because citizenship-stripping constitutes an exercise of state power at its zenith and engenders devastating consequences for targeted individuals and their families.

As a preliminary matter, it is helpful to define denaturalization and distinguish it from denationalization. While there are some variations in the definition of denationalization (Herzog, 2015, p.23-24; Gibney, 2017, p.360-361; Lenard, 2018, p.103), denationalization generally refers to revocation of citizenship (most commonly from native-born citizens) that presupposes that the

citizenship was acquired properly (Gordon et al., 2019, §100.01). By contrast, denaturalization, as that term is used today, refers to revocation of citizenship from naturalized citizens on the basis that the citizenship was acquired improperly or through some deficiency in the naturalization process (Gordon et al., 2019). There are only a limited set of circumstances under which native-born citizens may lose their citizenship, but naturalized citizens may lose their citizenship for a variety of reasons.

Since 2001, administrative denaturalization proceedings have been prohibited in favor of civil and criminal judicial proceedings (see *Gorbach v. Reno*, 2001 (enjoining permanently administrative denaturalization)). In most cases, the USCIS first determines that an individual unlawfully obtained U.S. citizenship and refers the matter to the Department of Justice (DOJ) for civil or criminal proceedings (Bianco, Bullis & Liggett, 2017; for a helpful legal analysis of current denaturalization law and policy, see Robertson & Manta, 2019a). Naturalization may be revoked through civil proceedings if an individual “illegally procured” citizenship or obtained it by “concealment of a material fact or by willful misrepresentation.” Naturalization may also be revoked based on a criminal conviction under 18 USC §1425 for knowingly procuring or attempting to procure the naturalization (of oneself or another) contrary to the law (for other possible grounds for revocation, see Gordon et al., 2019, §96.10). Once citizenship is lost, the individual reverts back to his or her pre-naturalization status, and the revocation relates back to the date of admission to citizenship. Denaturalization renders individuals subject to removal proceedings.

Empirical research on denaturalization proceedings is scant. As Ben Herzog (2015, p.3) has noted: “While the study of the recruitment of new members to the nation-state stands at the foundation of cutting-edge research on citizenship, the investigation of the notion of annulment

or revocation of citizenship is usually ignored.” One of the most extensive scholarly treatment of denaturalization is Patrick Weil’s (2013) historical examination of denaturalization laws and practices in the United States during the twentieth century. Weil traces the original purpose of the 1906 denaturalization law as targeting fraud and illegality that could occur during the naturalization process. Almost immediately, however, denaturalization became a tool for eliminating “undesirables” from the American citizenry, operating for decades at the center of racist and xenophobic immigration policy in the United States. According to Weil (2013, p.179), a total of 22,000 denaturalizations occurred between 1907 and 1967. Although the use of denaturalization has been substantially curtailed since then, emerging evidence suggests that in recent years, the government has renewed interest in its use.

Figure 4 shows the total annual number of civil and criminal denaturalization cases filed by the DOJ between 2013 and 2018. The DOJ reported these totals by calendar year for civil cases, and by fiscal year for criminal cases. Between 2013 and 2016 the number of civil cases filed fluctuated between 15 and 19, before rising to 28 in 2017 and 31 in 2018. The number of criminal cases filed between 2013 and 2016 ranged between 44 and 51, before jumping to 57 in 2017 and 53 in 2018. Considering these trends together, Figure 4 points to a notable increase in the overall number of denaturalization cases filed since 2016. These filing trends are consistent with substantial increases in the number of cases referred to the DOJ since 2017 (see Open Society Justice Initiative, 2019, p.10).

[Figure 4 about here]

Little is known about contemporary practices of denaturalization. For example, we do not even know how many cases the USCIS has investigated for denaturalization, on what bases, and how many of those cases have been referred to the DOJ. The first author filed a FOIA

request with the USCIS to obtain these records, but the agency has not responded. Thus, many important questions remain unanswered about the contemporary trends, uses, and decision-making processes involved in denaturalization. Considering the historical legacy of denaturalization as a tool to remove “undesirable” Americans from the citizenry (Weil, 2013), future research should systematically investigate the relationship between denaturalization decisions and demographic or other background characteristics of citizens targeted for denaturalization. What triggers denaturalization proceedings? Are certain national origin groups more likely to experience denaturalization?⁵ What role does discretion play in the USCIS’s decision to refer certain cases to the DOJ but not others? What role does discretion play in the DOJ’s decision to prosecute certain cases but not others? Are judges biased in favor of certain types of defendants but not others?

There are also important questions about contextual factors that might impact these referral and prosecutorial decisions. For example, how sensitive are denaturalization rates to changes in immigration enforcement policies? While denaturalizations are relatively rare, each case can send a powerful public message about the breadth of the government’s immigration enforcement powers that may chill naturalized citizens’ political and civic participation (Open Society Justice Initiative, 2019). Moreover, denaturalization cases can destabilize the very notion of naturalized citizenship and legitimate racial discrimination and treatment of immigrants

⁵ For example, many of the immigrant groups most affected by denaturalization under the Trump administration are those originating from countries that have been targets of President Trump’s public attacks (e.g., Mexico, Haiti, and Nigeria) (Open Society Justice Initiative, 2019).

as perpetual outsiders. From this standpoint, denaturalization remains a critical area of inquiry in both citizenship and enforcement studies.

Deportation of Immigrant Parents with U.S. Citizen Children

A growing number of American families are of mixed immigration status, which means that within a given household some family members are U.S. citizens while others are noncitizens. According to a recent estimate, in 2014 there were 5.3 million American households with undocumented residents. Of these households, 2.8 million (53 percent) contained 5.7 million U.S.-born children (Warren & Kerwin, 2017, p.3). For the reasons we discuss below, these citizen children have been described as “second class citizens” who lack full citizenship rights (Piatt, 1988).

Many U.S. citizen children in mixed-status families will experience parental deportation (see Yoshikawa, Suárez-Orozco & Gonzales, 2017, p.5). Immigration judges may grant cancellation of removal to eligible noncitizens whose removal will result in “exceptional and extremely unusual hardship” to their immediate citizen or lawful permanent resident family members. Factors such as the “[l]ack of language ability or the poor education and scant opportunities available for the [citizen] children in the [countries] of origin” have failed to meet this stringent legal standard (Pabón López, 2008, p.244). In 2014, President Obama attempted to offer temporary legal protection to parents of U.S. citizen children through the Deferred Action for Parents of Americans and Lawful Permanent Residents. However, twenty-six states sued the administration and the program was never implemented (Texas v. United States, 2015).

When a parent is detained or deported, the state may take custody of the child and place him or her in foster care unless the child has other family members in the United States to assume care. Subsequently, the child may be adopted or age out of the foster care system upon

turning eighteen unless the child is reunited with his or her deported parents before that time (McKenna, 2011; Wessler, 2011). Other citizen children will leave the United States with their deported parents to be raised in their parents' countries of origin. The departure of these children from the United States under these circumstances has been described as *de facto* or constructive deportation given that they cannot effectively exercise their right to remain in the United States (Bhabah, 2003; Rome, 2010).

Studies show that immigration enforcement and the threat of enforcement have direct and long-term negative effects on the wellbeing of citizen children—and by extension, their exercise of full citizenship rights (see Capps et al., 2015 for a review). For example, growing evidence documents the negative health consequences of parental detention or deportation (and threats of such enforcement action) on citizen children (Brabeck & Xu, 2010; Rojas-Flores et al., 2017; Zayas & Gulbas, 2017; Ybarra & Peña, 2017). And a burgeoning literature on citizen children who leave the United States to be raised in their parents' countries of origin shows that these children struggle to overcome a host of linguistic, social, and educational challenges (Dreby, 2012; Medina & Menjívar, 2015; Zayas et al. 2015; Hernández-León & Zúñiga, 2016). Beyond challenges faced by citizen children in their initial transition to life in their parents' countries of origin, much less is known about their long-term outcomes and experiences.

To our knowledge, the government does not track how many U.S. citizen children stay in the United States post parental deportation. Nor are there reliable estimates on the number of U.S. citizen children who have left the United States to live with their deported parents abroad. However, as of 2010 Congress has required the DHS to semiannually report on the number of parents of citizen children who have been removed (U.S. House of Representatives, 2009).

Figure 5, drawing on these reports (which use calendar years), shows that in 2013 ICE sought

over 60,000 removal orders for the parents of U.S. citizens, obtained over 28,000 of such orders, and removed over 70,000 people who were parents of U.S. citizens. The subsequent years show a downward trend in each of these counts, with the exception of removals obtained, which experienced an uptick in 2017. Specifically, the total number of removal orders obtained for the parents of U.S. citizens increased from 9,966 in 2016 to 11,120 in 2017.⁶

[Figure 5 about here]

Numerous issues relating to citizen children with detained or deported parents are of compelling policy concern to the U.S. government, but these questions remain largely unexplored and unexamined.⁷ Some of the issues are unique to certain segments of the citizen children. For example, for those children who remain in the United States, how many children are placed in foster care and how many transition out of foster care in the long-term? For those children who have left the United States with their deported parents, when and under what circumstances do they return to the United States? Many of the other issues are equally applicable to both groups of citizen children. How do the children cope with, or adapt and transition to their new life circumstances post parental detention or deportation? How do these

⁶ Of note, these trends might be partly related to a Parental Interests Directive issued by ICE in 2013 that provided guidance on the use of detention and prosecutorial discretion in cases involving parents of minors. This policy was replaced with a new directive in 2017 that eliminated many elements of the 2013 policy, including guidance on the use of prosecutorial discretion and references to parental rights (U.S. ICE, 2013, 2017).

⁷ There are important parallels between these issues and issues relating to children of the incarcerated (see, e.g., Wakefield & Wildeman, 2014).

children's direct and vicarious encounters with the legal system shape their legal socialization and attitudes toward the law and legal authorities? What are their educational trajectories and economic outcomes? What happens as these children come of age—do they vote in U.S. elections and if so, what are the determinants of their voting behavior? How are these children's familial relationships and social networks transformed by their parents' detention or deportation?

Intensified immigration enforcement may curb undocumented migration and reduce the size of the undocumented population in the United States, but stepped-up enforcement also has the effect of separating citizen children from their parents or constructively deporting citizen children—often to countries that are mired in poverty and violence (see Amuedo-Dorantes & Arrenas-Arroyo, 2019). Insofar as mixed-status families continue to be a pervasive reality in the United States, the denial of full citizenship rights for children born to undocumented parents constitutes a topic in urgent need of systematic investigation by both citizenship and enforcement scholars.

Unlawful Detention or Deportation of U.S. Citizens

A defining characteristic of citizenship is its guarantee of nondeportability, irrespective of criminal offending. Yet some U.S. citizens appear to be more vulnerable than others to state violations of this basic guarantee. For example, there have been documented cases of wrongful detention and deportation of U.S. citizens with mental disabilities (Kaplan, 2012; Rosenbloom, 2013; Wilson & Prokop, 2013; Marouf, 2014). One widely reported case is that of Pedro Guzman, a cognitively-impaired U.S. citizen who came to ICE's attention when he was arrested for the misdemeanor of trespassing. He was deported to Mexico and was missing for three months before he was brought back to the United States (Frost, 2015).



The problem, however, is not limited only to individuals with mental disabilities. As Jennifer Koh (2013, p.1824-1825) has explained: “Most citizens do not carry their birth certificates or passports, and cannot produce them during immigration enforcement actions that take place within the United States, such as during workplace raids or criminal arrests. Some people, including citizens, do not own either type of document.” In addition, “some individuals may be citizens without knowing it, due to the rules governing acquired and derivative citizenship” (Koh, 2013, p.1825; see also Hing, 2015, p.846-849).

An important institutional source of error may be the Secure Communities Program, an interoperability program that facilitates data sharing and database screening protocols between the DHS, the Federal Bureau of Investigations, and local law enforcement agencies (Miles & Cox, 2014). Secure Communities, which began its rollout in 2008 and was activated across all counties in the United States in 2013, uses a biometric database to target the apprehension of immigrants with criminal convictions. The Obama administration terminated the program in 2014, but it was reactivated in 2017 by the Trump administration. ICE uses the biometric information collected through Secure Communities to issue “immigration detainers” to local jails to hold individuals beyond their scheduled release date, which facilitates the custody transfer process (see Kandel, 2016). The database, however, has been widely criticized as “outdated and error-prone,” leading to the unlawful detention and deportation of U.S. citizens (Hu, 2015, p.1784-1785).

The government does not appear to track wrongful detention and deportation of U.S. citizens, making it impossible to accurately estimate the extent of the problem. However, according to one estimate, as many as 4,000 U.S. citizens were wrongfully detained or deported in 2010 (Stevens, 2011, p.608). To understand how frequently immigration enforcement might

wrongfully target U.S. citizens, some reports have examined the prevalence of immigration detainers issued by ICE to local law enforcement against persons claiming U.S. citizenship. One such report looking at detainer requests made in Travis County, Texas found that between October 2005 and August 2017, 814 targets of ICE detainers in Travis County claimed U.S. citizenship and presented officers with a Social Security number (Bier, 2018). Of the 814 cases, ICE chose not to execute detainers in 228 cases, presumably because ICE believed the detainees' citizenship claims (Bier, 2018).

Moving beyond the estimates for a single county, Figure 6 presents nationwide annual totals for ICE detainer requests issued against individuals recorded as U.S. citizens between fiscal years 2013 and 2018. We should note that these totals likely underestimate the actual number of such requests made.⁸ With that caveat, Figure 6 shows that between 2013 and 2017, the reported annual number of ICE detainer requests involving individuals recorded as U.S. citizens decreased from 325 to 156. In 2018, however, that total increased to 180. The decline shown in Figure 6 during much of the observational period tracks the overall decline in the number of detainers issued after the Obama administration terminated the Secure Communities

⁸ The data that David Bier (2018) obtained from the sheriff's office in Travis County, Texas, for example, indicate that between fiscal years 2005 and 2017, ICE made several hundred detainer requests to the Travis County Sheriff's Office for people claiming U.S. citizenship. By contrast, the nationwide data that we used for our analysis indicate that during the same time period, a total of only seven detainer requests were issued against individuals in Travis County whose recorded citizenship was the United States. The descriptions of these two datasets do not allow us to reconcile the differences in these total counts.

Program and established the new enforcement priorities in 2014 that we discussed earlier. The subsequent increase in the number of detainers issued against U.S. citizens in 2018 is also consistent with the Trump administration's reinstatement of the Secure Communities Program in 2017.

[Figure 6 about here]

The number of detainers issued is only one proxy—a rough and incomplete one—for the extent of immigration enforcement action involving U.S. citizens. We do not know how many individuals recorded as U.S. citizens were indeed U.S. citizens, and whether and to what extent the detainer requests resulted in actual citizens being detained or deported by ICE. Nor do we know how many U.S. citizens have been and are continuing to be detained or deported even if they have no contacts at all with the criminal justice system and thus are not subject to detainers. Who are the U.S. citizens that immigration enforcement officials wrongfully detain and deport? Are there racial or gender disparities between U.S. citizens who are targeted and those who are not? How long are U.S. citizens wrongfully detained or deported before they seek or obtain redress? What are the social, economic, and political consequences of wrongful detention or deportation at the individual level and at the societal level? These questions illuminate the intimate linkage of immigration enforcement and citizenship rights. As Rachel Rosenbloom (2013, p.1965) has argued, detention and deportation of U.S. citizens “compel us to reconceptualize citizenship as not just a status that precedes immigration enforcement but also one that is, in a functional sense, produced by such enforcement.”

CONCLUSION

This article reflects on the rise of various types of citizenship denials that have accompanied the unprecedented escalation of immigration enforcement in the United States in

modern times. Whether and to what extent immigration enforcement disrupts or derogates citizenship rights is an important empirical question with significant theoretical and policy implications. The gaps in our empirical knowledge that we have highlighted in this article underscore the need for a more rigorous and systematic field of research on citizenship denials.

Developing such a field of research requires attending to the dynamic, enduring, and radiating effects of citizenship denials. The impact of citizenship denials likely unfolds overtime for individuals and becomes cumulative across generations. In addition, given the social embeddedness of immigrants in neighborhoods, churches, markets, and schools, the impact of citizenship denials is certain to radiate beyond the immediate individual experiencing the denial. For example, news of either type of formal denial that travels through immigrant social networks may dampen the willingness of others in the network to seek naturalization. Effective denials may impose economic, social, and psychological costs on wider communities in which the directly impacted U.S. citizens are members (for research on community effects of immigration enforcement, see, e.g., Pham & Van, 2010; Bohn & Santillano, 2017). In sum, both enforcement and citizenship researchers must unpack not only direct, but also indirect, downstream effects of citizenship denials that may be far-reaching in their nature and scope.

Who gets denied citizenship should be a central question at the heart of research on citizenship denials. While our typology has focused broadly on citizens versus noncitizens in terms of targets of state action, much more work remains to be done to understand which immigrant groups are at a heightened risk of denial. Insofar as anti-immigrant policies and sentiments shape decision-making of government bureaucrats and law enforcement agents (see, e.g., Donato & Rodríguez, 2014; Armenta, 2017), we might expect that certain racial and national origin groups may be disproportionately impacted. For example, the denaturalization

program called “Operation Janus” focused on individuals from what the DHS called “special interest countries,” which has been defined as “countries that are of concern to the national security of the United States.” Some sources suggest that these countries are, for the most part, majority Muslim countries (Wessler, 2018).

A critical corollary to the question of who is denied citizenship, why, and under what circumstances, is the question of resistance by individuals and their advocates. Citizenship denials are a product of social and political struggles that give rise to legislative and policy changes. Thus, a full understanding of citizenship denials requires examining how individuals, families, and communities resist citizenship denials. Such an investigation can provide valuable insights into the public’s rejection of the legitimacy and the widening reach of the federal government’s enforcement powers.

We conclude by noting that while substantive due process concerns loom large when it comes to citizenship denials, procedural due process concerns represent an equally important but understudied area for understanding citizenship denials (see Robertson & Manta, 2019b). What kinds of procedural concerns are common for different types of citizenship denials? When and how should various procedural protections come into play for different types of citizenship denials? Do spells of heightened enforcement create greater risks of procedural violations? These and related inquiries are central to understanding the complex and evolving relationship between immigration enforcement policies and citizenship rights in the United States.



APPENDIX A

This Appendix describes the data that we used to generate the figures presented in this article, as well as other data that we explored. We provide links to the websites where we found publicly available data. Note that some of these websites retroactively update their data.

Denial of Naturalization Applications

The data used in Figures 2 and 3, which combine military and nonmilitary naturalization applications, come from the *All USCIS Application and Petition Form Types* tables found on the USCIS website (uscis.gov/tools/reports-studies/immigration-forms-data). We refer to these data as the USCIS Naturalization Data. We also collected and analyzed naturalization data from (1) the USCIS website that provide total counts by USCIS field office locations (*Number of Form N-400, Application for Naturalization, by Category of Naturalization, Case Status, and USCIS Field Office Location* tables), and (2) the DHS Yearbook of Immigration Statistics that contains annual totals on naturalization applications (*Petitions for Naturalization Filed, Persons Naturalized, and Petitions for Naturalization Denied* tables, dhs.gov/immigration-statistics/yearbook/2017/table20).

Comparing these latter two datasets with the USCIS Naturalization Data, we found that the temporal trends in applications received, denied, and approved were generally similar, but that discrepancies (ranging from large to small) existed across the different data sources in the aggregated total counts. We decided to present the USCIS Naturalization Data because it contained information on all the relevant years during our period of interest, and because the other two sources tended to undercount the total number of applications.

Denaturalizations

The data used in Figure 4 come from two different sources. The number of civil cases shown in Figure 4 comes from the first author's request filed under the FOIA with the DOJ. Separate requests were filed with both the Civil Division and the Criminal Division within the DOJ, but the Criminal Division has not responded. The first author's FOIA request to the DOJ Civil Division asked for "[y]early statistics . . . on the civil . . . cases the Department of Justice has filed for denaturalization" and the "cases the Department of Justice has succeeded in obtaining denaturalization." We refer to the data that the DOJ's civil division released under the FOIA request as the DOJ Civil Denaturalization Data.

The data we report in Figure 4 on the criminal denaturalization cases come from a request filed with the DOJ's Public Affairs Office. The request asked the Public Affairs Offices of the Criminal Division provide the number of times each year that "US Attorneys filed charges for naturalization fraud under 18 USC 1425." This request produced data that contain information on the number of criminal cases filed during each fiscal year. We refer to the data that the DOJ's Public Affairs Office released as the DOJ Criminal Denaturalization Data.

Deportation of Immigrant Parents with U.S. Citizen Children

For Figure 5, we collected data on the removal of parents of U.S. citizens from the semi-annual DHS reports to Congress on the *Deportation of Aliens Claiming U.S.-Born Children*. We refer to these data as DHS Parent Removal Data. We computed the numbers for "Removal Orders Sought," "Removals Orders Obtained," and "Removals" by totaling across the quarters for a given year appearing in reports for the years 2013 through 2017, except for calendar year 2014 for which there were no available data. For calendar year 2014, we used linear interpolation to impute the missing values. We compared the interpolated values for the DHS

Parental Removal Data with ICE removal data on all types of removals (not only parental removals) available for 2014, and we found that our imputed values were consistent with the overall removal trend during that time frame.

Unlawful Detention or Deportation of U.S. Citizens

To report detainer requests for Figure 6, we use data from case records for I-247 forms that the Transactional Records Access Clearinghouse (TRAC) at Syracuse University obtained from ICE (trac.syr.edu/phptools/immigration/detain/). We refer to these data as TRAC Detainer Data. According to TRAC (trac.syr.edu/phptools/immigration/detain/about_data), the citizenship information included in the TRAC Detainer Data refer to “the recorded citizenship of the individual.” It is unclear whether this information captures citizenship as reported by the individual or citizenship as verified by ICE.

We present the TRAC Detainer Data here because we could not resolve inconsistencies across several other data sources that we examined. For example, in fiscal year 2015, the enforcement data that ICE provided to the first author pursuant to a FOIA request showed no instance of U.S. citizens being arrested, detained, or removed. On the other hand, detention data obtained by TRAC from ICE showed 26 U.S. citizens detained in fiscal year 2015. TRAC data on removals, also produced by ICE, indicated that one person claiming U.S. citizenship was removed in fiscal year 2015. In contrast, data produced by the Executive Office for Immigration Review (EOIR) for Northwestern University’s Deportation Research Clinic (deportationresearchclinic.org/USCData.html) suggested that (1) a total of 208 removal cases were completed for people claiming U.S. citizenship during fiscal year 2015, and (2) of these cases, 164 involved individuals who were detained, and 97 involved individuals who received

final orders of removal. These total counts from the EOIR data are based on the number of cases “adjourned because alien claims to be a U.S. citizen.”



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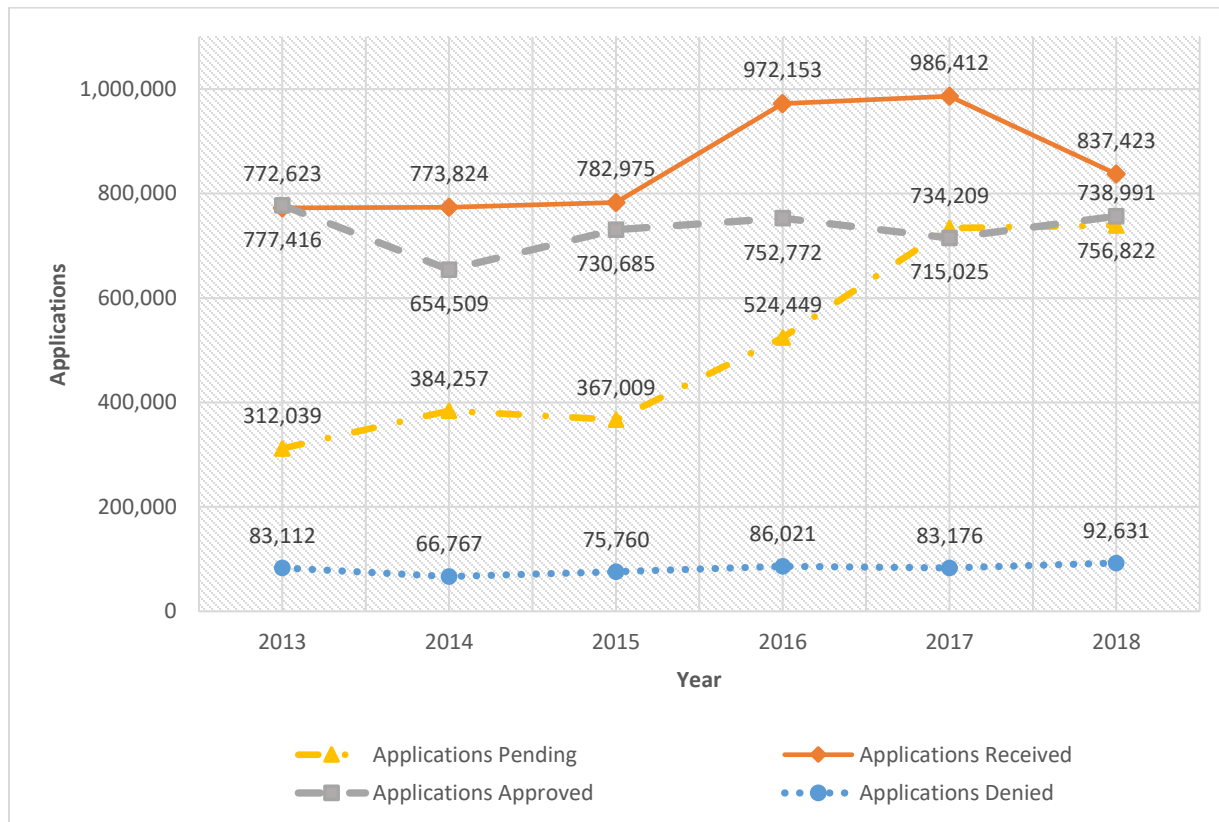
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Figure 1. Typology of Citizenship Denials

TARGET OF STATE ACTION		TYPE OF STATE ACTION	
		Formal Denials	Effective Denials
	Non U.S. Citizens	Denial of Naturalization Applications	Deportation of Immigrant Parents with U.S. Citizen Children ^a
	U.S. Citizens	Denaturalizations	Unlawful Detention or Deportation of U.S. Citizens

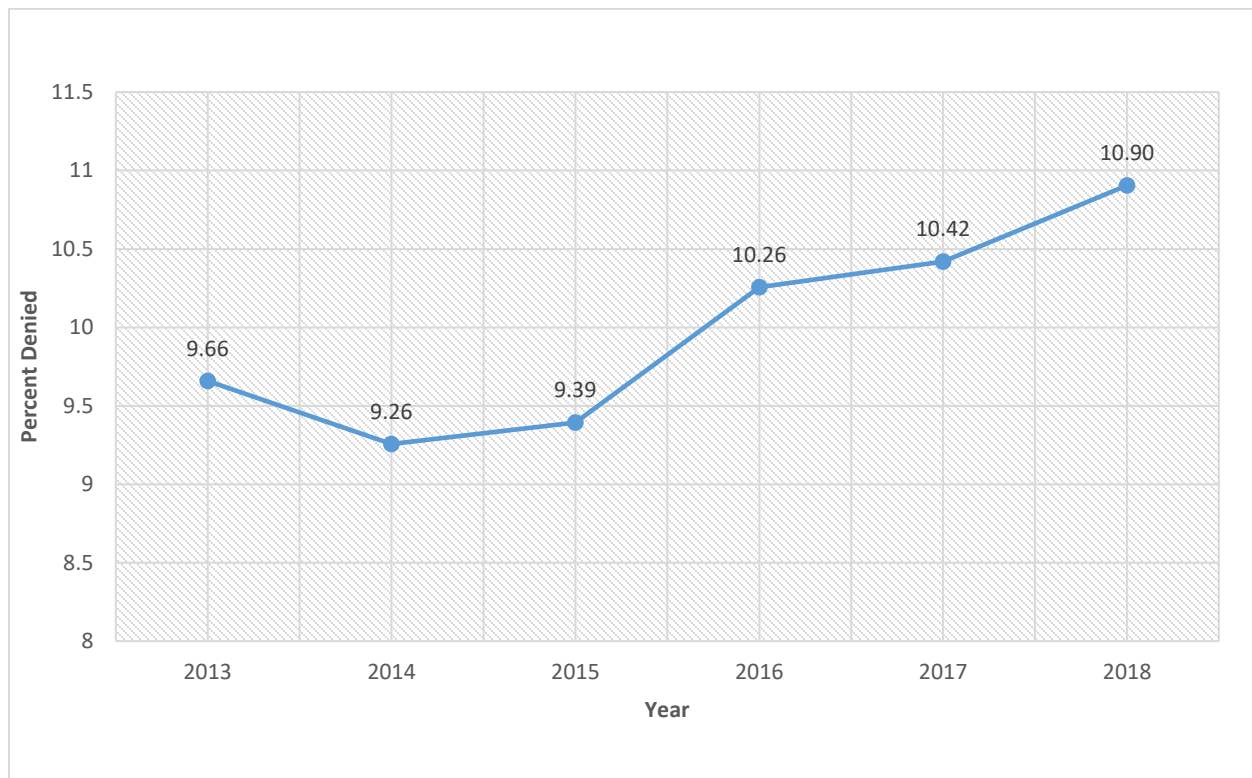
^a Effective denial involves curtailment of U.S. citizen children's citizenship rights.

Figure 2. Naturalization Applications, 2013-2018



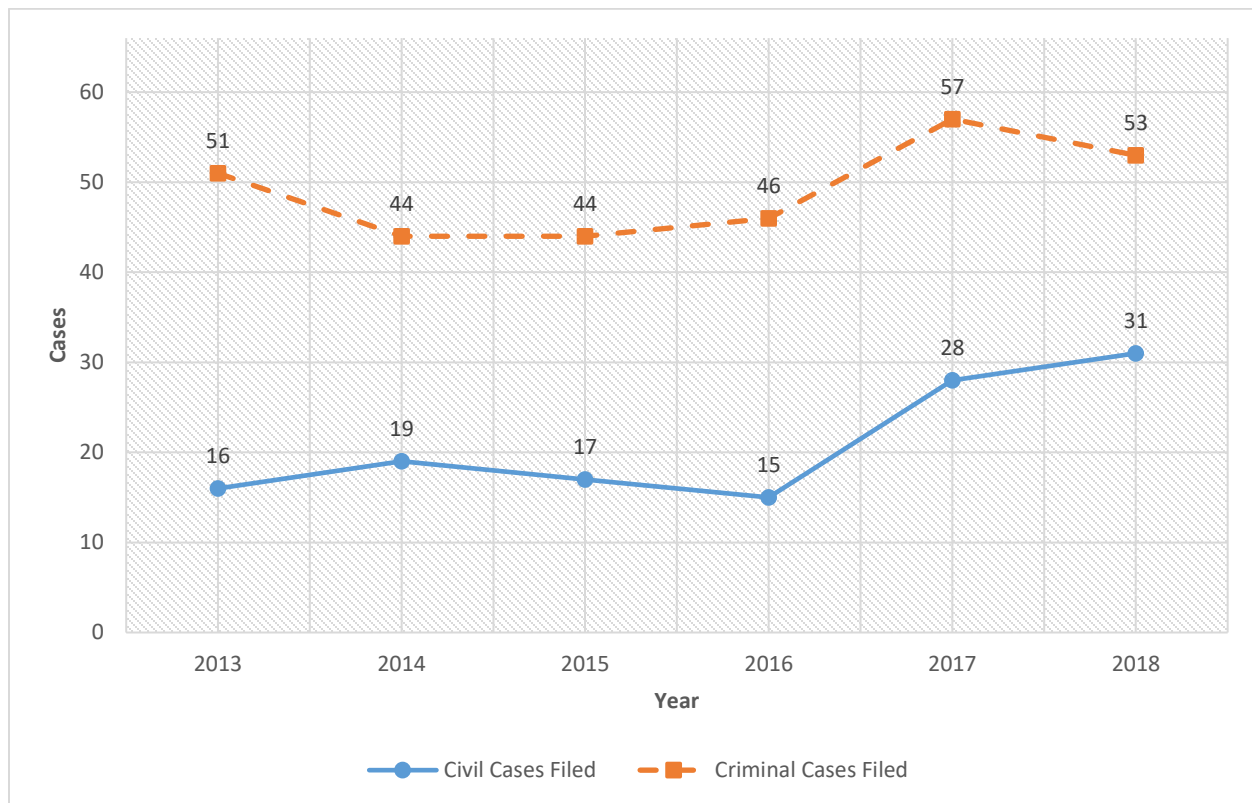
Source: USCIS Naturalization Data (see Appendix A, Denial of Naturalization Applications).
 Note: Military and nonmilitary applications combined. Year refers to fiscal year.

Figure 3. Naturalization Denial Rates, 2013-2018



Source: USCIS Naturalization Data (see Appendix A, Denial of Naturalization Applications).
Note: Military and nonmilitary applications combined. Year refers to fiscal year.

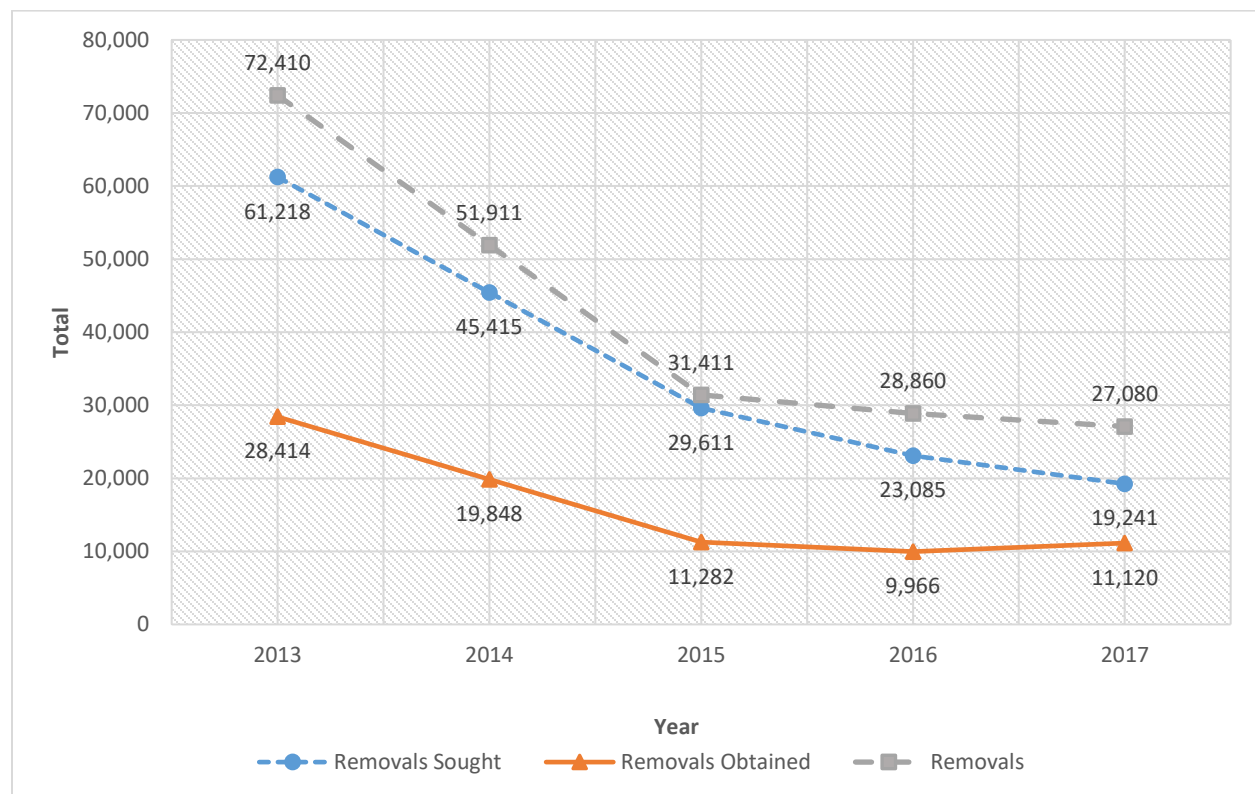
Figure 4. Number of Denaturalization Cases Filed, 2013-2018



Source: DOJ Civil Denaturalization Data and DOJ Criminal Denaturalization Data (see Appendix A, Denaturalizations).

Note: Year refers to calendar year for civil cases and fiscal year for criminal cases.

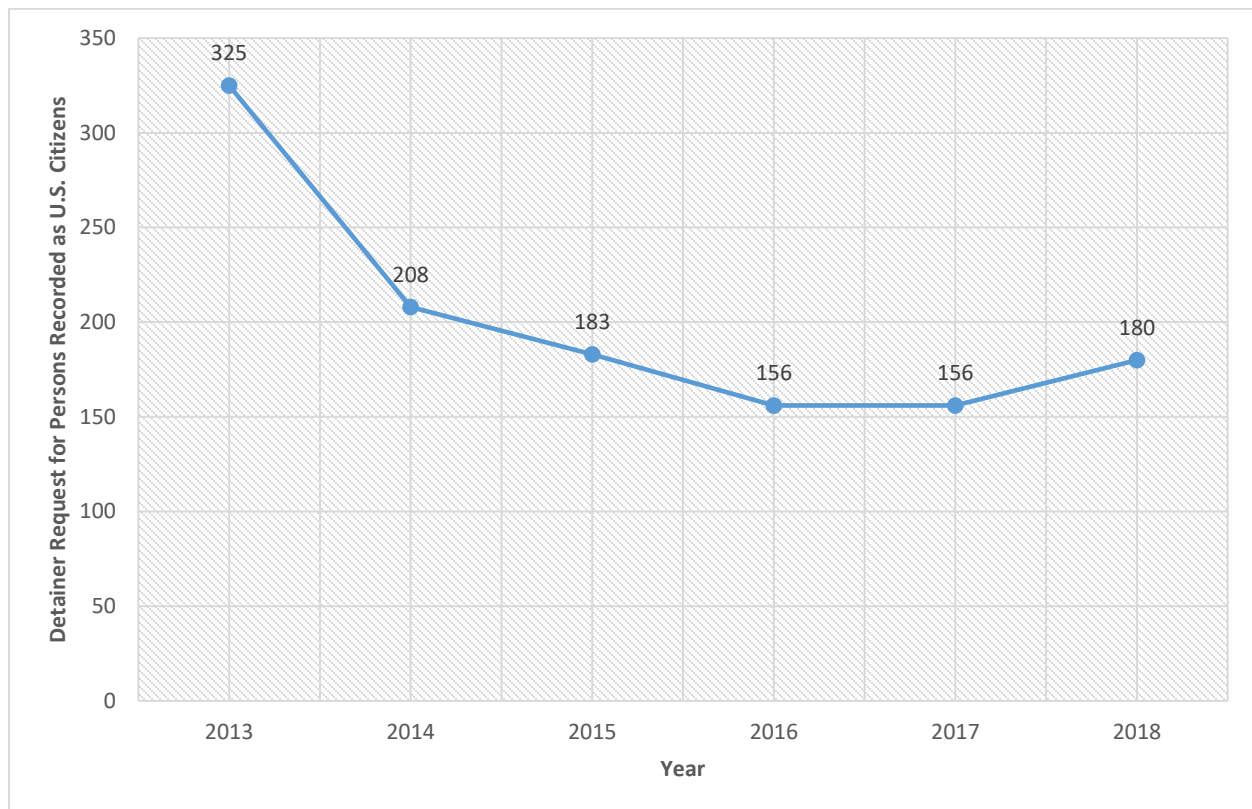
Figure 5. Total Removal Orders Sought, Removal Orders Obtained, and Removals of Immigrant Parents with U.S. Citizen Children, 2013-2018



Source: DHS Parent Removal Data (see Appendix A, Deportation of Immigrant Parents with U.S. Citizen Children).

Note: Removals Sought and Removals Obtained refer to orders of removal sought and orders of removal obtained, respectively, whereas Removals refer to actual removals. Years refer to calendar years.

Figure 6. Total Detainer Requests Made for Persons Recorded as U.S. Citizens, 2013-2018



Source: TRAC Detainer Data (see Appendix A, Unlawful Detention or Deportation of U.S. Citizens).

Note: Years refer to fiscal years.



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