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Editors' Foreword

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SYMPOSIUM

**CITIZENSHIP, IMMIGRATION, AND
NATIONAL SECURITY AFTER 9/11**

Editors' Foreword

On September 20, 2013, the *Fordham Law Review* and the Center on National Security at Fordham University School of Law hosted a Symposium entitled *Citizenship, Immigration, and National Security After 9/11*. The Symposium reflected on the important legal and policy battles surrounding the legal rights of citizens and noncitizens in the wake of the tragic terrorist attacks of September 11, 2001. At its essence, the Symposium examined a question that many Americans—and political leaders around the globe—have been forced to confront in the twelve years since September 11: how can we best understand, navigate, and balance the tensions between a state's duty to protect its citizens and its desire to protect individual rights and liberties? The Symposium presented three panels, consisting of preeminent scholars and practitioners from around the country, to examine these complex issues from a variety of perspectives.

The first panel examined how the United States has wrestled with citizenship rights when confronted by “enemy citizens.” The panelists analyzed case studies ranging from President Abraham Lincoln’s approach to Confederate soldiers during the Civil War to Presidents George W. Bush’s and Barack Obama’s use of drone strikes since September 11. Specifically, Professor Peter Margulies assessed the United States’ international surveillance practices, asserting that “[w]hile critics of U.S. surveillance abroad denounce the United States for disregarding international law on privacy, that conclusion is far too facile.”¹ He argued that the Obama Administration’s approach to surveillance is largely consistent with international law and the practices of many European nations, but he cautioned that the “United States should continue to do more to reconcile security with evolving global privacy norms.”²

The second panel discussed what U.S. citizenship rights mean and have meant historically and where exactly these rights apply. Professor Linda Bosniak examined the historically rooted relationship between physical location and citizenship rights through the lens of targeted government

1. Peter Margulies, *The NSA in Global Perspective: Surveillance, Human Rights, and International Counterterrorism*, 82 *FORDHAM L. REV.* 2133, 2162 (2014).

2. *Id.* at 2163.

killings and, in particular, the case of Anwar al-Awlaki.³ Jennifer Elsea explored the complex and often fine lines between citizen and alien—lines complicated by the idea of designating someone as an “enemy combatant.”⁴ She argued that it is time for the U.S. Supreme Court to revisit its approach at the intersection of citizenship and due process rights.⁵ Professor Andrew Kent discussed the United States’ “traditions of providing robust legal protection for all within U.S. territory regardless of citizenship but of withholding constitutional protections from military enemies and from noncitizens abroad.”⁶ Professor Kent then observed that these traditional formal legal barriers tied to citizenship status and physical location have been dissolving and argued that this “chang[es] the design and operation of the U.S. national security state.”⁷

The third panel assessed how national security interests have affected the naturalization and denaturalization processes. Professor Muneer Ahmad used Indian and Israeli visa policies to shine a light on how national visa policies “implicat[e] not merely the travel interests of individual citizens and the security interests of the state, but the normative visions of citizenship itself.”⁸ Professor Ramzi Kassem examined passport revocation practices at the U.S. embassy in Yemen and argued that these practices demonstrate how “prejudice and flawed risk analysis can morph into unsound policy.”⁹ Professor Peter Spiro traced various legislative proposals for expatriation of terrorists, noting that they have curiously met with resistance despite a larger “tough on terror” attitude, but surmising nonetheless that citizenship status may not be the “battleground” issue it once was.¹⁰ Professor Stephen Vladeck compared the requirements for military detention under the September 2001 Authorization for the Use of Military Force¹¹ (AUMF) with those of section 412 of the USA PATRIOT Act of 2001,¹² arguing that section 412 provides a plausible and even desirable—albeit more prosecutorially difficult—alternative to maintaining the status quo under the AUMF.¹³ Professor Leti Volpp explored the public response to the September 11 terrorist attacks and the Boston Marathon bombing, using the two crises to illuminate the way we think about race,

3. See Linda Bosniak, *Soil and Citizenship*, 82 FORDHAM L. REV. 2067 (2014).

4. See Jennifer K. Elsea, *Substantive Due Process and U.S. Jurisdiction over Foreign Nationals*, 82 FORDHAM L. REV. 2075 (2014).

5. See *id.* at 2095.

6. Andrew Kent, *Citizenship and Protection*, 82 FORDHAM L. REV. 2113, 2131 (2014).

7. *Id.* at 2132.

8. Muneer I. Ahmad, *The Citizenship of Others*, 82 FORDHAM L. REV. 2039, 2065 (2014).

9. Ramzi Kassem, *Passport Revocation As Proxy Denaturalization: Examining the Yemen Cases*, 82 FORDHAM L. REV. 2097, 2111 (2014).

10. Peter J. Spiro, *Expatriating Terrorists*, 82 FORDHAM L. REV. 2165 (2014).

11. Pub. L. No. 107-40, 115 Stat. 224 (2001) (codified at 50 U.S.C. § 1541 note (2006)).

12. Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 412, 115 Stat. 272, 350–52 (codified at 8 U.S.C. § 1226a (2012)).

13. Stephen I. Vladeck, *Detention After the AUMF*, 82 FORDHAM L. REV. 2185 (2014).

appearance, and culture and how these ideas inform our conception of “the terrorist.”¹⁴

14. Leti Volpp, *The Boston Bombers*, 82 FORDHAM L. REV. 2205 (2014).