

Dual Nationality for Mexicans

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I. INTRODUCTION

In 1995, the government of Mexico began seriously to consider amending its Constitution to allow for dual nationality, whereby a Mexican could be recognized as holding two nationalities at the same time. Legally, the concept prohibits Mexican nationals from voluntarily abandoning their nationality, even if they opt to become naturalized citizens of another country. Two questions arise as one considers dual nationality in Mexico. First, what has really influenced the philosophical change in Mexico regarding dual nationality? Second, why has Mexico started considering dual nationality now?

A. *Traditional Attitude Toward Mexican Americans*

For decades, Mexico adopted a somewhat cool and distant attitude toward Mexican Americans in this country.¹ Politically, Mexico did not even appear interested in officially acknowledging the presence of growing communities of Mexican immigrants in specific parts of the United States. It is difficult to advance an explanation for this prolonged

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1. In a recent interview, Raul Izaguirre, President of the National Council of La Raza, said: "For many years, there was an aversion by Mexico to deal with our community. Now they realize we represent a long-term interest." Alfredo Corchado, *Mexicans Study Dual Citizenship: Implications of Idea Intriguing to Many*, DALLAS MORNING NEWS, July 5, 1995, at 1A.

official disdain. It may be argued that Mexican government officials simply reflected the popular sentiment shared by most Mexicans—that those co-nationals who immigrated to the United States had turned their backs on their mother country, renouncing its rich history, values and admirable culture. Simply put, they were “Chaqueteros”(traitors) in Mexican terms.² They were no longer considered Mexicans and, in any event, were living in a foreign and wealthy nation. Accordingly, it was not worth keeping contact with them.

Mexican Americans had their own explanation for this official abandonment. They probably reasoned that Mexico, as a country, was too weak to confront the United States. Knowing that the bilateral relations between the United States and Mexico had traditionally been peppered not only with conflict but also with serious and constant problems, no additional friction was warranted. In response to this treatment by their government, Mexican Americans tended to complain bitterly about the arbitrary and illegal exactions they were charged when entering Mexico to visit relatives.³ Emotionally, Mexican Americans felt abused and discriminated against by Mexican authorities.

B. Gradual Change

In the early 1970s, President Luis Echeverria’s administration gradually began to change the situation. For the first time in the political history of Mexico, President Echeverria invited a number of Mexican American groups to “*Los Pinos*” (the Mexican presidential house) to discuss their problems and interests as a special community of Mexican immigrants in the United States.⁴

Later, President Carlos Salinas de Gortari (1988-1994) created a special and politically important program titled: “Program for the Mexican Communities Abroad”.⁵ This program was placed with the Secretary of Foreign Affairs (*Secretaria de Relaciones Exteriores* or SRE), to maintain contact with and cultivate a relationship with the communities of Mexican Americans in the United States. The official

2. Some of these feelings affect the Mexican immigrants in the United States even today. Describing her emotions when applying for her U.S. citizenship, a Mexican immigrant in Dallas, Texas, said: “You feel your heart tearing apart. . . . You feel as though you’re spitting at the mother-land and stepping on the flag.” *Id.*

3. These illegal exactions are known as “Mordidas” or bribes and are generally demanded by “Celadores” (Customs agents) and then by traffic agents and policemen.

4. See CENTRO DE ESTUDIOS ECONOMICOS Y SOCIALES DEL TERCER MUNDO, A.C., INSTITUTO DE INVESTIGACIONES ESTETICAS U.N.A.M., *A TRAVES DE LA FRONTERA* (1983). This book contains 24 contributions by Mexican and Mexican-American authors on U.S.-Mexico binational cultural, socio-economic, and historical questions.

5. See ANDRÉS ROZENTAL, *LA POLÍTICA EXTERIOR DE MÉXICO EN LA ERA DE MODERNIDAD* 124-131 (1993).

objectives were a significant step toward recognition of Mexican Americans:

- To improve the links with the Mexican population and with [the population] of Mexican origin that resides in the United States, through the development of specific programs of interest and mutual benefit;
- To promote in Mexico an improved image of Mexican Americans through an adequate dissemination of their struggles and accomplishments, and to foster the awareness and respect for their cultural manifestations; and
- To foster among Mexican communities abroad a better understanding of the national reality [of Mexico].⁶

This aggressive strategy was enhanced by the creation of sixteen Mexican Cultural Institutes and Centers;⁷ a promotional campaign in favor of the North American Free Trade Agreement (NAFTA);⁸ a considerable increase in the number of Mexican Consulates;⁹ the development of a special program to provide legal and diplomatic protection to Mexican migratory workers, both documented and undocumented; and the publication of *La Paloma*,¹⁰ a bilingual newsletter. These developments are all signs that the Mexican government has completed a dramatic change toward Mexican Americans.

C. Other Influences Aside From the Government's Gradual Change

So why did Mexico wait until 1995 to express its support of the proposal of dual nationality? There are numerous reasons, but three specific areas were major influences toward the Mexican government's decision to promote dual nationality: (1) the passage of Proposition 187

6. *Id.* at 127.

7. Headed by a Mexican Consul, who serves as the Honorary President of the Board of Directors, these institutes and centers operate in Atlanta, Brownsville, Chicago, Dallas, Denver, El Paso, Houston, Los Angeles, Miami, New York, Phoenix, San Francisco, Sacramento and Washington, D.C. *Id.* at 128.

8. Undoubtedly, NAFTA is among the major accomplishments of President Salinas' foreign affairs. For a most laudatory review of this PRI accomplishment, see *id.* at 58-66.

9. Currently, there are 40 Mexican Consulates in the United States. See Andrew Glass, *The Bill and Ernesto Show*, ATLANTA J.-CONST., Oct. 2, 1995, at A9.

10. LA PALOMA newsletter serves as the disseminating organ for the Program of Mexican Communities Abroad.

in California; (2) the North American Free Trade Agreement; and (3) the legal repercussions of the Immigration Reform Control Act of 1986.

1. Proposition 187

Anti-immigration sentiment has been on the increase around the United States. California representatives alone have written and submitted 107 legislative bills to the U.S. Congress on an assortment of immigration law questions.¹¹ Out of this trend came Proposition 187,¹² which was approved by the California electorate in November of 1994.¹³ Specifically, Proposition 187 has four requirements for all public entities when a person is "determined or reasonably suspected" of being unlawfully present in the United States. The proposition provides that public entities are required: (1) not to provide the person with benefits or services; (2) to instruct the person to "obtain legal status or leave the United States"; (3) to notify the Attorney General of California and the INS of the suspected person, and (4) to provide information obtained about each person to "any other public entity" requesting it.¹⁴

The proposition added numerous sections to several California Codes.¹⁵ In general, the main objective of this legislation is to deny public social services, including health, medical, economic, and educational services to applicants and existing recipients suspected of being unlawfully present in the United States.¹⁶ For instance, the

11. The content of these 107 bills range from English as the official language; moratorium on immigration by aliens; the use of Department of Defense personnel to assist the INS and the U.S. Customs Service; amendment of the Immigration and Nationality Act; streamlining deportation of criminal aliens; membership of the U.S. commission on Immigration Reform; increased enforcement of the employer sanctions; modification or elimination of Federal reporting requirements.

12. Proposition 187 was enacted as an initiative statute on November 8, 1994. Its purpose is to regulate immigration into the United States and "to establish a system of [sic] require notification . . . to prevent illegal aliens in the United States from receiving benefits or public services in the State of California . . ." Minty Siu Chung, *Proposition 187: A Beginner's Tour Through A Recurring Nightmare*, 1 U.C. DAVIS J. INT'L L. & POL'Y 267 (1995). Pursuant to the Constitution of California, Art. II, Section 8, the people of California exercise legislative power when enacting initiative statutes, and Barbara Nesbet & Sherilyn K. Sellgren, *California's Proposition 187: A Painful History Repeats Itself*, 1 U.C. DAVIS J. INT'L L. & POL'Y 153 (1995). Upon passage, Proposition 187 became an official act of the State of California. Because of a number of constitutional challenges in federal court, Proposition 187 has not been implemented.

13. For an analysis of this legislation, see the Chung & Nesbet & Sellgren articles, *supra* note 12.

14. CAL. WELF. & INST. CODE § 10001.5 (West Supp. 1998).

15. CAL. PENAL CODE §§ 113, 114, 834b (West Supp. 1998); CAL. WELF. & INST. CODE §§ 10001.5 (West Supp. 1998); CAL. HEALTH & SAFETY CODE § 130 (West Supp. 1998); CAL. EDUC. CODE §§ 48215, 66010.8 (West Supp. 1998); CAL. GOV'T CODE § 53069.65 (West 1997).

16. For discussion of the impact on education, health care, and social services, see

sections added to the Education Code prohibit public elementary and secondary schools—as well as public post-secondary educational institutions—from admitting children or permitting the attendance of suspected persons who do not meet the state's citizenship and immigration standards as provided by the new legislation.¹⁷

Clearly, the perception of the Mexican government was that this legislation would have imposed severe hardships on many Mexican nationals in California, irrespective of whether they were undocumented immigrants. The Mexican government believed that such severe hardship to the Mexicans in the United States would translate into *de facto* violations of their rights in the areas of constitutional law, civil law, immigration law, and human rights. Furthermore, the Mexican government believed it was likely that this kind of anti-immigrant legislation would have been followed by other states in the United States. However, the constitutionality of Proposition 187 is questionable and a federal district court has enjoined its enforcement.¹⁸

The devastating implications of this legislation become more evident when it is considered that, according to the report of the Census Bureau,¹⁹ California is the home of 7.7 million foreign-born persons—more than one-third of all immigrants in the United States and nearly one-quarter of all California residents. New York ranks second with 2.9 million foreign-born persons and Florida has about 2.1 million. Texas, Illinois, and New Jersey each have more than one million foreign-born residents.²⁰ The 1995 U.S. Census Bureau Report made no distinction between legal and illegal immigrants, however, the INS estimates that about four million illegal immigrants reside permanently in the United States.²¹

Chung, *supra* note 12, at 285-293.

17. CAL. EDUC. CODE §§ 48215, 66010.8 (West Supp. 1998).

18. *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995).

19. See Kristin A. Hansen & Amara Bachu, *The Foreign-Born Population: 1994*, CURRENT POPULATION REPORTS P20-486, Aug. 1995, at 1.

20. *Id.*

21. Spencer Rich, *20-Year Surge Puts U.S. Foreign-Born at Postwar High*, INT'L HERALD TRIB., Aug. 30, 1995, at 3. Some sources place the illegal entrants in the United States at 5.4 million. See *Immigrant Residents Set Record*, CHARLESTON GAZETTE, Aug. 29, 1995, at 8A.

2. *The North American Free Trade Agreement*

The North American Free Trade Agreement (NAFTA), in force among Canada, Mexico, and the United States since 1994,²² probably offers the most viable and permanent trilateral mechanism to elaborate and gradually strengthen the debilitated Mexican economy today. International investors are needed in Mexico to assist in the process of economic recovery. Considering U.S. investments represent over 60% of the total foreign investment in Mexico, perhaps Mexico decided to promote the idea of dual nationality to persuade Mexican Americans to finance joint ventures with their Mexican counterparts in Mexico.

The new Foreign Investment Act of 1993 allows foreign investors, contrary to the legal tradition of Mexico since the enactment of its Constitution in 1917, to have direct ownership of real estate properties in Mexico's "Restricted Zone" when used for commercial or industrial purposes.²³ The provision should appear to be incentive enough to Mexican immigrants in the United States to induce them to invest in these kinds of projects, with the added benefit of having no adverse legal consequences should they become U.S. citizens by naturalization. Likewise, Mexican immigrants in the United States, and U.S. naturalized citizens of Mexican origin, may also be able to take advantage of the visa privileges NAFTA created in favor of business people or investors.

3. *Legal Repercussions of the Immigration Reform and Control Act of 1986*

The Immigration Reform and Control Act (IRCA) of 1986 was enacted to provide a legal avenue to illegal immigrants physically present in this country to become lawful permanent residents by complying with a number of specific statutory requirements. This was known as the "Legalization Program,"²⁴ also referred to as the "Amnesty Program." As a result of IRCA, approximately 1.8 million illegal immigrants applied for temporary resident alien status.²⁵ The INS approved 97.5% of those applications.²⁶ Out of this total, some 82% of

22. See Jorge A. Vargas, *NAFTA, The Chiapas Rebellion, and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L. REV. 1 (1994).

23. See Mexico's *Foreign Investment Act*, 1 MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS & INTERNATIONAL INVESTORS 108 (Jorge A. Vargas ed. 1998).

24. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (codified in scattered sections of U.S.C.) [hereinafter IRCA].

25. See U.S. DEPT. OF JUSTICE, INS FACT BOOK: SUMMARY OF RECENT IMMIGRATION DATA, tbl. I (1993) [hereinafter INS FACT BOOK].

26. See Francesco Isgro, *Administrative and Judicial Review of Denials of Temporary Resident Status*, 2 GEO. IMMIGR. L.J. 473, 473 & n. 1 (1988).

the submitted applications, roughly one million, were submitted by Mexican nationals.²⁷

According to IRCA, immigrants who received "temporary resident status" (TRS) had to apply for "permanent resident status" (PRS) within approximately three and a half years after attaining TRS,²⁸ in conformance with the second stage of the legalization program. To change from TRS to PRS, IRCA provided that "the applicant demonstrate basic citizenship skills,"²⁹ which are defined by section 312 of the Immigration and Nationality Act (INA). The applicant was also required to demonstrate an understanding of the history and government of the United States.³⁰

Since the last day to apply for TRS was May 4, 1988, and because the INS adjudicated most applications promptly, the last immigrants to receive TRS had to apply for PRS between November 1989 and November 1991. Accordingly, by January of 1991, a maximum of one million Mexican nationals became lawful permanent residents of the United States. The INA provides that lawful permanent residents become eligible for U.S. naturalization by petition if they can prove that "immediately preceding the date of filing his application for naturalization [the immigrant] has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years within the United States. . . ."³¹ Between November 1994 and November 1996, a large number of lawful permanent residents of Mexican origin completed the five-year residence requirement for naturalization.

II. MISCONCEPTIONS

A. *First Misconception: Dual Nationality Is New*

It is important to clear up some misconceptions, having focused on a

27. See INS FACT BOOK, *supra* note 25, at tbl. I.

28. See Immigration and Nationality Act § 316(a), 8 U.S.C. § 1427 (1994). This section governs the second phase of the program. The statute originally provided only a one-year window in which to file second-phase applications. INA 703(a)(1), extended the deadline by another year. *Id.*

29. 42 U.S.C. § 1423 (1994).

30. See Immigration & Nationality Act § 312. For further information, see also THE NEW SIMPSON-RODINO IMMIGRATION LAW OF 1986 (Stanley Mailman ed., 1986).

31. 8 U.S.C. § 1427.

few of the influences on Mexico's dual nationality legislation. The first misconception to point out is that many people may believe dual nationality is a new concept. However, there are thirty-seven countries in the world today that allow their respective nationals to possess dual nationality.³² Because each country is sovereign under international law to determine its own nationality questions, the existence and modalities of dual nationality depend directly upon the domestic legislation of each country.³³

A few examples should suffice. A foreign national who naturalizes in Great Britain does not have to renounce his or her former nationality.³⁴ Conversely, an English national may freely adopt a second nationality without losing his or her original British nationality. Moreover, unlike the contemplated change by Mexico to limit the application of *Jus sanguinis* only to the first generations of foreign-born children, Britain allows dual nationality by simply registering them at the U.K. consulate and declaring where the birth took place.³⁵

A Swiss citizen does not lose citizenship by voluntarily acquiring a second nationality.³⁶ The French approach is slightly different. French law does not oppose the voluntary acquisition of a second nationality by French citizens.³⁷ Canadian legislation adopts a similar approach to the British and Swiss statutes, allowing a Canadian national to remain a dual national or to renounce Canadian citizenship upon acquisition of a second nationality.³⁸

B. *Second Misconception: No Dual Nationality Under U.S. Immigration Law*

The second misconception is that the United States does not accept

32. In Latin America, for example, this is the case of 1) Argentina; 2) Costa Rica; 3) Chile; 4) Dominican Republic; 5) Ecuador; 6) El Salvador; 7) Guatemala; 8) Nicaragua; 9) Panama; 10) Paraguay; 11) Peru; and , 12) Uruguay. In Europe; 13) France; 14) Germany; 15) Italy; 16) Spain; 17) Switzerland, 18) United Kingdom and Northern Ireland, etc. See A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1983).

33. See *id.*

34. British Nationality and Status of Aliens Act of 1943, 6 & 7 Geo. 6, ch. 14 (Eng.); see also Nissim Bar-Yacov, DUAL NATIONALITY 15 (1961).

35. Theresa Keelaghan-Silvestre, *Dual Nationality & the Problem of Expatriation*, 6 U.S.F. LAW REV. 291, 296 (1982).

36. *Id.*; see also 2 C. HYDE, INTERNATIONAL LAW 1148 (2d rev. ed. 1947).

37. FRENCH NATIONALITY CODE, art. 91; see BAR-YACOV, *supra* note 36, at 200.

38. Citizenship Act of Canada of 1976, 23-25 Eliz. 2, ch. 108 (Eng.); see also A. MUTHARIKA, 2 THE REGULATION OF STATELESSNESS UNDER INTERNATIONAL AND NATIONAL LAW §§ 3, 19, 27 (1980).

dual nationality. In *Sadat v. Mertes*,³⁹ the U.S. government was clear in asserting that it accepts dual nationality. In a letter from the U.S. State Department, the Secretary said:

The United States does not recognize officially, or approve of dual nationality. However, it does accept the fact that some United States citizens may possess another nationality as the result of separate conflicting laws of other countries. Each sovereign state has the right inherent in its sovereignty to determine who shall be its citizens and what laws will govern them.

Thus, based on this decision, the U.S. policy appears to ignore the existence of dual nationality when it occurs as a consequence of an involuntary acquisition of a second nationality, thereby allowing U.S. citizens possessing dual nationality to remain Americans.⁴¹ However, the flip side of this policy is for the U.S. government to declare voluntary acquisition of another nationality an expatriation.⁴²

Under this U.S. policy, a Mexican immigrant who becomes a U.S. citizen by a voluntary act of naturalization should not be affected at all by Mexican legislation declaring that he or she continues to possess the Mexican nationality. The rationale for this outcome would be based on the fact that the attribution of the Mexican nationality constitutes an involuntary act, separate and independent of the voluntary intention of the Mexican immigrant to become an American citizen by naturalization.

C. Third Misconception: Mexicans Will Freely Abandon Their Nationality

The third misconception worth addressing is that Mexicans will easily abandon their nationality. Mexicans are very proud of their culture and traditions, and they especially love their beautiful country. Accordingly, Mexicans tend to remain Mexican wherever they are.

Lawful immigrants from countries other than Mexico show, in general, markedly different inclinations to naturalize. For example, Asians appear to be willing to naturalize, as soon as they become eligible, whereas Mexicans and Canadians are less likely to do so.

39. 615 F.2d 1176 (7th Cir. 1980).

40. *Id.* at 1184.

41. See Lester B. Orfield, *The Legal Effects of Dual Nationality*, 17 GEO. WASH. L. REV. 427 (1949).

42. See David S. Gordon, *Dual Nationality and the United States Citizen*, 102 MIL. L. REV. 181 (1983).

Compare the data compiled by the INS⁴³ of aliens who were admitted as immigrants from 1970 to 1979: 17.4% from Mexico; 65.1% from the Philippines; 60.1% from Korea; 66.5% from China; 56.0% from India; 88.9% from Vietnam; 27.7% from the Dominican Republic; 23.1% from the United Kingdom; and 15.4% from Canada. These statistics clearly suggest that Mexicans and Canadians, contrary to Asian and foreign nations from other regions, take the longest and are the most reticent to become U.S. citizens by naturalization.

It is suggested that Mexicans are not as willing to naturalize because they are very proud people who love their country. In recent interviews with Mexican immigrants exploring whether they would consider applying for U.S. citizenship in light of Proposition 187, some of the answers were: "Never. I was born in Mexico, raised in Mexico, and I want to die in Mexico."; "Giving up my Mexican citizenship is like giving up a child of mine. It's not easy."; and "It's as though I'm betraying my country, my people and my culture."⁴⁴

However, nationals of any given country are likely to be proud of and emotionally attached to their country, regardless of that country's place in history or in contemporary affairs. Nationals of countries whose historical and cultural accomplishments have gained universal recognition and admiration (e.g., nationals from China and India) are quite ready to become U.S. citizens by naturalization regardless of their emotional ties to their country of origin. Rather than cultural or universal prominence, geographical contiguity may be a more decisive factor in deciding to obtain citizenship for certain countries such as Canada and Mexico.

Geographically situated in a nation which is immediately adjacent to the United States, it is relatively easy for Mexican and Canadian immigrants to move back and forth between their country of origin and their country of residence. The sentimental reasons may be there, but practical considerations tend to ameliorate them. If, from time to time, there is an uncontrollable urge for a direct emotional contact with the country of their origin, the solution may simply consist of a short visit, carefully planned so as not to lose their lawful permanent residence privileges. Those immigrants from countries which are not geographically connected to the United States do not have the luxury of easy access to the country of their birth and therefore, may be more willing to ignore their emotional ties to that country.

43. See U.S. DEPT. OF JUSTICE, 1989 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE xi (1990).

44. Alfredo Corchado & Kendall Anderson, *Mexicans' Interest in Citizenship Up: Proposition 187 Prompts Increase, INS Officials Say*, DALLAS MORNING NEWS, Dec. 1, 1994, at 27A.

Moreover, given the large numbers of Mexican immigrants that reside in certain areas of the United States, what may have been an emotional need in years past—to listen to *Mariachi* music, to eat tacos *con guacamole*, to watch a Mexican *telenovela*, or simply to speak Spanish—may no longer be a problem. The large Mexican and Mexican American population in the United States aids in reducing much of the emotional need of these immigrants. According to a recent report of the U.S. Census Bureau:

Of the 22,568,000 foreign-born persons living in the United States in March of 1994, 6.2 million came from Mexico. Mexico was by far the country of origin with the largest number of immigrants. The next largest group was from the Philippines. . . . Of the 4.5 million most recent immigrants, over (1.3 million) came from Mexico and an additional 243,000 came from Russia. . . . During the 1980's, the largest numbers of immigrants came from Mexico(2,671,000) and the Philippines (424,000). . . . Prior to 1970, Mexico was still the most frequent country of origin (768,000). . . . About 31 percent of foreign-born population in the United States are naturalized citizens. . . . Although 38.5 percent of the persons of Hispanic origin in this country are foreign-born and most have lived in the U.S. long enough to qualify for naturalization, only 18.3 percent are naturalized citizens. . . . Foreign-born persons who are not citizens have the highest unemployment rate (10.7 percent). . . . Recent immigrants are more likely to receive public assistance income than natives (5.7 percent versus 2.9 percent). . . . The foreign-born are 1.6 times more likely to be in poverty than natives (22.9 versus 14.4 percent).⁴⁵ And recent immigrants are over twice as likely to be in poverty (37.1 percent).

In essence, immigration law specialists agree that the legal differences between permanent residents and U.S. citizens are not that drastic, except in the areas of political rights and certain employment opportunities. Therefore, unless there is an imperative reason effectively pushing Mexican immigrants to naturalize, their current status as lawful permanent residents of the United States, able to travel freely to Mexico when needed or desired, may be the best of both worlds. According to the INS, foreign nationals who are lawful permanent residents in the United States are not legally obligated to become U.S. citizens by naturalization.

For Mexican immigrants in this country, citizenship appears to be a somewhat paradoxical notion they prefer to treasure for sentimental reasons. This notion of sentimental citizenship may be described as a genuine telluric feeling of attachment to Mexico for historical and cultural reasons. Lawful permanent residence in the United States has

45. HANSEN & BACHU, *supra* note 19, at 1-3.

generally taken care of these more pragmatic necessities. Only when these pragmatic necessities are at stake in the United States is the sentimental notion of citizenship to be substituted by a more pragmatic one; namely, to maintain legal rights by becoming a naturalized U.S. citizen. This may constitute a transition for permanent residence from sentiment to reality.

D. Fourth Misconception: A Legal Resident Cannot be Deported

The final misconception is that once an individual has attained legal resident status, he or she cannot be deported. To the contrary, any legal resident who commits a crime of moral turpitude can be deported, whereas a similarly situated immigrant who has naturalized will not be deported.

Having addressed a few of the misconceived perceptions relating to Mexico's adoption of dual nationality—namely, that it is not a new concept, that the United States accepts other countries' laws which allow dual nationality, that immigrants from Mexico tend to remain legal residents, and that deportation is possible for legal residents—it is now time to decipher some of the legal ramifications.

III. MAJOR LEGAL EFFECTS

Mexican supporters of the dual nationality proposal have been advancing arguments—in both Mexico and the United States—that its passage would eliminate some legal deprivations Mexican immigrants could suffer when they become U.S. citizens by naturalization. The precise legal contour of these effects would largely depend upon two considerations. The first consideration is the legal substance or content of the kind of "nationality" to be formulated or designed by the Mexican government. It should be evident that a person who has dual nationality cannot legally exercise both nationalities simultaneously to their fullest extent. One nationality tends to prevail over the other. The second consideration is the extent to which waivers or legal exceptions would be granted in the pertinent domestic legislation to the beneficiaries of this change of policy (i.e., the Mexican immigrants in the United States who are to become naturalized U.S. citizens without having to lose their Mexican nationality).

From a general Mexican law viewpoint, the major legal consequences affecting Mexican immigrants who have become U.S. citizens by naturalization may be grouped into three categories: property rights, political rights, and special occupational rights.

A. *Property Rights in Mexico and U.S. Citizens*

Hypothetically, what would happen to Mexican immigrants in the United States who own property in the Mexican Restricted Zone, and then become U.S. citizens by naturalization today? On this precise question, Article 24 of the 1993 Nationality Act provides that "[t]he assets in the [Mexican] national territory owned by Mexicans by birth who lose their Mexican nationality, should suffer no adverse effects for such a loss [of nationality]."⁴⁶

Pursuant to this provision of the current Nationality Act of 1993, no legal deprivations are intended for those Mexican immigrants who lawfully reside in this country and who finally decide to take the steps to become U.S. citizens by naturalization. It is rather strange that the content of this provision has not been addressed by the PRI politicians or by other government officials holding diplomatic or consular posts in the United States when they comment on the dual nationality proposal.

On the contrary, instead of advancing the content of the current Mexican law on this question, which legally protects the economic rights of former Mexicans after they have changed their nationality by voluntary naturalization, these politicians chose to play on the mistaken "fears" of these immigrants by implying that the government of Mexico is not only entitled to, but is ready and willing to, seize their assets and other economic rights in Mexico if they become U.S. naturalized citizens.⁴⁷ An official act of this nature would be in flagrant violation of Articles 14 and 16 of the Mexican Constitution, as well as other internationally-recognized principles of international law on naturalization or expropriation.⁴⁸

Furthermore, Mexican law provides several legal avenues the new U.S. citizens may utilize to change the legal status of their Mexican property without resulting in any economic detriment. For instance, they may consider the following: entering into a *Fideicomiso contract* if the property in Mexico is for residential use and within the Restricted

46. See D.O., 21 de junio de 1993, art. 24, at 11.

47. See Arthur Golden, *Mexico Encourages U.S. Citizenship: Constitutional Change Would Let its People Keep Nationality, Rights*, SAN DIEGO UNION-TRIB., July 1, 1995, at A-1.

48. Under Mexican law no expropriation can take place without proper, opportune, and adequate compensation, as provided by Article 27 of the Mexican Constitution. To act contrary to this provision would be in flagrant violation of the constitutional rights enunciated in Articles 14 and 16 of same Constitution in favor of both Mexican nationals and foreigners, including U.S. citizens. MEX. CONST. arts 14, 16 & 27.

Zone; doing nothing if the property is devoted to a commercial or industrial use or is outside the Restricted Zone; transferring it to a Mexican relative; or selling it to a Mexican national.

Another concern that has detained Mexican immigrants from becoming naturalized U.S. citizens is the fear of losing the collective property rights that some of them might have in a rural "ejido." With the recent amendment of Article 27 of the Constitution,⁴⁹ the legal tenets of the "ejido" have drastically changed.⁵⁰ Today, "ejidatarios" may have specific individual, as well as collective, property rights. Moreover, they may enter into any kind of contract of association or production, even with foreign investors, for a duration of thirty years (with a renewable period of an additional thirty years).⁵¹

B. *Political Rights in Mexico*

A U.S. citizen by naturalization is not allowed to vote in Mexico, just as it is prohibited for a Mexican citizen to vote in the United States. The full panoply of political rights of a U.S. citizen (by birth or by naturalization) are to be exercised only in the United States. Such a right corresponds exclusively to the citizens of a given country, and is closely associated with nationality, residence, domicile, age, and other considerations reflected in the pertinent domestic legislation.⁵²

C. *Special Occupational Rights*

Security considerations, or historical reasons, have imposed limitations on certain kinds of occupations that can be held by Mexican citizens only. For example, only Mexicans by birth may belong to the Mexican Army, Navy, Air Force, or hold office as Federal representatives, Senators, the President of the Republic, Justices of the Supreme Court of the Nation or State governors.⁵³ Similar limitations apply to Mexican nationals in this country. It is virtually impossible to determine accurately to what extent, if any, these or other legal considerations have adversely influenced the decision of eligible

49. See D.O., 3 de enero de 1992. The new paragraph IV of Article 27 provides: "Commercial corporations [with foreign participation] may own in property rural lands." MEX. CONST. art. 27.

50. For a legal analysis of this constitutional change, see Jorge A. Vargas, *A Closer Look into Mexico's Legal Revolution: An Appraisal of Its Recent Constitutional Changes, 1988-1995*, 25 GA. J. INT'L & COMP. L. 497, 528-538 (1996).

51. See "Ley Agraria," D.O., 26 de febrero de 1992.

52. See U.S. CONST. amend. XXVI; MEX. CONST. art. 35, p. I and II.

53. LEONEL PEREZNIETO CASTRO, *DERECHO INTERNACIONAL PRIVADO* 43 (1995) [hereinafter PEREZNIETO CASTRO].

Mexican immigrants in the United States to become U.S. citizens by naturalization, as legal questions may seem to be of relatively little importance to many of these immigrants.⁵⁴

D. Mexico's Political Interest

The final point to discuss before getting into the law itself is the large numbers of Latinos who permanently reside in the United States who would have the right to vote in the United States if they became naturalized citizens. As of March 1994, the combined Hispanic or Latino population, at 16.3 million, comprised the third largest population in the United States.⁵⁵ The largest racial population consisted of Caucasians at 199.7 million. The second largest population consisted of African Americans at 31.4 million. The total U.S. population consists of 237.1 million. Out of this 16.3 million Latinos, approximately 10,270,000 were foreign born in a Spanish-speaking country.⁵⁶ It is important to note that of these 10.2 million Latino individuals, only 1,879,000 (18.4%) are reported to have become naturalized U.S. citizens, whereas 8,391,000 (81.6%) continue to maintain their original nationality.⁵⁷

In general terms, this means that in the United States today, there are 8.3 million Latinos who permanently reside in the United States, who work and pay taxes, and whose children were born in the United States, but who are not naturalized. Most of these Latinos, especially Mexican immigrants, are concentrated in a few major urban centers in the states of California, Texas, Illinois, New Mexico, and Colorado. These immigrants have a higher birth rate than other populations at these locations. Also, due to their close family ties and their legal status as lawful permanent residents, these immigrants are likely to help their closest relatives, such as unmarried sons and daughters, immigrate to the United States. However, despite having lived in this country for many years and having developed clear and strong vested interests in the United States, these Latino immigrants cannot vote.

Because many of their members do have have the right to vote, these

54. See Jorge A. Vargas, *Dual Nationality for Mexicans: A Comparative Legal Analysis of the Dual Nationality Proposal and its Eventual Political and Socio-Economic Implications*, 18 UCLA CHICANO-LATINO L. REV. 19 (1996).

55. See Hansen & Bachu, *supra* note 19, at 5.

56. This report informs that "Persons of Hispanic origin may be of any race." *Id.*

57. *Id.*

permanent resident Latino immigrant communities, which have formed an integral part of our country for decades, tend to become "invisible communities" for political considerations. Their specific needs and interests, as well as their concerns and problems, tend to be neglected by politicians who are not familiar with them and who appear to be more interested in responding to the specific lobbyist interests of U.S. voters. It is not at all unusual to see that these Hispanic communities seldom have a Latino politician representing them, or a Latino person involved in the management and decision-making process of a city council. In sum, Latinos who do not have the right to vote carry little or no political clout in the United States today. They do not constitute a viable political force having the power to shape the content of important political decisions or compromises that affect their community.

However, if and when more Latinos become U.S. citizens, the traditional political landscape of the United States will be radically altered by the voting power of the emerging Latino communities. True, until now these communities have been politically dormant, but this is changing as you read this Article. No sophisticated analysis is required to predict the political consequences that would result when most of these 8.3 million Latinos decide to become U.S. naturalized citizens. Simply think of the likely impact upon Los Angeles, Chicago, San Antonio, San Diego, Houston, Denver, Tucson, El Paso, and Albuquerque.

By becoming U.S. citizens, these Latino immigrants will be able to vote and influence the political system in the United States. Whereas lawful permanent residents are subject to deportation, regardless of the duration of their residence in our nation, U.S. citizens cannot ever be legally expelled from the U.S. From an immigration law viewpoint, U.S. citizens have more power to sponsor foreign relatives and even non-relatives to immigrate to the United States, when compared to permanent residents who are subject to the legal limitations imposed by the Immigration and Nationality Act. Finally, with regard to any social or economic benefits, U.S. citizens have preference, especially *vis-à-vis* foreign residents or undocumented immigrants.

The government of Mexico has been promoting the idea of the "Dual Nationality" to induce all those millions of lawful permanent residents in this country to become naturalized U.S. citizens. This policy appears to be a win-win situation. From the international dimension of Mexico, it is evident that the Mexican government is attempting to broaden the political base of Mexican immigrants in the United States in order to enhance their growing political power.⁵⁸ Recent U.S. naturalized citizens

58. See Jose Angel Pescador Osuna, *Doble Nacionalidad y la Relacion Bilateral*

of a Mexican origin will probably take a few years to become "politically immersed" in U.S. politics at the local, state, and national levels. However, once they have sharpened their political skills and have realized their political force, the Mexican government can look to them as the strongest lobbyist group within the United States to promote, support, and defend certain Mexican policies or concerns in the United States. This is likely to happen in the early years after the year 2000.

IV. MEXICAN LAW

A. *Nationality and Citizenship Under Mexican Law*

Nationality and citizenship questions under Mexican law are regulated by Articles 30, 37 and 38 of Mexico's 1917 Constitution, and by the recently enacted Nationality Act (*Ley de Nacionalidad*) of 1993.⁵⁹ From the viewpoint of its legislative history, Mexico has enacted three federal statutes governing these questions prior to its current 1993 Act: an official decree on Alienship and Nationality (*Extranjeria y Nacionalidad*) of January 30, 1854; the Act of Alienship and Naturalization (*Ley de Extranjeria y Naturalizacion*) of May 28, 1886; and the Act of Nationality and Naturalization (*Ley de Nacionalidad y Naturalizacion*) of January 5, 1934.⁶⁰ The 1934 Act was more detailed than the current act. As a result, the 1993 Act, while repealing certain provisions of the 1934 Act, left a number of old provisions intact and in force.

1. *Mexican Nationality*

Mexican nationality is acquired by birth or by naturalization.⁶¹ Mexicans by birth are: (1) those who are born in the territory of the Republic, whatever the nationality of their parents; (2) those who are born abroad of Mexican parents, or of a Mexican father or Mexican mother; and (3) those who are born aboard Mexican vessels or aircraft,

Mexico-Estados Unidos, Coloquio del Instituto de Investigaciones Legislativas de la Camara de Diputados. Mexico, DF., June 9, 1995.

59. "Ley de Nacionalidad," D.O., 21 de junio de 1993. Basically, this brief federal statute details the content of arts. 30 and 37 of the Mexican Constitution.

60. See PEREZNIETO CASTRO, *supra* note 53, at 34.

61. See MEX. CONST. art. 30.

whether they are military or commercial.⁶² Mexicans by naturalization are: (1) foreigners who obtain from the Secretary of Foreign Affairs (*Secretaria de Relaciones Exteriores*) a letter of naturalization; and (2) foreigners who marry a Mexican man or woman who has established his or her domicile within the national territory.⁶³

Mexican nationality can be acquired by birth both within and outside the territory of Mexico. Article 42 of the Constitution enumerates the components of the Mexican "national territory," which consists of 31 States, islands (including reefs and keys), the internal waters, a 12 nautical mile territorial sea and the continental shelf, and the above-adjacent air space in the extension and modalities established by international law.⁶⁴ Those who are born in the Mexican national territory (including infants born on Mexican vessels and aircraft) immediately acquire Mexican nationality by virtue of the ancient legal notion of *jus soli*, that "the soil transmits the nationality to the person,"⁶⁵ regardless of the nationality of the parents.

The Mexican "nationality by birth" provision appears to have its counterpart in section 301(a) of the Immigration and Nationality Act.⁶⁶ Whereas the simple act of being born in Mexico is legally sufficient to acquire Mexican nationality, in the United States the policy has been that the physical act of birth, by itself, is not legally sufficient to confer U.S. nationality. The birth must be accompanied by other requirements, such as a physical residence in this country for a certain length of time.⁶⁷ Unlike the United States, Mexico does not have the peculiar legal category of "Nationals but not citizens of the United States at birth."⁶⁸

A person may acquire Mexican nationality when born outside Mexico, provided that the father and/or the mother is/are a Mexican national(s) pursuant to the traditional notion of *Jus sanguinis*—that the right that derives from the blood. The original constitutional provision included the case of those born abroad of Mexican parents, or of a Mexican father, and "of a Mexican mother and unknown father."⁶⁹ The provision

62. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS 144 (Delma ed., 1995) [hereinafter CONSTITUCION]; see also MEX. CONST. art. 135.

63. See CONSTITUCION, *supra* note 62, at 144; MEX. CONST. art. 30(B).

64. See MEX. CONST. art. 42, 43.

65. See, e.g., THOMAS A. ALENIKOFF & DAVID A. MARTIN, IMMIGRATION PROCESS AND POLICY 944-47 (2nd ed. 1991); CARLOS ARELLANO GARCIA, DERECHO INTERNACIONAL PRIVADO 192-93 (6th ed. 1983).

66. 8 U.S.C. § 1401.

67. See 8 U.S.C. § 1401. Mexico temporarily adopted the residency requirement in the amendment made to this article in 1934, probably inspired by the United States legislation. For the amended text, see D.O., 18 de enero de 1934.

68. 8 U.S.C. § 1408.

69. For the original text of Art. 30, see LEYES FUNDAMENTALES DE MEXICO 1808-1997 835 (Felipe Tena Ramirez ed. 20a ed. 1997).

was amended in 1969 to read as it does today.⁷⁰

Recently, Dr. Leonel Pereznieto Castro has been critical of the Mexican criteria of nationality which, in his opinion, are "extremely narrow and chauvinist." He alleges that Mexico has been copying its foreign nationality model, rather than developing its own, in response to its current domestic and international interests. Dr. Pereznieto appears to be the first individual to have formally proposed that the Mexican government contemplate adopting the "dual citizenship" notion in light of the "several million Mexicans living in the United States."⁷¹

The adoption of Mexican nationality by naturalization may be categorized into four different legal avenues—ordinary, special, automatic, and by means of recovering it. These avenues are not enunciated under these names by the current Nationality Act. However, they are expressly enumerated in the prior Act of Nationality and Naturalization of 1934,⁷² and in its corresponding Regulations.⁷³

a. Ordinary Naturalization

Ordinary Naturalization takes place, pursuant to Article 14 of the Nationality Act, when the foreigner receives the corresponding "*Carta de Naturalization*" (Letter of Naturalization) from the Secretary of Foreign Affairs (SRE).⁷⁴ In essence, the foreigner must: (1) produce a statement that the petitioner formally renounces his/her current nationality (*Renuncia*), expressing his/her intention to acquire the Mexican nationality (*Protesta*); (2) prove that he/she can speak Spanish and is "assimilated to the national culture"; and (3) prove that he/she has lived in Mexico legally (*Residencia legal*) for a minimum of five years immediately preceding the date of application, and that he/she has not

70. See D.O., 26 de diciembre de 1969. The amendment entered into force three days after it was published in the Official Daily (D.O.).

71. PEREZNIETO CASTRO, *supra* note 53, at 35.

72. Arts. 7-19 of the 1934 Act refer to Ordinary Naturalization; arts. 20-23, to Special Naturalization; art. 24 to Automatic Naturalization; and art. 27, To Recover the Mexican nationality. See PEREZNIETO CASTRO, *supra* note 53 at 35.

73. Regulations (*Reglamento*) of the 1934 Act, relative to the Certificates of Mexican Nationality (*Certificados de Nacionalidad Mexicana*), appeared in the D.O., 18 de octubre de 1972. For the text, see RAFAEL DE PINA VARA, *ESTATUTO LEGAL DE LOS EXTRANJEROS* 33-37 (1991).

74. Art. 2, para. III, defines this document: "*Letter of Naturalization*: the legal document attesting to the granting of the Mexican nationality to a foreigner." *Nationality Act* art. 2, p. III (1993) (Mex.).

“interrupted” said legal residency.⁷⁵

With regard to the third requirement of ordinary naturalization, the current statute adds that the foreigner must prove that his/her legal stay in Mexico “was not for recreational or educational purposes.”⁷⁶ The foreigner’s legal residence in Mexico is deemed not “interrupted” for purposes of naturalization when the physical absence from Mexico “does not exceed six months in total duration during the preceding period of two years” from the date of the corresponding application.⁷⁷

With respect to the “Renuncia” and “Protesta,” the statute considers it to be an “Administrative infraction” when the foreigner makes such renunciation and takes such an oath “in a fraudulent manner or without the true intent to be definitely and permanently obligated by them.”⁷⁸ This leads to the imposition of a monetary fine, ranging between 100 and 200 times the amount of the minimum wage in Mexico City at the time of the offense.⁷⁹ Unfortunately, no legal definitions exist as to what may qualify as “the true intent” in these cases. In the absence of precedents and more detailed statutory provisions, foreigners must depend exclusively upon the absolute discretion powers of the Mexican authorities.

b. *Special Naturalization*

The legal avenue of special naturalization may be divided into four categories.⁸⁰ The first applies to a married couple (i.e., Mexican spouse and foreign spouse) that already has or is establishing its “conjugal domicile” in Mexico.⁸¹ Under Mexican law, the foreigner who is married to a Mexican national must take the initiative to petition the SRE if interested in acquiring Mexican nationality by naturalization. The foreign spouse that acquires the Mexican nationality in this manner

75. *Id.* art. 14.

76. *Id.* art. 19.

77. *Id.* art. 20.

78. *Id.* art. 30.

79. *Id.* art. 30, p. I. Under the current U.S. dollar/Mexican peso conversion rate, and considering that today’s minimum wage in Mexico City is equivalent to \$5.00 U.S. dollars, approximately, the amount of this fine would range between \$500 and \$1,000 in U.S. dollars. For the imposition of this fine, the SRE must grant a hearing to the foreigner, in conformity with the Regulations; for the imposition of any sanction, SRE has to take into account A) the seriousness of the offense; b) the damages and injuries caused; and, c) the personal circumstances, and the socioeconomic condition of the offender. *See id.* art. 31.

80. *See* PEREZNIETO CASTRO, *supra* note 53, at 36-37.

81. For naturalization purposes, art. 2, para. V of the 1993 Act defines “Conjugal Domicile” in these terms: “(T)he (domicile) legally established by the spouses in the national territory, where they live consensually for more than two years.” Nationality Act art. 2, p. V.

preserves it even after the marriage in question is legally dissolved, thereby allowing family reunification. The same family reunification policy applies to the second category. It involves lawful foreigners residing in Mexico who have children born in Mexico qualifying for naturalization with only two years of legal residence (rather than five).

The third category derives from Article 15, paragraph II of the 1993 Act. It benefits foreigners who are from any country in Latin America or the Iberian peninsula (i.e., Spain and Portugal). It is assumed that because they come from a Latin country, it may be easier for them to assimilate into Mexico, which shares the same language, religion, and culture.

The final category of Special Naturalization benefits foreigners who have provided services or renowned works of a cultural, scientific, technical, artistic, athletic, or managerial nature for the benefit of Mexico.⁸² Here the lawful residency requirement has been reduced to two years.

c. *Automatic Naturalization*

Automation naturalization, found in Article 17 of the 1993 Act the provision, benefits children and foreign minors. Specifically, this provision benefits (1) children who are adopted or second generation dependents who are subject to the custody (i.e. *Patria potestad*) of a foreign person who has become a naturalized Mexican and (b) foreign minors who have been adopted by Mexicans residing in Mexico.⁸³ Basically, the legal custody holder files a petition which the SRE reviews and, later, issues a Letter of Naturalization.⁸⁴

d. *Naturalization by Recovery of Mexican Nationality*

Regulated by Articles 28 and 29 of the 1993 Act, Mexicans by birth who have lost their Mexican nationality "may regain it with the same character" by simply requesting it before the SRE, in compliance with a

82. *Id.* art. 15, p. III.

83. For a valid critical analysis of the poor legislative technique displayed by the Mexican legislature technique displayed by the Mexican legislature regarding the requirements needed to acquire this naturalization, see PEREZNIETO CASTRO, *supra* note 53, at 37.

84. Nationality Act art. 17. In Mexico, this election of nationality when reaching the legal age of adulthood is known as "*Opcion*" (Option or *Jus Optandi*). See *id.* art. 12.

few simple requirements.⁸⁵ In the case of Mexicans by naturalization who lose said nationality (by residing in their country of origin during five consecutive years, for example),⁸⁶ they have to follow the procedure established by Article 15 of the Act involving Special Naturalization.⁸⁷

According to some Mexican jurists,⁸⁸ this type of naturalization appears to be unconstitutional since it is not contemplated by the text of the Mexican Constitution. Furthermore, they believe that any Mexican national who happens to lose his or her Mexican nationality is, legally, a foreigner⁸⁹ and therefore, he or she should be required to follow the applicable procedures in order to regain his or her lost Mexican nationality. Perhaps a different but more favorable legal avenue should have been created by the Mexican legislature to handle this type of case.⁹⁰

2. *Loss of Nationality*

An individual will lose his or her Mexican nationality (1) by voluntarily acquiring a foreign nationality, (2) by accepting or using nobility titles that imply submission to a foreign state, (3) by residing for five consecutive years in their country of origin, if the person is a Mexican by naturalization; or (4) by pretending to be a foreigner in any public document, or for obtaining and using a foreign passport, if the person is a Mexican by naturalization.⁹¹

The first paragraph of Article 37, Section A simply recognizes the universally accepted right of any individual willingly to change his or her nationality. The 1993 Nationality Act provides that the acquisition of a foreign nationality based on the automatic application of a domestic law, simple residency, or as an indispensable condition in obtaining or maintaining employment, are not considered "voluntary."⁹² Apparently, the intention of the Mexican legislature in relation to paragraph III,

85. According to Article 28 of the 1993 Act, these requirements are: a) the clear intention to recover the Mexican nationality; b) to make the necessary renouncing of the current nationality and the formal oath; c) to satisfy the requirements established by the Regulations. *Id.* art. 28.

86. *Id.* art. 29.

87. *Id.* art. 15.

88. See PEREZNIETO CASTRO, *supra* note 53, at 37.

89. Article 33 of the Mexican Constitution provides, in part: "Foreigners are those who do not possess the qualities established by Article 30 (of the Constitution)." MEX. CONST., art. 33.

90. Section 324 of the Immigration and Nationality Act, *Former U.S. Citizens Regaining Citizenship*, may be of some interest in Mexico. See 8 U.S.C. § 1435 (1998).

91. See MEX. CONST. art. 37 § A. This section of Art. 37 is comparable to INA 349, U.S.C. § 1481 (1998).

92. Nationality Act art. 22, p. I; see also 8 U.S.C. § 1481.

Section A of Article 37 of Mexico's Constitution was to prevent Mexicans by naturalization from acquiring this nationality with the purpose of residing in their country of origin. Dr. Pereznieto Castro argues that this provision should be repealed for practical reasons since it cannot be effectively enforced by Mexican authorities.⁹³

The final paragraph of this section possesses serious problems regarding its effective enforcement in Mexico. It is rather common for former Mexican nationals who have become U.S. citizens by naturalization, for example, to have both a Mexican and a U.S. passport. As seen earlier, until recently Mexican law imposed severe limitations on foreigners, particularly in relation to the exercise of direct ownership of real estate in the Restricted Zone.⁹⁴ For a former Mexican business person who has acquired U.S. citizenship by naturalization, one might simply use a Mexican passport while buying beach front property in Mexico, then return to his or her home in, La Jolla, California, for example, where he or she permanently lives, using his or her U.S. passport to enter the United States.

Whereas this type of behavior, independent of its ethical implications, does not appear to be contrary to the immigration laws of the United States, it is in clear violation of Mexico's Constitution, as well as its Nationality Act of 1993. Given the apparent lack of interest or resources on the part of the Mexican authorities to enforce properly this constitutional mandate, it may be more practical to consider its deletion in order to do away with a chronic and embarrassing illegal practice.

The loss of Mexican nationality, according to the 1993 Act, is considered to be "*Personalisima*" in the sense that it only affects the person in question.⁹⁵ The same statute provides that "any assets located in Mexico owned by Mexicans by birth who lost their Mexican nationality, should not be adversely affected by said loss."⁹⁶ Possibly because of its recent enactment, this provision is not generally known by Mexican immigrants in the United States who continue to hold the wrong opinion that if they become naturalized U.S. citizens, then the Mexican government is to seize their properties in Mexico.

Unlike the United States, which has a special legal procedure for

93. See PEREZNIETO CASTRO, *supra* note 533, at 46.

94. LA PALOMA newsletter serves as the disseminating organ for the Program of Mexican Communities Abroad.

95. Nationality Act art. 24.

96. *Id.*

declaring the loss of nationality, Mexico lacks such a procedure as part of its legal system.⁹⁷ The only legal avenue is an administrative procedure delineated by the Regulations of Articles 47 and 48 of the Nationality and Naturalization Act of 1934.⁹⁸ These Regulations establish a procedure to declare the revocation or cancellation of the Letters of Naturalization (certificates of naturalization) when issued in violation of the statute. Except for this specific procedure, the Secretary of Foreign Affairs exercises absolute authority and virtually unlimited discretionary powers over questions of nationality.⁹⁹

There is no area of Mexico's legal system where the existence of vast discretionary powers in the federal government is more evident than in the field of immigration law. Legally, Mexico continues to adhere strongly to the antiquated notion of the absolute and unlimited power exercised by federal government regarding immigration questions in general, but especially in the areas of entry, deportation, lawful residence, naturalization, and refugees.

This old official policy stems directly from Article 33 of Mexico's Constitution, which has been at the core of the Mexican legal philosophy toward foreigners:

Foreigners are those who do not possess the qualities determined by Article 30. They are entitled to the [constitutional] guarantees enumerated in Chapter I, First Title, of this Constitution. However, the [Federal] Executive shall have the exclusive power to make abandon the national territory, immediately and without the need of a previous trial, of any foreigner whose presence it deems inconvenient. Foreigners may not engage, in any manner whatsoever, in the political affairs of the country.¹⁰⁰

The policy explains why in Mexico, unlike other more constitutionally advanced nations, there is no recognition of any due process rights in favor of undocumented aliens, even when this seems contrary to the

97. See PEREZNIETO CASTRO, *supra* note 53, at 47. Regarding this question, Pereznieto writes: "En el sistema jurídico mexicano no existe un procedimiento de carácter general con base en el cual pueda declararse la pérdida de nacionalidad mexicana." *Id.* (Informal translation: "In the Mexican legal system there is no proceeding of a general nature whereby the loss of Mexican nationality may be declared.")

98. See "Reglamento de los Artículos 47 y 48 de la Ley de Nacionalidad y Naturalización," D.O., 6 de Septiembre de 1940. For the rest of these regulations, see LEONEL PEREZNIETO CASTRO & MARIA ELENA MANSILLA Y MEJIA, *MANUAL PRACTICO DEL EXTRANJERO EN MEXICO* 49-55 (1991) [hereinafter PEREZNIETO & MANSILLA].

99. Pereznieto asserts: "(L)a Secretaría de Relaciones Exteriores... tiene amplias facultades para pronunciarse a este respecto. El recurso de reconsideración, y aun el juicio de amparo, no disminuyen los riesgos de esta *discrecionalidad amplísima*." *Id.* (emphasis added) (informal translation: "The Secretariat of Foreign Affairs (SRG) ... has ample powers to render an opinion on this question. An administrative appeal [consideration], and even a Writ of *Amparo*, do not diminish the risks of this almost unlimited discretion.")

100. MEX CONST. art. 33.

most progressive trends in international law and human rights. Mexico's legal provisions on immigration law matters are completely devoid of any hearing designed to provide foreigners with a legal forum to address and adjudicate challenges to the constitutionality of the decisions taken by the Mexican authorities on immigration matters. Decisions of an official nature by the Secretary of the Interior carry profound consequences upon undocumented aliens in question and are made solely on the basis of absolute discretionary power granted to the authorities by the Constitution.

Undoubtedly, NAFTA has had a direct impact upon business and commercial areas of Mexico's legal system, including immigration law. It is hoped that this progressive trend will continue to influence some legal developments in Mexico, especially in updating and modernizing its ineffective and arbitrary immigration law system. Mexico clearly requires a system which is responsive to (1) the effective recognition of the constitutional rights of undocumented aliens, (2) the acknowledgment and respect of the human rights of international migratory workers and refugees who enter Mexico (such as Guatemalans), and (3) the rendering of legal decisions by a court of law based on the fairness and equality of the applicable domestic and international legal principles, and not on the absolute and unrestricted power of the State.

3. *Loss of Citizenship*

Under Mexican Constitutional Law, Mexican citizenship is obtained by a Mexican national who complies with two requirements. First, he or she must have attained 18 years of age. Second, he or she must have an honest way of making a living.¹⁰¹ Having acquired citizenship, certain rights and obligations follow. The rights of Mexican citizens enumerated by the Constitution are the right to (1) vote in popular elections, (2) be voted into electoral posts or be appointed to any other employment or commission when the requirements established by the law are met, (3) freely and peacefully associate and take part in the political affairs, (4) enlist in the Army or National Guard, and (5) receive answers or information when requested from any public authorities.¹⁰²

101. MEX. CONST. art. 34.

102. These rights or privileges (i.e. *Prerrogativas del Ciudadano*) are enumerated in article 35 of the Mexican Constitution. The right to petition authorities (*Derecho de*

These rights are eminently political, save the right to serve in the Army or National Guard.

The obligations of Mexican citizens include (1) registering in the local registry of property and declaring their occupation in the National Registry of Citizens, (2) enlisting in the National Guard, (3) voting in popular elections, (4) serving in electoral posts at the federal and state levels, and (5) serving in posts at the municipal level, including electoral and jury duties.¹⁰³

Mexico's Constitution enumerates six situations resulting in the loss of Mexican citizenship: (1) accepting or using nobility titles which imply submission to a foreign government; (2) voluntarily performing official services to a foreign government without permission from the Federal Congress or the Permanent Commission; (3) accepting or using foreign decorations without permission of the Federal Congress or the Permanent Commission; (4) accepting from the government of another country titles or assignments without the previous authorization from the Federal Congress or the Permanent Commission, except for literary, scientific or humanitarian titles that may be freely accepted; (5) assisting a foreigner or a foreign government, against the interests of Mexico, in any diplomatic claim or before an international court; and (6) in the other cases established by the law.¹⁰⁴

Article 37, Section B was substantially amended By Presidential decree published in Mexico's Official Gazette (*Diario Oficial*) on March 20, 1997 to enter into force on March 20, 1998.

B. Constitutional Amendments

Understandably, Article 37 of the Mexican Constitution would have to be amended to provide that Mexican nationals by birth cannot legally renounce said nationality. On March 20, 1997, it was amended to say precisely that: "No Mexican by birth may be deprived of his/her nationality." It is interesting to note that prior to amendment, the SRE brochure promoted the language: "*The Mexican nationality is never lost.*"¹⁰⁵ Legally, the effect is that the Mexican nationality of origin would accompany every Mexican individual throughout his or her own life span, even if they were to acquire voluntarily a foreign nationality by

Peticion) is considered an individual guarantee, as established by article 8 of the Constitution. It has to be exercised "in writing, in a peaceful and respectful manner; but, in political matters, only citizens of the Republic may use this right." MEX. CONST. art. 8, 35 respectively.

103. *Id.* art. 36.

104. *Id.* art. 37.

105. *Recuperacion de la Nacionalidad* (Regaining of the Mexican Nationality), D.O., 21 de junio de 1993 (emphasis added).

naturalization.

The other section which requires attention is Section B of Article 37. The suggested amendment is as follows: "The Mexican citizenship is lost by the voluntary acquisition of a foreign citizenship or nationality."¹⁰⁶ In fact, it was amended by Presidential decree published in the Official Gazette (*Diario Oficial*) on March 20, 1997, effective one year later, to provide that the Mexican citizenship may be lost (1) for accepting or using nobility titles from foreign governments; (2) to voluntarily render official services to a foreign government without the corresponding permit from the Federal Congress or of its Permanent Commission; (3) for accepting or using foreign decorations without the permit from the Federal Congress or of its Permanent Commission; (4) for accepting from the government of another country titles or functions without the previous authorization (*Licencia*) from the Federal Congress or of its Permanent Commission, excepting literary, scientific or humanitarian titles which may be freely accepted; (5) for assisting a foreign government against the Mexican Nation, in any diplomatic claim or before an international tribunal; and (6) in the other cases established by the laws.

V. HYPOTHETICAL APPLICATION

At this point it is time to show the consequences of proposed changes in two hypothetical situations and mention a few related issues. Consider Mr. Juan Perez, a lawful permanent resident who is a Mexican national by birth and who became a U.S. citizen by naturalization. Mr. Perez is from Tijuana, Baja California, Mexico. He came to Los Angeles, California in 1980 as an undocumented worker when he was twenty years old. He started working as a busboy and a dish washer and then as a waiter at the Mexican restaurant "Azlan," located in an East Los Angeles barrio. He studied English and accounting at night at a community college. Today, Mr. Perez is the owner of two "taquerias" in Los Angeles, is happily married to a Chicana (Maria)—who is a U.S. citizen—and has three children, two born in the U.S. (Lupita and Lisa) and one in Mexico (Luis). A couple of years ago he acquired an ocean-front condominium in Rosarito, B.C., where he is planning to retire.

Pursuant to the constitutional changes, Mr. Perez is now an American citizen. He lives, works, votes, pays taxes, and participates in many

106. *Id.*

community activities, like any other U.S. citizen. However, notwithstanding the fact that he decided to become a U.S. citizen by naturalization, he has a "latent" Mexican nationality under Mexico's constitutional mandate. True, in the United States, this "latent" or "dormant" nationality is of little or no legal, economic, or political value. However, this status helps Mr. Perez emotionally or sentimentally to know that he still has some Mexican nationality within him.

Mr. Perez knows that when he retires in Rosarito, his Mexican "clock" is going to start ticking again, gaining and accumulating time as a consequence of his physical and permanent residence in Mexico. After a number of years, he will be able to regain his "citizenship rights" as a Mexican citizen, and even engage in "*La grilla*."¹⁰⁷ He will be able to participate in political activities, vote in political elections, and obtain employment reserved exclusively for Mexicans by birth. Maybe he might become the "*Presidente Municipal*" (mayor) of Rosarito.

A U.S. citizen by naturalization, Mr. Perez knows that "citizenship" appears to be a more useful and practical notion than "nationality." While all this is happening, he also knows that his U.S. citizenship is gradually moving to a peripheral place. Losing citizenship, or a given nationality, inherently carries a number of risks. In the long run, the reality of personal circumstances are likely to dictate which of the two choices is to become the final and most valuable citizenship. In most cases, this struggle normally ends with choosing one citizenship.

The "permanent Constitutional Mexican Legislature" may consider introducing an amendment to paragraph I of Article 27 of the Constitution, hopefully to follow the legal philosophy currently enshrined in Mexico's 1993 Foreign Investment Act. The Constitution contains an outright prohibition for foreigners to exercise direct ownership rights over immovable assets located within the Restricted Zone.¹⁰⁸ Although this question does not relate directly to the "Retention of Mexican Nationality Proposal," as it stands today, Articles 11-14 of said 1993 Act allow Mexican corporations with an Exclusion of Foreigners Clause to have direct ownership in the Zone when assets are used for non-residential activities such as industrial, commercial, and tourism purposes. This, in essence, circumvents the need to use the traditional but cumbersome *Fideicomiso*.¹⁰⁹

107. "*Grilla*" is the colloquial expression utilized in Mexico to refer to political activities. In this sense, a Mexican politician is a "*grillo*."

108. See Jorge A. Vargas, *Mexico's Foreign Investment Act of 1993*, 16 LOY. L.A. INT'L & COMP. L.J. 907 (1994).

109. See *id.* at 944-45. Under Mexican law, a "*Fideicomiso*" is a trust contract allowing an individual foreigner to have the beneficiary use of a piece of real estate

The same policy should benefit individual foreign investors who, under the Constitution and the recent 1993 Foreign Investment Act, must continue to use the Fideicomiso when interested in acquiring real property in the Restricted Zone for residential purposes. The change would certainly be welcomed by the numerous Mexicans by birth who are now U.S. citizens by naturalization. Indeed, they would be the direct beneficiaries of Mexico's "Retention of Nationality Proposal."

A. *Secondary Changes in Legislation*

Before playing out the rest of the hypothetical, it is important to note secondary changes. Eventual constitutional amendments have to be reflected in the pertinent secondary legislation. Accordingly, the changes will affect the Nationality Act of 1993, as well as the corresponding Regulations. In particular, Article 6 of this statute, which provides that "[t]he Mexican nationality must be one," will have to be eliminated.¹¹⁰ Further, if foreign investors are legally allowed to exercise direct ownership of property in the Restricted Zone for residential purposes, then numerous changes would be required in the articles of the 1993 Foreign Investment Act and corresponding regulations.

B. *Continuation of Hypothetical*

The second hypothetical is a continuation of the first. The hypothetical assists in explaining the necessary constitutional and statutory changes, which were refined by a selected group of Mexican legal experts called together by the SRE when the proposal was considered.¹¹¹ Remember Juan Perez had three children. Two, Lupita

located within the "Restricted Zone" for a renewable period of fifty years. For a detailed analysis of this contract, see the chapter in Professor Vargas' book entitled *Fideicomisos Real Estate Trusts in Mexico's Restricted Zone*, VARGAS, TREATISE, *supra* note 23, at 351-391.

110. Other changes in the Nationality Act of 1993 will have to include Chapter IV: *The Loss of Mexican Nationality*, and probably Chapter V: *The Regaining of Nationality*. See MEX. CONST. art. 37A, as amended by D.O., 20 de marzo de 1997, Mexico's new Nationality Act can be found in "Ley de Nacionalidad," D.O., 23 de enero de 1998.

111. See Victor Carlos Garcia Moreno, *La Propuesta sobre Doble Nacionalidad* (Original document on file with the author). Dr. Garcia Moreno writes:

[I]n the next months, and until November of 1996, when the presidential elections take place in that country, the attacks will be directed against anything which is not 'American and which will embrace, unquestionably, everything which [sic] is Mexican and all the Mexicans, including those who

and Lisa, were born in the United States. One, Luis, was born in Mexico. Article 30 of the Constitution, according to the legal experts, should consider those born outside Mexico of Mexican parents, a Mexican father, or a Mexican mother, as acquiring the Mexican nationality limited to the first generation of descendents only. Thus, since Lupita and Lisa were born in the U.S., they would become U.S. citizens by birth. They may remain their entire lives and, while their "dominant nationality/citizenship" would be American, their "dormant nationality" would be Mexican (though not Mexican citizenship).

At the age of 18 years, Luis would have to decide whether he wants to become a Mexican citizen or a U.S. citizen; he cannot be both. The contemplated legal amendments eliminate the need to choose and, thus, it would no longer be necessary. Luis, like his sisters, would have one dominant nationality and a dormant nationality. Professor Garcia Moreno describes the situation as a person suspending the exercise of some rights of the dormant nationality but "said rights may be regained when the Mexican residing abroad develops once more his habitual domicile [sic] in the Mexican territory."¹¹²

Accordingly, Article 38 of the Constitution should be amended to provide that Mexican nationality shall be suspended while exercising a foreign citizenship in another country and while that residence is taking place. However, Mexicans who establish their domiciles in Mexico and who comply with the legal requirements shall automatically regain the totality of their citizenship rights. The group also suggested that a number of statutes regarding activities, licenses, and official posts (i.e., political, technical, and strategic of national security) would need amending.

VI. THE MEXICAN PROPOSAL AND U.S. IMMIGRATION LAW

In the early days of the United States, between 1795 and 1797, many members of Congress adhered to the English doctrine of perpetual allegiance and doubted whether a citizen could even voluntarily renounce his citizenship.¹¹³ It was not until 1868, with the "Declaration of the Right of Expatriation,"¹¹⁴ that the United States recognized for the

possess legal documentation as permanent residents in that country, but sho [sic] have not yet acquired the U.S. nationality. The consequence is going to be, necessarily, an enormous deterioration in their rights, to be left in a complete state of unprotection and indefension.

Id. at 2-3 (translation by the author).

112. *Id.* at 7.

113. See *Afroyim v. Rusk*, 387 U.S. 253, 258 (1967).

114. The Act of 1868 declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty,

first time in its legislative history the right of immigrants and Americans voluntarily to renounce allegiance to their former sovereign state. This marked the formal recognition of the principle of expatriation in this country.

In light of the contemplated change of policy by the Mexican government, it may be recalled that the 1868 Act, whose principal objective was to protect immigrants coming to the United States, provided, *inter alia*, that: (1) a change of nationality was not dependent upon the consent of the former sovereign state; (2) naturalization in the United States dissolved any ties the national individual had with the former state; and (3) "by such process the individual acquired a new national character entitled to recognition upon his return to the country of origin."¹¹⁵

Dual nationality is a legal status long recognized by American courts.¹¹⁶ In the more recent case, *Kawakita v. United States*, the United States Supreme Court wrote:

The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other.¹¹⁷

Until now, the official policy of the U.S. government has been designed to discourage the incidence of dual nationality.¹¹⁸ This may be due to the fact that, as international observers explain,¹¹⁹ possession of dual nationality may result in competing or conflicting claims from both countries on questions such as military service, health programs, extradition, taxation, inheritance, education, and diplomatic protection of nationals abroad. However, the traditional attitude on the part of most nations may be ready to take a turn toward a more modern and flexible policy.¹²⁰

and the pursuit of happiness." Act of July 27, 1868, ch. 249, 15 Stat. 223. See also David F. Schwartz, *American Citizenship after Afroyim and Bellei: Continuing Controversy*, 2 HASTINGS CONST. L.Q. 1003, 1004 (1975).

115. *Id.*; see Note, *Some Problems of Dual Nationality*, 28 ST. JOHN'S L. REV. 63, 65 (1953).

116. See *Perkins v. Elg*, 307 U.S. 325 (1939).

117. *Kawakita v. United States*, 343 U.S. 717, 723-24 (1952).

118. See *Savorgnan v. United States*, 338 U.S. 491, 500 (1950).

119. See MYRES S. MCDUGAL & W. MICHAEL REISMAN, *INTERNATIONAL LAW IN CONTEMPORARY PERSPECTIVE: THE PUBLIC ORDER OF THE WORLD COMMUNITY* 900-20 (1981).

120. See Vargas, *supra* note 54, at 48.

