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2019

Due Process and Denaturalization

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Repository Citation

Robertson, Cassandra Burke and Manta, Irina D., "Due Process and Denaturalization" (2019). *Faculty Publications*. 2032.

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January 14, 2019

ARTICLES

Due Process and Denaturalization

Naturalized citizens risk losing their citizenship without the ability to provide any defense at all.

By Cassandra Burke Robertson and Irina D. Manta

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Policies restricting immigration and citizenship play a significant role in the current political environment. The implementation of the [travel ban](#), [litigation over DACA](#), and a narrowing of citizenship opportunities for [members of the armed forces](#) have all made headlines in the last two years. Along with those policies, the Trump administration has also [significantly increased efforts to strip citizenship](#) from individuals alleged to have gained it improperly.

Revocation of citizenship used to focus primarily on [former Nazis and other war criminals](#) hiding from justice in the United States. Now, through programs called [Operation Janus and Operation Second Look](#), the Trump administration is reviewing the files of large numbers of individuals who gained citizenship over the last several decades.

The government [plans to scrutinize the records of another 700,000 naturalized citizens](#) and expects to file denaturalization petitions [against at least 1,600 people](#). Government officials are looking for evidence of immigration fraud, searching for cases where individuals used more than one identity or concealed prior deportation orders before filing for citizenship. Such evidence may provide grounds to strip citizenship from those who allegedly gained it unlawfully.

In an [article forthcoming in the NYU Law Review](#), we argue that the civil-litigation procedures employed in these cases are ill equipped to protect the due-process rights of naturalized citizens. Our review of the court filings revealed that Baljinder Singh, the first person denaturalized through Operation Janus, may not even know that his citizenship has been taken away.

The Mystery of Baljinder Singh

[According to the government's denaturalization complaint](#), Singh arrived in the United States as a teenager in 1991. He spoke little or no English at the time. He filed an asylum claim shortly after his arrival, and his claim remained pending for years until he married a U.S. citizen. He obtained permanent residency and later citizenship as a result of his marriage. All appeared to be well for more than 25 years.

In 2017, the government digitized immigration files from the early 1990s. It alleged that Singh's fingerprint records matched those associated with another case, filed under the name Davinder Singh. Davinder Singh had allegedly entered the U.S. at around the same time in 1991. He had been scheduled to appear at an immigration hearing in January 1992, but failed to show up for it. As a result, he was subject to a deportation order.

The government alleged that Davinder Singh and Baljinder Singh were the same person—that when Singh was ordered to leave the United States for failing to show up for his case, he then fraudulently adopted a new identity and tried again to seek asylum.

While the government's allegation is certainly possible, it appears to us to be unlikely. Davinder's case was dismissed only for failure to appear—there was no hearing on the merits of his potential asylum claim, and certainly no affirmative finding that he would be ineligible for asylum. And Baljinder's asylum case was filed less than a month after Davinder's was dismissed. Given this situation, there would be little to be gained, and much to be lost, from engaging in identity fraud simply to open a second case. Filing a motion to re-open the first case would be a much more logical way to proceed.

What could have happened? One possibility, we argue, is a bureaucratic error. Assuming that the government is correct that “Davinder” and “Baljinder” are the same person, then we can piece together some facts about what occurred. Singh entered the United States in California, where he remained in detention for several weeks. The “Davinder” case was filed in California. At Singh’s request, he was released in New Jersey, where there was a large Punjabi community. The Davinder case was transferred to New Jersey. Although Singh did not appear for the scheduled hearing, the “Baljinder” case was filed in the same federal court in New Jersey less than a month after the “Davinder” hearing was scheduled.

Given that Singh spoke little English, we think that it is entirely possible that a translator could have mis-recorded his name. When Singh was transferred from California to New Jersey, he may have contacted the court and been told there was no proceeding under his correct name. This would explain why he never showed up to the “Davinder” hearing, as well as why the “Baljinder” case was filed around the same time.

The Problem of Due Process

Of course, this is all speculative. We don’t know what took place in the early 1990s. But the very fact that we don’t know what happened highlights the procedural problems with civil denaturalization. The bedrock of procedural due process is [notice and an opportunity to be heard](#). It is not clear that Singh was afforded either one.

After the government matched the two sets of fingerprints, it filed a civil proceeding against Singh in 2017, alleging that he had fraudulently used a second identity to gain citizenship. The government served him by leaving a copy of the summons and complaint at his last known residence. After all, the federal rules of civil procedure allow the plaintiff to leave a copy of the court documents with a person of [“suitable age and discretion” who resides at the address](#). This procedure works well in most civil litigation, where a statute of limitations ensures that the dispute is relatively current and makes it more likely that the defendant’s current address is known.

Because there is no statute of limitations or time limit for bringing civil denaturalization cases, however, the events giving rise to a lawsuit may have happened 20 or 30 years in the past. Once immigrants become citizens, they are under no legal obligation to update their addresses with the government. So if a process server hands the legal papers to an adult who lives at the defendant’s last known address, there is no guarantee that the defendant still lives there or has any

relationship to the people who do. If defendants do not learn about cases filed against them, they will not be able to show up to scheduled hearings.

We have reviewed the return of service in Singh's case, and it records that the papers were left with a resident of the house. We do not know whether Singh still lives there or whether the person who accepted service has any connection with him.

Even a denaturalization defendant who does get notice of the proceedings may still have difficulty lodging a defense. A defendant may have moved far away—even out of the country—and not be able to afford to travel to the courthouse. Defendants with enough money can hire an attorney to appear on their behalf. But hiring legal representation can be expensive, and there is [no right to an appointed attorney in civil litigation](#).

Regardless of whether defendants fail to show up because they didn't know about the case or because they couldn't afford to hire an attorney, the result is likely to be the same. The court will hear from only one side in the case—and will therefore accept the government's allegations as true.

That's what happened to Baljinder Singh. When he failed to appear in court for the denaturalization proceeding in early 2018, the judge accepted the government's statements as true and granted a summary judgment of denaturalization. The [court therefore concluded](#) that the defendant's failure to report earlier proceedings under a different name arose from an intent to deceive—and not from a mere transcription error or misunderstanding.

If Singh truly did not receive notice of the denaturalization action that had been filed against him, he will likely be able to contest the court's ruling when he finds out about it. But that may not happen until he tries to [vote](#) or to [renew a passport](#) and finds himself unable to do so.

Is There a Better Way?

Citizenship is a fundamental right. In the words of the Supreme Court, "[the right to acquire American citizenship is a precious one and . . . once citizenship has been acquired, its loss can have severe and unsettling consequences](#)." Taking citizenship away is not something that should be done lightly or without care.

But if the government determines that denaturalization is in the public interest, courts could require that denaturalization cases be brought only as criminal actions. Under current law, the government has a choice: It can charge defendants criminally with naturalization fraud or it can bring a civil action seeking to revoke citizenship.

Although it might sound counterintuitive, criminal proceedings better protect defendants' rights. In a criminal action, prosecutors must prove criminal culpability beyond a reasonable doubt—a standard higher than the “clear and convincing evidence” needed for civil denaturalization. In addition, counsel will be appointed for criminal defendants who cannot afford to hire an attorney. And criminal cases cannot proceed without proof that the defendant has been given [actual notice of the proceedings](#).

Of course, the heightened protections of the criminal-justice system mean that it is easier for the government to strip citizenship in civil proceedings than criminal ones. Indeed, some prosecutors have [recommended civil denaturalization proceedings](#) for that very reason. The U.S. Constitution's [requirement of due process](#), however, requires courts to give defendants a reasonable chance to defend against the loss of liberty. Under the civil-litigation procedures currently employed by the Trump administration, naturalized citizens like Singh risk losing their citizenship without the ability to provide any defense at all.

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