From: Mario Apuzzo, Esq.

To: Judge Squeeky Fromm,

I of III

With all due respect, your decision is poorly reasoned. Your reasoning suffers from misstatement of the law and logical shortcomings which are:

You state that Minor did not define or deal with children born inside the United States to alien parents. This is incorrect. Minor told us that at common law with which the Framers were familiar, such children were "aliens or foreigners."

You state that the clause "natural born citizen" "was discussed at length in U.S. v. Wong Kim Ark." This is false. Wong Kim Ark discussed at length an English "natural born subject." Justice Swayne in Rhodes told us that neither a "citizen" nor a "natural born citizen" were defined by the English common law.

You quote Justice Gray's "same rule" statement about the rule of the English common law continuing in the United States "to prevail under the Constitution as originally established." This statement does not prove that a "natural born citizen" was defined under English common law and not under the law of nations. What this statement means is that through the time of the adoption of the Constitution, the states, which selectively adopted the English common law until abrogated by state legislatures, decided who were their citizens and that they to some undefined degree used the jus soli English common law rule to make that decision. These state citizens became "citizens of the United States" upon the adoption of the Constitution. But then in 1790, Congress passed the Naturalization Act of 1790, followed by that of 1795, 1802, and 1855. After that, the states, to whatever degree they still applied the English common law, could no longer naturalize anyone after birth and their state citizens were no longer recognized as national citizens or what the Constitution called "citizens of the United States." The only common law rule that Congress did not nor could abrogate was that of the law of nations/American national common law which the Founders, Framers, and Ratifiers used to certainly and uniformly define a "natural born citizen." And that definition was a child born in a country to parents who were its "citizens" at the time of the child's birth.

You state that "citizens at birth" to be the legal equivalent of natural born citizenship. But you, like Jack Maskell, beg the question that all "citizens at birth" are "natural born citizens." Other than just assuming, also like Jack Maskell, that your statement is true, you fail to provide any evidence that your statement is true. Hence, that the Fourteenth Amendment or a Congressional Act might declare someone born either in the United States or out of it to be a "citizen at birth" does not prove that that person is a "natural born citizen."

Regarding whether children born out of the United States to U.S. “citizen” parents are “natural-born citizens,” the Naturalization Act of 1790 does not help you because the 1795 Act, with the work of James Madison, repealed it and replaced “natural born citizen” with “citizen of the United States.” Despite your statement that Congress never did so, the 1795 Act shows that “Congress intended to limit the rights of foreign born citizens at birth to some quanta less than that of a natural born citizen.” Furthermore, Wong Kim Ark informed us that the Fourteenth Amendment “has not touched the acquisition of citizenship by being born abroad of American parents, and has left that subject to be regulated, as it had always been, by Congress in the exercise of the power conferred by the Constitution to establish an uniform rule of naturalization.” So, Wong Kim Ark told us that children born out of the United States to U.S. “citizen” parents become “citizens at birth” under Congress’s naturalization powers. That means they are naturalized at birth. By your own argument, if they are naturalized, they cannot be “natural born citizens,” regardless of when they obtain their citizenship.

Continued . . .

June 26, 2013 at 2:18 AM

II of III

Your American serviceman example does not help you. As I have always argued, under Vattel’s Section 217, a child born out of the United States to U.S. “citizen” parents serving the defense of the United States (“the armies of the state”) is reputed born in the United States and therefore a “natural born citizen.” This rule makes John McCain a “natural born citizen” regardless of where in Panama he may have been born.

Your 8 U.S.C. Sec. 1401(a) example also fails. That Congress may choose to pass a statute acting upon “natural born citizens” does not make those persons naturalized citizens. Your point is absurd.

You engage in invalid logical argument, arguing: All "natural born citizens" are "citizens at birth," and since Ted Cruz is a "citizen at birth," he is a "natural born Citizen." This argument violates the rule of the undistributed middle. It is also fallacious for affirming the consequent. As I have already explained, Jack Maskell commits the same logical errors. And again when you argue: All “natural born citizens are not naturalized citizens. Since Ted Cruz is not a naturalized citizen, he is a “natural born citizen.” Do you not understand that you cannot arrive at an affirmative conclusion by way of one or even two negative premises?

You argue that “natural born citizens” are not naturalized citizens. Citizens “may be born or they may be created by naturalization.” You add that Cruz is a “born citizen” and not a naturalized citizen. You conclude that since he is “born a citizen” and not naturalized, he must be a “natural born citizen.” Your argument fails because you fail to understand how “born citizen” are made. “Born citizens” may be made by American national common law, by the Fourteenth Amendment,

or by Acts of Congress. Per Minor, only the ones made by American common law are “natural born Citizens.” Those made by the Fourteenth Amendment and Acts of Congress are “citizens of the United States” at birth. So, as you can see, just being a “born citizen” or “citizen at birth” does not automatically make one a “natural born citizen.”

Your argument that since parentage is irrelevant for “citizens at birth” under the Fourteenth Amendment, therefore it must also be irrelevant for “natural born citizens” fails for at least two reasons. One, you beg the question that the Fourteenth Amendment defines a “natural born citizen.” You might say it, but you do not prove it. Second, as I have shown above, there are different types of “citizens at birth,” and that parentage might not be relevant to one type does not mean it is not relevant to another type (which is the “natural born citizen” type).

You argue that there is no sign of Vattel post Wong Kim Ark and therefore Vattel is dead. This is false. Minor’s definition of a “natural-born citizen,” being a paraphrase of Vattel’s Section 212, comes from Vattel. Wong Kim Ark did not disturb that definition nor did it have to to find that Wong was a “citizen of the United States” at birth under the Fourteenth Amendment. Nor has any other decision of the U.S. Supreme Court. Hence, Vattel still lives and reigns after Wong Kim Ark and even to the present.

Continued . . .

June 26, 2013 at 2:19 AM

III of III

You fail to understand this fundamental truth--that one becomes at once a “citizen at birth” and does not need naturalization does not mean that one was not naturalized. See Calvin’s Case (1608). Calvin was born in the country of Scotland, after 1603, the year in which the English throne under the Tudor dynasty descended to the Stuart King, James VI of Scotland, making him James I, King of both England and Scotland. The English Parliament refused to naturalize Calvin as an English “natural born subject.” Lord Coke found that Calvin at birth owed natural allegiance to James as King of England and Scotland, by owing that allegiance to the natural body (as distinguished from his political body) of the King who reigned over both kingdoms. Lord Coke then, from the single circumstance of Calvin being born in the King’s dominion, naturalized Calvin at birth and ruled that he was a “natural born subject” of England); See also Emer de Vattel, The Law of Nations, Section 214 Naturalisation (1758) (correctly understanding Calvin’s Case said: “Finally, there are states, as, for instance, England, where the single circumstance of being born in the country naturalises the children of a foreigner”); Wong Kim Ark (said that persons who are born abroad to U.S “citizen” parents are naturalized by Congressional Acts; Rogers v. Bellei, 401 U.S. 815(1971) (considers persons born abroad to U.S. citizen parents to be naturalized at birth; J. Black dissenting in Bellei also said: "All means of obtaining American citizenship which are dependent on congressional enactment are forms of naturalization").

So, Judge Squeeky Fromm, with all due respect, you have not made one point that is legally correct. You have not shown that I am mistaken in my position that a "natural born citizen" is a child born in a country to parents who were its "citizen" at the time of the child's birth. You have also failed to demonstrate that all "citizens at birth" are "natural born citizens." Plaintiff will surely survive defendant's Motion to Dismiss and prevail on the merits. May I therefore respectfully request that you reconsider your decision.

June 26, 2013 at 2:20 AM