

United States Court of Federal Claims

Esther Jenke, et al.

No. 24-2005-SSS

v.

United States of America

AMENDED CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. For over a decade – since September 2014 – the U.S. government has been charging an astronomical fee of \$2,350 as a condition for U.S. citizens to voluntarily renounce their U.S. citizenship (“Renunciation Fee”). The right to renounce one’s citizenship is protected by the United States Constitution and by statute. For most of American history (prior to 2010), a U.S. citizen could exercise this fundamental right to renounce free of charge.

2. In 2020, several individual plaintiffs and a Paris-based non-profit organization, L’Association des Américains Accidentels (“AAA”), filed suit in the United States District Court for the District of Columbia challenging the constitutionality and legality of the Renunciation Fee. *L’Association des Américains Accidentels et al. v. United States Department of State, et al.*, 1:20-cv-03573 (TSC) (“AAA v. DOS”).

3. A few days before oral argument on summary judgment in *AAA v. DOS*, the government unilaterally notified the court of its intention to lower the fee to \$450 (the amount it charged between 2010 and 2014).

4. On October 2, 2023, the Department of State published the proposed rule to lower the \$2,350 fee to \$450. *See* 88 FED. REG. 67687, 2023 WL 6374126 (Oct. 2, 2023). 448 days have gone by since the publication of the proposed rule and no final rule has yet to been published.¹

5. The government's decision to reduce the Renunciation Fee by some 81% was a direct and proximate result of *AAA v. DOS*.

6. Since 2014, the U.S. government has been wrongfully profiting from charging this exorbitant fee and has been unjustly enriched at the expense of the Plaintiffs and those similarly situated.

7. The Renunciation Fee violated Plaintiffs' fundamental and natural right to expatriate.

8. Moreover, the fee was and remains illegal under the Independent Offices Appropriations Act ("IOAA"), 31 U.S.C. §9701 because, among other things, the fee is unfair; it is not calculated to reflect the true costs to the government; and it was used to fund governmental functions completely unrelated to renunciation services in violation of federal law as more fully alleged below.

¹This is in stark contrast to the time it took the government to enact rules to create and increase the fee. For example, on August 28, 2014, the government proposed to increase the then \$450 fee to \$2,350. A little more than a week later, on September 6, 2014, the new \$2,350 fee went into effect.

9. This class-action lawsuit seeks to hold the government accountable for its illegal charge and unjust enrichment by ordering the government to reimburse the Plaintiffs and tens of thousands of other former U.S. citizens who were forced to expend \$2,350 simply because they elected to renounce their citizenship as was their right under the United States Constitution and federal law.

10. This lawsuit began in the United States District Court for District of Columbia (1:23-cv-2950), but was subsequently transferred to this Court on November 26, 2024, by order of Judge Carl J. Nichols dated September 26, 2024. *See* Dkt. no. 26.

SUBJECT MATTER JURISDICTION AND VENUE

11. This Court has subject-matter jurisdiction under 28 U.S.C. §1346(a)(2) (the “Little Tucker Act”) because the individual Plaintiffs’ claims – and those of the putative class members² – do not exceed \$10,000 per claim and are founded upon the Constitution, an act of Congress, and regulations of the Department of State.

12. Venue is proper in this Court under 28 U.S.C. §1401(a)(1).

² *See United States v. Bormes*, 568 U.S. 6, 10 n. 1 (2012), citing *United States v. Will*, 449 U.S. 200, 211 n. 10 (1980) (“It is undisputed that this class action satisfied the Little Tucker Act’s amount-in-controversy limitation. We have held that to require only that the ‘claims of individual members of the clas[s] do not exceed \$10,000.’ ”); *Mar. v. United States*, 506 F.2d 1306, 1309 (D.C. Cir. 1974); *Briggs v. United States*, 2009 WL 113387, at *5 (N.D. Cal. Jan. 16, 2009) (“In class actions under the Little Tucker Act, this monetary limitation is satisfied if the *individual* claims of each of the class members are below \$10,000, even if a greater aggregate amount is claimed.”).

PARTIES

Plaintiffs

13. Plaintiff Esther Jenke is a resident and citizen of the Federal Republic of Germany. Up until November 28, 2018, Esther Jenke had U.S. citizenship. On that date, Esther Jenke paid the \$2,350 Renunciation Fee and renounced her U.S. citizenship by appearing at the U.S. mission in Germany and taking the renunciation oath as required by law.

14. Plaintiff Nina Nelson is a resident and citizen of the French Republic. Up until November 15, 2022, Nina Nelson had U.S. citizenship. On that date, Nina Nelson paid the \$2,350 Renunciation Fee and renounced her U.S. citizenship by appearing at the U.S. mission in France and taking the renunciation oath as required by law.

15. Plaintiff Arianna Poli is a citizen of the French Republic residing in the Republic of Singapore. Up until August 29, 2022, Arianna Poli had U.S. citizenship. On that date, Arianna Poli paid the \$2,350 Renunciation Fee and renounced her U.S. citizenship by appearing at the U.S. mission in Singapore and taking the renunciation oath as required by law.

Defendant

16. Defendant United States of America, through the Department of State, administers the voluntary renunciation process, and collects the \$2,350 Renunciation Fee from Plaintiffs and the members of the putative class. Defendant will sometimes be referred to in the Complaint as “DOS.”

STANDING

17. Plaintiffs in this action have standing. Plaintiffs have sustained injury-in-fact because they were forced to pay an excessive fee as a precondition to exercise their constitutional and statutory right to renounce their U.S. citizenship.

18. Plaintiffs' actual injury-in-fact is a direct and proximate result of Defendant's actions and inactions as alleged.

19. As to redressability, the relief Plaintiffs seek is within the power of the Court to grant and, if granted, would fully redress the injury by ordering Defendant to return the excessive amount of the \$2,350 Renunciation Fee to Plaintiffs along with other relief as further alleged and prayed for below.

STATUTORY AND LEGAL FRAMEWORK

A. The voluntary renunciation process

20. The current procedure by which an individual can exercise his/her right to voluntarily expatriate is set forth in Section 349(a) of the Immigration and Nationality Act of 1952, as amended, codified at 8 U.S.C. §1481(a) [sometimes referred to as the "INA"]. This statute sets forth the various ways by which a U.S. citizen can relinquish or renounce her U.S. citizenship.

21. Section 1481(a)(5) provides that a U.S. national "shall lose his nationality" by making a "formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State."

22. Expatriation by way of voluntary renunciation can only occur once the applicant has paid the \$2,350 fee and made a formal renunciation statement before a consular official.

23. The detailed procedures for voluntary renunciation are set forth in the Code of Federal Regulations and in the DOS Foreign Affairs Manual (“FAM”).³ Under 22 C.F.R. §50.50,

[a] person desiring to renounce U.S. nationality under section 349(a)(5) of the Immigration and Nationality Act [8 U.S.C. §1481(a)(5)] shall appear before a diplomatic or consular officer of the United States in the manner and form prescribed by the Department. The renunciant must include on the form he signs a statement that he absolutely and entirely renounces his U.S. nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

24. In accordance with 7 FAM 1260, when the applicant appears before a consular officer, she is instructed to read Form DS-4081 which contains twelve statements that must ultimately be declared by the renunciant and attested to by the consular officer. After reading Form DS-4081, the renunciant signs the form. 7 FAM 1262.4(b). Next, the renunciant must read the one-page Form DS-4080, entitled “Oath/Affirmation of Renunciation of the Nationality of the United States,” (“Renunciation Oath”) and then sign it. 7 FAM 1262.4(c). Form DS-4080 is publicly available online, <https://eforms.state.gov/Forms/ds4080.pdf>.

³ The FAM is the “comprehensive, and authoritative source for the Department’s organization structures, policies, and procedures that govern the operations of the State Department, the Foreign Service and, when applicable, other federal agencies.” <https://fam.state.gov/>.

25. As discussed in more detail below, since 2014, a renunciant (including each of the Plaintiffs) is required to pay a \$2,350 fee prior to signing DS-4080 and as a precondition for renouncing citizenship. 22 C.F.R. §22.1; 7 FAM 1262.4.⁴

26. After signing the DS-4080 and paying the fee, the consular officer forwards the forms and documents, including his/her recommendations to the Bureau of Consular Affairs within the DOS for final approval. *See* 7 FAM 1264 and 7 FAM 1220. If approved, the consular officer overseas provides the applicant with a Certificate of Loss of Nationality (“CLN”). Renunciation occurs at the time the U.S. citizen appears before the consular official and signs the Renunciation Oath. All Plaintiffs in this action have received their CLNs.

B. The imposition of the first renunciation fee

27. The INA and the regulations promulgated thereunder do not specifically authorize the DOS to set and collect fees from potential renunciants. Rather, to impose such fees the DOS relies upon the Independent Offices Appropriations Act (“IOAA”), 31 U.S.C. §9701 as a source for its authority. That statute provides as follows:

The head of each agency [...] may prescribe regulations establishing the charge for a *service or thing of value provided by the agency* [emphasis added].

⁴ 7 FAM 1262.4:

Under Federal regulations at 22 CFR 22.1, an administrative processing fee applies to documenting renunciation of U.S. nationality. The fee should be collected after the individual has decided to proceed with the renunciation and has arrived at post to take the oath of renunciation. *The fee should be collected before conducting the ceremony and administering the oath.*

(emphasis added)

Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) Fair; and

(2) based on-

- (A) the costs to the Government;
- (B) the value of the service or thing to the recipient;
- (C) public policy or interest served; and
- (D) other relevant facts.⁵

28. Prior to 2010 and for approximately 200 years, the government did not charge a fee as a precondition to voluntarily expatriate nor did it charge any fee for nearly six decades after the enactment of the IOAA in 1951.

29. In 2010, the DOS issued a Notice of Proposed Rulemaking (“2010 NPRM”), recommending imposing for the first time in American history a fee for voluntary renunciation under 8 U.S.C. §1481(a)(5), explicitly identifying the IOAA as the source of its authority. [75 FED. REG. 6321](#), 6322, 2010 WL 429639 (Feb. 9, 2010). DOS set the fee at \$450.

30. As noted in the 2010 NPRM, the DOS claimed that it adjusts fees accordingly so that the actual cost of services provided is covered by the fees actually paid. The proposed changes were based on a cost-of-services study (“CoSS”) that the DOS authorized to evaluate the fee structure to determine whether the DOS was fully recovering the costs of services. The rule went into effect on July 13, 2010, and

⁵ The government also has relied upon OMB Circular No. A-25, Executive Order 10718 of June 27, 1957 and 22 U.S.C. §4219 as sources of its authority to levy the renunciation fee.

became final on February 2, 2012. [75 FED. REG. 36522](#), 2010 WL 2551925 (June 28, 2010); [77 FED. REG. 5177](#), 2012 WL 292818 (Feb. 2, 2012).

C. The DOS increases the renunciation fee to \$2,350

31. On August 28, 2014, the DOS issued an interim final rule, adjusting the fee for the renunciation of citizenship from \$450 to \$2,350, a five-fold increase. [79 FED. REG. 51247](#), 2014 WL 4219382 (Aug. 28, 2014). The 2014 interim final rule went into effect on September 6, 2014, and became final on August 25, 2015. [80 FED. REG. 51464](#), 2015 WL 5001152 (Aug. 25, 2015). The government has been collecting the augmented Renunciation Fee since September 2014.

D. *AAA v. DOS* and the government’s notice to decrease the fee

32. On December 8, 2020, *AAA v. DOS*, was commenced challenging the constitutionality and legality of the Renunciation Fee under the Fifth, First and Eighth Amendments, as well as the Administrative Procedure Act, 5 U.S.C. §500 *et seq.* and under customary international law.

33. The government moved to partially dismiss and for summary judgment. Plaintiffs in *AAA v. DOS* opposed and filed a cross-motion for summary judgment.

34. Oral argument on the government’s motions and plaintiffs’ cross-motion was set for January 9, 2023.

35. On Friday, 5:19 EDT, January 6, 2023, less than three days before oral argument in the district court, the government filed a “Notice of Intent to Pursue Rulemaking to Reduce Fee Amount” (“Fee Reduction Notice”).

36. Following oral argument, notwithstanding the Fee Reduction Notice, on February 10, 2023 the district court granted the government's motion for summary judgment and denied plaintiffs' cross-motion as to all counts. *L'Association des Americains Accidentels v. United States Dep't of State*, 656 F. Supp. 3d 165 (D.D.C. 2023).

37. The *AAA v. DOS* plaintiffs appealed the decision on February 13, 2023 to the United States Court of Appeals for the District of Columbia Circuit.

38. On May 9, 2023, the Court of Appeals granted the parties' joint motion to hold the appeal in abeyance to allow the DOS time to complete new rulemaking regarding the Renunciation Fee. The Court of Appeals directed DOS to file a status report by August 7, 2023, and every 90 days thereafter.

39. On August 5, 2024, the government filed a "Status Report" with the Court of Appeals, noting that the "the Department was continuing its work on finalizing the relevant rulemaking" and on November 4, 2024 it advised the Court of Appeals that it "was actively working on the final rule."

40. As of the filing of this Amended Complaint, the \$2,350 fee is still in effect and the government continues to collect the excessive fee. The government has failed to provide any explanation for the delay in issuing the final rule. *See* also above, footnote 1.

Class Action Allegations

41. This action is being brought as a class-action pursuant to Rule 23(b)(3) of the Rules of the United States Court of Federal Claims ("RCFC").

42. Plaintiffs seek certification for the following class:

ALL INDIVIDUALS WHO HAVE VOLUNTARILY RENOUNCED THEIR U.S. CITIZENSHIP UNDER 8 U.S.C. §1481(a)(5) AND WHO PAID THE \$2,350 RENUNCIATION FEE SINCE OCTOBER 4, 2017

43. The conditions of Rule 23(a) of the RCFC are satisfied in this case:

- A. The class is so numerous that joinder of all members is impractical. The precise number and identity of all members is unknown at this time and can only be ascertained through discovery. On information and belief, based on public information, the number of class members exceeds 30,000.
- B. There are questions of law and fact common to all members of the class. These questions include, but are not limited to, the following:
 - i. Whether, in light of the government's Fee Reduction Notice, payment by Plaintiffs and putative class members was excessive under the Fifth Amendment Due Process Clause and the IOAA.
 - ii. Whether under constitutional and statutory law, the Plaintiffs and putative class members are entitled to a reimbursement of that portion of the Renunciation Fee in excess of \$450?
- C. Plaintiffs' claims are typical of the claims of the class because they, like the class members, paid the excessive fee in order to renounce their U.S. citizenship.

D. Plaintiffs will fairly and adequately protect the interests of the class because each of them has paid the \$2,350 fee to renounce during the class period, their interests do not conflict with the interests of the class (and, are in fact, identical with the interests of the putative class members), and they have obtained (or will obtain) counsel experienced in litigating class actions and matters involving similar questions of law.

44. The conditions of Rule 23(b)(2) and (3) of the RCFC are also satisfied in this case:

A. The United States has acted or refused to act on grounds generally applicable to the class; and

B. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members. Each of the claims of the Plaintiffs and the members of the putative class is identical, as is the amount of the claimed refund; and

C. A class action is superior to other available methods for fairly and efficiently adjudicating Plaintiffs' claims, given that the amount of over-payment for each Plaintiff and class member will be the same liquidated sum. Prosecution of the claims individually would be cost-prohibitive to Plaintiffs and class members and unduly burdensome for the Court.

45. Accordingly, class certification is proper under these circumstances.

CAUSE OF ACTION

ILLEGAL EXACTION

46. Plaintiffs incorporate by reference all the allegations above.

47. Under an illegal exaction claim, “a claimant must demonstrate that the statute or provision causing the exaction itself provides, either expressly or by ‘necessary implication,’ that ‘the remedy for its violation entails a return of money unlawfully exacted.” *Nat’l Veterans Legal Servs. Program v. United States*, 968 F.3d 1340, 1348 (Fed. Cir. 2020), citing *Norman v. United States*, 429 F.3d 1081, 1095 (Fed. Cir. 2005).

48. The law invoked by Plaintiffs – the Fifth Amendment and the IOAA – provide, either expressly or by necessary implication, that the remedy for their violation entails a return of money unlawfully exacted.

(a) Due Process Clause of the Fifth Amendment

49. An illegal exaction under the Fifth Amendment’s Due Process Clause exists “if money has been improperly exacted or retained by the government.” *Norman*, 429 F.3d at 1095 (internal citations omitted); *see also Casa de Cambio Comdiv S.A., de C.V. v. United States*, 291 F.3d 1356 (Fed. Cir. 2002), *citing Murray v. United States*, 817 F.2d 1580, 1583 (Fed.Cir. 1987), *cert. denied*, 489 U.S. 1055, 109 (1989) (“Our cases have established that there is no jurisdiction under the Tucker Act over a Due Process claim ***unless it constitutes an illegal exaction***”); *Davis v. United States*, 2022 WL 1618052, at *9 (Fed. Cl. May 20, 2022) [emphases added].

50. Plaintiffs maintain that they have a fundamental and natural right to renounce their United States citizenship. The right to renounce one's citizenship is protected by the Due Process Clause of the Fifth Amendment.

51. Plaintiffs further maintain that the government's imposition and collection of the Renunciation Fee infringed upon Plaintiffs' fundamental and constitutional right to voluntarily renounce their U.S. citizenship. This infringement constitutes an illegal exaction and, hence, the fee, in whole or in part, must be returned to Plaintiffs and the putative class.

(b) **IOAA, 31 U.S.C. §9701**

52. The IOAA is a federal statute that expressly (or, at the very least, by necessary implication), requires the government to return money unlawfully exacted. *See Nat'l Veterans*, 968 F.3d at 1349 (concluding that where a "statute authorizes the government to collect a fee for certain purposes, and it is alleged that the government collected fees in excess of the statutory authorization, the "necessary implication" is that the fees can be recovered through an illegal exaction claim). Notably, the government has conceded in several instances that the IOAA can support a Little Tucker Act challenge. *See Steele v. United States of America*, Case No. 1:14-cv-1523, *United States' Response to Plaintiffs' Motion for Reconsideration* (D.D.C., March 4, 2016), Dkt. no. 59, at 13; *see also* Dkt. no. 27, Transcript of Motion Hearing Proceedings before Judge Carl J. Nichols, on August 28, 2024, at 15-16 (government conceded that Court of Federal Claims has subject matter jurisdiction).

53. Section 9701 prohibits the government from collecting fees for services that are not needed to cover *directly* related expenses incurred in providing such services.

54. The Renunciation Fee was excessive and in violation of §9701 because **(1)** the fee is unfair and, as previously alleged, unconstitutional; and **(2)** the fee is **(a)** not based on the real costs to the government; **(b)** not based on the value of the service to the recipient; and **(c)** not based on proper public policy.

55. In particular, the Renunciation Fee is illegal under the IOAA because, *inter alia*:

- (a)** The fee is not based on the real costs to the government- the government highly exaggerates the amount of resources needed to provide renunciation services;
- (b)** the government utilized the fee to finance expenses unrelated to the provision of renunciation services;
- (c)** the economic analysis of the government is based on faulty methodology and cannot support the \$2,350 cost per renunciant as claimed by the government;
- (d)** the government's imposition and collection of the Renunciation Fee was and remains excessive and in violation of §9701 also because the government was not providing "a thing of value." In collecting the fee and administering the Oath of Renunciation, the government is not providing a service or a

benefit (akin to a license); it is merely facilitating U.S. citizens in the exercise of their rights guaranteed by the U.S. Constitution and federal law.

31 Accordingly, because the imposition and collection of the \$2,350 fee was and remains (a) unconstitutional and (b) illegal under the IOAA, Plaintiffs are entitled to the refund of the excessive portion of the Renunciation Fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in favor of Plaintiffs against Defendant, as follows:

- (a) Certify this action as a class action under RCFC 23(b);
- (b) Appoint undersigned counsel as class counsel;
- (c) Declare that the \$2,350 Renunciation Fee was and is unlawful;
- (d) Order Defendant to refund (at the very least) the amount of \$1,900 to each of the Plaintiffs and members of the putative class or such other amount as the Court may determine;
- (e) Award Plaintiffs their costs, expenses and attorney's fees pursuant to 28 U.S.C. §2412; and/or from a common fund; and/or under Rule 23(h) of the RCFC; and/or under any other applicable statute or source;
- (f) Grant such other and further relief as the Court may deem just and proper.

Date: December 23, 2024.

Respectfully submitted,

/s/ L. Marc Zell

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