

DENATURALIZATION'S MISSING LIMIT

Cassandra Burke Robertson & Irina D. Manta

ABSTRACT—Civil denaturalization has become a bipartisan tool of punishment and deterrence. The government has used the civil justice system to strip citizenship from naturalized citizens convicted of serious crimes—including sex offenders—to “send a loud message” and “hold accountable” those it considers undesirable, circumventing the ten-year statute of limitations Congress imposed on criminal naturalization fraud. The Trump Administration has gone further, elevating denaturalization to one of the Department of Justice’s top five enforcement priorities and directing attorneys to “maximally pursue” every viable case. One of the features that makes denaturalization such a potent tool is the widely accepted proposition that no statute of limitations applies. This Essay argues that proposition is wrong. Drawing on the Supreme Court’s decision in *Kokesh v. SEC*, the text and structure of 28 U.S.C. § 2462, and the policy rationales underlying statutes of limitations, we argue that Congress’s existing default five-year limitations period should be understood to apply to civil denaturalization. A five-year time bar would preserve the government’s ability to pursue clear fraud while preventing the indefinite vulnerability that chills the political participation of over twenty-three million naturalized Americans.

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INTRODUCTION

“Citizenship is no light trifle to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power.”¹ This was the underlying premise of the Supreme Court’s 1967 decision in *Afroyim v. Rusk*. The Court in *Afroyim* held that the Fourteenth Amendment forbids the involuntary revocation of citizenship and that a citizen has “a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.”² The Court explicitly warned against the politicization of citizenship, writing that “[t]he very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.”³ It held that the Fourteenth Amendment protects every citizen against the “forcible destruction” of citizenship, regardless of “creed, color, or race,” and that a citizen may remain “in a free country unless he voluntarily relinquishes that citizenship.”⁴ However, in a footnote to the majority opinion, *Afroyim* left open the possibility that citizenship could be revoked on the ground that it was “unlawfully procured.”⁵ It is this narrow exception that provides the statutory basis for civil denaturalization proceedings under 8 U.S.C. § 1451(a).

Nearly six decades later, the Court’s warning against politicization of citizenship materialized. In July 2025, President Trump announced on social media that he was “giving serious consideration to taking away” the citizenship of comedian Rosie O’Donnell—not because of any alleged fraud in her naturalization, but “[b]ecause of the fact that Rosie O’Donnell is not in the best interests of our Great Country.”⁶ The threat was constitutionally

¹ *Afroyim v. Rusk*, 387 U.S. 253, 267–68 (1967).

² *Id.* at 268.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 267 n.23.

⁶ *Trump Says He’s Considering ‘Taking Away’ Rosie O’Donnell’s US Citizenship*, AP NEWS, (July 12, 2025, 6:41 PM), <https://apnews.com/article/trump-rosie-odonnell-citizenship-835642a4d55a7897663c6ba89f42e606> [https://perma.cc/8VN2-JSLK].

baseless: O'Donnell is a natural-born citizen and the Supreme Court has never abrogated *Afroyim*'s holding. But the message was not directed at O'Donnell alone. For the more than twenty-four million naturalized Americans, many of whom have fully integrated into American society by taking the oath of allegiance, serving in the military, running businesses, raising families, and voting in every election, the message was unmistakable: your citizenship is contingent on political favor.⁷

Politicized citizenship threats intensified after the election of Zohran Mamdani, the New York City Mayor who won his race handily in November 2025 as the city's first Muslim and first South Asian mayor.⁸ Soon after his nomination, Republican members of Congress demanded that the Justice Department investigate his naturalization and pursue denaturalization proceedings, accusing him without legally cognizable evidence of concealing communist affiliations and terrorist sympathies.⁹ Representative Andy Ogles of Tennessee wrote to the Attorney General requesting an investigation and proclaimed:¹⁰ "If this [nomination] is confirmed, put him on the first flight back to Uganda."¹¹ Representative Randy Fine of Florida said on cable news that Mamdani, who has lived in the United States since he was seven years old and became a citizen in 2018, "did not meet the

⁷ See Chris Feliciano Arnold, *Naturalized Citizens Are Scared*, ATLANTIC (July 20, 2025), <https://www.theatlantic.com/ideas/archive/2025/07/naturalization-civics-test/683579/> [<https://perma.cc/4HRS-FLX8>] ("To become Americans, we promised to defend the laws of the United States. What if defending them now puts our status at risk?"); see also Carlos Lozada, *You Can't Denaturalize Me*, N.Y. TIMES (Jan. 21, 2026), <https://www.nytimes.com/2026/01/21/opinion/immigration-denaturalization-citizenship-ice.html> [<https://perma.cc/V5Z7-VN67>] ("When you redefine who gets to be American, you are also redefining what it means to be America."); Qian Cai & Zach Jackson, *More Than Half of U.S. Immigrants Are Eligible to Vote*, U. VA. WELDON COOPER CTR. FOR PUB. SERV. (Oct. 1, 2024), <https://www.coopercenter.org/research/more-half-us-immigrants-eligible-vote> [<https://perma.cc/YG4H-QF83>] ("[N]aturalized citizens: may vote in federal elections, may apply for jobs requiring U.S. citizenship and security clearance, may apply for a U.S. passport, have access to a wide range of social services and benefits, have more legal protections than noncitizens and cannot be deported.").

⁸ Ashley Cai & Jeff Adelson, *See the New York Neighborhoods That Swept Mamdani to Victory*, N.Y. TIMES (Nov. 5, 2025), <https://www.nytimes.com/interactive/2025/11/05/nyregion/nyc-mayor-election-results-mamdani-cuomo.html> [<https://perma.cc/373H-BW7L>].

⁹ Lawrence Hurley, *Calls to Strip Zohran Mamdani's Citizenship Spark Alarm About Trump Weaponizing Denaturalization*, NBC NEWS (July 23, 2025, 5:00 AM), <https://www.nbcnews.com/politics/donald-trump/calls-strip-zohran-mamdani-citizenship-trump-denaturalization-power-rcna216653> [<https://perma.cc/5J82-HZFM>].

¹⁰ Letter from Andy Ogles, Rep., U.S. House of Reps., to Pam Bondi, Att'y Gen., U.S. Dep't of Just. (Oct. 28, 2025), <https://ogles.house.gov/sites/evo-subsites/ogles.house.gov/files/evo-media-document/10.28.25-letter-to-bondi.pdf> [<https://perma.cc/6H76-CTKL>].

¹¹ Press Release, Congressman Andy Ogles, Ogles Leads Charge to Denaturalize and Deport Zohran Mamdani (Oct. 29, 2025), <https://ogles.house.gov/media/press-releases/ogles-leads-charge-denaturalize-and-deport-zohran-mamdani> [<https://perma.cc/QDZ9-MSNB>].

definition to gain citizenship.”¹² Immigration experts found no credible evidence to support these claims.¹³ Ogles cited Mamdani’s membership with the Democratic Socialists of America, which he wrongly alleges is a communist party, as disqualifying evidence of his citizenship, as well as rap lyrics that Mamdani wrote nearly a decade ago supporting the “Holy Land Five.”¹⁴

Experts agree that it is highly unlikely that a court would actually strip Mamdani of citizenship.¹⁵ But in a system without meaningful procedural constraints, the mere threat of investigation can serve its political purpose even without legal merit; defending against even a meritless claim can take more resources than most people have, and unlike criminal defendants, respondents in civil denaturalization proceedings have no Sixth Amendment right to appointed counsel.¹⁶ High-profile celebrities and politicians might get the most attention, but ordinary individuals, who are also increasingly targeted, would have a much harder time defending their legal interests.¹⁷

There is reason to be nervous about citizenship security even for non-famous naturalized citizens. A month before the O’Donnell threat, the Department of Justice issued a memorandum directing attorneys to “maximally pursue denaturalization proceedings in all cases permitted by

¹² Rep. Randy Fine, *Congressman Fine Discusses Denaturalizing and Deporting Zohran Mamdani*, YOUTUBE, at 1:22 (Oct 27, 2025), <https://www.youtube.com/watch?v=QCL9PdOxwr0> [https://perma.cc/E43C-GU56].

¹³ See Samantha Puterman & Maria Ramirez Uribe, *Can the US Government Strip Zohran Mamdani of His Citizenship?*, POLITIFACT (Nov. 24, 2025), <https://www.politifact.com/article/2025/nov/07/Zohran-Mamdani-citizenship-denaturalize-Fine-Ogles/> [https://perma.cc/6KUL-2UBG] (“Immigration law experts said they have seen no evidence to support Ogles and Fine’s assertions about Mamdani’s application.”).

¹⁴ *Id.* Whatever their content, rap lyrics expressing political views are protected speech. See Jeffrey B. Kahan, *Bach, Beethoven and the (Home)Boys: Censoring Violent Rap Music in America*, 66 S. CAL. L. REV. 2583, 2589 (1993) (“To deny, or even threaten, rappers’ speech rights mocks the First Amendment and suggests racism.”).

¹⁵ Puterman & Uribe, *supra* note 13 (“Immigration law experts said they have seen no evidence to support Ogles and Fine’s assertions about Mamdani’s application.”); see also Stephen Manning & Juliet Stumpf, *Big Immigration Law*, 52 UC DAVIS L. REV. 407, 433 (2018) (relating to the immigration context “Malcolm Feeley’s theory that processes adjacent to adjudication, like detention, the credible fear interview itself, or the atmospherics around the adjudication of asylum may work a form of punishment on its subjects”).

¹⁶ See Cassandra Burke Robertson & Irina D. Manta, *(Un)Civil Denaturalization*, 94 N.Y.U. L. REV. 402, 454 (2019) (“In 2018, a man was stripped of citizenship without being personally served with process, without making an appearance in the case either personally or through an attorney, and without benefiting from even a contested hearing at the summary judgment stage.”).

¹⁷ See Arwa Mahdawi, *Katie Miller Had a Podcast Meltdown and Threatened the Citizenship of a Critic*, GUARDIAN (Nov. 1, 2025, 9:00 AM), <https://www.theguardian.com/commentisfree/2025/nov/01/katie-miller-podcast-meltdown> [https://perma.cc/2DUS-D8PP] (“The Trump administration has made it very clear to 24.5 million naturalized Americans in the US that they’d better keep their mouths shut to keep their passports.”).

law and supported by the evidence.”¹⁸ Signed by Assistant Attorney General Brett Shumate, the “Shumate memo” elevated denaturalization to one of the Civil Division’s top five enforcement priorities and established ten categories of targets—from individuals with “a nexus to terrorism” to those who committed “financial fraud against the United States” to a catchall for “[a]ny other cases . . . the Division determines to be sufficiently important to pursue.”¹⁹ The breadth of these categories, combined with the directive to “maximally pursue” every viable case, represents a dramatic expansion from the historical norm.²⁰

That the Shumate memo envisioned something categorically different from prior uses of denaturalization became clear when it was followed by guidance from the Department of Justice to United States Citizenship and Immigration Services field offices, ordering them in late 2025 to “supply Office of Immigration Litigation with 100-200 denaturalization cases per month” in the upcoming fiscal year.²¹ If this directive is followed, more cases would be filed each month than in the entire half-century after *Afroyim*; between 1968 and 2013, fewer than 150 individuals were stripped of their citizenship.²² Prior administrations treated denaturalization as a tool of last resort, reserved for the most egregious cases, such as individuals who had committed crimes against humanity and concealed that history to gain entry to the United States.²³ The Shumate memo abandons that limiting principle entirely, replacing prosecutorial discretion with numerical quotas and a categorical directive to “maximally pursue” every viable case. Such large quotas create a real risk of over-enforcement. As Margy O’Herron, senior fellow at the nonpartisan Brennan Center pointed out, “[m]y fear would be that as we have seen in the arrest and removal context when D.H.S.

¹⁸ Memorandum from Brett A. Shumate, Assistant Att’y Gen., Civ. Div., U.S. Dep’t of Just., to All Civil Division Employees, Civil Division Enforcement Priorities (June 11, 2025), <https://www.justice.gov/civil/media/1404046/dl> [<https://perma.cc/84FH-M3W9>]; see also Cassandra Burke Robertson & Irina D. Manta, *Justice Department Efforts to Strip Citizenship from Naturalized Americans Likely Violate Constitutional Rights*, CONVERSATION (July 10, 2025, 1:22 PM), <https://theconversation.com/justice-department-efforts-to-strip-citizenship-from-naturalized-americans-likely-violate-constitutional-rights-260353> [<https://perma.cc/UZ2Q-XTFP>] (describing the Shumate memo).

¹⁹ Memorandum from Brett A. Shumate, *supra* note 18.

²⁰ *Id.*; see also Robertson & Manta, *supra* note 18 (“The Justice Department’s directive to ‘maximally pursue’ cases across 10 broad categories – combined with the first Trump administration’s efforts to review over 700,000 naturalization files – represents an unprecedented expansion of denaturalization efforts.”).

²¹ Hamed Aleaziz, *Trump Administration Aims to Strip More Foreign-Born Americans of Citizenship*, N.Y. TIMES (Dec. 17, 2025) <https://www.nytimes.com/2025/12/17/us/politics/trump-immigration-citizenship-denaturalization.html> [<https://perma.cc/7PV2-AJ3U>].

²² Robertson & Manta, *supra* note 16, at 422.

²³ *Id.* at 404.

employees are given arbitrary targets what happens is people who shouldn't be swept up, get swept up and that you're going to see that happening to people in this context as well.”²⁴

It is this very environment in which denaturalization law now operates. And one of the most significant features of civil denaturalization—one that makes it a particularly effective political tool in this environment—is the widely accepted proposition that no statute of limitations applies.²⁵ Every court to consider the question has so held, including two circuit courts and more than a dozen district courts across the country.²⁶ Unlike criminal naturalization fraud (in which the government prosecutes an individual for knowingly procuring citizenship unlawfully under 18 U.S.C. § 1425, with the full suite of criminal procedural protections including the right to appointed counsel, jury trial, and proof beyond a reasonable doubt, and which Congress subjected to a ten-year statute of limitations), civil denaturalization under 8 U.S.C. § 1451(a) is a government-initiated civil action seeking to revoke citizenship directly, carrying none of those procedural protections and, as courts have held, no time bar at all.²⁷

However, in 2017 the Supreme Court decided the case of *Kokesh v. SEC*,²⁸ holding unanimously that disgorgement in securities fraud—also long treated as a remedial measure that merely “restored the status quo” by returning ill-gotten financial gains—was in fact a penalty subject to 28 U.S.C. § 2462, Congress’s default five-year statute of limitations for “any civil fine, penalty, or forfeiture, pecuniary or otherwise.”²⁹ As we explain below, that holding has significant implications for civil denaturalization: if the same framework applies, the five-year limitations period that courts have long treated as absent from denaturalization proceedings would in fact govern them.³⁰

In earlier work, we stated that it was “puzzling” that the Ninth Circuit had found *Kokesh* inapplicable to civil denaturalization.³¹ At the time, we hoped courts might chart a different course. They have not. In fact, the Eleventh Circuit has now joined the Ninth,³² and more than a dozen district

²⁴ Aleaziz, *supra* note 21.

²⁵ Irina D. Manta & Cassandra Burke Robertson, *Inalienable Citizenship*, 99 N.C. L. REV. 1425, 1466 (2021).

²⁶ See *infra* Section I.A (surveying the case law).

²⁷ See *infra* Section I.A (surveying the case law).

²⁸ *Kokesh v. SEC*, 581 U.S. 455 (2017).

²⁹ 28 U.S.C. § 2462.

³⁰ See *infra* Section I.B (discussing *Kokesh*’s impact on civil denaturalization cases).

³¹ Manta & Robertson, *supra* note 25, at 1467.

³² *United States v. Prat*, No. 24-13407, 2025 WL 3081849 (11th Cir. Nov. 4, 2025); *United States v. Phatthey*, 943 F.3d 1277 (9th Cir. 2019).

courts across the country have followed without independent analysis.³³ The judicial consensus on the puzzling inapplicability has only hardened. That consensus rests on a misunderstanding of what *Afroyim* requires and of what the Constitution demands of any procedural framework governing citizenship. Under *Afroyim*, a naturalized citizen is a full member of the political community rather than an alien holding a revocable benefit. The government bears a heavy burden before that membership can be disturbed, and the procedural framework governing denaturalization should reflect that constitutional reality. The absence of a statute of limitations leaves in place a procedural framework that permits the government to threaten citizenship indefinitely and without temporal limit, contradicting the constitutional guarantee of citizenship security recognized by the Court in *Afroyim*.

This Essay makes the case we deferred then. We argue that a deeper engagement with *Kokesh* reveals that the existing statute of limitations should apply to denaturalization just as it applies to disgorgement of ill-gotten financial gains. Recognizing denaturalization as a penalty under *Kokesh* would impose a five-year limitations period on civil denaturalization, while leaving a ten-year statute of limitations intact for criminal naturalization fraud and associated citizenship revocation. Naturalized citizens are not combatants in an ongoing war between themselves and the government. They have sworn an oath to support and defend the Constitution—just as members of Congress do—and they participate fully in democratic life.³⁴ The Constitution, as *Afroyim* recognized, protects them against the use of government power to jeopardize their citizenship on the basis of political disfavor. Recognizing the punitive nature of denaturalization threats and thereby applying Congress's default statute of limitations would help make that protection real.

Part I of this Essay sets out the *Kokesh* framework and its implications for identifying penalties under § 2462, the default five-year statute of

³³ United States v. Widmer, No. C20-1837 MJP, 2022 WL 1061933 (W.D. Wash. Apr. 8, 2022); United States v. Singh, No. 1:20CV58, 2021 WL 1193623 (S.D. Ohio Mar. 30, 2021); United States v. Wasel, No. 17-12296, 2021 WL 1015939 (E.D. Mich. Mar. 17, 2021); United States v. Donkor, 507 F. Supp. 3d 423 (E.D.N.Y. 2020); United States v. Martinez, 507 F. Supp. 3d 793 (S.D. Tex. 2020); United States v. Rahman, 2020 DNH 154, 2020 WL 5236931 (D.N.H. Sept. 2, 2020); United States v. Wasel, No. 2:17-CV-12296, 2020 WL 4584168 (E.D. Mich. Aug. 10, 2020); United States v. Becker, No. CV 18-2049-GW(AGRX), 2019 WL 6167396 (C.D. Cal. June 20, 2019); United States v. Borgono, No. 18-21835-CIV-SCOLA/TORRES, 2019 WL 2436279 (S.D. Fla. June 11, 2019); United States v. Muthara, No. 15-9091, 2019 WL 1762877 (D. Kan. Apr. 22, 2019); United States v. Malik, No. 15-9092-CM, 2019 WL 13491847 (D. Kan. Apr. 17, 2019); United States v. Dhanoa, 402 F. Supp. 3d 296 (D.S.C. 2019).

³⁴ See Ming Hsu Chen, *The Political (Mis)Representation of Immigrants in the Census*, 96 N.Y.U. L. REV. 901, 902 (2021) (noting that “citizenship is broader than political belonging” and that “[i]t can include political, social, economic, and legal dimensions”).

limitations for civil denaturalization. Section I.A surveys the courts that have rejected § 2462's application to denaturalization and identifies the primary analytical errors that pervade the case law. Section I.B applies the *Kokesh* framework to denaturalization as it is actually practiced today and demonstrates that it satisfies both prongs of the penalty test. Part II explains why the policy rationales for statutes of limitations—protection against stale evidence, protection of reliance interests, and constraints on government abuse—apply with particular force to denaturalization. Lastly, this Essay concludes that applying Congress's default five-year limitations period to civil denaturalization would neither immunize fraud nor disturb the ten-year criminal statute of limitations for criminal naturalization fraud. Instead, it would bring denaturalization into conformity with the structural logic that governs federal civil enforcement generally. Most importantly, it would provide the more than twenty-three million naturalized Americans who have sworn an oath to the Constitution the security to participate fully in democratic life without fear that their citizenship may be weaponized against them.

I. THE *KOKESH* FRAMEWORK AND THE MEANING OF “PENALTY”

The *Kokesh* decision arose from a colorful fraud case.³⁵ Charles Kokesh allegedly stole \$34.9 million from tens of thousands of small investors and used the proceeds, in part, to maintain a private stable of more than fifty polo ponies.³⁶ The SEC brought a civil enforcement action and obtained a disgorgement order—a court order requiring Kokesh to surrender his ill-gotten gains.³⁷ The legal question was whether that order was subject to the five-year statute of limitations in 28 U.S.C. § 2462, which provides that “[e]xcept as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued.”³⁸

That statutory text is broader than it might first appear. The statute dates back to 1839 and has been understood broadly.³⁹ Its reach extends to any federal civil enforcement action that qualifies as a “fine, penalty, or

³⁵ See *Kokesh v. SEC*, 581 U.S. 455 (2017).

³⁶ Theresa A. Gabaldon, *Equity, Punishment, and the Company You Keep: Discerning a Disgorgement Remedy Under the Federal Securities Laws*, 105 CORNELL L. REV. 1611, 1627 (2020) (“Some of the money went directly to support Kokesh and his private stable of fifty-plus polo ponies, and some was directed to satisfy expenses of his controlled investment advisors.”).

³⁷ *Id.* at 1628.

³⁸ 28 U.S.C. § 2462.

³⁹ See *3M Co. (Minn. Mining & Mfg.) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994).

forfeiture”—three independent categories, each subject to the same five-year clock—and the phrase “pecuniary or otherwise” makes clear that the statute is not limited to monetary sanctions.⁴⁰ And, as Section I.B explains, that textual scope could equally plausibly be read to encompass civil denaturalization, which is a government-initiated action that compels the forfeiture of a nonpecuniary interest (that is, citizenship itself).

For decades, the SEC had treated disgorgement as a “remedial” measure that merely “restore[d] the status quo” by returning ill-gotten gains.⁴¹ In *Kokesh v. SEC*, the Court unanimously rejected that characterization in favor of a binary system that either punishes and deters or compensates a private victim.⁴² Justice Sotomayor’s opinion established a two-part framework for determining when a government enforcement action constitutes a “penalty” under § 2462. First, the Court asks whether “the wrong sought to be redressed is a wrong to the public, or a wrong to the individual.”⁴³ Second, the Court asks whether the sanction is sought “‘for the purpose of punishment, and to deter others from offending in like manner’—*as opposed to compensating a victim for his loss.*”⁴⁴ This second prong is particularly central to the Court’s analysis. The *Kokesh* framework thereby establishes a binary: either the sanction punishes and deters, or it compensates a private victim. The Court did not offer a third option. In fact, it emphasized that anything less than a “solely” remedial purpose constituted a punishment.⁴⁵

The Court found that SEC disgorgement fell squarely on the penalty side of that line. Disgorgement addressed a wrong to the public. Its “primary purpose” was deterrence—not merely as an incidental effect, but as the animating reason for the remedy.⁴⁶ And disgorgement was “not

⁴⁰ *Id.* at 1458.

⁴¹ Conor Daly, *Kokesh v. SEC: The Supreme Court Redefines an Effective Securities Enforcement Tool*, 77 MD. L. REV. ENDNOTES 51, 58 (2018) (“[N]o court of appeals held that disgorgement was a penalty under the statute of limitations before the Supreme Court decided *Kokesh*.”). The circuit split that prompted certiorari in *Kokesh* was itself about whether disgorgement constituted a “forfeiture” under § 2462. The Eleventh Circuit in *SEC v. Graham* had held that it did. *SEC v. Graham*, 823 F.3d 1357, 1363 (11th Cir. 2016) (“We agree with the district court that for the purposes of § 2462 forfeiture and disgorgement are effectively synonyms; § 2462’s statute of limitations applies to disgorgement.”). In *Kokesh*, the Supreme Court resolved the split by holding disgorgement was a “penalty” without reaching the forfeiture question. In the denaturalization context, no court has independently analyzed whether the compelled surrender of citizenship constitutes a forfeiture under § 2462. *Kokesh v. SEC*, 581 U.S. 455, 1642 (2017).

⁴² *Kokesh*, 581 U.S. at 467 (“Because disgorgement orders ‘go beyond compensation, are intended to punish, and label defendants wrongdoers’ as a consequence of violating public laws . . . they represent a penalty and thus fall within the 5-year statute of limitations of § 2462.”).

⁴³ *Id.* at 461.

⁴⁴ *Id.* at 462 (emphasis added).

⁴⁵ *Id.* at 467.

⁴⁶ *Id.* at 464.

compensatory”: disgorged funds often went to the Treasury rather than to victims, and in some cases the amount recovered exceeded the defendant’s actual profits, leaving “the defendant worse off” than before the violation.⁴⁷ Thus, the Court concluded, a remedy that leaves the defendant worse off is not restoring the status quo, even if it “serves compensatory goals” as well; instead, it is imposing a punishment.⁴⁸

Two features of *Kokesh*’s methodology deserve emphasis because they are the features the lower courts have most consistently ignored when analyzing denaturalization. First, *Kokesh* looked at how the remedy was *actually being used*, not just at its theoretical statutory design. The Court pointed out that lower courts were explicitly citing “deterrence” rationales in imposing disgorgement, that the SEC used disgorgement to “‘promot[e] economic and social policies,’” and that disgorged funds frequently went to the Treasury rather than to any injured party.⁴⁹ It was the combination of these practical features (punitive purpose, government retention of funds, and absence of private compensation) that led the Court to conclude that the remedy operated as a penalty regardless of how it had been characterized in theory.⁵⁰

Second, when the Court identified sanctions that were *not* penalties, the Court’s examples involved compensation flowing to a private plaintiff. In *Brady v. Daly*, the sanction provided “a compensatory remedy for a private wrong.”⁵¹ In *Meeker v. Lehigh Valley Railroad*, a railroad refunded overcharges to a shipping company—again, private compensation.⁵² The Court stated the principle directly: the *Meeker* sanction was not a penalty “[b]ecause the liability imposed was compensatory and paid entirely to a private plaintiff.”⁵³ The Court offered no examples of a solely remedial action where the disgorgement flowed to the government rather than a private party.

Three years later, *Liu v. SEC* reinforced this binary.⁵⁴ The Court held that SEC disgorgement could survive as an equitable remedy only if limited to the defendant’s actual net profits and directed to victims.⁵⁵ If the

⁴⁷ *Id.* at 466.

⁴⁸ *Id.*

⁴⁹ *Id.* at 463–65 (quoting SEC v. Teo, 746 F.3d 90, 102 (3d Cir. 2014)).

⁵⁰ *Id.*; SEC v. Teo, 746 F.3d 90, 102 (3d Cir. 2014) (quoting SEC v. Rind, 991 F.2d 1486, 1490 (9th Cir. 1993)).

⁵¹ *Kokesh*, 581 U.S. at 462 (citing *Brady v. Daly*, 175 U.S. 148, 154 (1899)).

⁵² *Id.* at 462–63 (citing *Meeker v. Lehigh Valley R. Co.*, 236 U.S. 412, 421–23 (1915)).

⁵³ *Id.* at 463.

⁵⁴ *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020).

⁵⁵ *Id.* (“The Court holds today that a disgorgement award that does not exceed a wrongdoer’s net profits and is awarded for victims is equitable relief permissible under § 78u(d)(5).”).

government kept the funds, or the amount exceeded actual profits, the remedy would have exceeded its equitable moorings and operated as a penalty.⁵⁶ *Liu* confirmed what *Kokesh* established: a government enforcement action that does not compensate private victims is not remedial.

A. An Incomplete Penalty Analysis

Every lower court to consider whether § 2462's five-year limitations period applies to civil denaturalization has said no. In the years since *Kokesh* was decided, two circuits have ruled on the question—the Ninth Circuit in *United States v. Phathey*⁵⁷ and most recently the Eleventh Circuit in *United States v. Prat*⁵⁸—and over a dozen district courts have followed.⁵⁹ But a closer look at the reasoning reveals that these courts have relied on outdated doctrine and consistently overlooked critical elements of the *Kokesh* framework—elements that, properly considered, point toward a different result.

The decisions follow a recognizable pattern. They cite *Johannessen v. United States*⁶⁰ and selectively quote dicta from *Trop v. Dulles*⁶¹ for the proposition that denaturalization is not punitive.⁶² In particular, courts quote the first half of *Trop*'s statement that “[d]enaturalization is not imposed to

⁵⁶ *Id.* at 1950.

⁵⁷ *United States v. Phathey*, 943 F.3d 1277, 1279 (9th Cir. 2019).

⁵⁸ *United States v. Prat*, No. 24-13407, 2025 WL 3081849 (11th Cir. Nov. 4, 2025).

⁵⁹ *United States v. Widmer*, No. C20-1837 MJP, 2022 WL 1061933 (W.D. Wash. Apr. 8, 2022); *United States v. Singh*, No. 1:20CV58, 2021 WL 1193623 (S.D. Ohio Mar. 30, 2021); *United States v. Wasel*, No. 17-12296, 2021 WL 1015939 (E.D. Mich. Mar. 17, 2021); *United States v. Multani*, No. 2:19-CV-01789-BJR, 2021 WL 633638 (W.D. Wash. Feb. 18, 2021); *United States v. Donkor*, 507 F. Supp. 3d 423 (E.D.N.Y. 2020); *United States v. Martinez*, 507 F. Supp. 3d 793 (S.D. Tex. 2020); *United States v. Rahman*, No. 19-CV-1113-PB, 2020 WL 5236931 (D.N.H. Sept. 2, 2020); *United States v. Wasel*, No. 2:17-CV-12296, 2020 WL 4584168 (E.D. Mich. Aug. 10, 2020); *United States v. Becker*, No. CV 18-2049-GW(AGR), 2019 WL 6167396 (C.D. Cal. June 20, 2019); *United States v. Borgono*, No. 18-21835-CIV-SCOLA/TORRES, 2019 WL 2436279 (S.D. Fla. June 11, 2019); *United States v. Muthara*, No. 15-9091, 2019 WL 1762877 (D. Kan. Apr. 22, 2019); *United States v. Malik*, No. 15-9092-CM, 2019 WL 13491847 (D. Kan. Apr. 17, 2019); *United States v. Dhanoa*, 402 F. Supp. 3d 296 (D.S.C. 2019).

⁶⁰ *Johannessen v. United States*, 225 U.S. 227, 242 (1912) (“[T]he act under consideration inflicts no such punishment, nor any punishment, upon a lawful citizen. It merely provides that, on good cause shown, the question whether one who claims the privilege of citizenship under the certificate of a court has procured that certificate through fraud or other illegal contrivance, shall be examined and determined in orderly judicial proceedings.”).

⁶¹ *Trop v. Dulles*, 356 U.S. 86, 98 (1958) (“Denaturalization is not imposed to penalize the alien for having falsified his application for citizenship; if it were, it would be a punishment.”).

⁶² In *Trop v. Dulles*, the Supreme Court held that a statute denaturalizing citizens for wartime desertion violated the Eighth Amendment. However, the Court also distinguished between “denationalization” (taking away citizenship) and “denaturalization” (revoking the grant of citizenship). *Id.*

penalize the alien for having falsified his application for citizenship,” and leave out the final clause of the Court’s sentence: “if it were, it would be a punishment.”⁶³ They note that *Costello v. United States*⁶⁴ observed that “Congress has not enacted a time bar” for denaturalization.⁶⁵ They observe that courts have approved denaturalization proceedings initiated decades after naturalization.⁶⁶ They characterize *Kokesh* as narrow—limited to pecuniary sanctions in the SEC context—or simply inapplicable.⁶⁷ And, although most of the courts fail to engage with the DOJ’s punitive rhetoric at all, those that do dismiss the government’s own enforcement rhetoric as reflecting the intent of the executive rather than the legislature.⁶⁸ Each of these analytical moves, however, rests on assumptions that *Kokesh* undermines.

First, the doctrinal foundation of these cases is outdated and relies on citizenship cases overruled by *Afroyim*, which fundamentally transformed citizenship doctrine.⁶⁹ After *Afroyim*, the governing question in any denaturalization proceeding is not whether citizenship was a “privilege” but whether the government has met its heavy burden of proving ineligibility or

⁶³ *Id.* (“Denaturalization is not imposed to penalize the alien for having falsified his application for citizenship; if it were, it would be a punishment.”); see *Malik*, No. 15-9092-CM, 2019 WL 13491847, at *2 (D. Kan. Apr. 17, 2019) (quoting only the first half of the sentence); see also *United States v. Phathey*, 943 F.3d 1277, 1281 (9th Cir. 2019) (quoting the same); *Wasel*, No. 2:17-CV-12296, 2020 WL 4584168, at *1 (E.D. Mich. Aug. 10, 2020) (quoting the same); *Rahman*, No. 19-CV-1113-PB, 2020 WL 5236931, at *2 (D.N.H. Sept. 2, 2020) (quoting the same).

⁶⁴ *Costello v. United States*, 365 U.S. 265, 283 (1961).

⁶⁵ *United States v. Wasel*, No. 17-12296, 2021 WL 1015939, at *1 (E.D. Mich. Mar. 17, 2021); *United States v. Multani*, No. 2:19-CV-01789-BJR, 2021 WL 633638, at *3 (W.D. Wash. Feb. 18, 2021); *United States v. Donkor*, 507 F. Supp. 3d 423, 427 (E.D.N.Y. 2020); *United States v. Martinez*, 507 F. Supp. 3d 793, 799 (S.D. Tex. 2020); *United States v. Rahman*, No. 19-CV-1113-PB, 2020 WL 5236931, at *2 (D.N.H. Sept. 2, 2020); *United States v. Wasel*, No. 2:17-CV-12296, 2020 WL 4584168, at *1 (E.D. Mich. Aug. 10, 2020); *United States v. Malik*, No. 15-9092-CM, 2019 WL 13491847, at *1 (D. Kan. Apr. 17, 2019); *United States v. Dhanoa*, 402 F. Supp. 3d 296, 300 (D.S.C. 2019).

⁶⁶ See *Malik*, No. 15-9092-CM, 2019 WL 13491847, at *1 (D. Kan. Apr. 17, 2019) (citing denaturalization cases considering revocation of citizenship up to 34 years after naturalization); *Wasel*, No. 2:17-CV-12296, 2020 WL 4584168, at *2 (E.D. Mich. Aug. 10, 2020) (citing precedent allowing denaturalization proceedings forty-one years after naturalization).

⁶⁷ See *Dhanoa*, 402 F. Supp. 3d at 301 (stating that “the Court was specifically only addressing a pecuniary penalty,” even though the statute at issue specifically references nonpecuniary forfeitures); *Wasel*, 2020 WL 4584168, at *1 (“The Supreme Court’s discussion of monetary penalties in the context of SEC enforcement actions in . . . *Kokesh* cannot overrule longstanding precedent solely by implication.”); *Rahman*, 2020 WL 5236931, at *3 (“[T]he Supreme Court in *Kokesh* addressed a pecuniary sanction, not a revocation of status.”).

⁶⁸ *United States v. Prat*, No. 24-13407, 2025 WL 3081849, at *1 (11th Cir. Nov. 4, 2025) (“[T]he DOJ press releases are immaterial because they display the intent of the Executive—not the Legislature—and they do not transform a remedial action into a punitive one.”).

⁶⁹ See Robertson & Manta, *supra* note 16, at 446 (explaining that in the years after *Afroyim*, far fewer cases “entered the litigation pipeline,” and those that did were decided with a “narrow and formalist approach”).

fraud—and until it does, the individual is a citizen, not an alien holding a revocable benefit. Both *Phathey* and *Prat* lose sight of this fundamental shift. Both decisions rest heavily on *Johannessen*, a decision that predates the Supreme Court's 1967 decision in *Afroyim v. Rusk* and suggests that citizenship is a freely revocable privilege.⁷⁰ In *Afroyim*, the Supreme Court held that citizenship was a constitutional right held against the government, subject only to a narrow exception for citizenship that was illegally procured.⁷¹ Yet the lower courts continue to invoke the pre-*Afroyim* language of privilege as though *Afroyim* had never been decided. When *Phathey* says denaturalization “merely deprives the alien ‘of a privilege that was never rightfully his,’” it is using *Johannessen*'s framing⁷²—a framing that reflected a constitutional understanding *Afroyim* repudiated.⁷³

Second, such courts have not applied *Kokesh*'s actual analytical method. *Kokesh* did not ask whether disgorgement was originally designed to be punitive, but how disgorgement was actually being used.⁷⁴ The Court cited appellate court descriptions of SEC enforcement practice, observed that deterrence had become the “primary purpose” of disgorgement orders, and examined where recovered funds actually went.⁷⁵ The analysis was functional rather than formalistic; that is, it looked at how the remedy operated in practice, not how the remedy may have been intended in theory. This difference is significant. A formalistic inquiry would have ended with the observation that disgorgement was designed to return ill-gotten gains and stopped there. But the functional inquiry the Court actually conducted looked past that design to ask where the money went, who benefited, and what purpose the remedy served in the hands of the agency deploying it.⁷⁶ It is that second inquiry that § 2462 demands.

⁷⁰ *United States v. Prat*, 2025 WL 3081849, at *1; *United States v. Phathey*, 943 F.3d 1277, 1281 (9th Cir. 2019). *See Johannessen v. United States*, 225 U.S. 227, 238 (1912) (suggesting that review of the grant of citizenship should be treated no differently than the “public grant of land” or issuance of a “letters patent”).

⁷¹ *Afroyim v. Rusk*, 387 U.S. 253, 267 n.3 (1967).

⁷² *Phathey*, 943 F.3d at 1281 (quoting *Johannessen*, 225 U.S. at 242–43).

⁷³ *Afroyim*, 387 U.S. at 263 (“Though the framers of the [Fourteenth] Amendment were not particularly concerned with the problem of expatriation, it seems undeniable from the language they used that they wanted to put citizenship beyond the power of any governmental unit to destroy.”).

⁷⁴ *Kokesh v. SEC*, 581 U.S. 455, 465–66 (2017) (“[I]t is not clear that disgorgement, *as courts have applied it in the SEC enforcement context*, simply returns the defendant to the place he would have occupied had he not broken the law.”) (emphasis added).

⁷⁵ *See supra* notes 46–49.

⁷⁶ The *Kokesh* Court's functional methodology is evident throughout Section II.B of the opinion. Rather than asking how Congress designed disgorgement, the Court examined how courts and the SEC had actually deployed it, citing circuit court holdings that deterrence had become the “primary purpose” of disgorgement orders and examining where disgorged funds actually went in practice. *See Kokesh*,

The lower courts that analyzed denaturalization cases have done the opposite. They ask whether § 1451(a) was designed as a penalty and, finding a remedial statutory purpose, stop there.⁷⁷ *Prat* took this approach to its logical extreme, dismissing DOJ press releases about deterrence and accountability as “immaterial because they display intent of the Executive—not Legislature.”⁷⁸ But *Kokesh* itself relied on descriptions of executive practice. When the Court quoted the Second Circuit’s observation that “[t]he primary purpose of disgorgement orders is to deter violations of the securities laws,” it was citing a description of how the SEC deployed the remedy, not a statement of congressional intent.⁷⁹ The lower courts’ dismissal of executive practice as “immaterial” directly contradicts the methodology *Kokesh* employed: the Court itself relied on descriptions of how the SEC deployed disgorgement in practice, not on statements of congressional intent.

Section 2462, moreover, asks whether the “action, suit or proceeding” seeks enforcement of a penalty—not whether the underlying statute was designed as one.⁸⁰ An action can be punitive even if the enabling statute is facially remedial, as *Kokesh* demonstrated.⁸¹

Third, the Ninth Circuit’s application of *Kokesh* rests on an incomplete quotation that has shaped the analysis in nearly every subsequent decision. *Phathey* stated that “[t]he Supreme Court has determined that a sanction is a penalty only if it is sought for the purpose of punishment or deterrence.”⁸² But the actual passage from *Kokesh* reads: a pecuniary sanction is a penalty if sought “‘for the purpose of punishment, and to deter others from offending in like manner’—*as opposed to compensating a victim for his loss.*”⁸³

The omitted clause is not incidental. It reveals that *Kokesh*’s framework is a binary: a sanction is either punitive and deterrent or it is compensatory

581 U.S. at 464 (2017). It was this gap between the remedy’s theoretical design and its practical operation that led the Court to conclude that disgorgement operated as a penalty.

⁷⁷ See, e.g., *United States v. Donkor*, 507 F. Supp. 3d 423, 429 (E.D.N.Y. 2020) (citing *Trop* for the proposition that “[a] court determining whether a deprivation of rights is penal in nature must examine the statute’s purpose rather than its practical effect,” instead of applying *Kokesh*’s more searching statutory analysis).

⁷⁸ *United States v. Prat*, No. 24-13407, 2025 WL 3081849, at *1 (11th Cir. Nov. 4, 2025) (“[T]he DOJ press releases are immaterial because they display the intent of the Executive—not the Legislature—and they do not transform a remedial action into a punitive one.”).

⁷⁹ *Kokesh*, 581 U.S. at 464 (quoting *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997)).

⁸⁰ 28 U.S.C. § 2462.

⁸¹ *Kokesh*, 581 U.S. at 463.

⁸² *United States v. Phathey*, 943 F.3d 1277, 1283 (9th Cir. 2019).

⁸³ *Kokesh*, 581 U.S. at 462 (emphasis added) (quoting *Huntington v. Attrill*, 146 U.S. 657, 668 (1892)).

to a private victim.⁸⁴ When the full passage is restored, the “status quo restoration” framing on which the lower courts have relied must be tested against *Kokesh*’s actual standard: Is denaturalization compensating a victim for a loss? The answer is self-evidently no. There is no private victim. No individual receives anything. The government is the sole plaintiff. Under the complete *Kokesh* framework—not the truncated version *Phathey* applied—a noncompensatory government sanction that addresses a public wrong is a penalty. The nonpenalty examples that the *Kokesh* Court cited—*Brady v. Daly*, *Meeker v. Lehigh Valley Railroad*—involved compensation flowing to a private plaintiff. That feature is entirely absent from denaturalization.⁸⁵

Fourth, the courts’ reasoning at every level, from the Ninth and Eleventh Circuits to the dozen-plus district courts that have followed, contains a logical circularity that presumes the very matter at issue. Nearly every decision falls back on the proposition that the defendant was “never rightfully” entitled to citizenship, so revoking it takes nothing away.⁸⁶ For example, courts may conclude that denaturalization “deprives the individual of something that he was never entitled to receive,”⁸⁷ or (drawing on *Kokesh* itself, but with a revealing alteration) that denaturalization “simply returns the [alien] to the place he would have occupied.”⁸⁸ But when the litigation is first filed, and the defendant seeks protection from the statute of limitations, the court cannot assume that citizenship was fraudulently obtained.⁸⁹ To reason otherwise—to say that “denaturalization is not a penalty because it only takes away something the person never deserved”—is to assume the very conclusion the proceeding is meant to test, and to deny the defendant a procedural protection based on a merits determination that the procedural protection exists to help the defendant contest. If the *Kokesh* Court had taken the same approach that the lower court denaturalization cases have taken, the Court could simply have stated that disgorgement of ill-gotten gains is not a penalty because it takes away funds to which the defendant was never

⁸⁴ See *supra* notes 45–50.

⁸⁵ See *supra* notes 47–48.

⁸⁶ *United States v. Donkor*, 507 F. Supp. 3d 423, 429 (E.D.N.Y. 2020).

⁸⁷ *Id.* at 430.

⁸⁸ *United States v. Phathey*, 943 F.3d 1277, 1283 (9th Cir. 2019) (quoting *Kokesh*, 581 U.S. at 665, while adding the alteration of “the alien”). The substitution of “the alien” for *Kokesh*’s original “the defendant” is not incidental; rather, it imports the pre-*Afroyim* assumption that the naturalized citizen was never truly a rights-bearing member of the political community, which is precisely the circular reasoning this Essay identifies as a primary flaw in the lower courts’ analysis.

⁸⁹ Unlike a traditional defendant’s 12(b)(6) motion where the court will assume the truth of the plaintiff’s allegation in testing the validity of the complaint, the interpretation and application of the statute is a legal question to be decided by the court. See, e.g., *McCreary v. Weast*, 971 P.2d 974, 979 (Wyo. 1999) (“The interpretation of the statute is a matter of law, and it is a function assigned to the courts.”).

entitled in the first place. But the Court did not take that position in *Kokesh*,⁹⁰ and courts should not take that position in denaturalization proceedings. The consequences of that denial are especially severe given that defendants in civil denaturalization proceedings have no right to appointed counsel (a procedural gap the government has exploited deliberately, choosing the civil route precisely because it strips away the protections Congress attached to criminal prosecution, including the right to counsel, jury trial, and proof beyond a reasonable doubt).⁹¹

The uniformity of the adverse case law, in the end, reflects a gap in the analysis rather than the strength of the underlying reasoning. Many of the district court decisions cite *Phathey* without independent engagement with the *Kokesh* framework.⁹² And *Prat*—the most recent and highest-level authority—disposed of the § 2462 question in a single paragraph without oral argument, suggesting the Eleventh Circuit did not consider the argument to warrant extended analysis.⁹³ But as the D.C. Circuit observed in *3M Co. v. Browner*, § 2462 is “a general statute of limitations, applicable . . . to the entire federal government in all civil penalty cases, unless Congress specifically provides otherwise.”⁹⁴ Courts that exempt denaturalization from § 2462 are not deferring to Congress. They are deferring to pre-*Afroyim*, pre-*Kokesh* common law—judge-made doctrine that *Kokesh* itself displaced by returning to the statutory text.

B. Denaturalization Involves Citizenship Forfeiture

A deeper analysis of the applicability of the statute of limitations should begin with the text of the statute itself. Section 2462 provides that “an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within

⁹⁰ *Kokesh v. SEC*, 581 U.S. 455, 465 (2017) (noting instead that “SEC disgorgement is imposed for punitive purposes”).

⁹¹ See Anthony D. Bianco, Paul Bullis & Troy Liggett, *Civil Denaturalization: Safeguarding the Integrity of U.S. Citizenship*, U.S. ATT’YS’ BULL., July 2017, at 8, <https://www.justice.gov/usao/page/file/984701/download> [<https://perma.cc/5BL3-3ZY9>] (listing the lack of appointed counsel among the advantages of civil over criminal denaturalization proceedings); Cassandra Burke Robertson & Irina D. Manta, *Litigating Citizenship*, 73 VAND. L. REV. 757, 778 (2020) (explaining that in citizenship litigation “the petitioner is not entitled to appointed counsel to help navigate these proceedings and may be held in immigration detention while the proceedings drag out”).

⁹² See, e.g., *United States v. Yetisen*, No. 3:18-CV-00570-HZ, 2022 WL 3644926, at *6 (D. Or. Aug. 22, 2022) (citing *Phathey* but not *Kokesh*); see also *United States v. Multani*, No. 2:19-CV-01789-BJR, 2021 WL 633638, at *5 (W.D. Wash. Feb. 18, 2021) (citing *Phathey* but not *Kokesh*); *United States v. Tall*, No. 5:19-CV-549-FL, 2021 WL 640691, at *8 (E.D.N.C. Feb. 18, 2021) (citing *Phathey* but not *Kokesh*).

⁹³ *United States v. Prat*, No. 24-13407, 2025 WL 3081849, at *1 (11th Cir. Nov. 4, 2025).

⁹⁴ *3M Co. (Minn. Mining & Mfg.) v. Browner*, 17 F.3d 1453, 1461 (D.C. Cir. 1994).

five years from the date when the claim first accrued.”⁹⁵ Congress chose each of these words carefully. The statute applies to forfeitures as well as penalties. It applies to nonpecuniary interests as well as pecuniary ones.⁹⁶ And it applies unless Congress has “otherwise provided” a different limitations period.⁹⁷ Civil denaturalization under § 1451(a) is a government-initiated action that compels the forfeiture of a nonpecuniary interest—citizenship—as a consequence of alleged fraud. Congress has not otherwise provided a limitations period for civil denaturalization. Under a plain reading of § 2462, the five-year statute of limitations applies.

This reading is confirmed by the broader statutory structure. The principle that civil forfeitures must have temporal limits is as old as the Republic. Chief Justice Marshall wrote in 1805 that “[i]n a country where not even treason can be prosecuted after a lapse of three years, it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture.”⁹⁸ Justice Story agreed, writing of “penalties and forfeitures” that “it would be utterly repugnant to the genius of our laws, to allow such prosecutions a perpetuity of existence.”⁹⁹ Section 2462 codified that principle. If perpetual liability for a pecuniary forfeiture was repugnant to the genius of our laws, perpetual liability for the forfeiture of citizenship—which the Supreme Court has called “more serious than a taking of one’s property”—is all the more repugnant to the constitutional order.¹⁰⁰

Congress has, in fact, addressed the question of time limits for citizenship revocation—but in the criminal context. Under 18 U.S.C. § 1425, criminal naturalization fraud carries a ten-year statute of limitations.¹⁰¹ Criminal proceedings, of course, come with the full suite of procedural protections: the right to appointed counsel, the right to a jury trial, and proof beyond a reasonable doubt.¹⁰² The ten-year window reflects a legislative judgment that, given these protections, the government should have ample time to investigate and prosecute serious fraud. Civil denaturalization offers none of these protections. Defendants have no right to appointed counsel.¹⁰³ There is no jury.¹⁰⁴ And while the burden of proof is heightened—

⁹⁵ 28 U.S.C. § 2462.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Adams v. Woods*, 6 U.S. (2 Cranch) 336 (1805) (Marshall, C.J.).

⁹⁹ *United States v. Mayo*, 26 F. Cas. 1230, 1231 (C.C.D. Mass. 1813) (Story, J., sitting as a Circuit Justice).

¹⁰⁰ *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

¹⁰¹ *Manta & Robertson*, *supra* note 25, at 1456.

¹⁰² *Id.* at 1455.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 1456.

“clear, unequivocal, and convincing”—it remains below the criminal standard.¹⁰⁵ A structural reading of the statutory scheme thus points toward a *shorter* limitations period for civil denaturalization, not the absence of one. Five years for the less-protective civil route; ten years for the more-protective criminal route. That is a coherent scheme. What is not coherent is a system in which the criminal route—with its greater procedural protections—has a ten-year time bar, while the civil route—with fewer protections, lower burdens, and more severe practical consequences for unrepresented defendants—has no time bar at all.

The Supreme Court’s decision in *Kokesh* is consistent with this reading and reinforces it. *Kokesh* establishes that § 2462 applies whenever a government enforcement action bears the two hallmarks of a penalty: it redresses a wrong to the public, and it serves the purpose of punishment and deterrence rather than private compensation.¹⁰⁶ These are the characteristics that mark a sanction as a “penalty” for purposes of § 2462; as the following analysis shows, civil denaturalization satisfies both.

None of the court decisions have contested the first element, that denaturalization offers no recompense to private individuals. Even the courts that have rejected § 2462’s application concede that denaturalization addresses a wrong to the public rather than a wrong to a private individual. *Phathey* acknowledged this expressly.¹⁰⁷ The government brings denaturalization proceedings in its own name, on behalf of the public interest in the integrity of the naturalization system. No private party initiates the action or stands to benefit from its outcome. The first *Kokesh* factor favors treating denaturalization as a penalty, a point on which there is no disagreement.

The second element—whether the sanction serves the purpose of punishment and deterrence rather than private compensation—is where the existing case law has gone astray, and where a faithful application of *Kokesh* compels a different result. This requires examining how denaturalization is actually being deployed, which is the methodology *Kokesh* demands. That examination reveals three distinct ways in which denaturalization functions as a punitive tool.

First, denaturalization has been wielded as a tool of political punishment. As the Introduction described, President Trump threatened to revoke Rosie O’Donnell’s citizenship on political grounds, and members of

¹⁰⁵ Robertson & Manta, *supra* note 91, at 776.

¹⁰⁶ *Supra* Section I.A.

¹⁰⁷ *United States v. Phathey*, 943 F.3d 1277, 1282 (9th Cir. 2019) (“Although the wrong sought to be redressed by § 1451(a) is a wrong to the public, revocation of citizenship is not sought for the purpose of punishment or to deter future violations.”).

Congress demanded denaturalization proceedings against New York City Mayor-elect Zohran Mamdani based on political speech and associational activity rather than evidence of fraud.¹⁰⁸ Representative Ilhan Omar of Minnesota has faced similar demands from a congressional colleague who called for her to lose her citizenship.¹⁰⁹ These episodes reveal something about the purpose denaturalization serves in the current political environment: it is a mechanism for punishing disfavored individuals and chilling the political participation of naturalized citizens more broadly. The threat of investigation alone—regardless of its legal merit—imposes costs on the target and sends a message to others.¹¹⁰

Second, the current turn toward mass enforcement of denaturalization reflects a form of structural punishment directed at naturalized citizens as a class. The Shumate memo's directive to "maximally pursue" denaturalization and the subsequent guidance ordering field offices to produce 100 to 200 cases per month represent a categorical shift from the historical norm of a handful of cases per year, most of which targeted former war criminals.¹¹¹ This recent shift is part of a larger political effort to target foreign-born individuals and engage in mass deportation efforts.¹¹²

Third, denaturalization has recently been deployed to target individuals on the basis of especially opprobrious criminal conduct, using the civil route specifically to circumvent the procedural protections Congress attached to

¹⁰⁸ See *supra* Part I.

¹⁰⁹ See Javier Manjarres, *Fine Wants Ilhan Omar Denaturalized and Deported, Calls Somali's [sic] "Dregs of the World,"* FLORIDIAN (Dec. 11, 2025), <https://floridianpress.com/2025/12/fine-wants-ilhan-omar-denaturalized-and-deported-calls-somalis-dregs-of-the-world/> [<https://perma.cc/7UQA-VZG2>] (quoting Representative Randy Fine as stating that "[s]he should be denaturalized and deported. I mean, the woman hates America. She's up to her eyeballs in both welfare fraud and immigration fraud. They should all go home").

¹¹⁰ See Christopher Levesque, Kimberly Horner & Linus Chan, *Process as Suffering: How U.S. Immigration Court Process and Culture Prevent Substantive Justice*, 86 ALB. L. REV. 471, 475–77 (2023) (explaining that being forced to defend oneself in court proceedings, especially without the aid of an attorney, can be a punishment in itself).

¹¹¹ Robertson & Manta, *supra* note 18.

¹¹² American Immigration Council, *Mass Deportation: Analyzing the Trump Administration's Attacks on Immigrants, Democracy, and America* (July 23, 2025), <https://www.americanimmigrationcouncil.org/report/mass-deportation-trump-democracy/> [<https://perma.cc/L4GK-QTSR>] (cataloging how the Trump Administration's immigration policies have blurred the line between enforcement and punishment across every category of noncitizen and foreign-born resident, deploying detention, deportation, status revocation, and denaturalization not as individualized responses to specific violations but as tools of mass deterrence and political control); Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, 71 STAN. L. REV. ONLINE 197, 197 (2019) (suggesting that "[t]wo years into the Trump presidency, white nationalism may be driving the Administration's immigration policy"); Ming Hsu Chen, *Colorblind Nationalism and the Limits of Citizenship*, 44 CARDOZO L. REV. 945, 948 (2023) ("A resurgent form of populist nationalism exhibits an aversion to a non-White minority or multicultural national identity.").

criminal prosecution. Operation False Haven, launched by ICE, cross-referenced a database of approximately 25,000 registered sex offenders against naturalization records to identify potential denaturalization targets.¹¹³ The Lecompte case is paradigmatic: Lecompte was a convicted serial child rapist for whom the relevant criminal statute of limitations had expired. The government stated explicitly that “because [the crimes were] discovered after the 10-year statute of limitations expired, a conventional criminal prosecution wasn’t a legally viable option”—and so DOJ pursued civil denaturalization instead.¹¹⁴ The government is not correcting administrative errors in these cases. It is selecting individuals whose crimes provoke moral revulsion and then searching for a mechanism to strip their citizenship after the time bar for criminal charges has run. The civil route is chosen not because it is more appropriate but because it lacks the constraints—including a statute of limitations—that Congress imposed on the criminal one. The selection of maximally sympathetic cases is not incidental. By leading with individuals whose alleged conduct provokes the broadest public condemnation (terrorism, war crimes, child sexual abuse) the government attempts to build both public approval and legal infrastructure for denaturalization as a tool. Once that infrastructure is created and the idea of denaturalization is normalized, the same mechanism can be deployed against individuals whose situations are far less egregious or who are targeted for reasons that have nothing to do with fraud. The absence of a statute of limitations means there is no structural check on that expansion. As a policy matter, it may be reasonable to seek punishment of the worst offenders. But there can be no doubt that the effort is indeed punitive.

Although the other two applications of denaturalization have been largely undertaken along partisan lines, the criminal targeting approach has been consistently bipartisan. Thus, for example, the Biden Administration did not dismantle the denaturalization apparatus that the Trump Administration built; instead, it “legitimize[d]” it, introducing “new broad and vague targets for denaturalization, such as people who ‘pose a potential danger to national security’ or people with ‘a very serious felony’” while

¹¹³ U.S. Immigration And Customs Enforcement, *ICE Investigation Prompts Federal Judge’s Denaturalization of Convicted Serial Child Rapist* (Jan. 4, 2024), <https://www.ice.gov/news/releases/ice-investigation-prompts-federal-judges-denaturalization-convicted-serial-child> [<https://perma.cc/2D4P-FBTW>] (explaining that ICE’s Enforcement and Removal Operations “designed and launched Operation False Haven in late 2019 to identify and target child sexual abusers and other egregious felons who were convicted after naturalizing for offenses they committed and concealed during the naturalization process”).

¹¹⁴ *Id.*

retaining discretion to pursue cases outside those categories.¹¹⁵ The bipartisan nature of the enforcement expansion underscores that this is not a partisan critique but a structural observation: denaturalization has become, across administrations, an enforcement program designed to “send a message” and hold people “accountable”—the language of deterrence and punishment, not remediation.¹¹⁶

Each of these enforcement patterns (political targeting, mass enforcement as deterrence policy, and circumvention of the time bar for criminal proceedings to reach opprobrious offenders) confirms that the purpose of denaturalization as actually practiced is punishment and deterrence, not the neutral correction of administrative errors. Under *Kokesh*, that is the relevant inquiry.

Each of these enforcement patterns confirms that denaturalization is deployed for punishment and deterrence. The analysis is further reinforced by what denaturalization does *not* do: compensate anyone. The *Kokesh* binary asks whether a sanction serves the purpose of “‘punishment, and to deter others from offending in like manner’—as opposed to compensating a victim for his loss.”¹¹⁷ Denaturalization falls entirely on the punishment side of that line. There is no private victim. No individual is made whole. The government is the sole plaintiff, and the sole consequence of a successful action is that the defendant loses her membership in the political community. Under *Kokesh*, “[w]hen an individual is made to pay a noncompensatory sanction to the Government as a consequence of a legal violation, the payment operates as a penalty.”¹¹⁸ The same principle applies when the noncompensatory sanction is the loss of citizenship rather than the loss of money.

¹¹⁵ Saman Hashemi, *Denaturalization and the Negative Effects of Widespread Insecurity in Citizenship for Naturalized Citizens*, 50 HASTINGS CONST. L.Q. 113, 137 (2023).

¹¹⁶ U.S. Dept. of Just., *Justice Department Secures First Denaturalization As a Result of Operation Janus* (Jan. 9, 2018), <https://www.justice.gov/archives/opa/pr/justice-department-secures-first-denaturalization-result-operation-janus> [<https://perma.cc/2ZS9-9BGN>] (quoting USCIS Director L. Francis Cissna: “I hope this case, and those to follow, send a loud message that attempting to fraudulently obtain U.S. citizenship will not be tolerated”); U.S. Dep’t of Just., *The Department of Justice Creates Section Dedicated to Denaturalization Cases* (Feb. 26, 2020), <https://www.justice.gov/archives/opa/pr/departments-justice-creates-section-dedicated-denaturalization-cases> [<https://perma.cc/M9UU-539Q>] (quoting Assistant Attorney General for the Civil Division, Jody Hunt: “When a terrorist or sex offender becomes a U.S. citizen under false pretenses, it is an affront to our system—and it is especially offensive to those who fall victim to these criminals The Denaturalization Section will further the Department’s efforts to pursue those who unlawfully obtained citizenship status and ensure that they are held accountable for their fraudulent conduct”).

¹¹⁷ *Kokesh v. SEC*, 581 U.S. 455, 463 (2017) (quoting *Huntington v. Attrill*, 146 U.S. 657, 668 (1892)).

¹¹⁸ *Id.* at 465.

The “status quo ante” characterization on which the lower courts have relied cannot survive this analysis.¹¹⁹ SEC disgorgement, at least, had a plausible compensatory dimension: the defendant returned money, and that money could theoretically be directed to victims. The *Kokesh* Court looked past the theory to the practice—and found that in practice, disgorgement was punitive.¹²⁰ Denaturalization lacks even the theoretical compensatory dimension. No money changes hands. No victim is identified. No one is restored to anything. If disgorgement was a penalty despite its compensatory veneer, denaturalization—which lacks even that veneer—is all the more clearly a penalty.

Finally, denaturalization leaves the defendant incomparably worse off than before. *Kokesh* observed that when disgorgement “exceeds the profits gained as a result of the violation” and “leaves the defendant worse off,” it “does not simply restore the status quo” but operates as a punishment.¹²¹ Denaturalization does not merely leave the defendant worse off. It destroys her membership in the political community. The Supreme Court has recognized repeatedly that the consequences of denaturalization are “more serious than a taking of one’s property”¹²² and “may result in the loss ‘of all that makes life worth living.’”¹²³ A denaturalized individual loses the right to vote, the right to hold a U.S. passport, protection from deportation, and the security of belonging to the national community in which she has built her life.¹²⁴ She may become stateless.¹²⁵ To describe this as “restoring the status quo” is to use language that has lost all connection to the reality it purports to describe.

The statutory text, the statutory structure, and the *Kokesh* framework all point in the same direction. Denaturalization is a forfeiture of a nonpecuniary interest, subject to § 2462 on the face of the statute. It is also a penalty under the *Kokesh* framework: it redresses a public wrong, it is

¹¹⁹ See *supra* Section I.A.

¹²⁰ See *supra* Section I.A.

¹²¹ *Kokesh*, 581 U.S. at 466. To the extent one might argue that a mistakenly naturalized citizen has “profited” from citizenship and that denaturalization merely reclaims that benefit, that argument reproduces the circular reasoning addressed in Part I.A: it assumes the very conclusion the proceeding exists to establish, and it imports a transactional conception of citizenship that *Afroyim* explicitly rejected.

¹²² *Schneiderman v. United States*, 320 U.S. 118, 122 (1943).

¹²³ *Knauer v. United States*, 328 U.S. 654, 659 (1946) (quoting *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)).

¹²⁴ *Robertson & Manta*, *supra* note 16, at 456–57 (discussing the rights deriving from citizenship).

¹²⁵ See Melissa Stewart, *Birthright Citizenship, Denaturalization, and the Specter of Statelessness*, 73 UCLA L. REV. DISCOURSE 170, 203 (2026) (explaining that loss of citizenship “may relegate them to a permanent underclass without hope of resolving their legal status and leave them vulnerable to deportation to a country to which they have no connection and face threats to their human rights and even death”).

deployed for deterrence and punishment rather than private compensation, and it leaves the defendant catastrophically worse off. The five-year statute of limitations applies.

II. THE CASE FOR A DENATURALIZATION TIME BAR

Statutes of limitations exist for reasons that apply with particular force to denaturalization. In *Gabelli v. SEC*—a decision the *Kokesh* Court cited approvingly—the Supreme Court explained that limitations periods “promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”¹²⁶ They also provide repose: “[E]ven wrongdoers are entitled to assume that their sins may be forgotten.”¹²⁷ And they constrain government power, ensuring that enforcement agencies cannot hold allegations in reserve indefinitely, deploying them when politically convenient rather than when the evidence is fresh.

Each of these rationales applies even more intensely to denaturalization, and taken together, they bear directly on the constitutional security of citizenship that *Afroyim* recognized as foundational. A limitations period is much more than a procedural convenience. Instead, it is one of the structural guarantees that makes citizenship secure enough to serve its constitutional function. Without it, the threat of denaturalization remains perpetually available as a political weapon, and the promise of stable membership in the political community that the Fourteenth Amendment enshrines becomes hollow.

The evidentiary concerns are acute. The government now uses programs like Operation Janus—which digitized old fingerprint records to identify discrepancies decades after naturalization—to reach back twenty, thirty, or more years.¹²⁸ In *Singh*, the government initiated denaturalization proceedings more than twenty-five years after naturalization.¹²⁹ At that distance, a defendant may be unable to reconstruct what happened at her naturalization interview. Was something disclosed verbally that the examiner failed to record? Were questions ambiguous? The examiner will likely not remember, even if they are still alive decades later. The notes may be lost. Evidence that might have exonerated the defendant at five years may simply not exist at twenty-five.

¹²⁶ *Gabelli v. SEC*, 568 U.S. 442, 448 (2013).

¹²⁷ *Id.* at 449.

¹²⁸ Robertson & Manta, *supra* note 16, at 415, 459.

¹²⁹ *Id.* at 457.

The reliance interests are even greater. A person who has been a citizen for decades has built a life on that foundation—a career, a family, a community, a political identity.¹³⁰ The reliance interest in citizenship dwarfs the reliance interest in any financial position that SEC disgorgement might disturb. And the constraint on government abuse is especially critical in the current environment where the Shumate memo has made denaturalization a mass enforcement priority, field offices have been instructed to produce cases by the hundred, and political figures have publicly demanded denaturalization of their opponents.¹³¹ Without a time limit, the government can investigate, decline to act, and then dust off the file years or decades later when the political winds shift.

The counterarguments to repose (the principle that potential defendants are entitled to finality and freedom from indefinitely threatened legal action) are unconvincing. First, the courts have pointed to the Supreme Court’s “longstanding” characterization of denaturalization as nonpunitive. But those characterizations—in *Johannessen*, *Trop*, and *Costello*—predate both *Afroyim*’s transformation of citizenship doctrine and *Kokesh*’s transformation of penalty analysis.¹³² The factual premises of those cases no longer hold. Courts had similarly long held that SEC disgorgement was remedial. *Kokesh* changed that understanding by examining actual practice. The same reexamination is warranted here.

Second, some courts have reasoned that because § 1451(a) contains no statute of limitations, Congress intended none to apply.¹³³ But this reasoning misunderstands the function of § 2462 itself. Section 2462 is a catchall provision: its entire purpose is to supply a limitations period where Congress has not otherwise provided one. The absence of a limitations period in § 1451(a) is therefore not evidence that Congress intended no time bar to apply; instead, it is precisely the condition that triggers § 2462’s operation. That is the same rationale the Supreme Court relied on in *Kokesh*: the SEC’s disgorgement authority likewise contained no statute of limitations, and the Court applied § 2462 anyway, reasoning that the catchall provision exists for exactly this situation.¹³⁴ Further, that statement is true of any of the civil

¹³⁰ *Id.* (“Citizenship encapsulates a right to belong, a right to participate in the political life of the country, and a right to feel secure in one’s national identity.”).

¹³¹ *See supra* note 18.

¹³² *See supra* Section I.A.

¹³³ *United States v. Phatthey*, 943 F.3d 1277, 1281 (9th Cir. 2019) (“Nothing in the statute provides for the imposition of a fine, penalty, or sentence of imprisonment—only the revocation of citizenship.”); *United States v. Dhanoa*, 402 F. Supp. 3d 296, 301 n.5 (D.S.C. 2019) (“[W]hen the sovereign elects to subject itself to a statute of limitations, the sovereign is given the benefit of the doubt if the scope of the statute is ambiguous.”) (quoting *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 96 (2006)).

¹³⁴ *Kokesh v. SEC*, 581 U.S. 455, 467 (2017).

actions lacking an individual statute of limitations, “which is precisely why the catchall provision exists.”¹³⁵ Congress did not include a limitations period in the SEC’s disgorgement authority, either. *Kokesh* applied § 2462 anyway.

Third, the district court in one of the cases analyzing the statute of limitations in denaturalization cases distinguished cases in which courts treated revocation of professional status as a penalty on the ground that those cases involved lawfully obtained status followed by subsequent misconduct, whereas denaturalization alleges the status was never lawfully obtained.¹³⁶ This is the most intellectually serious version of the counterargument, but it fails for two reasons. First, it is circular: the distinction works only if one has already established that citizenship was unlawfully obtained, which is the very question the proceeding exists to resolve. Second, it is factually inapt as a description of modern enforcement practice. Operation False Haven and similar programs begin with individuals convicted of crimes *after* naturalization and work backward to find defects in the original application. The functional pattern—lawful status, subsequent bad act, revocation triggered by the bad act—is indistinguishable from cases involving revocation of professional licenses.

The absence of a statute of limitations compounds these concerns by creating a permanent vulnerability that chills the very political participation that citizenship is meant to enable. The Supreme Court in *Afroyim* grounded its holding in the principle that citizenship must be secure enough to permit full participation in democratic life—that it is “completely incongruous” for those “temporarily in office” to hold the power to strip citizenship from those who oppose them.¹³⁷ But that is precisely the dynamic a limitless enforcement regime creates. A naturalized citizen who speaks out against abuse of power, or one who runs for office to challenge the political establishment, knows that her naturalization file can be reopened at any time—not because new evidence of fraud has emerged, but because she has drawn attention to herself.¹³⁸ Even a citizen whose application was entirely truthful may hesitate, aware that the process of defending against a denaturalization action, without appointed counsel and at her own expense, is itself a punishment. As naturalized citizen Carlos Lozada wrote in a recent op-ed, citizenship is not a bureaucratic transaction but “the commitment to

¹³⁵ Manta & Robertson, *supra* note 25, at 1466.

¹³⁶ *United States v. Rahman*, No. 19-CV-1113-PB, 2020 WL 5236931, at *4 n.4 (D.N.H. Sept. 2, 2020).

¹³⁷ *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967).

¹³⁸ See Jennifer Lee Koh, *Downsizing the Deportation State*, 16 HARV. L. & POL’Y REV. 85, 113 (2021) (noting that “the past several decades have illustrated the vulnerability of immigrant communities to the country’s political whims”).

an idea, the culmination of a personal and political transformation.”¹³⁹ To denaturalize him, Lozada observed, “you would have to do more than revoke my papers. You would have to revoke my life.”¹⁴⁰ A system that holds the threat of that revocation over every naturalized citizen indefinitely—with no time bar and no right to appointed counsel—risks silencing millions of Americans who have every right to participate fully in the democracy they swore an oath to defend.¹⁴¹

CONCLUSION

The principle that government forfeitures require temporal limits stretches from Chief Justice Marshall to *Kokesh*. Section 2462 codifies that principle. The text of 28 U.S.C. § 2462 applies on its face to nonpecuniary forfeitures, and the *Kokesh* framework confirms that civil denaturalization is a penalty: it redresses a public wrong, it is deployed for purposes of punishment and deterrence rather than private compensation, and it leaves the defendant catastrophically worse off. Furthermore, a five-year limitations period would not prevent the government from pursuing clear fraud discovered promptly after naturalization, nor would it affect the ten-year criminal statute of limitations for criminal naturalization fraud.

The courts that have rejected this conclusion have done so by relying on pre-*Afroyim* conceptions of citizenship as a revocable privilege, truncating the *Kokesh* analysis, and engaging in circular reasoning. Applying Congress’s default five-year limitations period would not immunize fraud, but would instead bring denaturalization into conformity with the same structural logic that governs criminal naturalization fraud and SEC enforcement alike. More importantly, applying the statute of limitations would provide the more than twenty-three million naturalized Americans who have sworn an oath to the Constitution the security to participate fully in democratic life without fear that their citizenship may be weaponized against them.

In an era when the Department of Justice has made denaturalization one of its top five enforcement priorities, directed attorneys to “maximally pursue” every viable case, and ordered field offices to produce hundreds of

¹³⁹ Carlos Lozada, *You Can’t Denaturalize Me*, N.Y. TIMES (Jan. 21, 2026), <https://www.nytimes.com/2026/01/21/opinion/immigration-denaturalization-citizenship-ice.html> [<https://perma.cc/QD5F-JLET>].

¹⁴⁰ *Id.*

¹⁴¹ See Medha D. Makhoul, *Health Care Sanctuaries*, 20 YALE J. HEALTH POL’Y L. & ETHICS 1, 11 (2021) (“Naturalized U.S. citizens may feel that their status is insecure, especially in light of the significant escalation of denaturalization proceedings from 2017 to 2020.”).

cases per month¹⁴²—and when the threat of denaturalization has been wielded openly against a comedian, a newly elected mayor, and a sitting member of Congress for no reason other than political disfavor—the question of whether a statute of limitations applies is more than a mere technicality. Instead, this procedural protection is the difference between citizenship that is secure enough to sustain full democratic participation and one that is held perpetually hostage to the political winds. The Constitution, as *Afroyim* recognized, demands the former.

¹⁴² It should be noted, however, that at this point in time the government has succeeded in filing far fewer cases than the Shumate memo appeared to anticipate. See Hamed Aleaziz & Madeleine Ngo, *Trump Administration Wants to Strip 12 Immigrants of U.S. Citizenship*, N.Y. TIMES (May 8, 2026), <https://www.nytimes.com/2026/05/08/us/politics/trump-immigrants-citizenship.html> [<https://perma.cc/6HL2-AJS4>] (noting that “Justice Department officials across the United States were advised recently to prepare to take on nearly 400 cases as part of a first wave of revocations,” though initially only 12 cases were filed).