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UNITED STATES CITIZENSHIP AND NATIVE AMERICANS

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Executive Summary

Recent legal challenges and debates about birthright citizenship have again raised questions regarding Native Americans' citizenship in the United States.¹ This white paper explains and confirms that 102 years ago, Congress resolved the issue of Native American citizenship by establishing that Native Americans born within the United States are citizens. At the same time, they retain distinct identities, cultures, and legal rights as members of sovereign Tribal Nations. American democracy's government of, by, and for the people benefits from Native Americans' diverse perspectives to support accountable and inclusive governance.

The relationship between Native American Tribes and the federal government is complex, characterized by ongoing negotiations and litigation regarding issues such as Tribal sovereignty, land rights, resource management, and the fulfillment of treaty obligations. These interactions are shaped by centuries of political, legal, and cultural challenges. While these challenges affect how Native Americans interact with the federal government, the fundamental question about citizenship is long settled.

The Path to U.S. Citizenship Recognition for Native Americans

Native Americans lived in and governed the lands that are now the United States before European colonization and the subsequent formation of the United States.² After the country was founded, federal authorities began to exert control over Tribal Nations and

¹ E.g. Gregory Ablavsky & Bethany Berger, "*Subject to the Jurisdiction Thereof*": *The Indian Law Context*, 100 N.Y.U. L. REV. ONLINE 201 (2025); Bethany R. Berger, *Birthright Citizenship on Trial: Elk v. Wilkins and United States v. Wong Kim Ark*, 37 CARDOZO L. REV. 1185 (2016); see also National Constitution Center, *On This Day, All American Indians Made United States Citizens* (June 2, 2023), available at <https://constitutioncenter.org/blog/on-this-day-in-1924-all-indians-made-united-states-citizens>.

² See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, ch. 1, at 1 (2024 ed.).

Native peoples through a combination of negotiation and coercion.³ Despite Native Americans' enduring presence, the federal government historically denied Native Americans full rights and recognition.⁴ This denial led to repeated litigation regarding the reach and application of the U.S. Constitution and federal laws to Native Americans.

An example is *Elk v. Wilkins*, 112 U.S. 94 (1884), in which the Supreme Court ruled that an Indian born a member of a Tribe within the United States who severed affiliation with their Tribe was not considered a citizen under the Fourteenth Amendment. John Elk, a Winnebago who left his Tribal community, tried to register to vote in a general election in Omaha, Nebraska, but registrar Charles Wilkins denied him, finding that Elk was an Indian, not a citizen, and therefore was not entitled to vote.⁵ In a 7-2 decision, the Supreme Court held that an Indian cannot become a U.S. citizen simply by renouncing membership in a Tribe and that an act of naturalization was needed to show allegiance to the United States.⁶ Thus, the Court held that Elk was not a citizen by birthright under the Fourteenth Amendment.⁷

Over time, Congress responded to the Supreme Court's *Elk* decision by granting citizenship to Native Americans through various ad hoc measures, such as treaties and acts of Congress. For example, in 1901, Congress granted citizenship to Native Americans through the General Allotment Act.⁸ In 1888, Congress granted citizenship to Native women who married U.S. citizens.⁹ Congress later awarded citizenship to Native Americans who served in the military or at naval establishments during World War I.¹⁰ Despite these selective avenues to citizenship, some Native Americans remained non-citizens into the early twentieth century. Estimates at that time reflected that approximately two-thirds of Native

³ *Id.*

⁴ See Charles F. Wilkinson, *BLOOD STRUGGLE: THE RISE OF MODERN INDIAN NATIONS* (2005); Laurence H. Tribe, *AMERICAN CONSTITUTIONAL LAW* (2d ed. 1988); Walter R. Echo-Hawk, *IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED* (2010); Felix S. Cohen, *The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy*, 62 *YALE L.J.* 348 (1953).

⁵ 112 U.S. at 95-96.

⁶ *Id.* at 99-102.

⁷ *Id.* at 109.

⁸ See General Allotment Act of 1887, ch. 119, § 6, 24 Stat. 388, 390 (codified as amended at 25 U.S.C. § 349) (“[E]very Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act . . . and every Indian born within the territorial limits of the United States who has voluntarily taken up . . . his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens.”).

⁹ See Act of Aug. 9, 1888, 25 Stat. 392 (1888).

¹⁰ See Act of Nov. 6, 1919, ch. 95, 41 Stat. 350 (1919).

Americans were already citizens.¹¹ Congress specifically noted “that as a large number of other Indians had become citizens under various acts of Congress, it was only just and fair that all Indians be declared citizens.”¹²

To address this disparity, on January 29, 1924, Representative Homer P. Snyder of New York sponsored H.R. 6355. Congress enacted the resulting legislation, the Indian Citizenship Act, several months later.¹³

The Indian Citizenship Act of 1924 specifically provided:

That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.¹⁴

President Calvin Coolidge signed the Indian Citizenship Act on June 2, 1924, granting citizenship to all Native Americans born within U.S. territorial limits who had not previously acquired it.

In 1940, Congress enacted the Nationality Act to—for the first time—provide a unified framework for naturalization and citizenship in the United States.¹⁵ The Indian Citizenship Act gave citizenship to “all non-citizen Indians born within the territorial limits of the United States,” but there was some speculation as to whether this applied to the children of Native

¹¹ See COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 17.01[3], at 1051 n.56 (2024 ed.).

¹² To Authorize the Secretary of the Interior to Issue Certificates of Citizenship to Indians, S. Rep. No. 68-441 (1924).

¹³ “From the available evidence, the Indian Citizenship Act seems to have been formed in the United States Senate Committee on Indian Affairs as regulatory legislation by Progressives who thought that through such an act Indians would enjoy the rights and privileges of American citizens while being protected in their new rights from the rapacity of unscrupulous politicians.” Gary C. Stein, *The Indian Citizenship Act of 1924*, NEW MEXICO HISTORICAL REVIEW, 47, 3, at 269 (2021). There is evidence that some Tribal members were opposed to the act. “[F]ew of the Indian reformers actually endorsed the [Indian Citizenship] Act.” *Id.* at 258; see also COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 17.01[3], at 1051 n.57 (2024 ed.); Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples*, 15 HARV. BLACKLETTER L.J. 107 (1999); Kevin Bruyneel, *Challenging American Boundaries: Indigenous People and the ‘Gift’ of U.S. Citizenship*, STUDIES IN AMERICAN POLITICAL DEVELOPMENT, Vol. 18, Issue 1, 30-43 (April 2004) (detailing that the U.S. government knew that the Iroquois were opposed to Indians in New York being made citizens of the United States).

¹⁴ Indian Citizenship Act of 1924, Pub. L. No. 68-175, ch. 233, 43 Stat. 253 (1924).

¹⁵ Nationality Act of 1940, ch. 876, 54 Stat. 1137, 1138 (1940) (codified as amended at 8 U.S.C. § 1401(b)).

Americans subsequently born within the territorial limits of the United States, whether or not their parents were living in Tribes.¹⁶

The section of the Nationality Act related to Native American citizenship provided:

The following shall be nationals and citizens of the United States at birth:

(b) a person born in the United States born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property.¹⁷

This provision replaced and expanded upon the original Indian Citizenship Act of 1924 by explicitly listing all categories of people who are U.S. citizens, including Native Americans and other Indigenous peoples, and making it clear that Native Americans who became citizens also passed citizenship to their children. The 1940 Act incorporated Native American citizenship into the broader framework of nationality law.

The Supreme Court later confirmed that Native Americans are citizens of the state where they reside.¹⁸ Native Americans may also be citizens of their respective Tribal Nation. Tribal citizenship is determined by each Tribe's own laws and criteria.¹⁹ As a result, a Native American may be a citizen of the United States, their state, and their Tribe at the same time.

Conclusion

Native American membership in sovereign Tribal governments has, in times past, been challenged as inconsistent with American citizenship. Congress sought to change that by naturalizing a number of Native Americans and eventually providing that all Native Americans born in the United States are American citizens, even if they are also citizens of sovereign Tribes. Some Native Americans believed this unilateral move to be

¹⁶ *A Bill to Revise and Codify the Nat'y Laws of the U.S. into a Comprehensive Nat'y Code: Hearings on H.R. 6127 and H.R. 9980, Before the H. Comm. on Immigr. and Naturalization*, 76th Cong. 419-420 (1940) (Comparative Print of the Text of the Proposed & Present Nationality Laws, Pt. 2, Provisions of the Proposed Code and the Corresponding Provisions of the Existing Nationality Laws.).

¹⁷ Nationality Act of 1940, ch. 876, 54 Stat. 1137, 1138 (1940) (codified as amended at 8 U.S.C. § 1401(b)).

¹⁸ See *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 n.10 (1987) ("In 1924, Congress declared that all Indians born in the United States are United States citizens, see Act of June 2, 1924, ch. 233, 43 Stat. 253, now codified at 8 U.S.C. §1401, and, therefore, under the Fourteenth Amendment, Indians are citizens of the States in which they reside.").

¹⁹ See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62-63 (1978) (tribes possess authority to define their own membership and govern internal matters).

assimilationist and opposed it. Others thought that it was a matter of justice and that citizenship should never have been denied them.

Today, it is clear under the law that Native Americans born in the United States are U.S. citizens, citizens of the state in which they were born or are domiciled, and may also be citizens of their Tribes. American citizenship allows Native Americans, a portion of whom live in poverty, to access federal and state programs, like all American citizens, and their Tribal citizenship gives them access to programs and services that the United States owes to Tribes and Native people under the federal government's treaty and trust responsibilities.²⁰ Some of those services, and the continuing sovereignty of Native American tribes, help Native Americans retain distinct cultures, identities, and legal rights.

In summary, Native Americans born within the United States possess citizenship with the same rights and responsibilities as other Americans. While a few questions remain complex, the fundamental issue of U.S. citizenship has been resolved.²¹

²⁰ For discussion of these issues, see U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (2018).

²¹ Native Americans have historically encountered obstacles to exercising full citizenship rights, including discrimination, barriers to voting, and the systemic dilution of their votes in state elections. See COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, §§ 17.02[1], at 1053 n.1 & 17.02[b], at 1057 (2024 ed.). These barriers have been gradually reduced through advocacy, legislative reforms, and legal challenges. *Id.*