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### **Mexico's Dual Nationality Amendments: They Do Not Undermine U.S. Citizens' Allegiance and Loyalty or U.S. Political Sovereignty**

Paula Gutierrez

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MEXICO'S DUAL NATIONALITY AMENDMENTS: THEY DO NOT  
UNDERMINE U.S. CITIZENS' ALLEGIANCE AND LOYALTY OR U.S.  
POLITICAL SOVEREIGNTY

I. INTRODUCTION

Are the Mexican government's constitutional amendments allowing dual nationality "an empowerment issue whose time has come,"<sup>1</sup> or will they create "a subversive 'fifth column' of Mexican agents with dubious loyalty to the United States[?]"<sup>2</sup> Since their inception, critics have incorrectly labeled the amendments as ploys to undermine U.S. citizens' allegiance and loyalty and U.S. political sovereignty.

Immigration and nationality issues are among the most controversial and divisive areas of public policy.<sup>3</sup> International law grants nations exclusive jurisdiction to establish nationality laws.<sup>4</sup> Accordingly, nations may determine their nationals' rights and may limit the entry and residence of non-nationals.<sup>5</sup> Allegiance, fidelity and patriotism are undoubtedly integral issues in the formation of nationality laws, particularly dual nationality laws.<sup>6</sup>

This Comment analyzes Mexico's constitutional amendments permitting current or former Mexican citizens residing in foreign jurisdictions to retain their Mexican nationality after being naturalized in these foreign countries. Part II discusses general concepts and issues relevant to international nationality jurisprudence. Part III provides a brief historical perspective of Mexico's nationality

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1. Howard LaFranchi, *Mexico Offers Retort to U.S. Anti-Immigrant Moves*, CHRISTIAN SCI. MONITOR, Apr. 7, 1995, at 1 (quoting Jorge Bustamante, President of the College of the Northern Border in Tijuana and a leading Mexican migration expert).

2. Michael Winters, *Prop. 187 Sequel Would Narrow Door to Citizenship Save Our State 2 Urges an End to Dual Nationality—and the 14th Amendment*, S.F. EXAMINER, Oct. 16, 1995, at A4 (quoting Ron Prince, author of Proposition 187 and "Save our State 2").

3. See SATVINDER S. JUSS, IMMIGRATION, NATIONALITY AND CITIZENSHIP 9-10 (1993).

4. See *id.* at 66 n.104.

5. See *id.* at 48.

6. See *id.* at 49.

laws. Part IV analyzes provisions of the dual nationality proposal and suggests that the Mexican Congress acted wisely when it recently passed the dual nationality amendments. Part V discusses the U.S. view on dual nationality. Part VI explains why the Mexican dual nationality amendments will not result in U.S. expatriation or undermine U.S. naturalized citizens' allegiance to the United States. Finally, this Comment concludes that in light of increasing global interdependence, Mexico's dual nationality amendments best serve and protect the interests of Mexican nationals without posing a threat to the United States. An analysis of possible U.S. congressional legislation in response to Mexico's dual nationality amendments is beyond the scope of this Comment.

## II. GENERAL NATIONALITY CONCEPTS

Traditionally, a person may obtain nationality in three different ways: *jus solis*, *jus sanguinis*, and naturalization. *Jus solis*, the "law of the place," confers nationality on persons born within a forum's territory.<sup>7</sup> *Jus or jure sanguinis*, the "law of blood," gives nationality to a national's foreign-born child.<sup>8</sup> Naturalization is the third traditional way to obtain nationality.<sup>9</sup>

Each state or country has exclusive jurisdiction over its nationality laws.<sup>10</sup> This exclusivity can create either statelessness or dual nationality.<sup>11</sup> One may become a dual national for instance, if two countries' nationality laws simultaneously characterize an individual as their national.<sup>12</sup> This may happen when a person born in one country acquires *jus solis* nationality by birth and simultaneously acquires *jus sanguinis* nationality from his parents.<sup>13</sup>

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

8. See *id.*

9. See *id.* "'Naturalization' is a term which is usually applied to all cases in which an individual takes on a new nationality after birth." *Id.* Each country has different laws and requirements for naturalization. See *id.*

10. See JUSS, *supra* note 3, at 66 n.104; see also Patricia McGarvey-Rosendahl, Comment, *A New Approach to Dual Nationality*, 8 HOUS. J. INT'L L. 305, 306 (1985).

11. See McGarvey-Rosendahl, *supra* note 10, at 306.

12. See *id.* at 310.

13. See *id.*

Statelessness may result if a person is expatriated from one country without having acquired a new nationality.

Historically, states have hesitated to permit dual nationality because of the associated diplomatic problems.<sup>14</sup> States fear dual nationals' disloyalty in times of hostility or war where dual nationals might be faced with conflicting demands or responsibilities from different countries.<sup>15</sup> In the United States, the Supreme Court took this concern one step further and held in *Harisiades v. Shaughnessy*<sup>16</sup> that Congress may deport resident aliens who hold dual nationality whenever there is any ambiguity regarding their allegiance to the United States.<sup>17</sup>

After the 1930 Hague Convention, dual nationality became more accepted as international and domestic sentiment and laws shifted from eliminating dual nationality to accepting it.<sup>18</sup> The Convention established rules to help nations resolve conflicts with dual nationals.<sup>19</sup> As a result, states revised their domestic laws to prevent statelessness and protect nationality.<sup>20</sup>

### III. HISTORICAL PERSPECTIVE OF MEXICAN NATIONALITY LAWS

#### A. *The Mexican Constitution of 1857 and its 1886 Amendment*

The Mexican Constitution of 1857 conferred *jus sanguinis* nationality to Mexican nationals' children regardless of their birthplace.<sup>21</sup> In addition to *jus sanguinis* nationality, Article 30 of the Constitution conferred Mexican nationality in certain instances on

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14. *See id.* at 306-07.

15. *See id.* "Dual nationality has caused conflict among states that at times has led to war. The War of 1912 [sic] was triggered by the impressment of naturalized American citizens by Great Britain, who had a competing claim to these individuals as natural-born British subjects." *Id.* at 307 n.22.

16. 342 U.S. 580 (1952).

17. *See id.* at 587-88. Congress' power to deport dual nationals is usually, though not exclusively, exercised during times of war. *See id.*

18. *See* McGarvey-Rosendahl, *supra* note 10, at 307.

19. *See id.*

20. *See id.*

21. *See* Richard W. Flournoy, Jr. & Manley O. Hudson, Editors' Note, A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES 426 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

aliens who purchased real estate in Mexico.<sup>22</sup> In addition, the Mexican government gave nationality to certain aliens who had children born on Mexican soil.<sup>23</sup>

A few years later, under the Law of 1886,<sup>24</sup> the Mexican legislature clarified the provision permitting *jus sanguinis* nationality to the children of Mexican nationals born abroad.<sup>25</sup> According to the Law of 1886, these children were *aliens*.<sup>26</sup> To gain Mexican nationality, however, these *alien* children could declare their intent to become Mexican nationals to the Mexican consular or diplomatic agents within one year from their twenty-first birthday.<sup>27</sup>

Furthermore, the Law of 1886 automatically granted Mexican nationality to children of Mexican nationals in certain circumstances.<sup>28</sup> For instance, children who lived in Mexico and held a public office, or served in the army, navy or national guard, could automatically acquire Mexican nationality at age twenty-one without declaring their intent to the Mexican government.<sup>29</sup>

#### B. The Mexican Constitutions of 1917 and 1934

The nationality provisions in the Mexican Constitution of 1917<sup>30</sup> slightly altered the preexisting nationality rules. Like the Law of 1886, the 1917 Constitution required that foreign born children of Mexican nationals declare their election of Mexican nationality.<sup>31</sup> Similarly, the 1917 Constitution required that Mexi-

22. *See id.*

23. *See id.*

24. Law of May 28, 1886, *translated in* A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES, 427, 427-35 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

25. *See id.*

26. *See id.* ch. 1, art. 1, § (3), *translated in* A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES, 427, 427-28 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

27. *See id.*

28. *See id.*

29. *See id.*

30. CONSTITUCION POLITICA DE LOS ESTADOS UNIDOS MEXICANOS [CONST.] arts. 30, 37 (Mex.) (amended 1934), *translated in* A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES, 426, 426-27 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

31. *See id.* art. 30, § 1, *translated in* A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES,

can born children of "foreign parentage"<sup>32</sup> declare their election of Mexican nationality to the Department of Foreign Affairs within one year of their twenty-first birthday.<sup>33</sup> The 1917 Constitution, however, imposed an additional residency requirement on children born in Mexico to non-national parents.<sup>34</sup>

In 1934, Mexico further amended Article 30 of its Constitution.<sup>35</sup> Simplifying previous language, the 1934 amendment divided Mexican nationality into two sections: (A) Mexican nationality acquired by birth;<sup>36</sup> and (B) Mexican nationality acquired by naturalization.<sup>37</sup>

### C. The 1939 and 1944 Amendments to the 1934 Decree

World War II sparked nationalist legislation throughout the world.<sup>38</sup> During this time, many nations reduced the number of dual nationals through bilateral and multilateral agreements.<sup>39</sup> One such agreement, the Montevideo Pact in 1933,<sup>40</sup> enacted single nationality legislation in Mexico and in eighteen other Latin American countries.<sup>41</sup> Under the Montevideo Pact, signatories rejected *any* form of dual nationality.<sup>42</sup>

Mexico's 1939 and 1944 amendments to the 1934 Decree re-

426, 426 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

32. *Id.*

33. *See id.*

34. *See id.* (requiring children of non-nationals to have resided in Mexico for "six years immediately prior to the said declaration.").

35. *See* Decree of 18 January 1934, translated in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 307, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

36. *See id.* § A, translated in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 307, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

37. *See id.* § B, translated in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 307, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

38. *See infra* note 144 and accompanying text.

39. *See* Gordon, *supra* note 7, at 182 (stating that signatories held various bilateral and multilateral conventions in an attempt to reduce the numbers of dual nationals because states feared dual nationals' potential disloyalty towards their country of residence and its military).

40. *See* Montevideo Pact, Dec. 26, 1933, 49 Stat. 3097, 3100, 165 L.N.T.S. 19.

41. *See* Nicole Laborde, *Dual Nationality's Dual Purpose: How Mexicans Could Defeat Proposition 187*, BUS. MEX., Sept. 1995, available in LEXIS, Mexico Library, Mexnws File.

42. *See id.*

flect the strong nationalist feelings of the post-World War II era. Articles 1 and 2 of the Nationality and Naturalization Act of January 5, 1934 as Amended by Decrees of September 1939, December 1940 and December 28, 1949 (1934 Nationality Act)<sup>43</sup> are virtually the same as Sections (A) and (B) of the 1934 Amendment.<sup>44</sup> Article 3 of the 1934 Nationality Act adopted categories specifying how Mexican nationals could lose their nationality.<sup>45</sup> These categories noticeably deviated from the previous Mexican Constitutional provisions. In particular, article 3, § (1) states that voluntary acquisition of a foreign nationality results in automatic loss of Mexican nationality.<sup>46</sup> Similarly, Mexican nationals today who obtain U.S. or other foreign citizenship also automatically lose their Mexican nationality.<sup>47</sup>

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43. Nationality and Naturalization Act of 5 January 1934 as amended by Decrees of 18 September 1939, 30 December 1940 and 28 December 1949, arts. 1, 2, *translated in* U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 307-08, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

44. *See* Decree of 18 January 1934, art. 30, §§ A, B, *translated in* U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 307, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

45. *See id.* art. 3, *translated in* U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 307, 308, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954). Article 3 provides that individuals who commit any of the following acts lose their Mexican nationality:

- (I) Voluntarily acquires a foreign nationality, it being understood that the act is not considered voluntary if the said nationality was acquired by law, by the simple fact of residence, or as a prerequisite to obtaining work or to retaining a post acquired previously, the decision to be left to the discretion of the Ministry of Foreign Affairs;
- (II) Accepts or employs titles of nobility which imply allegiance to a foreign State;
- (III) Being a Mexican national by naturalization, resides continuously for five years in his country of origin;
- (IV) Being a Mexican national by naturalization, represents himself as an alien in any public instrument, or obtains and uses a foreign passport.

*Id.*

46. *See id.* art. 3, § (I), *translated in* U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 308, U.N. Doc. ST/LEG/SER.B/4 (Secretariat of the United Nations, trans., 1954).

47. *See* "Ley de Nacionalidad" [Nationality Law], ch. 4, art. 22, § (I), D.O., 22 de junio de 1993, *available in* LEXIS, Mexico Library, Mxfed File.

### D. Mexico's Citizenship and Nationality Distinction

In most countries, citizenship and nationality implicate virtually the same legal rights and privileges.<sup>48</sup> In Mexico, however, the terms "citizenship" and "nationality" give rise to different rights and obligations.<sup>49</sup>

Mexican citizenship confers upon the individual the rights to vote, engage in political activities and participate in the military.<sup>50</sup> These citizenship rights, however, are not inherent in nationality rights, as Mexico limits the nationality rights it extends to foreigners.<sup>51</sup> Mexican nationals do, however, share with Mexican citizens, property ownership, inheritance rights and rights to own certain stock in Mexican businesses.<sup>52</sup>

## IV. THE MEXICAN CONGRESS' RECENT PASSAGE OF THE DUAL NATIONALITY CONSTITUTIONAL AMENDMENTS—A WISE MOVE FOR MEXICO

### A. The Mexican Legislature's Recent Passage of the Dual Nationality Amendments

On December 5, 1996, the Mexican Senate approved the dual nationality legislation and sent the proposal to the Mexican House of Deputies.<sup>53</sup> Before approving this legislation, political parties, researchers and congressional committees studied and discussed these constitutional amendments for approximately one year.<sup>54</sup>

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48. See Gordon, *supra* note 7, at 181-82. Countries generally consider dual nationals residing within their borders as citizens of that country. Countries provide certain rights, obligations, privileges and immunities to their citizens and nationals. A country also protects individuals in return for their allegiance. See *id.*; see also McGarvey-Rosendahl, *supra* note 10, at 305-06.

49. See Laborde, *supra* note 41.

50. See *id.*

51. See *id.*

52. See *id.*

53. See Patrick J. McDonnell & Mark Fineman, *Mexico Poised to OK Dual Nationality Law: Border Move Could Encourage Millions to Seek U.S. Citizenship Without Fear of Losing Rights in Homeland, Including Property Ownership*, L.A. TIMES, Dec. 9, 1996, at A3 [hereinafter *Mexico Poised*].

54. See Diego Cevallos, *Mexico: Dual Nationality, A Step Forward for Immigrants*, INTER PRESS SERV., Dec. 9, 1996, available in 1996 WL 14476762. The Mexican House of Deputies (*La Camara de Diputados*) is the Mexican Congress' lower house, which is

Additionally, congressional committees held meetings with human rights organizations before recommending the amendments' passage.<sup>55</sup> Subsequently, on December 10, 1996, the Mexican House of Deputies passed the dual nationality legislation.<sup>56</sup> Known as *la no perdida de nacionalidad* (no loss of nationality),<sup>57</sup> the dual nationality amendments passed by a nearly unanimous vote<sup>58</sup> of 405-1.<sup>59</sup>

Although two-thirds of Mexico's thirty-one state legislatures must ratify<sup>60</sup> constitutional amendments before the President can sign them into law, ratification of the dual nationality amendments was expected to be "automatic."<sup>61</sup> This expectation was because the three major political parties supported the amendments, and because the Partido Revolucionario Institucional (PRI) dominates most state legislatures.<sup>62</sup> Analysts predictions that President Ernesto Zedillo Ponce de Leon would sign the amendments early in 1997 proved correct.<sup>63</sup> The amendments were ratified by the required majority of state legislatures and signed into law.<sup>64</sup> They were published in Mexico's *Diario Oficial de la Federación* on March 20, 1997 and will take effect one year from date of publica-

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analogous to the U.S. House of Representatives.

55. *See id.*

56. *See* Miguel Perez, *Aprueban los Diputados la Doble Nacionalidad [Officials Approve Dual Nationality]*, REFORMA, Dec. 11, 1996, at 8, available in 1996 WL 12914212.

57. *See* Miguel Angel Juarez, *Divide a Perredistas Doble Nacionalidad [Dual Nationality Divides PRD Members]*, REFORMA, Dec. 2, 1996, at 4.

58. *See* Perez, *supra* note 56. Partido Revolucionario Democratico Congressman Antonio Tenorio Adame was the only congressperson to vote against the proposal. Tenorio Adame stated he was opposed to the Constitutional amendment because Mexico was not depriving persons of Mexican origin of their Mexican nationality. *See id.* Tenorio Adame believes Mexican emigrants choose to renounce their Mexican nationality by naturalizing in a foreign jurisdiction. *See id.*

59. *See Dual Nationality Law Gains Congressional Approval*, ASSOCIATED PRESS, Dec. 11, 1996, available in 1996 WL 5427356.

60. *See id.*

61. *See Dual Nationality Law Gains Congressional Approval*, *supra* note 59.

62. *See* Mark Fineman, *Lawmakers in Mexico Approve Dual Nationality*, L.A. TIMES, Dec. 11, 1996, at A1.

63. *See* Fineman, *supra* note 62, at A1; *see also Dual Nationality Law Gains Congressional Approval*, *supra* note 59.

64. *See Breves [Briefs]*, REFORMA, Mar. 21, 1997, at 12, available in 1997 WL 7193959.

tion.<sup>65</sup>

### B. The History of the Dual Nationality Amendments

The dual nationality amendments radically depart from Mexican traditions and laws. They represent a "sharp reversal after decades in which successive governments either ignored Mexican expatriates or referred to them as *pochos*, or cultural traitors."<sup>66</sup>

Discussions of dual nationality legislation began during the administration of former Mexican President Carlos Salinas de Gortari.<sup>67</sup> For over a decade, groups on both sides of the U.S. and Mexican border supported the concept of dual nationality.<sup>68</sup> Additionally, the Partido Revolucionario Democrático (PRD), Mexico's opposition party, has advocated dual nationality since the party's formation in 1989.<sup>69</sup> Finally, in 1995, President Zedillo placed the dual nationality amendments at "the center of his foreign policy,"<sup>70</sup> thereby cementing their importance in Mexican politics.

Although the three main political parties in Mexico, the PRI, the PRD and the Partido de Acción Nacional (PAN) support the dual nationality proposal,<sup>71</sup> enacting it requires Mexico to change many peripheral laws.<sup>72</sup> Mexican Congressman, Alejandro Diaz Duarte, recently stated that the dual nationality reforms proved

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65. See *id.*

66. Sam Dillon, *Mexico Wants to Make Dual Citizenship Legal*, N.Y. TIMES, Dec. 11, 1995, at A6. *Pochos* is a colloquial term that refers to U.S.-born persons of Mexican descent who do not speak proper Spanish and may not have ties to their parents' homeland. *Pochos* may also refer to Mexican expatriates who are naturalized in the U.S. and are believed to shun their Mexican culture. Hence, as Dillon suggests, *pochos* are generally viewed as "cultural traitors." See *id.*

67. See *id.*

68. See LaFranchi, *supra* note 1.

69. See Pamela Hartman, *Mexico is Considering Proposal to Give Citizens Dual Nationality*, ASSOCIATED PRESS, May 2, 1995, available in 1995 WL 6726411; see also LaFranchi, *supra* note 1.

70. Dillon, *supra* note 66.

71. See Jorge Oclander, *Mexico may Offer Dual Nationality/ U.S. Citizenship Would be Encouraged*, CHI. SUN-TIMES, May 29, 1995, at 6.

72. See Dulce Ruiz de Chavez, *Discuten Otorgamiento de Doble Nacionalidad [They Discuss Granting Dual Nationality]*, REFORMA, Aug. 31, 1996, at 2, available in 1996 WL 11631652.

more complicated than previously believed.<sup>73</sup> Congressman Perez Duarte stated that although the proposal necessitates modification in three sections of the Mexican Constitution, at least fifty-five "secondary laws" will require amendments as well.<sup>74</sup>

Prior to the 1996 Congressional floor debate, the Mexican government held forums regarding the dual nationality amendments.<sup>75</sup> Congressman Pérez Duarte confirmed that the amendments had essentially no partisan problems and asserted that all political factions wanted the amendments to pass.<sup>76</sup> The Congressional floor discussions focused on the federal and state implementation measures.<sup>77</sup> Subsequently, a multi-party Mexican Congressional committee approved the dual nationality proposal in June 1996.<sup>78</sup> The passage of the amendments by the Mexican Federal Legislature at the end of 1996<sup>79</sup> confirmed analysts' predictions.<sup>80</sup>

The dual nationality amendments were originally estimated to take effect in January 1998.<sup>81</sup> The dual nationality amendments will not become effective until March 1998, however, because the "secondary laws" dealing with issues such as property rights, inheritances, business rights and taxation also must be amended.<sup>82</sup>

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73. *See id.*

74. *See id.* Other analysts predict more than fifty-five changes to "secondary laws." *See* Alicia Ortiz, *Debatén Sobre La Doble Nacionalidad [Dual Nationality Debates]*, REFORMA, May 3, 1996, at 4, available in 1996 WL 10025040 (illustrating Mexican Senator Trinidad Lanz Cardenas' opinion that the dual nationality amendments require, at a minimum, changes to three constitutional articles and sixty-eight state and federal laws and regulations).

75. *See* Ruiz de Chavez, *supra* note 72.

76. *See id.*

77. *See id.*

78. *See* Arthur Golden, *Mexico Vote Plan has Precedents: Other Latin Nations Allow Citizens to Cast Ballots From Abroad*, SAN DIEGO UNION-TRIB., June 9, 1996, at A2.

79. *See* Fineman, *supra* note 62.

80. *See* Hartman, *supra* note 69 (discussing Alejandro Carrillo Castro's, the PRI's Secretary of International Relations, views on dual nationality).

81. *See* Mark Fineman & Patrick J. McDonnell, *Dual Nationality Will Have to Wait, Mexico Officials Say: Complexity of Creating New Legal Category For Millions of Expatriates is to Blame, Experts Declare*, L.A. TIMES, Dec. 12, 1996, at A17 [hereinafter *Dual Nationality*].

82. *See Dual Nationality, supra* note 81; *see also* Patrick J. McDonnell, *Mexico Delays Dual-Nationality Plan 1 Year: U.S. Citizens Seeking to Recover Homeland Rights Told to Prepare Kickoff Next March*, L.A. TIMES, March 6, 1997, at A3 [hereinafter *Mexico Delays*].

The dual nationality amendments require changes to articles 30, 32 and 37 of the Mexican Constitution.<sup>83</sup>

### C. How the Dual Nationality Amendments Function

Once the amendments take effect, Mexicans who are legal, permanent U.S. residents will no longer be legally deterred from becoming U.S. citizens.<sup>84</sup> Jorge Bustamante, Director of the Colegio de La Frontera Norte College and a leading expert on immigration and bi-national issues, contends that “[d]ual nationality would mean that a Mexican who becomes a foreign citizen would not enjoy the rights guaranteed Mexican citizens under the Constitution, but because of their Mexican nationality, they would not be subjected to the restrictions placed upon foreign citizens in Mexico.”<sup>85</sup>

The dual nationality amendments will permit Mexicans to hold both foreign citizenship and Mexican nationality.<sup>86</sup> Currently, Mexico prohibits foreigners from owning land within one-hundred kilometers of either the Mexico-United States or the Mexico-Guatemala borders.<sup>87</sup> Similar restrictions apply to foreign ownership of coastal properties.<sup>88</sup> Under the new amendments, however, dual nationals will be able to preserve their Mexican-owned property.<sup>89</sup>

Additionally, dual nationals will be able to protect family inheritances.<sup>90</sup> Previously, Mexicans who became foreign citizens

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83. See Claudia Ramos, *Envia Iniciativa de Doble Nacionalidad [Dual Nationality Initiative Sent]*, REFORMA, Dec. 4, 1996, at 2, available in 1996 WL 12912660.

84. See Hartman, *supra* note 69.

85. *Mexico's New Voting Process Considered a Challenge*, SAN ANTONIO EXPRESS-NEWS, Aug. 6, 1996, available in 1996 WL 11492607.

86. See Ruiz de Chavez, *supra* note 72; see also Hartman, *supra* note 69 (explaining that currently Mexicans naturalized in foreign countries automatically renounce their Mexican nationality).

87. See Laborde, *supra* note 41.

88. See *id.* Mexico prohibits foreigners from owning property within 50 kilometers of the coast. See *id.*

89. See *id.* For a discussion regarding Mexican property ownership rights and Mexico's recent expansion of foreign ownership rights since enactment of the North American Free Trade Agreement (NAFTA) see Jorge A. Vargas, *The Dual Nationality Proposal and its Eventual Political and Socio-Economic Implications*, 18 CHICANO-LATINO L. REV. 1, 16-19, 27 (1996).

90. See Oclander, *supra* note 71.

risked forfeiting inherited property.<sup>91</sup> Furthermore, Mexican nationals will avoid the business and stock ownership restrictions placed on foreigners.<sup>92</sup> For example, Mexico currently allows foreigners to control only a limited percentage of stock in certain businesses.<sup>93</sup> The dual nationality amendments create equal stock ownership rights for dual nationals, Mexican nationals and Mexican citizens.<sup>94</sup>

Moreover, the dual nationality amendments lift restrictions on children of nationals.<sup>95</sup> The amendments allow the children of Mexican nationals to hold both U.S. and Mexican nationality simultaneously, without any express action. This eliminates Mexico's previous requirement that children of nationals renounce their U.S. or foreign citizenship to retain their Mexican nationality.<sup>96</sup> Notably, the dual nationality amendments mandate that certain political positions—President, Senator, Congressperson, Governor, Assemblymember and Supreme Court Justice or Magistrate—be filled only by Mexican born nationals who do not hold another nationality.<sup>97</sup>

Finally, article 37 of the new amendments has several guarantees: that adoption of non-Mexican nationalities, such as U.S. citizenship, will not deprive Mexican nationals of their Mexican nationality;<sup>98</sup> that Mexican expatriates will have five years from 1998 to recuperate their former Mexican nationality;<sup>99</sup> and that dual nationals may keep their Mexican passports.<sup>100</sup>

#### *D. Mexico's Constitutional Amendments Reflect Common International Practice*

Dual nationality is not a novel concept. Many countries, in-

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91. *See id.*

92. *See* Laborde, *supra* note 41.

93. *See id.*

94. *See id.*

95. *See* Hartman, *supra* note 69.

96. *See id.*

97. *See* Juarez, *supra* note 57.

98. *See id.*

99. *See* *Breves* [Briefs], REFORMA, Mar. 21, 1997, at 12, available in 1997 WL 7193959.

100. *See* Fineman, *supra* note 62.

cluding the United States, Canada, France, England and Poland, currently allow dual nationality.<sup>101</sup>

In 1933, Mexico and eighteen other Latin American countries signed the Montevideo Pact,<sup>102</sup> restricting their citizens to single nationalities.<sup>103</sup> Twelve of these eighteen Latin American countries, however, subsequently withdrew due to emigration patterns and changing economic interdependence.<sup>104</sup> In 1993, the six remaining signatories to the Montevideo Pact included Honduras, Chile, Ecuador, Panama and Uruguay and Mexico.<sup>105</sup> At that time, all of these countries, except Mexico, permitted dual nationality in certain circumstances.<sup>106</sup>

Mexico, however, recently took stock of changing economic and international trade markets, and in March 1997, approximately three months after the Mexican legislature's passage of the dual nationality amendments, Mexico withdrew from the Montevideo Pact.<sup>107</sup> Mexico, like other nations, found that the number of persons with dual nationality "appears to be increasing worldwide due to a multiplicity of factors," and that many people work, live or pursue an education abroad.<sup>108</sup> In addition, increased numbers of "marriages between persons of different nationalities" and children born and raised in foreign countries contribute to the numbers of dual nationals.<sup>109</sup> Recent xenophobia in the United States might have influenced the timing of the dual nationality legislation.<sup>110</sup> President Zedillo declared that by adopting the dual nationality amendments, Mexico would adjust its laws to reflect those of the international community.<sup>111</sup>

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101. See Oclander, *supra* note 71.

102. See Montevideo Pact, Dec. 26, 1933, 49 Stat. 3097, 3100, 165 L.N.T.S. 19.

103. See Laborde, *supra* note 41.

104. See *id.*

105. See *id.*

106. See *id.*

107. See *Convenio Signado en 1993. Mexico Se Retira de la Convención Interamericana Sobre Nacionalidad* [Mexico Withdraws from the Inter-American Convention on Nationality] EL NACIONAL, Mar. 11, 1997.

108. McGarvey-Rosendahl, *supra* note 10, at 326.

109. *Id.*

110. See Hartman, *supra* note 69.

111. See Ramos, *supra* note 83, at 2.

*E. Mexico's Constitutional Amendments and Their Impact on U.S. Permanent Legal Residents and U.S. Citizens of Mexican Descent*

Francisco Javier Guerrero, a researcher at the Center for Chicano and Border Studies in San Diego, argues that Mexico's recognition of dual nationality is "pragmatism at work."<sup>112</sup> Growing economic interdependence between Mexico and the United States, and increasing numbers of Mexican immigrants in the United States who contribute financially to their relatives in Mexico, render the dual nationality concept less controversial in Mexico than it has historically been.<sup>113</sup>

Currently, two to four million Mexicans reside in the United States with permanent legal resident status.<sup>114</sup> Jorge Bustamante predicts that approximately two million Mexicans residing in the United States "have been . . . reluctant . . . to give up their [Mexican] nationality."<sup>115</sup> The dual nationality amendments, however, remove one of the biggest deterrents to naturalization for Mexicans living in the United States — the fear of losing property rights.<sup>116</sup> The amendments permit Mexican nationals to concurrently retain their Mexican properties and obtain citizenship in their country of residence.<sup>117</sup> Furthermore, the amendments eliminate restrictions on inheritances and business ownership, thereby further encouraging many Mexican immigrants to become U.S. citizens.<sup>118</sup>

Castro Carrillo, the PRI's international affairs director, posits that the amendment allows Mexican nationals to protect their interests in their country of residence.<sup>119</sup> It "give[s] Mexicans living abroad the same voting, health, and other rights enjoyed by other

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112. LaFranchi, *supra* note 1 (quoting Francisco Javier Guerrero).

113. *See id.*

114. *See* LaFranchi, *supra* note 1. The number varies from one to four million depending on the statistical source. *See id.*

115. *Id.*

116. *See* Laborde, *supra* note 41.

117. *See id.*

118. *See id.*

119. *See* Hartman, *supra* note 69. Carrillo Castro is the PRI's Secretary of International Relations. Carrillo Castro predicted the dual nationality amendment would be enacted by the end of 1996. *See id.*; *see also* Cevallos, *supra* note 54.

citizens in that country.”<sup>120</sup> By becoming U.S. citizens, Mexican nationals can “organize to defend their own interests.”<sup>121</sup>

Enactment of the dual nationality amendments remove obstacles that previously prevented Mexican immigrants living in the United States from applying for U.S. citizenship.<sup>122</sup> The amendments allow U.S. permanent residents of Mexican descent to apply for U.S. citizenship without breaking away from their cultural roots and heritage. The Mexican government and analysts of the proposal have repeatedly argued that the main reasons that millions of Mexican immigrants have not obtained U.S. citizenship is because they fear losing their Mexican nationality rights or cutting their cultural ties to Mexico.<sup>123</sup> Mexican immigrants in the United States who were interviewed regarding the amendments also stated these same reasons.<sup>124</sup>

Activists who previously lobbied for U.S. legislation against legal and illegal immigrants criticize Mexico's motives for passing the dual nationality proposal.<sup>125</sup> Such critics claim that Mexico is attempting to influence U.S. politics through the amendments.<sup>126</sup> They also argue that dual nationals cannot be loyal to the United States.<sup>127</sup> Indeed, Mexican nationals currently residing in the United States *technically* owe their allegiance to Mexico.<sup>128</sup> In return for this loyalty, Mexico protects its nationals.<sup>129</sup> Permanent U.S. legal residents often live in the United States for several years, working, studying and paying taxes. Yet, because such resi-

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120. See LaFranchi, *supra* note 1 (quoting Castro Carrillo).

121. Dillon, *supra* note 66.

122. See Fernando Lerdo de Tejada, *Analisis/Nacionalidad Mexicana* [Analysis/Mexican Nationality], EL NORTE, Dec. 11, 1996, at 2, available in 1996 WL 13745876.

123. See *Mexico Poised*, *supra* note 53.

124. See *id.*

125. See *id.* (citing Ron Prince, a main proponent of Proposition 187, who attempted unsuccessfully to place a ballot measure prohibiting dual nationality on California's 1996 Ballot); see Winters, *supra* note 2.

126. See *Dual Nationality*, *supra* note 81; see also Oclander, *supra* note 71.

127. See *Mexico Poised*, *supra* note 53 (referring to the interview with Bill King, former U.S. Border Patrol chief who helped draft Proposition 187, and director of Americans for Responsible Immigration in Orange County, California).

128. See *supra* note 48 (discussing nationals' rights and obligations).

129. See *id.*

dents are not U.S. citizens, they cannot participate in the U.S. political process.<sup>130</sup> Further, Mexican nationals residing in the United States cannot vote in Mexican elections.<sup>131</sup> They are essentially in "political limbo because they cannot exercise their rights in either country."<sup>132</sup>

Dan Stein, Executive Director of the Federation for American Immigration Reform (FAIR), is one of these critics.<sup>133</sup> He argues that because the United States admits "so many immigrants from [Mexico] . . . many new immigrants from Mexico seem to believe that the [United States] is 'occupied Mexico,' . . . Over time, with dual nationality, the distinctions between the border regions could disappear with a significant section of the electorate of the view that the border with Mexico 'really doesn't matter.'"<sup>134</sup>

Mexican immigrants, however, support the dual nationality amendments and emphasize property ownership rights and cultural ties as motives, rather than political gain.<sup>135</sup> Opponents are mistakenly concerned, however, that dual nationality will result in U.S. naturalized citizens' disloyalty to the United States.

The critics' concerns may arise from the fact that the words "citizenship" and "nationality" in Mexico are accorded different meanings and associated privileges.<sup>136</sup> Mexican nationals affected by these amendments do not have the right to vote in local or federal Mexican elections.<sup>137</sup> In addition, they cannot serve as government elected officials or serve in the military.<sup>138</sup> The dual nationality amendments reserve such rights for Mexican citizens only.<sup>139</sup>

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130. See Oclander, *supra* note 71.

131. See *id.*

132. *Id.* (quoting Castro Carrillo).

133. See *Naturalization Practices and American Citizenship Before the Senate Comm. on the Judiciary Subcomm. on Immigration and Refugee Affairs*, 105th Cong. (1996) (statement of Dan Stein, Executive Director, FAIR).

134. *Id.*

135. See *Dual Nationality*, *supra* note 81.

136. See Laborde, *supra* note 41.

137. See Fineman, *supra* note 62.

138. See Juarez, *supra* note 57.

139. See *id.*

## V. UNITED STATES VIEWS ON DUAL NATIONALITY

## A. U.S. Views Regarding Dual Nationality Prior to 1950

The United States, like Mexico, provides for nationality and citizenship *jus solis* (by birth), *jus sanguinis* (by blood) and by naturalization.<sup>140</sup> Historically, the United States has been against dual nationality. Section 2 of the United States 1907 Expatriation Act provided for expatriation if a person obtained foreign citizenship or swore an oath of allegiance to a foreign country.<sup>141</sup>

In 1940, the United States repealed the 1907 Expatriation Act<sup>142</sup> and enacted the Nationality Act of 1940.<sup>143</sup> The 1940 Act, however, did not improve the rights of dual nationals because it was "passed during a time of rising patriotism and apprehension surrounding World War II."<sup>144</sup> Under the 1940 Act, U.S. citizens lost their U.S. nationality by swearing an oath of allegiance to a foreign country, serving in a foreign country's armed forces or voting in a foreign country's elections.<sup>145</sup> These harsh dual nationality restrictions mirror those currently in place in Mexico prior to dual nationality amendments' passage.<sup>146</sup>

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140. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 496-501, U.N. Doc. ST/LEG/SER.B/4 (1954).

141. See Act of March 2, 1907, ch. 2534, § 2, 34 Stat. 1228 (1907) (repealed 1940), which provides that "any American Citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state." *Id.*

142. See Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 AM. J. INT'L L. 359, 378 n.61 (1996).

143. See Nationality Act of 1940, ch. 876, 54 Stat. 1137, 1168, § 401. Note that although the Expatriation Act was repealed, the changes in the 1940 Act seem merely technical. The 1940 Act also had very restrictive provisions towards dual nationals. Although termed expatriation acts, these provisions resulted in denationalization (an involuntary loss of U.S. nationality) rather than expatriation. See Franck, *supra* note 142, at 378.

144. Therese Keelaghan-Silvestre, Comment, *Dual Nationality and the Problem of Expatriation*, 16 U.S.F.L. REV. 291, 297 (1982). After World War II, when nationalism "reached a peak," border closures, passport requirements and immigration restrictions were common. See *id.* at 297 n.40.

145. See Franck, *supra* note 142, at 378.

146. See *supra* Part III.C.

### B. The Immigration and Nationality Act of 1952

The Immigration and Nationality Act of 1952 (1952 Act)<sup>147</sup> allowed *jus solis* nationality and citizenship. Section 301(a)(1) of the 1952 Act conferred nationality and citizenship on persons born in the United States.<sup>148</sup>

Like Mexico, the United States also provided for citizenship and nationality *jus sanguinis* by granting nationality and citizenship to U.S. citizens' foreign born children.<sup>149</sup> To preserve their U.S. citizenship, the United States required foreign-born children to move to the United States prior to turning twenty-three<sup>150</sup> and to remain "continuously physically present"<sup>151</sup> in the United States for a period of at least five years.<sup>152</sup> Section 301(b) of the 1952 Act specified that the five-year residency requirement had to be met before an individual's twenty-eighth birthday.<sup>153</sup> An individual's residence in the United States before the age of fourteen did not count towards this five-year residence requirement.<sup>154</sup>

The 1952 Act differentiated between domestically-born children and those born abroad to U.S. citizens.<sup>155</sup> Children who received U.S. citizenship *jus sanguinis* would lose their citizenship and nationality if they could not move to the United States before turning twenty-three.<sup>156</sup> Citizens born in the United States, how-

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147. Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 496, U.N. Doc. ST/LEG/SER.B/4 (1954).

148. See *id.* § 301(a)(1), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 496, U.N. Doc. ST/LEG/SER.B/4 (1954).

149. See *id.* § 301(a)(7), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 496-97, U.N. Doc. ST/LEG/SER.B/4 (1954).

150. See *id.* § 301(b) reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 496, U.N. Doc. ST/LEG/SER.B/4 (1954).

151. *Id.*

152. See *id.*

153. See *id.* § 301(b), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 497, U.N. Doc. ST/LEG/SER.B/4 (1954).

154. See *id.*

155. See *id.* § 301(a)-(c), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 497, U.N. Doc. ST/LEG/SER.B/4 (1954).

156. See *id.* § 301(a)(7) (providing one exception to the five-year residency requirement). The Act exempted children of U.S. citizens born abroad if U.S. citizens provided their support or if these children's parents served in the U.S. military or worked in an international organization. See *id.*

ever, could move to a foreign country and would preserve their U.S. citizenship and nationality unless they committed an enumerated expatriating act.<sup>157</sup>

The U.S. residency requirement imposed on foreign-born U.S. citizens resembles Mexico's requirement for Mexican nationals' foreign-born children. The Mexican government required that children of Mexican nationals declare their intent to elect their Mexican nationality to a Mexican consular or diplomatic agent prior to turning twenty-one.<sup>158</sup> The Mexican government did not, however, impose a residency requirement like that found in the U.S. 1952 Act.

### C. *The Supreme Court's Treatment of Dual Nationality in the 1950s and 1960s*

In *Kawakita v. United States*, the U.S. Supreme Court held that "dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both."<sup>159</sup> In 1939, Kawakita, who was born in the United States, traveled to Japan using his U.S. passport.<sup>160</sup> In Japan, he registered with a family census and served as an interpreter for a factory using U.S. prisoners of war for labor.<sup>161</sup> The Court upheld Kawakita's treason conviction,<sup>162</sup> reflecting the fear of dual nationals' divided loyalty in times of war. Thus, the case's liberal rule recognizing that an individual may exercise his citizenship rights in two countries gave less protection than it appeared.

In 1958, the Supreme Court further weakened the *Kawakita* rule in *Perez v. Brownell*.<sup>163</sup> In *Perez*, the Court held that Perez had lost his U.S. citizenship by voting in a Mexican election.<sup>164</sup>

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157. See Simone Tan, *Dual Nationality in France and the United States*, 15 HASTINGS INT'L & COMP. L. REV. 447, 452-53 (1992).

158. See Law of May 28, 1886, art. I, § 3, translated in A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES, 427, 427-28 (Richard W. Flournoy, Jr. & Manley O. Hudson eds., 1929).

159. *Kawakita v. United States*, 343 U.S. 717, 723 (1952).

160. See *id.* at 720.

161. See *id.* at 720-21.

162. See *id.* at 745.

163. 356 U.S. 44 (1958).

164. See *id.* at 63.

This holding undermined the stated position in *Kawakita* that a person could exercise the responsibilities of nationality in two countries.<sup>165</sup>

In 1967, the U.S. Supreme Court overturned *Perez* in *Afroyim v. Rusk*.<sup>166</sup> In *Afroyim*, the Court declared section 349(a)(5) of the 1952 Act unconstitutional.<sup>167</sup> In *Perez*, *Perez* lost his U.S. citizenship and nationality under section 349(a)(5) for voting in a foreign election.<sup>168</sup> *Afroyim*, on the other hand, was able to preserve his U.S. citizenship.<sup>169</sup> The Court held that the Fourteenth Amendment gave *Afroyim* the right to retain his U.S. citizenship despite having voted in an Israeli election.<sup>170</sup> The Court held that Congress could not impliedly or expressly remove a United States citizen's citizenship "unless he voluntarily relinquishes [it]."<sup>171</sup>

#### D. Congressional Action in the 1970s

Between 1976 and 1978, Congress repealed sections 349(a)(5), 349(a)(8),<sup>172</sup> and 349(a)(10) of the 1952 Act,<sup>173</sup> thereby re-

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165. See *Kawakita*, 343 U.S. at 723.

166. 387 U.S. 253 (1967).

167. See *id.* at 254-267. Section 349(a)(5) provides that persons lose their nationality by "[v]oting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory." Immigration and Nationality Act, § 349(a)(5), Pub. L. No. 82-414, 66 Stat. 163 (1952), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 496, 530, U.N. Doc. ST/LEG/SER.B/4 (1954).

168. See *Perez*, 356 U.S. at 63.

169. See *Afroyim*, 387 U.S. at 268.

170. See *id.*; see also *Vance v. Terrazas*, 444 U.S. 252, 259 (1980).

171. See *Afroyim*, 387 U.S. at 268.

172. Section 349(a)(8) states that loss of nationality occurs when an individual deserts the United States military, air or naval forces in times of war. Immigration and Nationality Act, § 349(a)(8), Pub. L. No. 82-414, 66 Stat. 163 (1952), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 497, 530, U.N. Doc. ST/LEG/SER.B/4 (1954).

173. Section 349(a)(10) provides for a loss of U.S. nationality or citizenship when an individual departs from the United States or remains in a foreign jurisdiction during times of war and national emergencies "for the purpose of evading or avoiding training and service in the military, air, or naval forces of the United States." Immigration and Nationality Act, § 349(a)(10), Pub. L. No. 82-414, 66 Stat. 163 (1952), reprinted in U.N. LEGAL DEP'T LAWS CONCERNING NATIONALITY at 497, 530, U.N. Doc. ST/LEG/SER.B/4 (1954).

ducing the number of expatriation acts from ten to seven.<sup>174</sup> Sections 1481(a)(1)-(a)(7) of Title 8 of the United States Code provide that individuals may lose their U.S. nationality and citizenship by committing any one of seven expatriation acts.<sup>175</sup> Sections 1481(a)(1) and (a)(2) provide for loss of U.S. nationality upon naturalization in a foreign jurisdiction or for taking an oath of allegiance to a foreign state.<sup>176</sup>

### *E. Vance v. Terrazas—A Landmark Supreme Court Decision*

In *Vance v. Terrazas*,<sup>177</sup> the U.S. Supreme Court examined the constitutionality of Section 349(a)(2) of the Immigration and Nationality Act of 1952.<sup>178</sup> Section 349(a)(2) provides that "a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by ... taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof."<sup>179</sup>

Terrazas was a U.S. and Mexican dual national.<sup>180</sup> Born in the United States, Terrazas acquired U.S. citizenship and nationality *jus solis* (by birth) and Mexican nationality *jus sanguinis*

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174. See 8 U.S.C. § 1481(a)(1)-(7) (1952) (containing the seven expatriation acts).

175. 8 U.S.C. § 1481(a)(1)-(7) (1952). The following acts, in pertinent part result in a loss of U.S. nationality:

- (1) naturalization in a foreign state upon application of the individual himself or a parent or guardian;
- (2) taking an oath to a foreign state;
- (3) entering into the armed forces of a foreign state without authorization from the United States government;
- (4) serving in the employment of a foreign state as a national of that state or under an oath of allegiance to that state;
- (5) formal renunciation before a United States diplomatic or consular officer in a foreign state;
- (6) formal renunciation in the United States as prescribed and approved by the Attorney General during wartime; or
- (7) committing an act of treason against, or attempting by force to overthrow the government of the United States if and when convicted by a court martial or by a court of competent jurisdiction.

*See id.*

176. *Id.* § 1481(a)(1)-(2) (1952).

177. 444 U.S. 252 (1980).

178. *See id.* at 254. Section 349(a)(2) is codified at 8 U.S.C. § 1481(a)(2) (1952).

179. 8 U.S.C. § 1481(a)(2) (1952).

180. *See Terrazas*, 444 U.S. at 255.

(because of his father's Mexican citizenship).<sup>181</sup>

At age twenty-two, Terrazas applied for a certificate of Mexican nationality.<sup>182</sup> In doing so, he swore "adherence, obedience, and submission to the laws and authorities of the Mexican Republic."<sup>183</sup> He also renounced his U.S. citizenship, and "any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America."<sup>184</sup>

As a result of his stated allegiance to Mexico, the U.S. Department of State revoked Terrazas' U.S. citizenship.<sup>185</sup> The Department of State's Board of Appellate Review affirmed that, despite his assertions to the contrary, Terrazas had voluntarily renounced his U.S. citizenship.<sup>186</sup>

The U.S. District Court and the U.S. Court of Appeals disagreed as to whether Terrazas had expatriated himself.<sup>187</sup> The District Court held that Terrazas had "voluntarily committed an act whereby he unequivocally renounced his allegiance to the United States."<sup>188</sup> The court required the U.S. government to "prove by a preponderance of the evidence" that Terrazas "knowingly, understandingly and voluntarily took an oath of allegiance to Mexico, and concurrently renounced allegiance to the United States."<sup>189</sup> Finding that the government had satisfied this test, the court held that Terrazas knew and understood that by signing the Mexican nationality certificate he was renouncing his U.S. citizenship.<sup>190</sup>

The Court of Appeals, however, disagreed and held that the United States had the burden to prove by unequivocal and clear evidence that Terrazas took an oath of allegiance to a foreign jurisdiction.<sup>191</sup> Furthermore, the court required the government to

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181. *See supra* Part II.

182. *See Terrazas*, 444 U.S. at 255.

183. *Id.*

184. *Id.* Terrazas' application contained the renunciatory oath and a blank line where he indicated that the United States was his other country of citizenship. *See id.* at 255 n.2.

185. *See id.* at 256.

186. *See id.*

187. *See id.* at 256-59.

188. *Id.* at 256.

189. *Id.* at 257.

190. *See id.* at 257.

191. *See id.* at 257-58.

prove that Terrazas intended to renounce his U.S. citizenship.<sup>192</sup>

The U.S. Supreme Court, like the District Court, found that the government need only prove that there had been an expatriating act and an intent to relinquish U.S. citizenship by a preponderance of the evidence.<sup>193</sup> The Court also held it constitutional to presume volition from a statutory expatriating act.<sup>194</sup> It found that persons who commit an expatriating act have the burden of proving the act was involuntary.<sup>195</sup> Persons who acquire dual nationality voluntarily, as Terrazas did, may be denationalized involuntarily<sup>196</sup> because such persons must meet a high burden of proof.<sup>197</sup> In addition to proving their act was involuntary, these individuals must also prove that they did not intend to relinquish their U.S. citizenship when they committed the act.

#### F. Statutory Changes after Terrazas

In 1986, Congress repealed some of the statutory expatriation provisions. Today, U.S. citizens lose their citizenship only if they voluntarily commit an expatriating act with the intent of renouncing their U.S. nationality.<sup>198</sup> The Department of State's Board of Appellate Review, after reviewing Congress' 1986 amendments, established that merely acquiring a second citizenship does not prove the requisite intent to renounce U.S. citizenship.<sup>199</sup> Therefore, after 1986, simply voting in a foreign jurisdiction does not constitute the requisite intent to renounce U.S. citizenship.<sup>200</sup>

By 1990, the State Department Board of Review had modified its position on dual nationality. The Board presumed that "United States nationals intend to keep their U.S. nationality when they obtain the nationality of another state, make a pro forma declaration of allegiance to another state, or accept a non-

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192. *See id.* at 257.

193. *See id.* at 270.

194. *See id.*

195. *See id.*

196. *See Keelaghan-Silvestre, supra* note 144, at 300.

197. *See Terrazas*, 444 U.S. at 258.

198. *See supra* note 175 and accompanying text.

199. *See Franck, supra* note 142, at 379.

200. *See id.*

policy level position in another state.”<sup>201</sup> Under the 1990 policy, because Terrazas did not intend to renounce his U.S. nationality, he might have preserved his U.S. citizenship despite signing a Mexican certificate of nationality declaring his allegiance to Mexico.

## VI. DUAL NATIONALITY PROPOSAL WOULD NOT BE AN ACT OF EXPATRIATION FOR NEWLY NATURALIZED U.S. CITIZENS OF MEXICAN ORIGIN

### A. Requirement of a Voluntary Act and An Intent to Relinquish U.S. Citizenship.

Today, the U.S. government must prove the commission of a voluntary expatriation act before revoking an individual's U.S. citizenship.<sup>202</sup> The Court presumes a volitional expatriation act.<sup>203</sup> Persons accused of committing the expatriation act, however, may rebut this presumption by proving they acted involuntarily.<sup>204</sup> To show involuntariness, the accused expatriate must show duress.<sup>205</sup> Pursuing a professional career, pursuing a fellowship or scholarship and acquiring foreign naturalization in an attempt to avoid non-citizen employment discrimination do not qualify as the economic duress necessary to prove an involuntary act.<sup>206</sup>

Individuals face a difficult task in rebutting the government's presumption of volition.<sup>207</sup> Even with this great burden, however, individuals have a strong chance of success as the government has a harder burden in that it must affirmatively prove that individuals *intended* to relinquish U.S. citizenship.<sup>208</sup>

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201. *Id.* (quoting Telegram from James Baker, Secretary of State, to all diplomatic and consular posts, U.S. Dep't of State, unclas. No. 121, 931, § 5 (Apr. 16, 1990)).

202. See Lawrence Abramson, *United States Loss of Citizenship Law After Terrazas: Decisions of the Board of Appellate Review*, 16 N.Y.U.J. INT'L L. & POL. 829, 835 (1984).

203. See *id.* at 851.

204. See *id.*

205. See *id.* at 851. An individual may rebut the presumption of a voluntary act by showing physical duress, fear of imprisonment, reasonable fear for life and safety, induction by a foreign government into its armed forces or mental illness. See *id.*

206. See *id.* at 851-52.

207. See *id.* at 853.

208. See *id.*

*B. The Dual Nationality Amendments—Application*

The Mexican dual nationality amendments apply to two different groups of people. The first group includes individuals who acquire foreign citizenship after March 1998. Under the amendments, this group automatically preserves their Mexican nationality.<sup>209</sup> The second group includes Mexican expatriates, who may recover their former Mexican nationality by informing the Mexican consulate.<sup>210</sup> This group of expatriates must inform the Mexican government of their intent within five years of the dual nationality amendments' enactment.<sup>211</sup>

The dual nationality amendments permit Mexican nationals acquiring a foreign nationality to automatically preserve their Mexican nationality.<sup>212</sup> These individuals do not have to take any affirmative steps to attain dual nationality.<sup>213</sup> For example, Mexican nationals are not required to swear an oath of allegiance to Mexico in order to preserve their Mexican nationality when they acquire foreign citizenship. Furthermore, acquiring dual nationality by this method may not be considered an act of expatriation to the United States because this status results by virtue of a nation's laws and not from any action on the part of U.S. naturalized citizens.

The U.S. government will likely treat this class of *automatic* dual nationals as it treats those who acquire dual nationality by marriage, adoption, *jus solis* or *jus sanguinis*.<sup>214</sup> The United States has not deemed such dual nationality to conflict with U.S. citizenship or U.S. sovereignty.<sup>215</sup> For example, dual citizenship granted to U.S. Jews under Israel's Law of Return does not conflict with U.S. citizenship because "it is presumed that Israeli citizenship is accepted without the intent to relinquish U.S. citizenship."<sup>216</sup> The first group of individuals affected by Mexico's dual nationality

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209. See Cevallos, *supra* note 54.

210. See *id.*

211. See *id.*

212. See *id.*

213. See *id.*

214. See Abramson, *supra* note 202, at 861 n.225.

215. *Id.*

216. See *id.*

amendments will be those who acquire dual nationality solely by virtue of a foreign jurisdiction's laws.

### *C. Mexican Expatriates Who Opt to Recover Their Mexican Nationality*

The second group of individuals affected by the dual nationality amendments are former Mexican nationals who lost their Mexican nationality when they swore an oath of allegiance to a foreign jurisdiction.<sup>217</sup> This group of Mexican expatriates may notify a Mexican consulate office in the United States or in another foreign country of their intent to recover their Mexican nationality.<sup>218</sup> Hence, such individuals will be able to own property in Mexico and have the same rights as other Mexican nationals.

It is unclear, however, how the U.S. government will classify the actions of this latter group of individuals. Notifying the Mexican government that they wish to recover their Mexican nationality is clearly a voluntary act. The outcome in these cases will depend greatly on the Board of Review's determination of whether voluntary recovery of a former nationality constitutes an intentional renunciation of U.S. citizenship. A significant factor may be the language in the nationality recovery application. If the application for recovery of Mexican nationality contains an oath renouncing other nationalities, as did Terrazas' oath, then the same issues of intent considered in *Terrazas* must be examined.

### *D. The U.S. Government Requires Intent to Renounce U.S. Citizenship*

The United States must prove intent to renounce U.S. citizenship, before revoking an individual's U.S. citizenship, even in cases where an oath of allegiance to a foreign country has been sworn.<sup>219</sup> The greatest indicator of individuals' intent is naturalization in a foreign jurisdiction accompanied by an oath or affirmation of allegiance.<sup>220</sup> In cases where individuals swear an oath of allegiance to a foreign jurisdiction, a letter to the Immigration and Naturali-

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217. See Cevallos, *supra* note 54.

218. See *id.*

219. See Abramson, *supra* note 202, at 853.

220. See *id.* at 861.

zation Service indicating an intent to preserve their U.S. citizenship may be sufficient to protect them from losing their U.S. citizenship.<sup>221</sup>

In some countries, however, the naturalization oath contains language that renounces former allegiance. For example, a U.S. missionary naturalized in Brazil lost his U.S. citizenship when he declared that he renounced his previous citizenship "for all effects and purposes" during his court naturalization proceedings.<sup>222</sup> After *Terrazas*, the Board of Appellate Review has held in many cases that Mexico's oath of allegiance, which contains renunciatory language, is "highly persuasive" or "conclusive" of an individual's intent to relinquish U.S. citizenship.<sup>223</sup> Since 1984, however, the Board of Appellate Review abandoned its general position regarding Mexico's renunciatory oath.<sup>224</sup>

Certain actions like traveling on a foreign passport, participating in foreign politics and asserting a foreign citizenship exclusively indicate an intent to renounce U.S. citizenship.<sup>225</sup> Persons acquiring dual nationality under Mexico's Constitutional amendment should avoid traveling on a Mexican passport because doing so may indicate intent to renounce one's U.S. citizenship.

Refraining from the activities listed above are certain to minimize the risk of loss of U.S. citizenship for dual nationals. Other safeguards against such loss include registering one's children as U.S. citizens if an individual resides in a foreign country, paying taxes in the United States and renewing one's U.S. passport.<sup>226</sup>

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221. *See id.* at 872. The letter carries more weight if it is sent near the date of naturalization in a foreign jurisdiction. *See id.*

222. *Id.* at 863. Moreover, the Board of Appellate Review does not classify the English and French oaths of allegiance as an intent to renounce U.S. citizenship. *See id.* at 864-65.

223. *See id.* at 862 nn.232 & 234 (citing *Re LDB*, Bd. App. Rev. (June 30, 1982); *Re AY*, Bd. App. Rev. (June 2, 1983)).

224. *See id.* at 863 (stating that the Board has approved several cases of dual nationals who have taken the Mexican oath of allegiance).

225. *See id.* at 869.

226. *See id.* at 869.

## VII. CONCLUSION

Mexico's Constitutional amendments will take effect March 20, 1998, one year from their publication in Mexico's Official Diary.<sup>227</sup> The dual nationality amendments represent Mexico's departure from decades of single nationality tradition.

With the changing economic interdependence in the world, Mexico's dual nationality amendments make sense. Mexico's high emigration patterns will continue so long as the Mexican economy cannot support its labor force. The dual nationality amendments recognize that Mexico's single nationality traditions prevented its emigrant nationals from fully exercising their rights in their country of residence.

The dual nationality amendments also remove barriers that prevent Mexican nationals from becoming citizens of foreign jurisdictions. Although the amendments reserve political, voting and military rights to Mexican citizens only,<sup>228</sup> Mexican nationals will be able to protect their Mexican property, inheritances and business interests while maintaining households in the United States or other foreign jurisdictions and participating politically in these jurisdictions. While the United States may want to prohibit naturalized U.S. citizens from using foreign passports, the rights granted by the dual nationality amendments do not threaten the new citizens' allegiance and loyalty to the United States. Nor do they undermine U.S. political sovereignty.

*Paula Gutierrez\**

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227. See *Breves*, *supra* note 64.

228. See *Mexico Delays*, *supra* note 82. PRI Foreign Relations Secretariat Enrique Berruga Filloy suggested that dual nationals will have to register for the Mexican Military by age 18, but will not be required to serve. See *id.*

\* J.D. Candidate, Loyola Law School, 1998; A.B., Political Science, Stanford University, 1991. I dedicate this Comment to my parents, Pedro and Sonia, who have always inspired me. Special thanks to my siblings, Margarita, Ana Sonia and Pedro Luis, for their encouragement, and to my husband Marco Baeza, for his love and support. I am also grateful to the *Journal's* editors and staff for their invaluable assistance.