

## 7. FROM THE OUTSIDE LOOKING IN U.S. PASSPORTS IN THE BORDERLANDS

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Juan Aranda has a birth certificate documenting his birth in 1970 in Weslaco, Texas, a small city located a few miles from the U.S.-Mexico border (Jordan 2008). He has baptism records from a Weslaco church dated two weeks later. Weslaco school records list him as a student from kindergarten through high school. He is a registered voter and has voted in U.S. federal elections. However, when he submitted his birth certificate as proof of citizenship for a passport application in 2007, the U.S. Department of State requested further information to substantiate his birth within the United States, including his mother's prenatal care records, a newspaper announcement of his birth, and his parents' U.S. school records. Aranda responded by sending in his own school and baptism records, with a note explaining that the other requested documents did not exist. (His mother had come to Texas from Mexico when she was three months' pregnant, following the death of her husband. She could not afford any prenatal care and had never attended school in the United States or placed a birth announcement in the paper.) To further support the passport application, Aranda's mother dug up a document attesting to a ten-dollar loan that she took out shortly after her son's birth, along with his immunization records and pictures from his years in the local elementary school. The response from the State Department informed Aranda that he had not "fully complied with the request for additional information." It advised him to learn about

“procedures for your possible naturalization as a U.S. citizen” and informed him, “Once you obtain U.S. citizenship, you may execute another application for a U.S. passport.”

The experiences of Juan Aranda and many others in the U.S.-Mexico borderlands cast a new light on U.S. passports, revealing how they function to draw lines of belonging and exclusion not only at international borders but also within the United States. This chapter describes the recent imposition of new passport requirements for U.S. citizens at the U.S.-Mexico border and the wide-scale denial of passport applications from Mexican Americans born in the borderlands of South Texas. Drawing on the work of John Torpey and others on state identification processes and the evolution of the passport, this chapter argues that the U.S. passport, although often described as a document aimed exclusively at foreign governments, has in fact come to resemble an internal passport in the areas close to the southern U.S. border. The current situation in the borderlands can be viewed as one chapter within a much longer history of the domestic use of U.S. passports by those on the margins of U.S. citizenship, and of racialized presumptions of fraud within the adjudication of passport applications. The fluctuations of evidentiary criteria reveal the racialized character of citizenship’s operations and also suggest the vagaries of citizenship’s core meanings. (See chapters by Flaim, Lawrance, Babo, and McKenzie, this volume, for discussions of demands for documents directed toward those encountered as members of ethnic or racial communities targeted by political elites or government officials.)

### *The Changing Border and Emerging Conflicts over Passports*

The Fourteenth Amendment to the U.S. Constitution accords *jus soli* citizenship to individuals born in the United States. Thus, a birth certificate issued by a city, county, or state authority is, in theory, sufficient proof of citizenship to obtain a U.S. passport. However, as Beatrice McKenzie details in this volume, race has played a role in the adjudication of citizenship claims throughout the history of the United States. In recent years, one particular group of applicants has encountered high levels of scrutiny: Mexican Americans born in noninstitutional settings—private homes or small clinics—in areas close to the U.S.-Mexico border. In particular, residents of the Rio Grande Valley in South Texas have experienced a surge in passport denials.

For much of the twentieth century, *parteras* (lay midwives) played a key role in the provision of maternal health care in the Rio Grande Valley, which is home to one of the largest concentrations of farmworkers in the United States

and is served by few hospitals (Ogolla 2008, 2). The four counties that make up the region range from 87.2 to 95.7 percent Latino, and per capita income, which ranges from \$10,800 to \$13,695, is among the lowest in the United States (U.S. Department of Commerce, Census Bureau, 2012). Many residents of the valley live in small *colonias* consisting of just a few houses. One study of midwives in the region has observed that “in addition to a shortage of primary care providers, Colonia residents’ difficulty in accessing health care is compounded by having to travel long distances to health care facilities, fear of losing wages for time spent away from work, inconvenient health care facility hours, lack of awareness of available health care programs and no health insurance” (Ogolla 2008, 2–3).

A State Department spokesperson, Cy Ferenchak, has explained that while a birth certificate generally suffices as proof of citizenship for a passport application, “because of a history of fraudulently filed reports on the Southwest border, we don’t have much faith in the [midwife-granted] document” (Sieff 2008a). The State Department has viewed midwife-signed birth certificates with heightened suspicion for several decades, but denials of passports have reached a critical mass since 2008 due to changes in federal law and a resulting surge in passport applications from residents of the borderlands. Passengers arriving in the United States by air or sea generally must present a U.S. passport to establish citizenship, but for many decades documentation requirements were more relaxed for U.S. citizens entering at land border crossings or arriving by air or sea from Mexico, Canada, or the Caribbean. In those settings—and particularly at land border crossings, where people often cross the border for just a few hours to run errands or socialize—it was common until recently for U.S. citizens returning home to use a variety of documents, such as birth certificates and driver’s licenses, in lieu of passports. This changed in 2009 with the advent of the Western Hemisphere Travel Initiative (WHTI). Under the WHTI, U.S. citizens returning to the United States at a land border crossing must now present a U.S. passport or other designated identification.<sup>1</sup> In the lead-up to the implementation of the WHTI, many residents of the borderlands rushed to apply for passports in order to comply with the new requirements (Vogel 2008).

Over the past few years, a number of applicants who have been denied passports have brought suit in federal court. Juan Aranda was a plaintiff in one of these suits, *Castelano v. Clinton*, a class action filed in 2008 (*Castelano v. Clinton* 2008a). The class of plaintiffs was defined as individuals of Mexican descent who were born in southwestern border states and were delivered by midwives or birth attendants in private homes or local clinics rather than in hospitals.

The complaint alleged that the State Department applied heightened scrutiny to the plaintiffs' passport applications; subjected them to burdensome, unreasonable, and excessive demands for documentation of their birth that went far beyond what other applicants were required to submit; and deemed their applications to be "filed without further action" (i.e., put on hold) or abandoned rather than issuing a formal denial that could be appealed. Other lawsuits have challenged immigration enforcement actions at the border against U.S. citizens of Mexican descent. For example, Laura Nancy Castro brought suit for a declaratory judgment of citizenship after border officers detained her, along with her mother and sister, for ten hours, coerced from them a false confession that the birth certificates belonging to Castro and her sister had been falsified, confiscated her passport, and denied her entry to the United States (Ulloa 2010).

At the center of the conflict over passport adjudications is a list of "suspect birth attendants" known as the SBA List (U.S. Department of State 2009, 137–38). Although the list has never been publicly released, the State Department produced an undated copy in response to discovery requests made by passport applicants in the course of litigation. That version of the SBA List includes the names of 249 midwives who practiced in South Texas between 1961 and 1996 (*Castelano v. Clinton* 2008b; Ulloa 2010). It also includes dates that appear to refer to convictions for birth certificate fraud for 49 of the midwives, mostly from the 1980s and 1990s. There are notations next to thirteen other names that appear to refer to (undated) convictions, confessions, or indictments, as well as one notation referring to a revoked license. The remaining names on the list have no such notations but have been described as being midwives suspected of fraud by agency officials (Ulloa 2010; U.S. Department of State 2009, 137–38).

Like Juan Aranda, many Latino passport applicants born in the region and delivered by midwives in noninstitutional settings have been asked to produce extensive additional evidence, such as prenatal records, newspaper announcements of their birth, and records relating to their parents' presence in the United States at the time of their birth (Jordan 2008). Many of the births in question took place decades ago, and thus midwives and other possible witnesses, as well as documentary evidence, may no longer be available (Vogel 2008). Those who cannot produce the requested evidence have had their applications denied or put on indefinite hold (Jordan 2008).

As indicated by the SBA List, a number of midwives in South Texas were convicted of falsifying birth certificates during a wave of such prosecutions in the 1980s and 1990s. Yet the connection between "suspect" birth attendants and the authenticity of particular birth certificates that bear their signatures is

tenuous at best. The majority of midwives on the SBA List have never admitted to or been convicted of falsifying birth certificates. Moreover, it is undisputed that all the midwives on the list, including those who have been convicted of falsifying birth certificates, delivered many babies inside the United States, all of whom presumably have birth certificates bearing their signature. As one news report has put it, “No one was asked which records they had been paid to forge and which were authentic, making it nearly impossible to determine which children had been delivered in the United States and which had not” (Ulloa 2010). Even the most expansive estimate of falsified birth certificates puts the total at fifteen thousand for the entire period between 1960 and the early 1990s, fewer than the number of babies delivered by midwives in the region in any given year (Hsu 2008). The use of the SBA List to deny passports has thus thrown a wide net that has prevented many people born in the United States from being able to obtain proof of citizenship.

The most insistent claims of fraud have been directed at applicants whose births were registered on both sides of the border. For example, Amalia Castelano, the lead plaintiff in the *Castelano* case, was born in Weslaco, Texas, in 1968 to Mexican parents who resided across the border in Reynosa, Mexico, but had border-crossing cards and frequently spent time in Texas (*Castelano v. Clinton* 2008a, 26). Castelano’s mother went into labor while visiting family members in Weslaco and gave birth there attended by a midwife. The birth was registered in Texas on the same day, and Castelano was baptized in Weslaco two months later. Yet her parents also registered her birth across the border in Reynosa, Mexico, in 1972. She thus ended up with two separate birth records, evidencing two different births in two different countries. The State Department and the Department of Homeland Security now routinely conduct searches of Mexican birth records when investigating U.S. citizenship claims in contexts such as passport applications, removal proceedings, and applications for certificates of citizenship. The existence of a Mexican birth certificate is frequently cited as a cause for a denial of such a claim (*Garcia v. Clinton* 2011; *Rivera v. Albright* 2000).

Agency officials appear to be jumping to the conclusion that dual birth registrations are a sign of migration-related fraud. Yet a closer look at these cases and their historical context suggests a very different narrative. For most of the twentieth century, Mexican citizenship law placed families in a bind if they returned to Mexico with U.S.-born children. Mexican law did not recognize dual nationality claims, deeming any acquisition of foreign citizenship, by birth or naturalization, to result in an automatic loss of all Mexican citizenship rights

(Fitzgerald 2005, 176–77; Gutierrez 1997, 1003–5). Even Mexican naturalization laws, which included preferential treatment for immigrants from Latin American countries, provided no such accommodations for the U.S.-born children of Mexican citizens until 1974 (Fitzgerald 2005, 180–81). In 1998, the law was finally amended to recognize Mexican nationality claims of those born in Mexico who have naturalized abroad and those born abroad to at least one Mexican parent (183–86).

Faced with the disjuncture between Mexican citizenship law on the one hand and the realities of circular migration and cross-border communities on the other, many Mexicans with U.S.-born children chose a straightforward solution: re-registering their children's births in Mexico. This phenomenon is widely known in the region. As Joe Rivera, the county clerk of Cameron County, Texas, has explained:

It is common practice in Cameron County and other border counties that the parents of children born in Texas also register their children as having been born in Mexico. This is particularly true where the parents are living in Mexico, and intend to raise the child in Mexico. There are many reasons that this occurs. Some parents do it for purely cultural reasons. Others do so in order that their children may have the benefit of Mexican Citizenship, such as attending public school, or obtaining medical services, in Mexico. I have seen many cases where parents registered their children as having been born in Mexico, when in fact they were born in the United States, regardless of whether they were born with a midwife or in a hospital. (*Trevino v. Clinton* 2007)

Amalia Castelano's story bears this out: her parents registered her birth in Reynosa so that she could access medical care (*Castelano v. Clinton* 2008a, 26). Yet the paradigm of migration-related fraud is so powerful that it has entirely obscured, for agency adjudicators, this likely explanation for many cases in which passport applicants have dual birth certificates.

Aranda and the other plaintiffs in *Castelano v. Clinton* reached a settlement with the government in 2009. The State Department agreed to readjudicate the passport applications of class members (*Castelano v. Clinton* 2009, 16–18); to apply a standard of proof that is easier for an applicant to meet (“preponderance of the evidence” rather than “substantial evidence”) (13); and to issue approvals or denials rather than putting applications on hold (14–15). Under the terms of the settlement, the State Department will continue to maintain a list of midwives

who have been convicted of birth certificate fraud and/or who the Department has a reasonable suspicion of having engaged in birth certificate fraud, based on: a) a conviction or plea agreement involving a crime of document fraud; b) an admission, confession, or statement of implication made by the birth attendant, a client, or a witness pertaining to birth certificate fraud by the birth attendant; c) information received from a law enforcement agency regarding the birth attendant and his/her involvement in birth certificate fraud; d) documents or other information supporting a reasonable suspicion that the birth attendant has engaged in birth certificate fraud; or e) disciplinary action taken by the Texas Midwifery Board or other state licensing agency for falsely registering births or falsely filing birth records. (10)

The settlement does not include any provision for public release of the list, but the State Department agreed that a name will be included on the list only where “there is an articulable and reasonable basis for the belief that an individual has engaged in birth certificate fraud” and that “mere guesses or hunches are insufficient” (11). It also agreed not to deny an application solely because a birth certificate was signed by someone whose name appears on the list (18). Where further information is requested of the applicant, the case will be handled by a senior-level adjudicator designated as an “SBA officer” (26). If that adjudicator determines that the application should be denied, the decision will be reviewed by an “SBA panel” made up of three SBA adjudicators (10, 21–22). The agency also agreed to provide training for its adjudicators (25–26) and to engage in outreach efforts to Texas border communities (26–27).

In the wake of the *Castelano* settlement, the State Department has taken steps that appear aimed at signaling a standardized (if still onerous) approach to adjudicating applications by those born in a noninstitutional setting. A new application form requires applicants seeking to establish citizenship on the basis of an out-of-hospital birth to provide information about every residence they had up to age eighteen and every school they attended, as well as the citizenship status and place and date of birth of relatives, including siblings, children, parents, and stepparents, living or deceased (U.S. Department of State 2013). The form asks about the parents’ residences and places of employment during the year preceding the applicant’s birth; the dates of each prenatal visit the mother had; and the names of individuals present at the birth. For those with noncitizen parents, the form requires information about what form of documentation, if any, the parents used to enter the country (2–3).



*Passports and the Documentary Life of Citizenship*

Contested citizenship claims reveal the inherent instability of the citizen/alien line. As I have discussed elsewhere, this instability was once widely acknowledged with the U.S. legal system (Rosenbloom 2013). A century ago, immigration officials adjudicating Chinese American citizenship claims frequently fell back on racialized assumptions in resolving cases where the evidentiary record of birth in the United States was unclear. While some federal judges were content to uphold the validity of such adjudications, others expressed distress at their own inability to distinguish “true” from “false” citizens. As one judge complained, “It is impossible in this class of cases to know what the truth is” (*U.S. v. Leu Jin* 581).

Such a confession by a judge would be remarkable in the present-day United States, where birth registration has been nearly universal for several decades and *jus soli* citizenship is treated as a clear-cut question to resolve. Yet the forensic contingency of citizenship, and its malleability in the hands of the state, persist. Other chapters in this volume draw our attention to the ascriptive aspects of citizenship in settings where identity documents are lacking. The passport cases serve as a reminder that the processes through which identity documents are evaluated may themselves serve as a site of such ascription.

Identity documents are a hallmark of the modern state, serving to create “legible people” (Caplan & Torpey 2001; Lyon 2009; Scott 1998; Torpey 2000). They provide access to rights and benefits (Sadiq 2008), and at the same time they subject individuals to government surveillance and control (Lyon 2009). Their function is at once inclusionary and exclusionary; John Torpey has described identification practices as a means for states, “at once sheltering and domineering,” to “embrace” some citizens and exclude others (2000, 7–13).

Depending on place and circumstance, a variety of official documents may serve as proof of identity and status, including birth certificates, national ID cards, and passports. While these documents may have overlapping functions, however, they often carry widely divergent connotations. As David Lyon has noted, documentation of identity “may be carried with pride, indifference, reluctance or even fear, depending on the political conditions and the history of using such documents in the country in question” (2009, 3), a government of affective ties to which Sara Friedman and Kamal Sadiq both allude in their chapters in this volume.

Context can transform the valence of any document. Yet at the same time, it is possible to make some broad generalizations about the connotations of



various types of documents. At one end of the spectrum, possession of a birth certificate carries associations that are almost entirely positive. International law proclaims birth registration to be a fundamental right (Todres 2003). A 2002 UNICEF report identified the failure of governments to register an estimated fifty million births every year as a global crisis, noting that those who are unregistered “in legal terms, do not exist” and that registration “is the official and positive recognition of a new member of society, who is entitled to all the rights and responsibilities of a valued citizen” (UNICEF Innocenti Research Centre 2002, 1). Birth registration has been the subject of vigorous campaigns by both governmental and nongovernmental agencies, with one such campaign adopting the slogan “Write me down, make me real” (Caplan 2005, 195).<sup>2</sup>

In contrast, national ID cards have at times generated significant opposition and critique (Lyon 2009, 10; Redman 2008, 914–15; Steinbock 2004). No form of ID card is as tainted as the internal passport, most closely associated in the twentieth century with Stalinist Russia, Nazi Germany, and apartheid-era South Africa (Garcelon 2001; Lyon 2009, 25–27). As Torpey has commented, “Where pronounced state controls on movement operate within a state today, especially when these are to the detriment of particular ‘negatively privileged’ status groups, we can reliably expect to find an authoritarian state (or worse)” (2000, 9). One might extend the genealogy of internal passports back further to slave passes in the antebellum United States (Lyon 2009, 27–28) and a variety of internal controls on movement in early modern Europe (Torpey 2000) and in European colonies (Lyon 2009, 28–30).

The international, or external, passport occupies a more complex position on this spectrum. On the one hand, the passport embodies the liberal ideal of freedom of movement; the text inside a U.S. passport declares, “The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection.” On the other hand, the passport also serves as a reminder of international borders and global restrictions on movement. This dual nature of the passport—simultaneously signifying both mobility and restrictions on mobility—has been widely noted. While internal passports “may be a state’s principal means for discriminating among its subjects in terms of rights and privileges . . . [and] may be used to regulate the movements of certain groups of subjects, to restrict their entry into certain areas, and to deny them the freedom to depart their places of residence,” external passports “serve both to facilitate the rights of an issuer state’s citizens abroad, and to secure state control of movement across international boundaries” (Garcelon 2001, 83).

The recent spate of passport litigation in South Texas reveals another sort of duality embodied in the international passport, or at least in the U.S. passport as it functions in the U.S.-Mexico borderlands: although ostensibly directed at foreign governments, a passport sometimes serves its most important purpose in mediating the relationship between citizens and their own government. Many—perhaps most—of those who have sought passports since 2008 in South Texas have been motivated to do so not by the requirements of Mexico or any other foreign state but rather by the need to protect their rights at home.

This domestic aspect of the passport is often obscured. The U.S. Supreme Court, for example, has described the passport as a document “which from its nature and object is addressed to foreign powers; purporting only to be a request that the bearer of it may pass safely and freely” (*Urtetiqui v. D’Arcy* 1835). Scholarship often echoes this assumption. Adam McKeown has written that “the modern passport is addressed to a global audience; other documents can establish the link between nation and individual for domestic purposes” (2008, 1). David Lyon has contrasted the passport to the national ID card, arguing that “passports, by definition, are for travellers who wish to cross national borders . . . [while the] intent of most national ID schemes is eventually to cover entire populations” (2009, 21).

As a formal matter, it is certainly true that possessing a U.S. passport is optional, even after the imposition of passport requirements under the WHTI. Yet this perspective overlooks the extent to which the borderlands have always functioned as one region rather than two. The current U.S.-Mexico border, which came into being in its present state in 1853, did not begin to resemble a meaningful international boundary until the early twentieth century. Referring to one particular stretch of the border in 1899, a newspaper article described the two towns of Nogales—one in Arizona, the other in Mexico—“as one, for they really are such, being divided by an imaginary line only, which passes along the center of the international strip, or more properly speaking street” (Tinker Salas 1996, 89). Mexican immigrants encountered increasing scrutiny at the border beginning in the 1920s (Ettinger 2009) and were subject, along with their U.S.-born children, to mass deportations in the 1930s and 1950s (Johnson 2005). Yet Mexicans were exempt from numerical caps on immigrant visas until 1965, and unauthorized migration from Mexico was frequently overlooked by federal immigration officials, reflecting the powerful interests of agricultural employers. As one analysis put it, “The early twentieth century official practices at the border reflected a social construction of Mexico and [the] U.S. having mutual interests in cross-border or transnational communities” (Valencia-Webber and Sedillo Lopez 2010, 268). The controversy over “suspect” birth

attendants is itself an indication of the degree to which border crossing has been an integral part of life in the area: a number of the midwives on the SBA List are under suspicion in part because they regularly delivered babies in both the United States and Mexico. Trinidad Saldivar, for example, has been described as having been “one of the most sought-out parteras along both sides of the Texas-Mexico border” for many years (Ulloa 2010).

Over the last few decades, the border has been radically transformed. Federal spending on border enforcement increased twenty-one-fold from 1980 to 2003 (Congressional Research Service 2008, 5). It has continued its steady rise since then, with the construction of a border fence and increases in border patrol officers. The growing emphasis on border enforcement has wrought changes not only in the lives of would-be migrants but also in the lives of U.S. citizens residing in the borderlands, who now find their own status frequently called into question (del Bosque 2012).

Even with the increasing militarization of the border, international travel is not a luxury but rather a routine part of life for many residents of the Rio Grande Valley. Laura Nancy Castro, asked to describe her trip from Brownsville, Texas, to Matamoros, Mexico, to visit her mother—the trip that resulted in her passport being confiscated on suspicion of fraud—responded, “It was just so routine,” noting that it is a drive she is accustomed to making practically every weekend (Ulloa 2010). Pre-WHTI policies at the border reflected this reality. The imposition of passport requirements under the WHTI and the denials of passport applications submitted by Mexican Americans born in South Texas disrupted these long-standing cross-border communities. This disruption, in turn, has transformed the meaning of identity documents for U.S. citizens of Mexican descent in the region.

Birth certificates long assumed to be authentic have suddenly become suspect. The plaintiffs in *Castelano v. Clinton*, for example, functioned as U.S. citizens for many years before being told that their proof of citizenship was insufficient to obtain a passport. They regularly crossed the border and returned home without incident. Amalia Castelano, the lead plaintiff in the case, obtained an immigrant visa for her Mexican husband through a provision of the immigration laws granting visas to immediate relatives of U.S. citizens (*Castelano v. Clinton* 2008a, 27). Arturo Garcia, another plaintiff, has five Mexican-born children who, at the time of his passport denial, had already been issued certificates of U.S. citizenship based on their father’s birth in the United States (30). Juan Luis Flores brought his father to the United States as the parent of a U.S. citizen; his Mexico-born daughter obtained a certificate of citizenship on the basis of her father’s birth in the United States (36).

Although birth registration is often considered to be the foundation for rights, a birth certificate only has the power that it is accorded by the state. Further gatekeeping procedures lay bare the distance that can separate a birth record from the rights it is presumed to convey. Recent adjudications of U.S. passport applications serve as a stark reminder of the gap between birth registration and its attendant rights.

Along with this shift in the meaning of birth registration has come a shift in the meaning of the passport itself. Citizens of the United States have generally been far less likely to acquire passports than citizens of Canada and many European countries (Avon 2011). But a U.S. passport is increasingly becoming a necessary part of daily life along the border. When viewed through the lens of South Texas, the U.S. passport begins to look less like an international passport and more like an internal one. People long accustomed to traveling within the region have suddenly been required to obtain new identity documentation from the State Department in order to do so. And, crucially, as in the case of internal passports in other countries (Lyon 2009, 25–30; Torpey 2000, 9), the process that has unfolded has been one not of simply documenting status but of producing status (or lack thereof), largely along racial lines.

The requirements imposed by the WHTI are new, but this is not the first time that domestic uses of a U.S. passport have come to the fore. In the early years of the twentieth century, before the imposition of passport requirements for entry into the United States, Chinese Americans sought passports because they hoped (in vain, as it turned out) that carrying the document would spare them from the lengthy interrogations and other indignities to which Chinese immigrants were subjected during the years of the Chinese exclusion laws (Robertson 2010, 178–79). California state representative Martha Escutia has described her memories of her grandfather, a naturalized U.S. citizen born in Mexico, who would never leave his own house in Los Angeles without his U.S. passport in his pocket for fear that he would be wrongly deported (Johnson 2005, 8). Escutia, testifying before the California legislature on the enduring effects of the forced repatriation of Mexicans and Mexican Americans in the 1930s, noted that her grandfather's passport was so important to him that she buried him with the document in his pocket (8).

In ways that parallel these earlier examples, the recent conflicts over passport adjudications primarily involve attempts to access full citizenship rights within the United States rather than the privileges that a U.S. passport may carry abroad. A number of scholars have used the term “alien citizenship” to describe the tenuous hold on citizenship that these circumstances suggest. In

the words of historian Mae Ngai, “The alien citizen is an American citizen by virtue of her birth in the United States but whose citizenship is suspect, if not denied, on account of the racialized identity of her immigrant ancestry. In this construction, the foreignness of non-European peoples is deemed unalterable, making nationality a kind of racial trait. Alienage, then, becomes a permanent condition, passed from generation to generation, adhering even to the native-born citizen” (2007, 2521).

Those on the margins of citizenship, who have sought passports to secure their citizenship rights, are precisely the applicants who have tended to be viewed with particular suspicion by the State Department. The heightened fraud precautions at issue in *Castelano v. Clinton* echo a long history of racialized presumptions of fraud in adjudicating U.S. passport applications. For example, one of the earliest measures to combat passport fraud was directed at Japanese Americans in Hawaii. Passports, which were required for the first time as a temporary measure during World War I, became a permanent fixture in 1926. In his history of the U.S. passport, Craig Robertson recounts the difficulties that Americans faced in applying for passports in an era in which few had documentation of their birth (states did not begin to mandate birth registration until the early years of the twentieth century, and as late as 1942, an estimated 40 percent of Americans lacked birth certificates) (2010, 105). The State Department responded to these difficulties by creating protocols to issue passports based on affidavits from those who had witnessed a birth or, if such witnesses had died or were otherwise unavailable, the sworn statement of a “respectable” person who “knew” the applicant to be a citizen (105). However, the State Department took the position that alternative evidence of birth on U.S. soil would not be accepted from Hawaii, based on the following calculus:

The substitute evidence which we will take in the cases of persons born in this country to white fathers and mothers is appropriate when the circumstances warrant our taking such action, for we may do so with reasonable safety; but when it comes to extending the same practice to members of the Japanese race, with their well-known racial tendency to equivocate and their racial similarity of physical appearance, we cannot do so without danger of being imposed upon, both in the matter of the identity of the applicant and in the matter of his alleged birth on the soil of the United States. (107)

Like the heightened fraud precautions directed at those born in Hawaii in the 1920s, the State Department’s current approach to fraud prevention suggests a narrative in which Mexican migrants are especially likely to commit fraud, and

births claimed to have taken place near the border are especially suspect. Home births have been on the rise nationally over the past two decades among white women, who are now three to five times as likely to have a home birth as women of any other racial or ethnic group (Centers for Disease Control 2012, 1). In 2009, the highest rates of home births occurred in Oregon and Montana (1). Yet the State Department's scrutiny of applicants born in noninstitutional settings appears to have been confined to Latinos born near the southwestern border; no reports of passport denials or onerous document requests have emerged from other communities (Sieff 2008b). A 2009 report by the State Department's Office of the Inspector General is revealing:

The term "suspect birth attendants" refers to a sub-set of licensed midwives or other medical practitioners who deliver children born to alien parents either at home or at an institution other than a hospital. . . . Unscrupulous SBAs are known to have prepared fraudulent birth documentation to show that children actually born abroad were allegedly born in the United States. In some cases, those children have subsequently applied for and been granted U.S. passports. In other cases, the children repeatedly enter the United States on their fraudulently obtained birth certificates. The vast majority of SBA cases involve children born to Mexican parents. (U.S. Department of State 2009, 137)

This language suggests that simply delivering babies who have noncitizen (and, in particular, Mexican) parents might be enough to make a midwife "suspect."

In *The Invention of the Passport* (2000), John Torpey argues that that "in the course of the past few centuries, states have successfully usurped from rival claimants such as churches and private enterprises the 'monopoly of the legitimate means of movement'" (1-2), and that this monopolization has been a crucial element of state building. "Procedures and mechanisms for identifying persons are essential to this process" because "in order to be implemented in practice, the notion of national communities must be codified in documents rather than merely 'imagined'" (6). Torpey chronicles the unfolding of this process in Western Europe and the United States since the French Revolution.

Recent developments in the use of passports at the U.S.-Mexico border reveal some additional nuances to the state monopoly on movement. Although the U.S. government has long monopolized the right to authorize and regulate movement over the U.S.-Mexico border, the ways in which it has done so have changed significantly over the years. In the borderlands, the pre-WHTI era was characterized by a multiplicity of forms of documentation—birth certificates, driver's licenses, and so forth—and diffuse authority on the part of frontline

officers to determine what was acceptable. The WHTI has replaced this system with a new, centralized one in which proof of citizenship is tightly controlled by one federal agency. In the process, documents previously deemed proof of citizenship have been rendered invalid, and new lines of belonging and exclusion have been drawn.

#### NOTES

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1. Other acceptable forms of identification include a U.S. Passport Card, which is also issued by the Department of State; enhanced driver's licenses, which some states have begun issuing under the requirements imposed by the REAL ID Act of 2005; and the Trusted Traveler Program Card, issued by the Department of Homeland Security (U.S. Department of Homeland Security, Customs and Border Protection, 2012).

2. The failures of citizenship regimes that rely on birth registration are discussed in this volume, especially in the chapters by Polly Price, Benjamin Lawrance, and Jacqueline Bhabha.