

# CRS Report for Congress

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## Basic Questions on U.S. Citizenship and Naturalization

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### Summary

This report answers the following questions: Who is a United States citizen at birth? How does one become a naturalized citizen? Must citizens take loyalty oaths? What is the required period of residency prior to being eligible for citizenship? Is a citizenship revocable? If so, under what circumstances? Finally, are there provisions for dual citizenship? If so, under what circumstances?

### 1. Who Is a United States Citizen at Birth?

United States citizenship is conferred at birth both under the principle of *jus soli* (nationality of place of birth) and the principle of *jus sanguinis* (nationality of parents). The United States Constitution states as a fundamental rule of *jus soli* citizenship that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."<sup>1</sup> The exceptions to universal citizenship comprehended by the requirement that a person be born "subject to the jurisdiction thereof include: (1) children born to a foreign sovereign or accredited diplomatic official; (2) children born on a foreign public vessel, such as a warship; (3) children born to an alien enemy in hostile occupation; and (4) native Indians."<sup>2</sup>

Federal statutes repeat and expand the constitutional grant of citizenship at birth. Respecting *jus soli*, the Immigration and Nationality Act of 1962 (INA), as amended, grants citizenship at birth to a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.<sup>3</sup> The INA also confers citizenship at birth to persons born in various offshore territories who are subject to the jurisdiction of the

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<sup>1</sup> U.S. CONST. amend. XIV, § 1.

<sup>2</sup> 4 C. GORDON & S. MAILMAN, IMMIGRATION LAW AND PROCEDURE § 92.03[3].

<sup>3</sup> INA, § 301(b); 8 U.S.C. § 1401(a).

United States.<sup>4</sup> Respecting *jus sanguinis*, the INA grants citizenship at birth to any person born outside the United States if (1) both parents are United States citizens and at least one resided in the United States prior to the person's birth; (2) one parent is a national of the United States and the other parent is a United States citizen who resided in the United States prior to the person's birth; or (3) one parent is an alien and the other parent is a United States citizen who, prior to the person's birth, was physically present in the United States for periods totaling at least five years, two or more years of which were after the parent attained age 14.<sup>5</sup>

## 2. How Does One Become a Naturalized Citizen?

The vast majority of individuals who become United States citizens after birth, or naturalized citizens, do so on their own initiative through an administrative naturalization process set forth in the INA.<sup>6</sup> At the same time, minor children become naturalized citizens automatically under the INA on the naturalization of their parents.<sup>7</sup> On occasion Congress has collectively naturalized the population of a territory upon its acquisition by the United States, though in these instances individuals have at times been given the option of retaining their former nationality.<sup>8</sup>

The Constitution empowers Congress to establish a uniform rule of naturalization.<sup>9</sup> Under this authority, Congress has set forth substantive standards and procedures in the INA. The primary substantive requirements for naturalization, while waived or relaxed for aliens within certain classes, are that the applicant (1) have resided continuously in the United States for at least five years as a lawfully admitted permanent resident, (2) be of good moral character, (3) be attached to the principles of the United States Constitution, (4) be literate in English,<sup>10</sup> and (5) have a knowledge and understanding of the history and

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<sup>4</sup> Among the territories in which children are born citizens under the INA are Puerto Rico, the United States Virgin Islands, and Guam. By virtue of separate legal authority children born in the Commonwealth of the Northern Mariana Islands are born citizens. Under the INA, children born in American Samoa are nationals of the United States but not citizens. See INA, §§ 302, 306, 307, 308, 101(a)(29), 8 U.S.C. §§ 1402, 1406, 1407, 1408, 1101(a)(29). *See also* INA, §§ 301(a), 101(a)(38), 8 U.S.C. §§ 1401(a) [persons born in U.S. citizens], 1101(a)(38) [defining "United States" as including Puerto Rico, Virgin Islands, and Guam].

<sup>5</sup> INA, § 301, 8 U.S.C. § 1401.

<sup>6</sup> INA, §§ 310 *et seq.*, 8 U.S.C. §§ 1421 *et seq.*

<sup>7</sup> INA, §§ 320-321, 8 U.S.C. §§ 1431-1432.

<sup>8</sup> *E.g.*, INA, §§ 306(a)(1), 307(a), 8 U.S.C. §§ 1406(a)(1), 1407(a).

<sup>9</sup> U.S. CONST. art. 1, § 8, cl. 4.

<sup>10</sup> INA, § 312; 8 U.S.C. § 1423. The literacy requirement is waived for an applicant who (1) is physically unable to comply, (2) is over 50 years old and has lived in the United States for at least 20 years as a lawfully admitted permanent resident, or (3) is over 55 years old and has lived in the United States for at least 15 years as a lawfully admitted permanent resident.

government of the United States.<sup>11</sup> Subversives and deserters expressly are precluded from becoming naturalized citizens.<sup>12</sup>

To initiate the naturalization process, an applicant must file an application with the Immigration and Naturalization Service (INS). The applicant must be at least 18 years old to apply. Subsequent to filing, the INS conducts a police check and other pertinent investigations. Before becoming a citizen, the applicant must pass tests on English literacy and a basic knowledge of the history and government of the United States. The applicant also is examined in person. An attorney may be present at this examination but has no right to actively participate. Successful applicants are eligible to take the oath of allegiance, the final step in the naturalization process. An unsuccessful applicant may appeal the adverse decision to administrative authorities and the federal courts. Administrative authorities may rely on the original record or conduct their own investigations. On judicial review, the federal courts conduct their own inquiry and come to their own findings of fact and conclusions of law.<sup>13</sup>

### 3. Must Citizens Take Loyalty Oaths?

No citizen must take a loyalty oath in order to retain citizenship. At the same time, an alien seeking to become a citizen through the naturalization process must take the following oath before citizenship can be granted:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by law; that I will perform noncombatant service in the Armed Forces of the United States when required by law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

In addition to taking this oath, any applicant holding an hereditary title or order of nobility in a foreign state must renounce the title or order. The oath of allegiance may be modified for conscientious objectors to military service or for individuals preferring to affirm (to swearing to) the substance of the oath.<sup>14</sup>

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<sup>11</sup> INA, §§ 311, 312, 316, 8 U.S.C. §§ 1422, 1423, 1427.

<sup>12</sup> INA, §§ 313, 314, 8 U.S.C. §§ 1424, 1425.

<sup>13</sup> Current naturalization procedures are set forth in interim regulations published October 7, 1991. 8 C.F.R. parts 334-337 published at 56 Fed. Reg. 50475, 50495-50501 (Oct. 7, 1991).

<sup>14</sup> INA, § 337, 8 U.S.C. § 337. *See also* 8 C.F.R. § 337.1 published at 56 Fed. Reg. 50499 (Oct. 7, 1991).

## 4. What Is the Required Period of Residency Prior to Being Eligible for Citizenship?

In order to be eligible for naturalization, an alien generally must reside continuously in the United States for at least five years as a *lawfully admitted permanent resident alien*.<sup>15</sup> A period of continuous residence is broken by an absence of over a year unless the alien is employed abroad by the government, an international organization, a research institute, or an American company engaged in foreign trade. An absence of between six months and one year presumptively breaks continuous residence.<sup>16</sup>

Certain classes of aliens either are exempt from the residency requirement or are subject to shorter residency periods. Unmarried children under 18 living with a citizen parent are exempt from any residency requirement.<sup>17</sup> Aliens who served in the armed forces for specified periods also are exempt.<sup>18</sup> The residency requirement for spouses of American citizens is three years instead of five years.<sup>19</sup> Residency requirements also are modified for other special classes.

## 5. Is Citizenship Revocable? If So, under What Circumstances?

A United States citizen may lose that citizenship through expatriation. Expatriating acts are set forth in the INA. These acts include: (1) voluntary naturalization in a foreign country after the age of 18; (2) making a formal declaration of allegiance to a foreign country after the age of 18; (3) serving in the armed forces of a foreign country that is engaged in hostilities against the United States; (4) serving in the armed forces of a foreign country as a commissioned or non-commissioned officer; (5) holding an office under the government of a foreign country if foreign nationality is acquired or if a declaration of allegiance is required; (6) formal renunciation of citizenship before a U.S. diplomatic or consular officer abroad; (7) formal written renunciation of citizenship during a state of war if the Attorney General approves the renunciation as not contrary to the national defense; and (8) conviction of treason, seditious conspiracy, or advocating violent overthrow of the government.<sup>20</sup> The Supreme Court has held that performing an expatriating act alone is an insufficient basis for revoking citizenship. Rather, according to the Court, the Constitution requires that an expatriation act be undertaken with an intent to relinquish U.S. citizenship.<sup>21</sup> This restriction also has been enacted in statute.<sup>22</sup>

All United States citizens potentially are subject to expatriation. Separately, an individual who obtained citizenship through naturalization may have that citizenship

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<sup>15</sup> INA, § 316(a), 8 U.S.C. § 1427(a).

<sup>16</sup> INA, § 316(6), 8 U.S.C. § 1427(6).

<sup>17</sup> INA, § 322, 8 U.S.C. § 1433.

<sup>18</sup> INA, §§ 328, 329, 8 U.S.C. §§ 1439, 1440.

<sup>19</sup> INA, § 319(a), 8 U.S.C. § 1430(a).

<sup>20</sup> INA, § 349(a), 8 U.S.C. § 1481(a).

<sup>21</sup> *Vanee v. Terrazas*, 444 U.S. 252 (1980).

<sup>22</sup> INA, § 349(a), 8 U.S.C. § 1481(a).

revoked through denaturalization. Naturalized citizenship may be revoked on grounds that that citizenship was procured illegally, by concealment of material fact, or by willful misrepresentation.<sup>23</sup> Various acts occurring after naturalization are, by law, evidence of misrepresentation or suppression at time of naturalization. For example, if a naturalized citizen joins a subversive organization within five years of becoming a citizen and membership in that group would have precluded eligibility for naturalization under the INA, then the joining of the organization is held to be a rebuttable presumption that naturalization was obtained by concealing or misrepresenting how attached to the United States the citizen was when naturalized.<sup>24</sup> Similarly, if a naturalized citizen begins to permanently reside abroad within one year of naturalization, taking that residence is deemed a rebuttable presumption that the citizen concealed a lack of requisite attachment to the United States at the time of naturalization.<sup>25</sup>

Except for acts that bear on the integrity of the naturalization process itself, however, citizenship through naturalization is as secure as citizenship at birth. Also, the United States no longer conditions retention of citizenship at birth abroad on subsequent residence in the United States by a specified age.

## 6. Are There Provisions for Dual Citizenship? If So, under What Circumstances?

The United States does not categorically forbid its citizens from holding dual nationality nor does it expressly require dual nationals to make an election of citizenship as such at any point. At the same time, Congress has enacted citizenship rules that militate against acquiring dual nationality after birth.

Individuals who acquire United States citizenship under the Constitution by virtue of being born in the United States may lose that citizenship only by committing an act of expatriation. Under the INA, a citizen loses United States citizenship on voluntarily obtaining naturalization in a foreign country with an intent to relinquish United States citizenship.<sup>26</sup> The requisite intent to relinquish need not be express. Rather, it may be inferred from the circumstances, including the taking of an oath of allegiance as part of the foreign naturalization process.<sup>27</sup> While a citizen may lose citizenship through voluntary naturalization abroad, the voluntary naturalization of a child's parents abroad no longer results in the child's expatriation even if the child derivatively becomes a foreign national.

Expatriation aside, citizenship acquired at birth abroad under rules set in statute remains subject to congressional regulation. However, Congress no longer conditions

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<sup>23</sup> INA, § 340, 8 U.S.C. § 1451.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> INA, § 349(a)(1), 8 U.S.C. § 1481(a)(1).

<sup>27</sup> *E.g., Richards v. Sec'y of State*, 752 F.2d 1431 (9th Cir. 1985); *Terrazas v. Haig*, 653 F.2d 285 (7th Cir. 1981).

retention of United States citizenship at birth abroad on subsequent residence in the United States or otherwise.

Part of the process for becoming a United States citizen is the taking of an oath "absolutely and entirely" renouncing any allegiance or fidelity to any other country. United States naturalization, in combination with the oath of absolute allegiance, may result in loss of foreign nationality under the pertinent foreign laws. Furthermore, United States naturalization may be revoked if illegally or fraudulently obtained. Any exercise of foreign citizenship subsequent to United States naturalization may be evidence of misrepresentation in taking the oath of allegiance and thus potential grounds for denaturalization.