

Sec. 8—Powers of Congress

Cl. 4—Naturalization and Bankruptcies

There is no middle choice.”¹¹⁹⁹ This interpretation makes of the naturalization power the only power granted in § 8 of Article I that is unrestrained by constitutional limitations on its exercise. Thus, the first naturalization act enacted by the first Congress restricted naturalization to “free white person[s],”¹²⁰⁰ which was expanded in 1870 so that persons of “African nativity and . . . descent” were entitled to be naturalized.¹²⁰¹ “Chinese laborers” were specifically excluded from eligibility in 1882,¹²⁰² and the courts enforced these provisions without any indication that constitutional issues were thereby raised.¹²⁰³ These exclusions are no longer law. Present naturalization statutes continue to require loyalty and good moral character and generally bar subversives, terrorists, and criminals, among others, from citizenship.¹²⁰⁴

Although the usual form of naturalization is through individual application and official response on the basis of general congressional rules, naturalization is not so limited. Citizenship can be conferred by special act of Congress,¹²⁰⁵ it can be conferred collectively either through congressional action, such as the natural-

¹¹⁹⁹ *United States v. Macintosh*, 283 U.S. 605 (1931). See also *Fong Yue Ting v. United States*, 149 U.S. 698, 707–08 (1893). Though Congress broadly controls the path to naturalization in the United States, it is restricted in conditioning the retention of citizenship so conferred. The Fourteenth Amendment declares persons born or naturalized in the United States to be citizens, and Congress may not distinguish among classes of “Fourteenth Amendment” citizens in setting rules for expatriation (assuming the absence of fraud in obtaining naturalization). *Schneider v. Rusk*, 377 U.S. 163 (1964). By contrast, Congress controls by statute who born abroad becomes a U.S. citizen at birth (based generally on the citizenship status of the parents), at times has conditioned this “statutory” citizenship on subsequent periodic residence in the United States, and has had relinquishment of citizenship for failure to meet this condition subsequent upheld by the Court. *Rogers v. Bellei*, 401 U.S. 815 (1971).

¹²⁰⁰ 1 Stat. 103 (1790).

¹²⁰¹ Act of July 14, 1870, § 7, 16 Stat. 254, 256.

¹²⁰² Act of May 6, 1882, § 1, 22 Stat. 58. The statute defined “Chinese laborers” to mean “both skilled and unskilled laborers and Chinese employed in mining.” 22 Stat. 61.

¹²⁰³ Cf. *Ozawa v. United States*, 260 U.S. 178 (1922); *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923); *Toyota v. United States*, 268 U.S. 402 (1925); *Morrison v. California*, 291 U.S. 82 (1934). The Court refused to review the only case in which the constitutional issue was raised and rejected. *Kharaiti Ram Samras v. United States*, 125 F.2d 879 (9th Cir. 1942), *cert. denied*, 317 U.S. 634 (1942).

¹²⁰⁴ The Alien and Sedition Act of 1798, 1 Stat. 570, empowered the President to deport any alien he found dangerous to the peace and safety of the Nation. In 1903, Congress provided for denial of naturalization and for deportation for mere belief in certain doctrines, *i.e.*, anarchy. Act of March 3, 1903, 32 Stat. 1214. See *United States ex rel. Turner v. Williams*, 194 U.S. 279 (1904). The range of forbidden views was broadened in 1918 (Act of October 15, 1918, § 1, 40 Stat. 1012) and periodically thereafter. The present law is discussed in *The Naturalization of Aliens*, *infra*.

¹²⁰⁵ *E.g.*, 77 Stat. 5 (1963) (making Sir Winston Churchill an “honorary citizen of the United States”).