NO. 15-981

In the
Supreme Court of the United States

LENEUOTI FIAFIA TUAUA,
VA'ALEAMA TOVIA FOSI, FANUATANU F.L. MAMEA, ON BEHALF OF HIMSELF AND HIS THREE MINOR CHILDREN,
TAFFY-LEI T. MAENE, EMY FIATALA AFALAVA, AND
SAMOAN FEDERATION OF AMERICA, INC.
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit

BRIEF OF CITIZENSHIP SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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March 2, 2016

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are scholars of law, history, and political science who have written extensively on the history of American citizenship. Their names, titles, and institutional affiliations (for identification purposes only) are listed in Appendix A. *Amici* have a professional interest in the doctrinal, historical, and policy issues involved in this Court's interpretation of the meaning of citizenship in the United States. *Amici* also have a professional interest in historical conceptions of citizenship before and after the ratification of the Fourteenth Amendment's Citizenship Clause, modern notions of citizenship and non-citizen national status, and the impact of history and doctrine on today's policies.

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[1] Pursuant to Sup. Ct. R. 37.2(a), *amici* timely notified the parties in writing of their intent to file this brief. All parties consented through correspondence that accompanies this brief. No counsel for any party authored this brief in whole or in part, and no person or entity, other than *amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition poses a question of immense importance: may Congress deny citizenship to persons born in the territories of the United States who owe allegiance to the Nation at birth? The correct answer to that question turns on longstanding principles of constitutional and common law. Because individuals born on United States soil while owing allegiance to the Nation, including individuals born in territories such as America Samoa, are "persons born . . . in the United States, and subject to the jurisdiction thereof," they are citizens of the United States. U.S. CONST. amend. XIV, § 1.

In reaching the opposite conclusion, the court of appeals misinterpreted this Court's precedents and misunderstood much of the history behind the Constitution's Fourteenth Amendment. Instead of respecting our common-law traditions, the court concluded that Congress has legislative authority to decide as a political matter which persons born in the United States are entitled to citizenship. That decision is at odds with the Fourteenth Amendment, which was designed to withdraw from the political branches that type of legislative authority.

The question of citizenship is one of great individual and national importance. The notion of citizenship is essential to foundational principles of constitutional government in the United States, and the availability of many rights and privileges turns on citizenship status. Because the issues raised in

this case go to the shape of our Nation, this Court's review is warranted. The petition should be granted.

ARGUMENT

I. All Persons Born Within And Owing Allegiance To The United States Are Citizens.

From the Founding, all persons born within the dominion of and owing allegiance to the United States, including its territories, have been its citizens. This doctrine known as *jus soli*—"the right of the soil"—was recognized at pre-revolutionary English common law and by American courts in the eighteenth and nineteenth centuries. It is also reflected in core principles of American constitutionalism and embodied in the Constitution's Fourteenth Amendment.

A. The Right-of-the-Soil Doctrine Is Part Of The United States' Common Law Heritage.

At common law, the English right-of-the-soil rule was straightforward: those born within the dominion of the English monarch and who owed allegiance at birth were English subjects. *Calvin's Case*, 7 Co. Rep. 1a, 77 E. R. 377, 409 (1608). That was true for persons born in Scotland after its union of crowns with England in 1603. *Id.* It was also true for persons born in Ireland, Normandy, and Wales during the periods when those countries were territories of the English crown. Polly J. Price, *Natural Law and Birthright Citizenship in Calvin's Case (1608)*, 9 YALE J. L. & HUMAN. 73, 93 (1997). In fact, it was true for all persons born in any of

England's territories. Any person born in a territory who owed allegiance to the English crown at birth was by both statute and common law granted the status of a natural-born English subject. *See, e.g.*, Children Born Beyond the Sea, if Inheritable in England 1368, 42 Edw. 3, ch. 10 (Eng.).

The same rule applied to individuals born in the American colonies. *See* William Blackstone, *Commentaries on the Laws of England*: *In Four Books; with an Analysis of the Work* *106–109 (1846) (describing the American colonists as "subjects of the crown of Great Britain"). On the eve of the American Revolution, William Blackstone confirmed that, under English common law, "[n]atural-born subjects are such as are born within the dominions of the crown of England, that is, within the ligeance, or, as it is generally called, the allegiance of the king." William Blackstone, *Blackstone's Commentaries: With Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia* *366 (1803).

After the Revolution, early American courts were forced to decide whether individuals born in the colonies, who had previously been British subjects, would be recognized as citizens of the United States. To resolve that question, they turned to English common law and relied on the right-of-the-soil doctrine. *See, e.g., Dawson's Lessee v. Godfrey,* 8 U.S. (4 Cranch) 321, 322–24 (1808) (applying common law to determine citizenship). The courts found that the King's authority—and the colonists' allegiance—had transferred to the new sovereign nation and, as a result, the colonists *were* citizens of the United

States. *See, e.g.*, *Kilham v. Ward*, 2 Mass. 236, 239 (1806) ("All persons, therefore, who were then within the United States, and were parties to that declaration, must be considered as agreeing to the new political compact, and by virtue of it became citizens of the established government.").

Many other cases from the eighteenth and nineteenth centuries confirm that persons born within the territory of, and owing allegiance to, the United States were citizens by right of the soil:

> [A] man, born within the jurisdiction of the common law, is a citizen of the country wherein he is born. By this circumstance of his birth, he is subjected to the duty of allegiance which is claimed and enforced by the sovereign of his native land and becomes reciprocally entitled to the protection of that sovereign, and to the other rights and advantages which are included in the term "citizenship."

Gardner v. Ward, 2 Mass. 244 (1805). Early decisions recognized that "[n]othing [was] better settled at the common law than the doctrine that the children even of aliens born in a country . . . are subjects by birth." *Inglis v. Sailor's Snug Harbor,* 28 U.S. (3 Pet.) 99, 164 (1830); *see also United States v. Rhodes,* 27 F. Cas. 785, 789 (C.C.D. Ky. 1866) ("[A]ll persons born in the allegiance of the United States are natural born citizens."). No matter "how accidental soever his birth in that place may have been, and although his parents belong to another country," the country of one's birth "is that to which he owes allegiance," *Leake v. Gilchrist,* 13 N.C. (2

Dev.) 73, 76 (1829), and that birth "does of itself constitute citizenship," *Lynch v. Clarke,* 1 Sand. Ch. 583, 663 (N.Y. Ch. 1844). Even a person "born within the United States" who later emigrated, "not being proved to have expatriated himself according to any form prescribed by law, is said to remain a citizen, entitled to the benefit and subject to the disabilities imposed upon American citizens." *Murray v. Schooner Charming Betsy,* 6 U.S. (2 Cranch) 64, 120 (1804); *see also Talbot v. Jansen,* 3 U.S. (3 Dall.) 133, 165–66 (1795) (holding that a person born in Virginia who later moves to France was still a citizen of the United States).

Courts also recognized that the right-of-the-soil doctrine did not apply to persons who, while born on a nation's soil, owed allegiance to a foreign sovereign. Accordingly, although those born on United States lands owing allegiance to the United States were citizens, the children of diplomats and persons born under hostile occupations were not citizens by right of the soil. *See* Thomas P. Stoney, *Citizenship,* 34 AM. L. REG. 1, 13 (1886); *Calvin's Case,* 77 E. R. at 399. Similarly, Native Americans, though "born within the territorial limits of the United States," were not encompassed by the right-of the-soil doctrine because they were "members of, and ow[ed] immediate allegiance to, one of the Indian tribes." *Elk v. Wilkins*, 112 U.S. 94, 102 (1884). Their tribes, in turn, were viewed as "domestic dependent nations," separate from the United States. *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1, 2 (1831); s*ee also Ex parte Reynolds*, 20 F. Cas. 582, 583 (C.C.W.D. Ark. 1879) ("not being subject to the jurisdiction of

the United States, [Indians] are not citizens thereof").

These precedents confirm the rule that any person born on United States soil, whether in a state or a territory, who owes allegiance to the United States is a citizen entitled to the privileges and immunities of citizenship. As Chief Justice Marshall explained, "the United States" is "the name given to our great Republic, which is composed of States and territories." *Loughborough v. Blake*, 18 U.S. (5 Wheat) 317, 319 (1820). Accordingly, a "citizen of one of our territories is [also] a citizen of the United States." *Picquet v. Swan*, 19 F. Cas. 609, 616 (C.C.D. Mass. 1828) (Story, J.).

B. The Right-of-the-Soil Doctrine Is Embodied In The Constitution's Fourteenth Amendment.

The right-of-the-soil doctrine is reflected in fundamental notions of American constitutional self-government and enshrined in the Constitution's Fourteenth Amendment. The meaning of citizenship has always been important in the United States because, in our constitutional system, sovereign power rests ultimately not in the government but in the people—that is, in the citizens of the United States. As President Lincoln famously proclaimed, our Constitution establishes a government "of the people, by the people, and for the people." Abraham Lincoln, Gettysburg Address (1863).

Lincoln's description of our constitutional republic reflects the long-standing importance of United States citizenship. As the petition explains,

only United States citizens are eligible to vote for President or to serve as voting members of Congress, and states allow only citizens to vote. Pet. 1. Only citizens are eligible for certain federal jobs, and states prevent non-citizens from exercising many of the rights that citizens enjoy. *See* Pet. 11 (holding public office, serving on juries, serving as law enforcement officers, firefighters, or public school teachers). In contrast to non-citizens, only persons who hold the status of United States citizens are eligible to participate fully in a government of the people, by the people, and for the people.

But Lincoln's epigrammatic formulation is not just a recognition of the important role of political rights in a constitutional democracy; it is also and more importantly a reflection on the fundamental principles that the Founders embraced to define the relationship between the new national government and its sovereign people. As this Court has explained, "[c]itizenship in this Nation is a part of a co-operative affair" where "citizenry is the country and the country is its citizenry." *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967). The "very nature" of our system of government "makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship." *Id*. To this end, the Constitution guarantees to all citizens certain privileges and immunities—including (for example) the right to free travel, the right to petition the government for a redress of grievances, and the right to engage in interstate commerce—that are essential to liberty and therefore cannot be taken

away. *See Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 79-80 (1872).

In the Nation's history, there has been only one exception to the consistent application of these basic principles. The Supreme Court announced this exception in its 1857 opinion in the *Dred Scott* case, making African Americans the *only* persons who, despite being born within the territorial limits of the United States *and* owing undivided allegiance to the United States, were denied citizenship. *See Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). This exception was grounded in a racial exclusion calculated to serve as a bulwark for slavery. The Court held that African Americans were not United States citizens because "they were . . . considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them." *Id.* at 404–05; *but see id.* at 576, 588 (Curtis, J., dissenting) (noting that several states had recognized free African Americans as citizens).

This race-based exception to the right-of-the-soil doctrine faced immediate protest and rapid reversal. As Lincoln put it, the Court in *Dred Scott* chose the wrong side in the constitutional debate between protecting the "unqualified evil" of slavery, Abraham Lincoln, Last Speech in Springfield, Illinois, in the Campaign of 1858 (Oct. 30, 1858), and the Declaration of Independence's expression of the principle of "Liberty to all," Abraham Lincoln,

Fragment on the Constitution and Union (Jan. 1861), in COLLECTED WORKS OF ABRAHAM LINCOLN (Roy P. Basler ed., 1953). The problem was not just that *Dred Scott* protected and even encouraged slavery, but that it dishonored and thus tended "to subvert the first principle of free government." Lincoln, Last Speech*, supra*.

Like the system of slavery it propped up, this exception to the right-of-the-soil doctrine did not long survive the *Dred Scott* decision. Within a dozen years, the United States ratified the Fourteenth Amendment. The Amendment's Citizenship Clause provides 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." U.S. CONST. amend. XIV, § 1. The Clause "unambiguously overruled this Court's contrary holding" in *Dred Scott*. *McDonald v. City of Chicago*, 561 U.S. 742, 807–08 (2010) (THOMAS, J., concurring in judgment); *see also In re Look Tin Sing,* 21 F. 905, 909 (C.C.D. Cal. 1884) (observing that the Citizenship Clause was meant to "overrule" *Dred Scott*). It also reaffirmed the constitutional pedigree of the right-of-the-soil doctrine, while both rejecting any exception to it (including any race-based exception) and insulating the venerable doctrine from future legislative tampering. *See generally Afroyim*, 387 U.S. at 263 (the purpose of the Clause was "to put th[e] question of citizenship and the rights of citizens . . . beyond the legislative power") (internal citation omitted); Kristin A. Collins, *Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation,* 123 YALE L. J. 2134, 2153 (2014) (explaining that the

Fourteenth Amendment declared the right of the soil to be the higher law of the land).

The debates in the Senate over the Fourteenth Amendment confirm that the Citizenship Clause was aimed at restoring and assuring that as a constitutional matter all persons born in and owing allegiance to the United States are citizens. As Senator John Henderson noted in 1866: "I propose to discuss the first section [of the Fourteenth Amendment] only so far as citizenship is involved in it. I desire to show that this section will leave citizenship where it now is. It makes plain only what has been rendered doubtful by the past action of the Government." CONG. GLOBE, 39th CONG., 1ST SESS. 3031 (1866). Senate Judiciary Chairman Lyman Trumbull announced that the Fourteenth Amendment recognized that "persons born in the United States and owing no allegiance to any foreign Power are citizens without regard to color." *Id.* at 574 (1866). Senator Wade likewise stated that the clause made clear that "every person, of whatever race or color, who was born within the United States was a citizen of the United States." *Id.* at 2768.

This Court reached parallel conclusions in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). *See generally* Lucy E. Salyer, *Wong Kim Ark: The Contest Over Birthright Citizenship*, in Immigration Stories 51, 66 (David A. Martin & Peter H. Schuck eds., 2005). Born in San Francisco to Chinese nationals, Wong Kim Ark had been denied re-entry to the country following a trip to China on the ground that he was not a citizen of the United States. *Wong Kim Ark*, 169 U.S. at 649–51. Rejecting the

government's position, this Court unequivocally reaffirmed the right-of-the-soil doctrine. The Court explained that "two things usually concur to create citizenship: First, birth locally within the dominions of the sovereign; and, secondly, birth within the protection and obedience, or, in other words, within the ligeance, of the sovereign." 169 U.S. at 659. The Court observed that "there is no authority, legislative, executive, or judicial" which "superseded or restricted, in any respect, the established rule of citizenship by birth within the dominion." *Id.* at 674. The Fourteenth Amendment follows the "established" and "ancient rule of citizenship by birth within the dominion" and allegiance of the nation—that "[e]very person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization." 169 U.S. at 674, 667, 702.

Finally, it is clear that the Fourteenth Amendment's Citizenship Clause applies with full force to individuals born in the territories. As Senator Trumbull explained at the time, the Citizenship Clause was intended to refer "to persons everywhere, whether in the States, or in the Territories or in the District of Columbia." CONG. GLOBE, 39TH CONG., 1ST SESS. 2890, 2894 (1866). This was a matter of significance in the postbellum United States. Following decades of relentless expansion, barely half of the land mass of the United States was composed of states. In 1868, Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington, and Wyoming had not yet become states. Today, these are 12 of the 20 largest states.

The alternative to extending the right of the soil to these non-state lands of the United States was stark: deny the right of the soil to the children of the hundreds of thousands of Americans who resided there.

This Court later agreed that the Amendment's Framers had not taken such a radical route. Instead, it wrote in 1873, the Citizenship Clause "puts at rest" any question whether persons "born . . . in the territories" are citizens. *Slaughterhouse Cases*, 83 U.S. at 72–73; *see also Wong Kim Ark*, 169 U.S. at 677 ("[A] man [may] be a citizen of the United States without being a citizen of a state. . . . [I]t is only necessary that he should be born or naturalized in the United States to be a citizen of the Union.") (internal citation omitted). Those persons, just like any person who owes allegiance to the United States when born in territory subject to the United States' jurisdiction, are entitled to the rights and privileges of citizenship.

II. The D.C. Circuit's Decision is Contrary to The Right-of-the-Soil Doctrine And Basic Principles Of American Constitutionalism.

Under the constitutional principles and common law understandings discussed above, American Samoans are citizens of the United States by birth. American Samoa is within the sovereign limits of the United States, and its residents owe permanent allegiance to the United States and to no other sovereign. 8 U.S.C. § 1101(a)(22). Nonetheless, the court of appeals agreed with the government that Congress may decree that American Samoans are not citizens and designate them as "non-citizen

nationals"—a twentieth-century term invented by federal agencies and the political branches that this Court has never adopted. The lower court's decision is deeply flawed and merits review.

First, the D.C. Circuit declared itself "skeptical the framers plainly intended to extend birthright citizenship to distinct, significantly self-governing political territories within the United States' sphere of sovereignty." Pet. App. 11a. But that was precisely the genesis of the right-of-the-soil doctrine. In 1603, the Tudor rein in England ended when Queen Elizabeth died without a child and the crown passed to the Scottish King, James VI. James was thus king of two distinct realms. Scotland, with its own legislature, formed one body politic. England, with a different legislature, formed another. But despite each realm priding itself on its national identity, *Calvin's Case* announced in 1608 that all born in either realm owing allegiance to the natural body of King James would be subjects of both realms. The American colonists understood the right of the soil in the same way. They declared themselves to be natural-born subjects within the realm of England, yet also to be self-governing political territories.

Second, the D.C. Circuit concluded that citizenship is not a fundamental right because other democracies in the civil-law tradition have at times applied a *jus sanguinis*—"right of the blood"—approach to citizenship, where citizenship depends on the nationality of a child's parents. But this misstates the inquiry. The question is not whether American Samoans receive their citizenship by descent or by place of birth; it is whether they are

entitled to United States citizenship at all. No status is more fundamental to the American experiment. Collectively, citizens are "the people," who announced in the Declaration of Independence their intent to exercise their "right . . . to alter or abolish" existing forms of government and to "constitute" new ones. Invoking the Constitution's preamble ("We the people"), Chief Justice Marshall declared that the Constitution derives its authority "directly from the people; is 'ordained and established' in the name of the people; and is declared to be ordained, 'in order to . . . secure the blessings of liberty to themselves and to their posterity.'" *McCulloch v. Maryland*, 17 US 316, 403–04 (1819); *see also id.* at 405 ("The government of the Union . . . is, emphatically, and truly, a government of the people" that "[i]n form and in substance it emanates from them."). Abraham Lincoln's invocation of government of, by, and for the people was thus an evocative characterization of what was and is in an important sense *the* canonical encapsulation of the American project: In the United States, the citizen is the nation's fundament.

Third, the D.C. Circuit detached the Fourteenth Amendment from its common law moorings and concluded that legislatures have the power to decide who is entitled to citizenship within the United States. It did so even though it recognized that "the doctrine of *jus soli* is an inheritance from the English common law." Pet. App. 7a. It also acknowledged that at common law citizenship extended to any person born in one of the King's territories, that the former colonies continued to look to the common law rule to determine citizenship, and that *Wong Kim Ark* declared that the Fourteenth Amendment

reaffirmed that approach. *Id*. 7a–8a. Nonetheless, it gave dispositive weight to the fact that the American Samoan government and its congressional delegate intervened to argue that the question of citizenship should be decided politically by Congress. *Id*. at 19a–20a. But that ignores the central purpose of the Fourteenth Amendment's Citizenship Clause. By overturning the *Dred Scott* decision, the Fourteenth Amendment required federal courts to enforce the right-of-the-soil doctrine. And by codifying that doctrine in constitutional text, it permanently removed that source of citizenship from the vagaries of legislative judgment. Indeed, because it was supposed to protect the people, the question of the Fourteenth Amendment's meaning is one particularly suited to a judicial answer that the courts must provide.

Fourth, the D.C. Circuit placed heavy reliance on a series of cases, known as the Insular Cases. *See* Pet. App. 11a–18a; *see generally* Samuel C. Erman, *Citizens of Empire: Puerto Rico, Status, and Constitutional Change*, 102 CAL. L. REV. 1181 (2014). In particular, the court below "adopt[ed] the conclusion of Justice Brown's dictum" from his solo opinion in *Downes v. Bidwell*, 182 U.S. 144 (1901), that citizenship might not be guaranteed to the people of the territories. Pet. App. 16a. But the *Downes* Court as a whole took a different tack than Brown's dictum suggests. *Downes* issued no holding on the question of citizenship in the unincorporated territories. When the Court unanimously confronted the question three years later in *Gonzales v. Williams*, 192 U.S. 1, 12 (1904), it expressly reserved the question.

Whatever their merits, the often-criticized Insular Cases are simply—and self-consciously—silent on the application of the Citizenship Clause in the unincorporated territories. In the absence of precedent, the text, structure, purpose, and history provide the relevant interpretive tools. *See, e.g.*, *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 600 (2004). The latter teaches that the right of the soil has always extended to the Nation's utmost borders, even as the rights that residents of outlying territories and colonies enjoyed have varied over time. The Insular Cases thus reflect continuity, not rupture, with respect to the right-of-the-soil doctrine.

The principle overlooked by the court below is that the United States government cannot assert authority over its territories and demand allegiance from individuals born on United States soil without also recognizing that, by definition and common-law tradition, those individuals are entitled to the rights and privileges enjoyed by all citizens of the United States. As this Court explained long ago, "acts of congress . . . cannot exclude" individuals "born in this country from the operation of the broad and clear words of the constitution: 'All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States.'" *Wong Kim Ark,* 169 U.S. at 704.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

APPENDIX A

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APPENDIX A

This Appendix provided *amici's* titles and institutional affiliations for identification purposes only, and not to imply any endorsement of the view expressed herein by *amici's* institutions.

Sam Erman is assistant professor at the University of Southern California Gould School of Law. A scholar of law and history, his research focuses on questions of status and U.S. citizenship in the United States, especially in the years between the Civil War and World War II. His current work examines conflicts over birthright Fourteenth Amendment U.S. citizenship and the invention of the status of the U.S. noncitizen national in the years following the 1898–1899 U.S. annexations of Hawai'i, Puerto Rico, Guam, and the Philippines. He received his J.D. and Ph.D. (American Culture) from the University of Michigan.

Nathan Perl-Rosenthal is assistant professor of early American and Atlantic history at the University of Southern California. His first book, *Citizen Sailors: Becoming American in the Age of Revolution*, shows how the idea of early U.S. citizenship was defined in the crucible of a transnational conflict over mariners' citizenship status. His scholarship on the American revolutionary era and the early Republic has appeared in The American Historical Review and The William and Mary Quarterly, among other publications. He is an Assistant Professor of History at the University of Southern California. He was

educated at Harvard, the Sorbonne, and Columbia University.

Linda Bosniak is Distinguished Professor of Law at Rutgers, The State University of New Jersey. She is the author of *The Citizen and The Alien: Dilemmas of Contemporary Membership* (Princeton University, 2006), and many chapters and articles on immigration, citizenship, nationalism, territoriality, equality and globalization. She is a graduate of Stanford Law School, and completed an M.A. in Latin American Studies at the University of California, Berkeley.

Stella Burch Elias is Associate Professor of Law at the University of Iowa School of Law. She joined the Iowa Law faculty in 2012, after a two-year appointment as a Climenko Fellow and Lecturer on Law at Harvard Law School. She teaches civil procedure, foundations of international law, and immigration law. Her research involves public international and comparative law, with a focus on United States and foreign immigration and nationality laws. She has a J.D. from Yale Law School and a B.A. and M.A. from Oxford University. Following law school, she clerked for Judge Stephen Reinhardt of the United States Court of Appeals for the Ninth Circuit.

Kristin Collins is Professor of Law at Boston University and is currently the Sidley Austin–Robert D. McLean Visiting Professor of Law at Yale Law School. Professor Collins teaches courses in legal history, citizenship law, civil procedure, and federal courts. She is the author of several articles on the history of American citizenship law. Her articles

have appeared in the Yale Law Journal, Duke Law Journal, Law and History Review, the Vanderbilt Law Review, and elsewhere. She received her J.D. from Yale Law School.

Rose Cuison-Villazor is Professor of Law and Martin Luther King, Jr. Hall Research Scholar at the University of California at Davis School of Law. In Spring 2014, Professor Villazor is a Visiting Scholar at the University of California at Berkeley's Center for the Study of Law and Society. Her current research includes the history of "non-citizen national status" and its contemporary implications on citizenship, and the immigration status of guest workers in the Commonwealth of the Northern Mariana Islands and whether they should be granted a path to citizenship. She is co-editor of a forthcoming book, *Asian Americans and Pacific Islanders and the Law,* with Neil Gotanda and Robert Chang (New York Univ. Press 2014). Professor Villazor obtained an LL.M from Columbia Law School in 2006 and a J.D. from the American University Washington College of Law in 2000.

Torrie Hester is Assistant Professor at St. Louis University. Her research includes immigration and region, race and ethnicity, gender and sexuality, as well as law and foreign policy during the late nineteenth and the early twentieth centuries. She received a Ph.D. from the University of Oregon, an M.A. from California State University, Los Angeles, and a B.A. from the University of Victoria.

Linda Kerber is the May Brodbeck Professor in the Liberal Arts and Professor of History Emerita, and Lecturer in the College of Law at the University

of Iowa. In her writing and teaching she has emphasized the history of citizenship, gender, and authority. She served as President of the American Historical Association (2006) and also as President of the Organization of American Historians (1996-97). Her AHA presidential address, "The Stateless as the Citizen's Other: A View from the United States," appeared in the American Historical Review (February 2007) and is the foundation of her current research and writing. Other essays on the subject include "Birthright Citizenship: the Vulnerability and Resilience of an American Constitutional Principle," in Jacqueline Bhabha, ed., Children Without a State: The Scope of Child Statelessness in the 21st Century (MIT Press, 2011). With support from the National Endowment for the Humanities, she is at work on a book provisionally titled Stateless: An American History. Her other books include *No Constitutional Right To Be Ladies: Women and the Obligations of Citizenship* (1998) and *Women of the Republic: Intellect and Ideology in Revolutionary America* (1980). She is an elected member of the American Philosophical Society and the American Academy of Arts and Sciences.

Mary Mitchell is a doctoral candidate in the Department of the History and Sociology of Science at the University of Pennsylvania. Her dissertation is a legal history of American nuclear testing in the Marshall Islands. The project is centrally concerned with the legal history of American territorial statuses in the Pacific and with islanders' rights of participation in American law and politics. She holds a J.D. from Drexel University, an M.A. in history from the University of Pennsylvania, and a B.A. in

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