THEY ARE HERE BECAUSE WE WERE THERE: COFA MIGRANTS IN THE UNITED STATES

CHARLES HIRSCH PESKIN*

ABSTRACT

In the late 20th century, the United States entered into agreements each known as the Compact of Free Association (COFA) with the newly independent states of the Marshall Islands, the Federated States of Micronesia, and Palau, collectively the Freely Associated States (FAS). These nations, formerly part of the United States-administered Trust Territory of the Pacific Islands, are part of the Micronesian geocultural area which has been under the dominion of colonial powers for over 500 years. Under the COFAs, citizens of the FAS are allowed to permanently live and work in the United States and its territories as habitual residents. Known as COFA migrants, these individuals face a distinct slate of challenges due to the precarious statutorily-defined legal status they maintain in the United States. This Note examines this status and argues that COFA migrants are most accurately characterized as imperial denizens by demonstrating the unique hardships COFA migrants face. With the COFAs expected to be renewed by the end of 2024, this Note offers considerations to be taken into account in the renewal process which would improve the lives of COFA migrants.

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* Charles Hirsch Peskin, J.D. Candidate, 2023, Georgetown University Law Center; B.A., *cum laude*, 2018, Tufts University.

I. INTRODUCTION

Most Americans have never heard of the Compact of Free Association (COFA).[1] In 1986, the United States implemented an agreement known as the COFA with the newly independent countries of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), adding Palau in 1994. These countries are collectively called the Freely Associated States (FAS) and are part of the Micronesian geocultural area.[2] Before their independence, the United States controlled the FAS as the Trust Territory of the Pacific Islands (TTPI), a United Nations trusteeship which marked the beginning of an end to centuries of colonialism.[3] The stated purpose of the COFA was to "improve health and education and promote self-sufficiency" in the FAS, but the underlying reasoning was to allow continued U.S. military dominance in Micronesia.[4] The COFA has thus resulted in dissimilar benefits for the United States and citizens of the FAS. The COFA allows the United States to

1. REBECCA STOTZER & JOCELYN HOWARD, FINAL SUMMARY OVERVIEW FOR IMPACTS OF SOCIAL PROXIMITY TO BIAS CRIME AMONG COMPACT OF FREE ASSOCIATION (COFA)-MIGRANTS IN HAWAII 2 (2020).

2. Neal Palafox, Sheldon Riklon, Sekap Esah, Davis Rehuher, William Swain, Kristina Stege, Dale Naholowaa, Allen Hixon & Kino Ruben, *The Micronesians*, PEOPLE AND CULTURES OF HAWAI'I 295, 297 (John F. McDermott & Naupaka Andrade eds., 2011).

3. *See* Palafox et al., *supra* note 2, at 296.

4. *Id*. at 297–98.

exercise "strategic denial" over the FAS, meaning the U.S. military can prevent other nations from entering the area for their respective military interests.[5] In return, FAS citizens are allowed to establish habitual residence in the United States and its territorial possessions, giving them the ability to live (and work) in the United States with minimal restrictions for a continuous period.[6]

Citizens of the FAS who take advantage of the COFA's habitual residency provision are known as COFA migrants.[7] There are now over 100,000 COFA migrants living and working in the United States and its territories who have come seeking economic opportunities, education, healthcare, and family unification.[8] However, COFA migrants are eligible for far fewer public benefits than United States citizens and permanent residents.[9] COFA migrants are also subject to "perpetual deportability," meaning they can be removed at any time – like other non-citizens – despite their permission to reside in the United States.[10] This means that 'COFA migrant' is a precarious status in the United States. COFA migrants are included in the United States "partially [and] contingently," which manifests as an inclusion by exception, a second-class status not faced by any U.S. citizen, even in unincorporated U.S. territories.[11] Scholars have accordingly described COFA migrants as *imperial citizens*.[12] However, most legal conceptions of citizenship imply permanent status, which COFA migrants lack.[13] Therefore, I argue that the term 'imperial *citizen*' better describes the status of U.S. citizens in unincorporated territories, while the word *denizen* better describes COFA migrants, as their legal right to reside in the United States does not provide them with full rights to welfare or political participation.[14]

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5. *Id*. at 297.

6. ERIN THOMAS, COMPACTS OF FREE ASSOCIATION IN FSM, RMI, AND PALAU: IMPLICATIONS FOR THE 2023-2024 RENEWAL NEGOTIATIONS 1–4 (2019), https://perma.cc/XB8V-4BXC; Compact of Free Association Between the United States and the Government of Palau, Pub. L. No. 99-658, § 461(e), 100 Stat. 3672, 3701 (1986) [hereinafter "Palau COFA"].

7. Alexander J. Hirata, Postcolonialism and the Marshallese Diaspora: Structural Violence and Health in the Marshallese Community in Springdale, Arkansas 43 (2015) (Master's Thesis, The University of San Francisco) (on file with the Gleeson Library, The University of San Francisco).

8. THOMAS, *supra* note 6, at 3; Dan Diamond, *How 100,000 Pacific Islanders Got Their Health Care Back*, POLITICO (Jan. 1, 2021), https://perma.cc/A8ZS-9QUL; U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-491, COMPACTS OF FREE ASSOCIATION: POPULATIONS IN U.S. AREAS HAVE GROWN, WITH VARYING REPORTED EFFECTS 1, 19–20 (2020).

9. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 12–13.

10. Sarah A. Smith & Heide Castañeda, *Nonimmigrant Others: Belonging, Precarity and Imperial Citizenship for Chuukese Migrants in Guam*, 44 POLAR: POL. & LEGAL ANTHROPOLOGY REV. 138, 150 (2021).

11. *See* Emily Mitchell-Eaton, *Imperial Citizenship Marshall Islanders and the Compact of Free Association*, PRECARITY AND BELONGING LABOR, MIGRATION, AND NONCITIZENSHIP 259–60 (Catherine S. Ramírez, Sylvanna M. Falcón, Juan Poblete, Steven C. McKay & Felicity Amaya Schaffer eds., 2021).

12. Mitchell-Eaton, *supra* note 11, at 257; Smith & Castañeda, *supra* note 10, at 138.

13. *See* Guy Standing, *Denizens and the Precariat*, OPENDEMOCRACY (May 5, 2014), https://perma.cc/PK29-EPWV; THOMAS, *supra* note 6, at 1–4.

14. *See infra* Part III.A.C.; Nicholas De Genova, *Denizenship*, *in* PRECARITY AND BELONGING LABOR, MIGRATION, AND NONCITIZENSHIP 227, 230 (Catherine S. Ramírez, Sylvanna M. Falcón, Juan Poblete, Steven C. McKay & Felicity Amaya Schaffer eds., 2021).

This Note seeks to demonstrate how a history of colonization and U.S. imperial security interests have spurred migration from the FAS to the United States, and how these migrants have become a new underclass most accurately described as imperial denizens. Part II of this Note outlines the history of the colonization of Micronesia, culminating in the signing of the COFAs. Part III argues that COFA migrants should be classified as imperial denizens, a status that differs from imperial citizenship, a framework previously applied to them. Part IV seeks to operationalize imperial denizenship by showing how this liminal status has impacted the development of COFA migrant communities in the US. Part V outlines important and timely considerations regarding improving the lives of COFA migrants, as the COFAs must be renewed by 2024, and rising sea levels place the FAS on the brink of imminent climate disaster.

II. HISTORY OF U.S. COLONIZATION OF MICRONESIA

Micronesia has been under the control of foreign powers for nearly 500 years. Because of its strategic location in the Pacific, occupying Micronesia under the TTPI aligned with US military interests. The TTPI transformed the economies of Micronesia, making the nations completely dependent on the United States and ensuring that Micronesia will never achieve full independence to protect U.S. military interests.

A. *Pre-American Era*

Micronesia refers to "a geocultural area in the western and central Pacific, just north and south of the equator."[15] The name Micronesia is a European creation that captures neither a consistent area over time, nor a set of nations that share the same cultural characteristics.[16] These islands have been under differing forms of colonial administration for almost 500 years.[17] The first European nation to enter Micronesia was Spain, which established a mission in 1668.[18] Spain valued Micronesia for its strategic location.[19] Spain's occupation and claims to Micronesia bolstered the reach of its military and allowed the country to exercise 'strategic denial' over the region, a practice repeated by Micronesia's subsequent occupiers, including the United States.[20] Spain's occupation ended with its defeat in the Spanish-American War. Spain then sold Micronesia to Germany, which held the islands until

15. Palafox et al., *supra* note 2, at 295.

16. *See* David Hanlon, *"Sea of Little Lands": Examining Micronesia's Place in "Our Sea of Islands"*, 21 CONTEMP. PAC. 91, 93 (2009).

17. Palafox et al., *supra* note 2, at 296; Ediberto Román & Theron Simmons, *Membership Denied: Subordination and Subjugation Under United States Expansionism*, 39 SAN DIEGO L. REV. 437, 500.

18. Palafox et al., *supra* note 2, at 296; *Spanish Timeline*, SPANISH LEGACY IN MICRONESIA, https://perma.cc/J8LW-YLRD (last visited Apr. 2, 2022).

19. Glenn Petersen, *Lessons Learned: The Micronesian Quest for Independence in the Context of American Imperial History*, 3 MICRONESIAN J. HUMANS. & SOC. SCIS. 45, 60 (2004).

20. Petersen, *supra* note 19, at 60; Palafox et al., *supra* note 2, at 297.

their capture by Japan in World War I.[21] Japan administered Micronesia as the League of Nations' South Pacific Mandate, the first instance of a "formalized international presence in the Pacific Islands."[22] Though Japan developed the islands, Japanese control of Micronesia also brought dispossession of Micronesian lands, a practice that continued under U.S. occupation.[23] After capturing Micronesia from Japan in World War II (WWII), American leadership insisted on retaining control, viewing the islands' strategic location as part of the reason for Japan's success in attacking Pearl Harbor.[24] This led to the establishment of the Trust Territory or TTPI in 1947.[25]

B. *Trust Territory of the Pacific Islands*

Of the eleven United Nations (U.N.) trusteeships established after WWII, the TTPI was the only strategic trust.[26] This status allowed the U.S. to administer the TTPI to protect its security and placed the TTPI under the oversight of the U.N. Security Council, rather than the U.N. Trusteeship Council.[27] In 1946, a year before the TTPI was established, the United States began nuclear testing in the Marshall Islands, detonating sixty-seven weapons through 1958.[28] Nuclear testing caused repeated displacements of Marshallese and resulted in radiation-related illnesses.[29] A 1961 U.N. report, prompted by Micronesian independence advocates, chastised the United States for not fulfilling its duties under the Trusteeship Agreement to prepare Micronesia for self-governance, foster economic advancement, and provide adequate education and healthcare.[30] The U.N. report was followed by the United States' 1963 study, known as the Solomon Report, which advocated for increasing Micronesia's economic dependency on the United States in order to secure loyalty and ensure that Micronesia would remain a neocolonial possession after independence.[31] In practice, dependence has been furthered by developmental neglect, which ensures that infrastructure remains either incomplete

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21. Petersen, *supra* note 19, at 49.
22. Emily Mitchell-Eaton, New Destinations of Empire: Imperial Migration from the Marshall Islands to Northwest Arkansas 46 (Aug. 2016) (Ph.D. dissertation, Syracuse University) (SURFACE).
23. *See* Joakim Peter, *Chuukese Travelers and the Idea of Horizon*, 41 ASIA PAC. VIEWPOINT 253, 260 (2000); Petersen, *supra* note 19, at 57; Román et al., *supra* note 17, at 501.
24. Petersen, *supra* note 19, at 49.
25. Román et al., *supra* note 17, at 484.
26. *See* Palafox et al., *supra* note 2, at 296. While Article 82 of the UN Charter allows for the creation of Strategic Trust Territories, the UN never developed a formal definition for a "strategic" area. The explanation given for designating the TTPI as strategic was that "the islands were important for international security in Pacific as demonstrated by their strategic role during the Second World War. . . and the fact that the islands constituted an integrated physical complex vital to the security of the United States." UNITED NATIONS, *Article 82*, *in* REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS, 235, 238 (4TH ed. 1954).
27. Petersen, *supra* note 19, at 49; Palafox et al., *supra* note 2, at 296.
28. Palafox et al., *supra* note 2, at 296–97.
29. *See* Román et al., *supra* note 17, at 508–11.
30. *See* Palafox et al., *supra* note 2, at 297; Román et al., *supra* note 17, at 504–05; Smith & Castañeda, *supra* note 10, at 140.
31. *See* Román et al., *supra* note 17, at 505–08.

or inadequate due to consistently insufficient funding.[32] All told, the TTPI changed "the ethnocultural template of the Micronesian peoples."[33] Their economies shifted from barter systems with strong agricultural practices to reliance on food imports and aid.[34] Micronesian social structures, based on connections to ancestral lands, which were central to "social organization, [the] structure of family relationships, economy, shared food, and common work," were undermined by displacement and the imposition of a Western economic model and a reliance on government employment.[35]

C. *Negotiating "Independence": The Compacts of Free Association*

The Congress of Micronesia (COM) was established in 1965 to negotiate the future status of Micronesia.[36] In the negotiations, the United States pushed for a unified Micronesia that retained some form of a permanent relationship with the United States.[37] Members of the COM viewed full inclusion in the United States as a territory or commonwealth unfavorably based on their knowledge of U.S. imperialism.[38] At the time, Micronesia was under the control of the U.S. Department of the Interior, which members of the COM distrusted because of its genocidal record with American Indians, treating them not as sovereign peoples, but as wards of the United States.[39] COM members who studied in Hawai'i were also acutely aware of the dispossession of Native Hawaiians' lands, and they viewed this outcome as a worst case scenario for Micronesia.[40] Negotiations were therefore underlined by the importance of retaining ancestral lands in a bid to protect Micronesian identities and avoid a second-class citizenship status that would inhere to full inclusion in the American polity.[41]

In 1977, Palau, the Marshall Islands, and Chuuk, Yap, Pohnpei, and Kosrae as a collective (that later became the FSM) were 'offered' either independence, free association with the United States, or incorporation as a territory or a commonwealth.[42] In reality, full independence was never on the table, and every proposal proffered by COM negotiators that reduced U.S. military rights in Micronesia was a non-starter.[43] Therefore, all three governments negotiated for free association, acquiescing to the United States'

32. Smith & Castañeda, *supra* note 10, at 141.
33. Palafox et al., *supra* note 2, at 296.
34. Hirata *supra*, note 7, at 7–8.
35. Palafox et al., *supra* note 2, at 299–301.
36. *Id*. at 297 (discussing that by this time the Mariana Islands pursued their own future status separately, seeking commonwealth status, leaving the Marshall Islands, Palau, and the future Federated States of Micronesia to negotiate).
37. *See* Román et al., *supra* note 17, at 513–14.
38. *See* Petersen, *supra* note 19, at 53.
39. *Id*. at 56.
40. *See id*. at 55.
41. *See id*.
42. Palafox et al., *supra* note 2, at 297.
43. *See* Petersen, *supra* note 19, at 58.

insistence on retaining the right to exercise strategic denial in Micronesia and balancing the reality of their economic dependence on the United States against the want for full sovereignty.[44]

The agreements designed to govern 'free association' between the United States and the new Freely Associated States of the Republic of the Marshall Islands (RMI), the FSM, and Palau demonstrate the United States' continued imperial interests in, and control of, the former TTPI.[45] The COFAs are unilateral treaties with the stated goals of providing economic assistance, improving health and education, and increasing self-sufficiency in the FAS.[46] By 2024, over $4 billion in economic assistance will have been allocated to the FAS.[47] The COFAs also allow FAS citizens to live and work in the United States and its territorial possessions indefinitely.[48] The inclusion of these migration provisions was not "particularly contentious," as they were not the focus of the agreements.[49] The biggest points of contention for the United States were related to its military legacy and future.[50] The United States was determined to ensure provisions were included to prevent future claims related to compensation for victims of nuclear testing in the RMI and to maintain full military rights over the FAS.[51] These issues resulted in tense negotiations, specifically with Palau, which wanted to ensure through its constitution that the United States would not move nuclear weapons through its territory.[52] This led to over fifteen years of political turmoil in Palau, and the country's Supreme Court invalidated the Compact.

Nevertheless, the United States exercised its imperial authority over Palau and implemented the COFA in 1994, retaining the right to operate nuclear-capable and -powered military equipment in Palau's territory without consent.[53] The Palauan COFA marked the end of imbalanced negotiations by Micronesians for their autonomy. These negotiations were informed by an understanding of the United States' insistence upon maintaining control over Micronesia despite denying its status as an imperial power.[54]

III. THE LIMINAL STATUS OF DENIZENSHIP

Because of the history of U.S. imperialism in Micronesia, scholars have used the term "imperial citizenship" to describe the legal status of COFA

44. *See id.* at 59–60; Palafox et al., *supra* note 2, at 297; Román et al., *supra* note 17, at 505–06.
45. Román et al., *supra* note 17, at 506–07.
46. Palafox et al., *supra* note 2, at 297–98.
47. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 4–5.
48. THOMAS, *supra* note 6, at 1.
49. Mitchell-Eaton, *supra* note 22, at 235.
50. *See* Mitchell-Eaton, *supra* note 22, at 235; Smith & Castañeda, *supra* note 10, at 140-41; Román et al., *supra* note 17, at 516–17.
51. Mitchell-Eaton, *supra* note 22, at 235.
52. Smith & Castañeda, *supra* note 10, at 140-41; Román et al., *supra* note 17, at 516–17.
53. Román et al., *supra* note 17, at 517; Palau COFA, *supra* note 6, at § 324.
54. *See* Román et al., *supra* note 17, at 517; Petersen, *supra* note 19, at 60.

migrants in the United States.[55] While the conceptual framework of imperial citizenship accurately describes the precarity and second-class status of COFA migrants, it is important to distinguish the experiences of COFA migrants and citizens of unincorporated U.S. territories who, by virtue of the *Insular Cases*, are more accurately labeled imperial citizens.[56] For this reason, I argue for the creation of a new label, "imperial *denizen*," to more accurately describe the experiences of COFA migrants in the United States, as denizenship directly refers to legal residency devoid of the legal status and rights that attach to citizenship.[57] This framing is both necessary and useful to help accurately shape COFA renewal negotiations for the benefit of COFA migrants.

A. *COFA Migrants as Imperial Citizens*

Imperialism scholar Emily Mitchell-Eaton describes how imperial citizenship "both enables and constrains mobility for its holders in the contingent and precarious forms of belonging it produces for subjects of empire" and is not defined by a specific set of legal rights.[58] Rather than a set of recognized rights, it "is made up of a range of statuses held by subjects in an empire who reside in, were born in, or are otherwise legally affiliated with a current or former semi-sovereign or non-sovereign territory within that empire."[59] For COFA migrants who hail from ostensibly sovereign states affiliated with the United States, imperial citizenship is a status that applies *only* after entering the United States and its territories.[60] Under the imperial citizenship framework, COFA migrants' status in the US is an "inclusion by exception," granted not as a constitutional right, but by revocable legislation.[61] Though COFA migrants have an almost unlimited right to enter, live, and work in the United States like U.S. citizens, this right also creates a "form of noncitizenship that both derives from and perpetuates their precarity." [62] But in the United States, using the word "citizen" in this context is complicated by the history of how its meaning evolved through the *Insular Cases* and in subsequent statutes. As such, I argue that to accurately characterize COFA migrants as *noncitizens*, the word "citizen" is inappropriate.

B. *The* Insular Cases

In the first three decades of the 1900s, the U.S. Supreme Court developed a form of citizenship that included lesser rights for residents of Court-defined

55. *See* Mitchell-Eaton, *supra* note 11, at 256; Smith & Castañeda, *supra* note 10.
56. Mitchell-Eaton, *supra* note 22, at 182–83.
57. De Genova, *supra*, note 14, at 227, 230.
58. Mitchell-Eaton, *supra* note 11, at 257.
59. Mitchell-Eaton, *supra* note 22, at 182.
60. Mitchell-Eaton, *supra* note 11, at 259–60.
61. *Id*. at 259.
62. *See id*. at 259–60.

unincorporated territories in a series of cases known as the *Insular Cases*.[63] Prior to the *Insular Cases*, in *US v. Cruikshank* the Court defined citizens as "members of the *political community* to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and *the protection of their individual as well as their collective rights*."[64] The rights that citizens are entitled to are only those that the federal government can constitutionally grant or secure, with the remaining rights left to the *states*.[65] But in the *Insular* Cases, the Supreme Court declined to extend these constitutional rights to U.S. citizens in newly acquired territories.

Prompted by the acquisition of Puerto Rico and other territories from Spain in 1898, the *Insular Cases* "rationalized and legitimized American colonial rule in Puerto Rico."[66] In Justice White's concurrence in *Downes v. Bidwell*, which the Court adopted three years later in *Dorr v. U.S.*, Justice White established that Puerto Rico was "foreign to the United States in a domestic sense" and not a member of the *American political community*.[67] This narrowed the definition of the United States to the 'mainland' and laid the ground for legitimizing America's subsequent *overseas* colonialism.[68] Though Congress granted Puerto Ricans citizenship in 1917, in 1922, the Court, in *Balzac v. Porto Rico*, made clear that "P[ue]rto Rico did not form *part of the American polity*, and that incorporation of such a 'distant ocean communit[y] of a different origin and language from those of our continental people' would require a clear declaration from Congress."[69] The effect of *Balzac* was twofold. The holding affirmed that U.S. citizen Puerto Ricans in Puerto Rico and U.S. citizens in other unincorporated U.S. territories would not enjoy full constitutional rights unless they were granted by Congress, but it made clear that they *would* have full constitutional rights in the U.S. mainland (meaning states, the District of Columbia, and incorporated territories, which *Downes* defined as the American political community).[70] Despite recent signals from the Supreme Court that the *Insular Cases* should be overturned, U.S. citizens' legal status in unincorporated territories remains in the

63. Edgardo Meléndez, *Citizenship and the Alien Exclusion in the Insular Cases: Puerto Ricans in the Periphery of American Empire*, 25 CENTRO J. 106, 111 (2013).

64. *See* US v. Cruikshank, 92 U.S. 542, 549 (1875) (emphasis added).

65. *See id*. at 550–51 (emphasis added).

66. Meléndez *supra* note 63, at 107, 111.

67. Lisa Maria Perez, *Citizenship Denied: The "Insular Cases" and the Fourteenth Amendment*, 94 VA. L. REV. 1029, 1039 (2008).

68. Meléndez *supra* note 63, at 107, 112.

69. Perez, *supra* note 67, at 1041 (quoting Balzac v. Porto Rico, 258 U.S. 298, 311 (1922) (emphasis added)).

70. Meléndez *supra* note 63, at 132; Perez, *supra* note 67, at 1039. Incorporation of territories was ultimately a political decision often based on race and whether those of "uncivilized races" could be fit to receive full constitutional rights. *See* Román et al., *supra* note 17, at 460–62.

hands of Congress.[71] This has, in effect, rendered these U.S. citizens living at the furthest reaches of the U.S. empire *imperial* citizens due to their rightlessness and legislatively revocable semi-inclusion in the American polity.[72]

C. *Imperial Citizenship: An Imperfect Fit for COFA Migrants*

While the citizenship status bestowed to Puerto Ricans and residents of other unincorporated territories makes them imperial citizens, the same cannot be said for COFA migrants.[73] This is not to say that U.S. citizens from unincorporated territories enjoy the same "legal membership in the polity"[74] that defined citizenship in *Cruikshank* and the constitutional rights of U.S. citizens in the U.S. mainland as defined in *Downes*.[75] But by having *citizenship*, they are not statutorily defined as aliens, while COFA migrants are.[76]

Like U.S citizens in unincorporated territories, the legal status of COFA migrants is determined by Congress.[77] But when U.S. citizens from unincorporated territories reach the US 'mainland,' they enjoy the same *irrevocable* constitutional rights of other U.S. citizens, including the right to vote.[78] From a legal perspective, this makes the citizenship of Puerto Ricans, Guamanians, and others the same status as citizenship conferred by any nation-state as recognized under international law.[79] COFA migrants, on the other hand, do not have the same constitutional rights as U.S. citizens anywhere within the U.S. empire. In its determination of COFA migrant's access to rights, Congress is permitted to rationally discriminate on the basis of their *alienage*, whereas U.S. citizens, no matter where they reside, are never deemed 'aliens.'[80]

The misfit of a citizenship designation is also evident from a rights-based conception of citizenship. Under international law, a citizen has access to five rights: civil, cultural, political, social, and economic.[81] Though U.S. citizens in unincorporated territories lack the full constitutional civil and political rights of U.S. citizens in the mainland, these rights can be *gained* by moving there.[82] This does not happen for COFA migrants, problematizing

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71. *See* US v. Vaello Madero, 142 S. Ct. 1539 (2022) (Gorsuch, J., concurring).
72. Mitchell-Eaton, *supra* note 11, at 257.
73. 8 FAM 302.3 Acquisition by Birth in Guam on or After December 24, 1952, https://perma.cc/K2BQ-BC7R (last visited Feb. 8, 2023); *Supra* Part III Section B.
74. *See* Linda Bosniak, *Citizenship Denationalized*, 7 IND. J. GLOB. LEGAL STUD. 447, 456 (2000).
75. *See* U.S. v. Cruikshank, 92 U.S. 542, 549 (1876).
76. *See* 8 U.S.C. § 1101(a)(3).
77. *See* Meléndez, *supra* note 63, at 132.
78. *See* C.J. Urquico, *'Hey, How About That? We Can Vote for President Now.'*, PACIFIC ISLAND TIMES (Oct. 11, 2020), https://perma.cc/3HSR-NVEU. The one exception is that former residents of the US states and DC who move to the Mariana Islands can continue voting there under the Uniformed and Overseas Citizens Absentee Voting Act. Smith & Castañeda, *supra* note 10, at 143.
79. Bosniak, *supra* note 74, at 456.
80. *See* Basiente v. Glickman, 242 F.3d 1137, 1143 (9th Cir. 2001) (quoting *Mathews v. Diaz*, 426 U.S. 67, 96 (1976)); 8 U.S.C. § 1101(a)(3).
81. *See* Standing, *supra* note 13.
82. *See* Mitchell-Eaton, *supra* note 22, at 182; *Puerto Rico and the U.S. Constitution*, PR51ST (Oct. 13, 2017), https://perma.cc/7AZN-RKC6; Smith & Castañeda, *supra* note 10, at 143.

their designation as imperial *citizens*.[83]

Perhaps more than any other legal disability, the "perpetual deportability" of COFA migrants also counsels against their classification as imperial *citizens*.[84] COFA migrants are legally classified as nonimmigrants and are often removed for committing crimes, sometimes even before completing their sentences.[85] Migrants may even be removed if deemed public charges.[86] Those removed from the United States may also face limitations on future mobility, not just to the United States and its territories, but out of the FAS at all, because most flights from the FAS go through the United States.[87] *Citizens* from unincorporated territories do not confront these issues because they are not aliens and cannot face removal. Though imperial *citizenship* is a useful framework for understanding the experiences of U.S. citizens in unincorporated territories, it does not accurately capture the status of COFA migrants.

D. *Imperial Denizenship*

COFA migrants are undoubtedly *imperial* subjects because the United States exerts military, economic, and political influence over the FAS.[88] However, I argue that constitutional and statutory conceptions of U.S. citizenship that center rights and political membership, coupled with the importance of citizenship as a legal status, counsel that *denizenship* should be used to describe COFA migrants.[89] Denizenship more accurately describes the rightlessness COFA migrants face and the legally liminal space they occupy *between* citizen and alien.[90] Denizens are those who live outside of their country of citizenship and possess "a legal right of residence . . . in a given territory, but who ha[ve] limited rights to welfare and political participation such as the right to vote."[91] Denizenship is not designed as a path to citizenship, nor is it viewed as constituting or being tantamount to citizenship.[92] While COFA migrants are citizens of the FAS who maintain an elevated status within the U.S. empire, describing them as *citizens* in the context of their U.S. residency may imply access to rights they lack.

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83. *See* Mitchell-Eaton, *supra* note 22, at 182 (defining imperial citizen from that author's point of view.).

84. Smith & Castañeda, *supra* note 10, at 150.

85. *See* Kevin Escudero, *Federal Immigration Laws and U.S. Empire: Tracing Immigration Lawmaking in the Mariana Islands*, 46 AMERASIA J. 63, 70 (2020); Smith & Castañeda, *supra* note 10, at 149.

86. Smith & Castañeda, *supra* note 10, at 148–49.

87. *See id*. at 149–50.

88. *See* Mitchell-Eaton, *supra* note 22, at 224.

89. *See* Nicholas De Genova, *supra* note 14, at 227, 230 (quoting Brian S. Turner, *The Erosion of Citizenship*, 52 BRIT. J. OF SOCIO. 189 (2001)).

90. *See* Smith & Castañeda, *supra* note 10, at 141; Mitchell-Eaton, *supra* note 22, at 220–21.

91. De Genova, *supra*, note 14, at 227, 230.

92. *Id*. at 228.

Denizenship in the United States is not new. The term has been used by scholars including Catherine Ramirez to describe the status of Native Americans in the United States after the Naturalization Act of 1790, which limited citizenship through naturalization to whites. Ramirez also applies the term to African Americans in the United States prior to the ratification of the citizenship-granting Fourteenth Amendment.[93] Neither African Americans nor Native Americans were considered *real* Americans, nor were they "envisioned as legitimate parts of the *polity* or even permanent members of society" upon the nation's founding.[94] Importantly, however, African Americans and Native Americans were made citizens, like the residents of unincorporated U.S. territories.[95] On the other hand, COFA migrants lack the rights that citizenship purports to bring, and they maintain a legally liminal existence punctuated by imperial exploitation and near-arbitrary exclusion from the American polity.[96]

The status of COFA migrants brings a host of vulnerabilities in addition to removability,[97] namely a lack of access to federal and state benefits afforded to similarly situated U.S. citizens, including citizens living in unincorporated territories.[98] At the federal level, COFA migrants are ineligible for Supplemental Security Income, Temporary Assistance for Needy Families, the Supplemental Nutritional Assistance Program, and the Federal Emergency Management Agency's Individuals and Households Program.[99] It wasn't until 2021 that COFA migrants regained access to Medicaid and CHIP benefits, which were revoked in the 1996 U.S. Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).[100] Without health care, COFA status was stripped of one of its most important aspects, as many

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93. Catharine S. Ramirez, *Black No More*, *in* PRECARITY AND BELONGING LABOR, MIGRATION, AND NONCITIZENSHIP 243, 249–50 (Catherine S. Ramírez, Sylvanna M. Falcón, Juan Poblete, Steven C. McKay & Felicity Amaya Schaffer eds., 2021).

94. *Id*. at 249–50. These views have persisted into the modern day as well. "Take, for example, the conspiracy theories that Barack Obama and Kamala Harris were not born in the United States and, therefore, are ineligible to be president or vice president. As long as African Americans are disassociated from Americanness, stories about racial passing will not be considered stories about assimilation and Americanization. Instead, they will be read as tales about people who claim something that is not supposed to be theirs: *the power and privilege of full citizenship*." *See id*. at 251–52 (emphasis added).

95. *See* Perez, *supra* note 67, at 1041, 1080–81; 8 FAM 302.3, *supra* note 73.

96. *See* Mitchell-Eaton, *supra* note 22, at 221; Cecilia Menjívar, *Liminal Legality: Salvadoran and Guatemalan Immigrants' Lives in the United States*, 111 AM. J. OF SOCIO. 999, 1009 (2006). *See also*, MAE M. NGAI, IMPOSSIBLE SUBJECTS ILLEGAL ALIENS AND THE MARKING OF MODERN AMERICA 6 (2004) ("[I]llegal alienage is not a natural or fixed condition but the product of positive law; it is contingent and at times it is unstable. The line between legal and illegal status can be crossed in both directions.").

97. *See* discussion *supra* Part III.C.

98. *See Appendix A: Social Welfare Programs in the Territories*, COMM. ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES (2018), https://perma.cc/98RS-RCP9 ("Many, but not all, social welfare programs that are available in the 50 states and the District of Columbia are also available in the U.S. territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Some programs are only available in certain territories and for some programs the territories receive funding based on different formulas or under different circumstances than do the states.").

99. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 12.

100. *See* Kimmy Yan, *U.S. Restores Medicaid for Marshall Islands, Exposing Longtime Injustice, Experts Say*, NBC (Dec. 31, 2020, 7:16 PM), https://perma.cc/BJ44-SYGY.

Micronesians suffer from poor health due "to a variety of historical events. . . including U.S. nuclear testing in the region and the disruption of traditional economies, cultures, and diets."[101] But because the population of COFA migrants is small and unable to seek representation through direct civic participation, COFA migrants were unable to advocate effectively to keep health coverage.[102] These prohibitions are clear examples of exclusion from citizenship when it is viewed as a legal and rights-granting status, furthering the argument to use the term denizenship.[103]

IV. IMPERIAL DENIZENSHIP IN ACTION

"The people of the United States told us they would take care of our health and education in our home islands. They did not. When we come here seeking that care, we do not receive any kindness."[104]

This Section explores four communities of COFA migrants from the RMI and the FSM: those residing in Oklahoma, Arkansas, Guam, and Hawai'i.[105] Together they demonstrate different aspects of community development and the struggles faced by COFA migrants as imperial denizens. Imperial denizenship has informed how COFA migrants preserve their culture, experience discrimination, face a lack of governmental support, and fare in court, issues which need to be addressed with urgency in the face of COFA renewal.

A. *Enid, Oklahoma: Cultural Preservation*

The first Marshallese to arrive in Enid, Oklahoma were students who came to the United States after a 1972 rule made TTPI residents eligible for federal education grants.[106] Subsequent migration to Enid after the COFA was signed has been largely for employment and healthcare, reasons which drive Marshallese migration across the United States.[107] Enid, however, is unique among communities of Marshallese in the US because of the community's strong emphasis on cultural preservation.

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101. Megan Kiyomi Inada Hagiwara, Jill Miyamura, Seiji Yamada, & Tetine Sentell, *Younger and Sicker: Comparing Micronesians to Other Ethnicities in Hawaii*, 106 AM. J. OF PUB. HEALTH 485, 485 (2016); *See* Hirata *supra*, note 7, at 57.

102. Hirata, *supra* note 7, at 57.

103. Bosniak, *supra* note 74, at 456.

104. Palafox, *supra* note 2, at 311 (quoting COFA migrant in HI describing life in the state).

105. Due to a lack of substantive literature on Palauan COFA migrants, they are not included in this section.

106. Bryce McElhaney, *Marshallese Islanders: Contributing to Life in Enid*, GAYLORD NEWS (May 18, 2017), https://perma.cc/AA9Y-Z33J; Jim Hess, Karen L Nero & Michael Burton, *Creating Options: Forming Marshallese Community in Orange County, California*, 13 CONTEMP. PAC. 89, 95 (2001).

107. McElhaney, *supra* note 106; Zoë Carpenter, *How Years of Ruthless Nuclear Testing in the South Pacific Forged America's Most Impoverished Ethnic Group*, NARRATIVELY (July 17, 2017), https://perma.cc/FD7R-SPGF/.

Enid is a place where "culture survives as younger generations become more Americanized,"[108] "[a] cultural 'safe harbor' for migrants adrift in the U.S. Marshallese archipelago."[109] Migrants in Enid see themselves as Marshallese *of* Enid. This has helped the community juxtapose itself against other Marshallese communities, making Enid's Marshallese the *true* Marshallese who keep Marshallese traditions and language alive.[110] Despite this designation, the community's cohesive 'traditional' identity does not reflect life in the Marshall Islands and was developed in accordance with the cultural demands of one church in Enid, the Marshallese Assembly of God (AOG).[111]

The AOG was the first Marshallese church in Enid, and it has served as a touchpoint for the community to provide support and promote the cohesion of distinct Marshallese identities.[112] Since the 1990s, the church has imposed a strict way of life for Marshallese to follow in order to emphasize cultural preservation based on the church's proprietary view of Marshallese customs.[113] To this end, the AOG extracts significant time and money from Marshallese congregants by requiring donations and frequent attendance. Because of the importance the AOG has for Marshallese in Enid, the church's efforts to preserve a Marshallese lifestyle that never existed have blurred the differences between identities that existed back in the RMI and allowed for the creation of a unified Marshallese community in Enid.[114]

As denizens, the Marshallese in Enid have faced societal exclusion, and the importance of cultural preservation and adherence to the requirements of the AOG have served as a buffer from the rest of Enid, helping migrants to adapt to their American lives more easily.[115] But cultural preservation has begotten cultural *isolation* from the rest of Enid, contributing to racism. Because Enid's Marshallese mostly do not fraternize with the larger community, there is an air of mystery surrounding their culture which has prompted racial stereotyping.[116] Racism in turn has fed into poverty and poor health outcomes.[117] But still, the AOG's dogma of cultural preservation has allowed new migrants from the RMI the latitude to distance themselves from the more fast-paced and demanding American lifestyle and, for some, still secure the health benefits or employment that prompted their migration.[118] Despite racism and poverty faced in Enid, some Marshallese have expressed that they

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108. *Id*.
109. *See* Linda Ann Allen, Enid "Atoll": A Marshallese Migrant Community in the Midwestern United States 44–48, 84 (May 1997) (Ph.D. dissertation, The University of Iowa) (ProQuest).
110. *Id*. at 62–64, 68.
111. *See* Allen, *supra* note 109, at 105–10; McElhaney, *supra* note 106.
112. *See* Allen, *supra* note 109, at 105–10; McElhaney, *supra* note 106.
113. Allen, *supra* note 109, at 110–11.
114. *Id*. at 113–115.
115. *See* McElhaney, *supra* note 106; Allen, *supra* note 109, at 112–13.
116. *See* Allen, *supra* note 109, at 112–13; *see* Carpenter, *supra* note 107.
117. *See* Carpenter, *supra* note 107.
118. *See* McElhaney, *supra* note 106; Carpenter, *supra* note 107.

"don't say United States – we say 'Mainland' because the United States has become our home away from home," emphasizing Enid's existence as an extension of an imagined 'traditional' RMI which never existed.[119]

B. *Springdale, Arkansas: Jobs, Healthcare, Family, and Legality*

Springdale, Arkansas is the most studied COFA migrant community in the United States. There has been a continuous flow of migrants from the RMI to Springdale since 1986, and the town's Marshallese population is around 20,000.[120] To some residents, life in Springdale is similar to life in the RMI, as many familial and kinship networks have been established and maintained.[121] Marshallese joke that they live in Springdale "because they like chicken and rice," both of which are produced in Arkansas, but the main drivers of migration to Springdale are family, jobs, and healthcare.[122] But upon moving to Springdale, many Marshallese find that their poorly understood legal status leads them to face a life no better and more precarious than the one they left behind, leaving them to rely on the community for sufficient support.[123]

Family is the primary motive for migration to Springdale.[124] Extended families house over half of all newly arrived migrants.[125] The average household size is estimated to be between six and eight people, and around 87% of households have children.[126] This large household size reflects the cultural tendency to have a more fluid definition of family than the typical American nuclear family model, including everyone from nieces to friends.[127] Parents migrating with children are most often seeking better education for their children.[128] Many new migrants are also invited by family members in order for them to receive healthcare.[129]

Finding a job is the second leading motivation for migration to Springdale.[130] There are many jobs in Springdale for Marshallese, as the jobs require little education and English proficiency.[131] Most Marshallese work in

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119. Allen, *supra* note 109, at 199–200; McElhaney, *supra* note 106.

120. S.N. McClain, C. Brunch, M. Nakayama & M. Laelan, *Migration with Dignity: A Case Study on the Livelihood Transition of Marshallese to Springdale, Arkansas*, 21 J. OF INT'L MIGRATION AND INTEGRATION 847, 848 (2020).

121. *See* Hirata, *supra* note 7, at 20.

122. *See* Diana Kay Chen, Got Breadfruit? Marshallese Foodways and Culture in Springdale, Arkansas 10 (May 2018) (Ph.D. dissertation, University of Arkansas, Fayetteville) (on file with ScholarWorks@UARK) (Rice became a staple food for Marshallese after being imported to the TTPI by the US, and "Arkansas is the largest producer of rice in the US and the second largest producer of broilers. . ."); McClain et al., *supra* note 120, at 851.

123. *See* McClain et al., *supra* note 120, at 853–55.

124. McClain et al., *supra* note 120, at 851.

125. *See id.*

126. *Id.*

127. McClain et al., *supra* note 120, at 851; Hirata *supra*, note 7, at 17.

128. Hirata, *supra* note 7, at 29.

129. McClain et al., *supra* note 120, at 851.

130. *Id.*; *See* Hirata *supra*, note 7, at 31.

131. McClain et al., *supra* note 120, at 848.

poultry plants.[132] These jobs not only provide a source of income, but they also substitute for the lack of state and federal services available to COFA migrants. For example, employers like Tyson hold free English and GED classes for their employees.[133] Tyson also offers driver's license instruction classes in Marshallese, something normally barred by Arkansas state law, which prohibits instruction in languages other than English.[134] Tyson also provides health insurance for their employees, although the co-pays are costly, and the policies are developed based on the American nuclear family, meaning they do not cover Marshallese households that include many non-nuclear family members.[135]

Healthcare is another major reason motivating migration to Springdale, but health outcomes for Marshallese in Springdale are abysmal.[136] Despite structural causes like a lack of publicly funded health care in Arkansas, Marshallese in Springdale are more inclined to "attribute many of the health and employment problems they face to issues within their community," shifting the responsibility to the individual instead of U.S. policy failures.[137] Springdale's Marshallese have comparatively high rates of leprosy, TB, and diabetes.[138] Diabetes is known to stem from poverty, and leprosy and TB from overcrowded living conditions.[139] As Marshallese in the RMI and Springdale lack access to nutritious foods and adequate living space due to poverty, the prevalence of these diseases is a symptom of the structural inequality and harm attributable to American capitalism.[140] In addition, language barriers, a lack of transportation and money, and the inability to take off work make doctor's visits prohibitive.[141] When Marshallese do seek care, they are often discriminated against by healthcare workers who downplay the role nuclear weapons testing and military occupation have played in their poor health "in favor of cultural or innately biological explanations."[142] This maltreatment is evident in the statistic that despite comprising around 3% of Northwest Arkansas's population, Marshallese represented 65% of the early COVID-19 deaths in the region.[143]

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132. Hirata, *supra* note 7, at 20, 49.
133. McClain et al., *supra* note 120, at 856.
134. *Id*. at 857; ARK. CODE ANN. § 1-4-117.
135. Hirata, *supra* note 7, at 49–51.
136. McClain et al., *supra* note 120, at 851; Pearl A. McElfisha, Ramey Mooreb, Melisa Laelanc & Britni L. Ayersa, *Using CBPR to Address Health Disparities With the Marshallese Community in Arkansas*, 45 ANNALS HUM. BIOLOGY 264, 265 (2018).
137. *See* Hirata *supra* note 7, at 37, 63–64, 67–68.
138. *See id*. at 59, 67–68.
139. *See id*. at 66–67; Kay Chen, *supra* note 122, at 267.
140. *See* Hirata, *supra* note 7, at 67, 69, 72.
141. *See id*. at 70–72; Michael R. Duke, *Neocolonialism and Health Care Access Among Marshall Islanders in the United States*, 31 MED. ANTHROPOLOGY Q. 422, 431–32 (2017).
142. Duke *supra*, note 141, at 432.
143. Elise Berman & Vicki Collet, *Marshallese Families' Reported Experiences of Home-school Connections: An Asset-based Model for Critiquing "Parental Involvement" Frameworks and Understanding Remote Schooling during COVID-19*, 80 HUM. ORG. 311, 313 (2021).

The legal status of COFA migrants is not well understood in Springdale, and many residents, viewing the Marshallese as 'legal,' falsely believe they have the same rights as U.S. citizens or permanent residents.[144] This is because the status of Springdale's Marshallese is viewed in relation to the town's Latino residents, who, in the eyes of Springdale's law enforcement, are presumptively *illegal*.[145] This focus on illegality and legality obscures the needs faced by Marshallese due to their status as imperial denizens.[146] Imperial denizenship means that Springdale's Marshallese are stuck in a liminal state as neither American nor Marshallese, combatting poverty without governmental support and forced to "make survival decisions on a day-to-day basis instead of planning for the future."[147]

Despite the challenges inherent to imperial denizenship, out-migration from the RMI to Springfield continues, and 72% of the population is determined not to return to the RMI.[148] In Springdale "the very act of migration [has] further[ed] the process of migration" and provided methods of community support that are not reliant on legal status.[149] As Springdale's Marshallese community grows, "more Marshallese churches are available, more relatives are present, and it becomes easier to leave the RMI."[150] This success in community development has also been furthered by sharing one common language, high levels of both blood and marriage relation, a traditionally communal social structure, and the ability of community to provide robust support for new migrants to get their footing in the face of governmental neglect.[151]

C. *Guam: The "Other" Micronesians*

The U.S. territory of Guam is geographically part of Micronesia, separated from the FAS only due to colonization.[152] The largest group of COFA migrants on Guam are the Chuukese, who make up an estimated 7% of the territory's total population.[153] Chuukese come from the FSM state of Chuuk seeking healthcare, jobs, and education.[154] Chuuk is an approximately two hour flight from Guam, but despite the geographic proximity, Chuukese face widespread discrimination by Guam's imperial *citizens*, including its native Chamorro population.[155]

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144. *See* Mitchell-Eaton, *supra* note 22, at 194.
145. *See id.* at 194–98.
146. *See id.* at 199.
147. *Id.*
148. McClain et al., *supra* note 120, at 851.
149. Hirata, *supra* note 7, at 28.
150. *Id.*
151. *Id.* at 29–30 (explaining community development in Springdale, AR).
152. Smith & Castañeda, *supra* note 10, at 144.
153. Rebecca Hofmann, *The Puzzle of Chuukese Mobility Patterns Contradictory, Dualistic, or Pluralistic?*, 25 ANTHROPOLOGICAL F. 131, 135, 139 (2015).
154. Smith & Castañeda, *supra* note 10, at 150.
155. *See* Hofmann, *supra* note 153, at 139, 144–45.

The Chuukese population on Guam is impoverished. While the first wave of migrants that arrived in the 1980s to meet Guam's new tourism-driven labor demand were relatively successful, since Guam's economic downturn in the 1990s, Chuukese have faced rampant unemployment and homelessness.[156] Initially, labor migrants were viewed as a benefit to Guam's economy, but Chuukese are now viewed as an economic burden.[157] This is because the multigenerational households that form Guam's Chuukese community include non-working members and receive a disproportionate percentage of Guam's welfare spending despite their ineligibility for many programs.[158] In 2012, it was estimated that 60% of Guam's COFA migrant workforce made less than $8 per hour, and each income earner supported an average of two other household members.[159] By 2012, 58% of people in Guam's homeless shelters were COFA migrants, and COFA migrants were arrested at a rate seven times higher than Guam's overall population.[160] Despite these challenges, the population of COFA migrants on Guam from the FSM continues to grow by about 375 mostly Chuukese migrants per year.[161]

To the Chamorros of Guam, "the label Micronesian has become a derogatory expression."[162] Guamanians even seek to differentiate between the Chamorros and *other* Micronesians, mainly Chuukese, by "evoking biological differences."[163] Chuukese are viewed as "badly behaved, expensive guests who cannot support themselves."[164] Chuukese men are described as violent alcoholics and Chuukese women are described as "hyper-fertile and overly dependent on social services."[165] But most Guamanians know little about their Chuukese neighbors, and Chuukese are largely absent from civil society.[166] Guam also still relies on COFA migrant labor to support its economy.[167] Chuukese, however, have been perceived as solely harming Guam's economy since the 1990s when the term "Compact Impact" was coined to imply that COFA migrants were all public charges.[168]

As discussed in Part III of this Note, Chamorros and other US citizens on Guam are imperial citizens.[169] Though both US citizens on Guam and Chuukese migrants obtain constitutional rights at the whim of the U.S.

156. *See* Francis X. Hezel, *Micronesians on the Move Eastward and Upward* Bound, 9 PACIFIC ISLANDS POL'Y 8–15 (2013).
157. *See id.* at 12–15.
158. *See id.* at 11–15.
159. *See id.* at 15, 25–26, 35.
160. *See id.* at 26–27.
161. *See id.* at 34.
162. Hofmann, *supra* note 153, at 139.
163. Smith & Castañeda, *supra* note 10, at 144.
164. *Id.*
165. *Id.*
166. Hofmann, *supra* note 153, at 139.
167. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 41–42.
168. Smith & Castañeda, *supra* note 10, at 146.
169. *Supra* Part III.

Congress, the lack of *citizenship* for Chuukese means they face greater difficulties.[170] Even attempts at inter-group solidarity to highlight shared subjugation by U.S. imperialism prove futile and reproduce "the racist logics of the US nation-state."[171] For example, 'We are all Micronesians' has become a term used to emphasize a bond between Guamanians and COFA migrants. But "often in the same conversation – Guamanians [may] point out the issues perceived as brought" by outsiders like the "*those* Chuukese."[172]

Chuukese are not welcome on Guam nor are they connected with their ancestral lands after migrating.[173] Chuukese in Chuuk view migration as a "destructive force, which breaks up family ties and devalues culture," and those who return to Chuuk either by their own volition or after removal are judged as different.[174] But staying on Guam means Chuukese are subject to precarity through their denizenship. Without citizenship they are especially vulnerable to removal, which occurs frequently because of the criminalization of Chuukese, in part because they are poor. Often their sentences are commuted just so they can be sent 'home.'[175] Many who stay on Guam forego reaching out for the social services they *are* eligible for due to stigma, which renders them invisible.[176] As "discrimination, school-dropouts, and criminality become the reality of many young migrating fortune seekers," many Chuukese who go to Guam to save money return only after removal or in death.[177]

D. *Hawaii: Combatting Systemic Discrimination with Litigation*

Hawai'i hosts the largest population of COFA migrants of any U.S. jurisdiction, and 80% of these migrants are Chuukese and Marshallese.[178] Like the Chuukese on Guam, COFA migrants in Hawai'i face discrimination and are subject to similar stereotypes that emphasize their perceived societal burden.[179] Hawaiian media has furthered these stereotypes, perpetuating and entrenching negative views that COFA migrants contribute to increased homelessness and unemployment.[180] It is estimated that COFA migrants make up 20% of Honolulu's homeless population, a reality that has led 'homeless' to become part of the public's perception of what it means to be

170. *See* Meléndez *supra* note 63, at 132; Smith & Castañeda, *supra* note 10, at 146.
171. Smith & Castañeda, *supra* note 10, at 145, 147.
172. *Id*. at 145.
173. *Id*. at 148, 152.
174. Hofmann, *supra* note 153, at 143–44.
175. Smith & Castañeda, *supra* note 10, at 149.
176. *Id*. at 148.
177. *See* Hofmann, *supra* note 154, at 143–44.
178. Palafox, *supra* note 2, at 296, 307.
179. *Id*. at 308–9; Juliette P. Budge, A Pacific Island Diaspora: A Case Study of Chuukese Women Migration and Adaptation Strategies in Urban Honolulu 172 (2019) (Ph.D. dissertation, The University of Hawai'i at Manoa) (ProQuest).
180. Budge, *supra* note 179, at 88.

Micronesian.[181] Because of this negative perception, COFA migrants fought a contentious and discriminatory battle to retain state-funded healthcare.[182] COFA migrants in Hawai'i did not acquiesce in their battle for healthcare, and they brought the fight to court and strengthened solidarity with community activists in the process.[183]

Since the COFA was signed, access to adequate healthcare, specifically dialysis, became a major draw for COFA migrants to leave the FSM for Hawai'i.[184] Migrants from the FSM and the RMI have also migrated to Hawai'i to find jobs and establish permanent communities, but Hawai'i's high cost of living has led to apartment overcrowding and homelessness.[185] Poverty and homelessness have in turn led to poor health outcomes for COFA migrants. Those who are hospitalized in Hawai'i are younger and sicker than other major racial and ethnic groups in the state.[186] For COFA migrants in Hawai'i, access to adequate, free health care is paramount for their survival, but this access was eroded in 2010.[187]

The rightlessness and liminal legality of imperial denizenship faced by COFA migrants in Hawai'i was on full display when they were cut from the state's public health plan, Med-QUEST. They were cut from Med-QUEST in a bid to save money during the 2007-2008 financial crisis and enrolled in a new plan called Basic Health Hawaii (BHH).[188] BHH was a restrictive plan, denying access to treatments including chemotherapy and dialysis.[189] Hawai'i rationalized the plan based on the dominant media-fueled narrative that COFA migrants were an unfair burden and a drain on the state's resources, and therefore undeserving of the same free, state-provided health care as Hawai'i's poorest U.S. *citizens*.[190] In response, community organizations, including established Micronesian community groups, filed suit, receiving a preliminary injunction against Hawai'i in 2009.[191] This success was short-lived, and BHH was reinstated in July 2010.

Thereafter, the case, *Korab v. Fink*, moved to federal court, where COFA migrants filed a class action lawsuit citing unlawful discrimination "on the

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181. Chad Blair, *An Untold Story of American Immigration*, HONOLULU CIVIL BEAT (Oct. 14, 2015), https://perma.cc/9XX8-HPZS; Budge, *supra* note 179, at 68–69.

182. *See* Budge, *supra* note 179, at 86–89; Megan Kiyomi Inada Hagiwara, Seiji Yamada, Wayne Tanaka & Deja Marie Ostrowski, *Litigation and Community Advocacy to Ensure Health Access for Micronesian Migrants in Hawai'i*, 26 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 137, 139–40 (2015).

183. *See* Korab v. Fink, 797 F.3d 572 (2014).

184. Budge, *supra* note 179, at 192.

185. HEZEL, *supra* note 156, at 17–18, 36.

186. Megan Kiyomi Inada Hagiwara, Jill Miyamura, Seiji Yamada, & Tetine Sentell, *Younger and Sicker: Comparing Micronesians to Other Ethnicities in Hawaii*, 106 AM. J. OF PUB. HEALTH 485, 485, 488 (2016).

187. Susan K. Serrano, *The Human Costs of "Free Association": Socio-Cultural Narratives and the Legal Batter for Micronesian Health in Hawai'i*, 47 J. MARSHALL L. REV. 1377, 1379.

188. Hagiwara et al., *supra* note 186, at 139–40.

189. Serrano, *supra* note 187, at 1379; Hagiwara et al., *supra* note 186, at 139–40.

190. Serrano, *supra* note 187, at 1388–389.

191. Hagiwara et al., *supra* note 186, at 140.

basis alienage and immigration status in violation of the Equal Protection Clause."[192] The idea was to shift "the narrative away from Micronesians as 'undeserving welfare recipients' to Micronesians as full and equal participants deserving of meaningful health care."[193] The plaintiffs received a favorable ruling at the District level, with the court finding no justifiable state interest to support their removal from Med-QUEST, and that it was unconstitutional discrimination based on alienage.[194] But on appeal, the Ninth Circuit determined Hawai'i's action to exclude COFA migrants was not unconstitutional. The court held Hawai'i's move was within the discretionary powers delegated to the state by Congress under the PRWORA.[195] In response, instead of reinstating BHH, Hawai'i pushed COFA migrants to apply for health care under the ACA.[196] But many COFA migrants who lost free Med-QUEST coverage could neither afford the ACA's premiums, nor navigate the process of signing up, rendering them uninsured.[197]

After *Korab*, and before COFA migrants regained Medicaid eligibility in 2021, community groups, including those that helped pursue the litigation, banded together to demand support for COFA migrants. [198] Organizations like COFACAN were established to advocate for healthcare rights, part of the movement of "COFA residents [to] engage[] a group of multiracial and cross-sector allies, including civil rights groups, community centers, health professionals, and social organizations."[199] The legal process itself also helped in "shaping the larger public understandings crucial to the movement," building community and shaping media discourse to reinforce a narrative that COFA migrants deserve health care access rights, a critical counter-narrative that may not have come up without litigation.[200] However, *Korab* also reaffirmed the stark truth that as denizens, COFA migrants are viewed as aliens who can have their rights taken away at any time and can be treated as less than U.S. citizens despite their habitual residency status.[201] While beneficial, the level of community organizing that was needed reflects the fact that COFA migrants cannot seek representation through voting.[202] Ultimately, the loss of healthcare meant COFA migrants "died, lost limbs, and suffered months of sickness because of their lack of access to care."[203]

192. Serrano, *supra* note 187, at 1389.
193. *Id*. at 1391.
194. Hagiwara et al., *supra* note 186, at 140.
195. Korab v. Fink, 797 F.3d 572, 581 (9th Cir. 2014).
196. Hagiwara et al., *supra* note 186, at 141.
197. *Id*.
198. *Id*. at 142–43.
199. Hagiwara et al., *supra* note 186, at 143; Serrano, *supra* note 187, at 1397–98.
200. Serrano, *supra* note 187, at 1398–400.
201. THOMAS, *supra* note 6, at 1–4; Korab v. Fink, 797 F.3d 572, 596 n.7 (9th Cir. 2014) (Bybee, J., concurring).
202. *See* HAWAII ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, MICRONESIANS IN HAWAII: MIGRANT GROUP FACES BARRIERS TO EQUAL OPPORTUNITY 40 (2019).
203. Budge, *supra* note 179, at 192.

V. CONSIDERATIONS FOR COFA RENEWAL

COFA renewal is on the horizon. It is expected that the COFA with the RMI and FSM will be renewed before it expires in 2023, and the COFA with Palau will be renewed before it expires in 2024.[204] Unfortunately, the needs of COFA migrants will likely remain an afterthought in related negotiations. The United States' main focus is retaining strategic denial over the FAS to counter Chinese influence by controlling this "'power projection superhighway running through the heart of the North Pacific into Asia.'"[205] The FAS are, rightfully, focused on the future of their financial support, climate change mitigation, the legacy of nuclear testing, and healthcare.[206] However, these negotiations present a timely opportunity to address the issues COFA migrants face as imperial denizens and the financial needs of their communities.

Under the terms of the COFAs, Congress is required to "act sympathetically and expeditiously to redress any adverse consequences" of the COFAs that fall on U.S. states and territories. This has not panned out, and the United States has shown little regard for the financial needs of states and territories that host COFA migrants.[207] The jurisdictions the federal government recognizes as bearing the greatest 'Compact Impact' (meaning local spending on COFA migrants which the federal government has not reimbursed) are Hawai'i, Guam, and the Commonwealth of the Northern Mariana Islands, collectively known as the 'Affected Jurisdictions.'[208] Between 2004 and 2018, the Affected Jurisdictions spent $3.2 billion on education, health services, public safety, and social services for COFA migrants, almost the same amount of aid provided directly to the FAS under the COFAs.[209] During the same period, federal Compact Impact Grant Funding amounted to only $509 million, not enough to "redress any adverse consequences," and thus placing a significant financial burden on the Affected Jurisdictions.[210] Additionally, no other U.S. states or territories except American Samoa receive any Compact Impact Grant Funding.[211] It is up to the Department of the Interior to expand the definition of Affected Jurisdiction to include other states with

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204. THOMAS, *supra* note 6, at 1. As of February 2023, the RMI and Palau signed memorandums of understanding with the US related to future economic assistance, but the details of these agreements remain unknown. Kanishka Singh, Rami Ayyub & David Brunnstrom, *U.S. Opens Embassy in Solomon Islands, Blinken Says*, REUTERS (Feb. 1, 2023), https://perma.cc/C6X2-TAJY.

205. Michael Martina & David Brunnstrom, *To Counter China Influence, U.S. Names Envoy to Lead Pacific Island Talks*, REUTERS (Mar. 22, 2022), https://perma.cc/8RSC-9LKR (quoting DEREK GROSSMAN, MICHAEL S. CHASE, GERARD FININ, WALLACE GREGSON, JEFFREY W. HORNUNG, LOGAN MA, JORDAN R. REIMER & ALICE SHIH, AMERICA'S PACIFIC ISLAND ALLIES THE FREELY ASSOCIATED STATES AND CHINESE INFLUENCE 1 (2019)).

206. *See* Anita Hofschnider, *Climate Change Looms Large in US Treaty Talks in the Pacific*, HONOLULU CIVIL BEAT (Apr. 12, 2022), https://perma.cc/7XFT-FHKQ.

207. *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 8, at 7–8.

208. *See id.*

209. *Id.* at 4–5, 21.

210. *Id.* at 8, 25.

211. *See id.* at 29–30.

COFA migrant populations, like Arkansas and Oklahoma, and federal funding and benefits access must be increased for states and territories to both recoup losses and reduce uncompensated spending.[212]

Just as the 'Affected Jurisdictions' should receive more support from the federal government, COFA migrants should too. But because of their imperial denizenship, COFA migrants retain no political voice and cannot vote for legislators to advocate for their access to rights and resources.[213] It is also evident that rights and resources cannot be secured through the federal courts. COFA migrants are heavily restricted in their ability to use the court system to secure benefits.[214] In *Basiente v. Glickman* and *Korab*, federal courts determined that states are permitted to provide disparate treatment to COFA migrants on the basis of alienage in order to protect their fiscal condition so long as Congress provided a pathway for doing so.[215] This effectively allows for a separate but equal approach to granting COFA migrants benefits.[216] But as the states and territories where COFA migrants reside receive little or no funding from the federal government to fund public benefits programs for COFA migrants, any judicial victory would also be a state's fiscal burden.

As imperial denizens, the best chance COFA migrants have to secure the support they need is through legislation. Before 2021, there were twenty-two bills introduced in Congress to address Compact Impact and provide federal benefits to COFA migrants.[217] Success in expanding Medicaid coverage in December 2020 happened only after years of community organizing, support from lawmakers across the aisle, and the COVID-19 pandemic.[218] Proposed by representatives from Arkansas and Hawai'i, the Compact Impact Fairness Act (CIFA) would restore eligibility for COFA migrants to access *all* of the federal programs they lost after the PRWORA.[219] Passing CIFA, coupled with the renewal of Medicaid eligibility for COFA migrants, would greatly improve the fiscal condition of the Affected Jurisdictions and other states. It is also in the interest of justice to provide COFA migrants with the support promised to them under the COFAs after decades of imperial exploitation in their homelands and subsequent neglect in the United States and its territories. However, CIFA did not make it out of the Senate Finance Committee

212. *Id*. at 49, 82–84.
213. *See* HAWAII ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS *supra*, note 202, at 40.
214. *See* Basiente v. Glickman, 242 F.3d 1137 (9th Cir. 2001); Korab v. Fink, 797 F.3d 572 (9th Cir. 2014).
215. *Basiente*, 242 F.3d at 1142–143; *Korab*, 797 F.3d at 597.
216. *Korab*, 797 F.3d at 600.
217. HAWAII ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS *supra*, note 202, at 23.
218. Diamond, *supra* note 8.
219. Michelle Pedro, *Compact Impact Fairness Act (CIFA) Gives Hope to Micronesians Living in the United States*, CHIKIN MEL˛EL˛E (June 5, 2021), https://perma.cc/3ZNF-VFS6.

before the end of 2022 legislative session.[220] Meanwhile, President Biden hosted leaders from across the Pacific, including the FAS, at the first ever U.S.-Pacific Island Summit in September 2022. The main theme of the summit was security and countering Chinese influence by way of the United States both providing more aid to Pacific Island nations and expanding its diplomatic reach, with no discussion related to COFA migrants.[221] Therefore, COFA migrants instead must rely directly on U.S. citizens to vote for those that will protect "fairness and justice" by getting CIFA or other similar legislation passed into law.[222]

VI. CONCLUSION

'COFA migrant' is a status that is "neither natural nor unproblematic."[223] The status has been "determined and calculated through issues of economic compensation, compact legalities, and . . .[has] now become politically contested."[224] Years of imperial control over 'Micronesia' has placed the FAS within the U.S. empire. Though some have argued the financial aid provided through the COFAs constitutes reparations for the nuclear testing and subjugation during the TTPI, the aid has done nothing but create a cycle of dependency and a loss of traditional culture.[225] COFA migrants who choose to seek a better life in the United States and its territories have been included by exception as imperial denizens and are almost immediately cast as burdens to a country that has done little to support them. But soon, there may be nowhere else to turn. The FAS may be some of the first countries wiped off the map due to climate change, and their citizens will need to be relocated if sea levels keep rising, adding to the growing need to address the negative effects that imperial denizenship has on COFA migrants in the United States.[226]

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220. *See* S. 1930, 117th Cong. (2021), https://perma.cc/9CVN-EVVN; *Rubio, Schatz Lead Colleagues in Urging Biden Administration to Renew COFA, Defend Against CCP Expansion in the Indo-Pacific*, Marco Rubio US Senator for Florida (Apr. 7, 2022), https://perma.cc/AFR7-QHB4.

221. *See Readout of the U.S.-Pacific Island Country Summit*, U.S. DEP'T OF STATE (Sept. 30, 2022), https://perma.cc/7FWM-CYRW; Pete McKenzie, *Marshall Islands, Feeling Neglected by the U.S., Enjoys New Leverage*, WASH. POST (Jan. 27, 2023), https://perma.cc/XW87-LL2S.

222. *See* HAWAII ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 202, at 40; Pedro, *supra* note 219 (describing the benefits of CIFA for COFA migrants).

223. Peter, *supra* note 23, at 254.

224. *Id.*

225. Hirata, *supra* note 7, at 23.

226. Sarah Kaplan, *Exiled by Nuclear Tests, now Threatened by Climate Change, Bikini Islanders Seek Refuge in U.S.*, WASH. POST (Oct. 28, 2015), https://perma.cc/CL5X-CCM8.