

A CITIZEN BY ANY OTHER NAME: POSTCOLONIAL COP OUT IN SECTION 4, ARTICLE XIX OF VIETNAM'S LAW ON NATIONALITY THANH D. NGUYEN* TABLE OF CONTENTS I. INTRODUCTION

494 II. THE TEXT OF SECTION 4 498 III. VIETNAM'S CITIZENSHIP LAWS 500 A. Naturalization Laws from 1945 to Present Day 500 B. The Law That Never Was. 501 C. Rates of Naturalization in Vietnam 503 IV. NATION-BUILDING AND VIETNAM 504 A. Nation-building, State-building, and Citizenship Theory . 504 1. Ethnic Nations. 504 2. Civic Nations. 505 3. Citizenship 506 B. Vietnam's Multiethnic Nation: Fifty-four Ethnic Groups and Fifty-four "Siblings" 507 C. Vietnam's Civic Nation: One Family 508 D. Communitarian Citizenship 510 E. A Hypothesis: The Government Enforces Section 4 Based on the Applicant's Perceived Proximity and Threat to the Việt Kinh 511 * Thanh D. Nguyen, J.D. Candidate, 2020, Georgetown University Law Center; M.A. Modern Thought & Literature, 2014, Stanford University; B.A. Comparative Studies in Race & Ethnicity, 2014, Stanford University. I would like to express my immense gratitude for Professor Allegra McLeod, who extended me patience, support, and time; Ken Savage, for giving me a place to write; the editors of the Georgetown Immigration Law Journal, for all of their hard work; Professors Andrea Lunsford and Stephen Hong Sohn, for believing in me from the beginning; Airin Chen, Alison Smith, Amy Chau, Andrew Dam, Arianna Skipper, Lynn Phan, and Elizabeth Cheng, for listening; and E, for everything. © 2020, Thanh D. Nguyen. 493 1. The Cham 512 2. The Rade 512 V. INDIGENOUS ETHNIC MINORITIES 513 A. Other Oppressive Practices Dwarf Section 4's Symbolic Violence 513 B. Low Numbers of Naturalization Applicants Means Section 4's Impact May Not be Statistically Significant 514 C. Many Indigenous Surnames are Similar to Vietnamese Ones, Resulting in Little Attention Paid to Section 4 515 VI. EXOGENOUS RACIAL AND ETHNIC GROUPS 515 VII. CONCLUSION: SECTION 4 IS A POSTCOLONIAL COP OUT 518 APPENDIX I: SECTION 4'S (LACK OF) LEGISLATIVE HISTORY 520 APPENDIX II: TABLE OF NATURALIZED INDIVIDUALS 520 I. INTRODUCTION In December 2007, Fabio Dos Santos made history as the first foreign-born athlete to obtain Vietnamese citizenship.¹ See Khieu Thanh Ha, Santos 1st Foreign Athlete Made Citizen, *VIE ^T NAM NEWS* (Feb. 3, 2008, 12:00 AM), <https://vietnamnews.vn/sunday/features/173568/santos-1st-foreign-athlete-made-citizen.html#gy8mCbtdf3wcRDpj.97>. Upon naturalization, Dos Santos adopted the name Phan Va ̣n Santos, a tribute to two football players he admired: Phan Va ̣n Ta`i Em and Phan Va ̣n Gia`u.² 2. Id. "Football" is used to refer to what many U.S. Americans know as "soccer." Names represent an individual's given first, middle, and last names according to the prevailing norms of the relevant culture. For example, Fabio Dos Santos's Brazilian name follows Brazilian conventions, sequencing his name with the first name first, followed by the middle name and surname. Dos Santos' legal Vietnamese name is listed in the reverse order, according to Vietnamese naming conventions. 3. See Ha, *supra* note 1. 4. Vietnam Decree No. 1066/2017/QĐ-CTN (June 5, 2017), <https://thuvienphapluat.vn/van-ban/Quyen-dan-su/Quyết-dinh-1066-QĐ-CTN-2017-nhap-quoc-tich-Viet-Nam-352635.aspx>. At the time, Dos Santos noted, "I am very happy to become Vietnamese."³ After Dos Santos, several football players followed

suit. Some players retained elements of their former names. For example, Gaston Sebastian Merlo became Đỗ ̣ Merlo,⁴ Samon Kayote Olaleya became Hoa ̣ng V ̣u Olaleye Samson,⁵ Vietnam Decree No. 1736/2013/QĐ-CTN (Sept. 24, 2013), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-1736-QD-CTN-nam-2013-cho-nhap-quoc-tich-Viet-Nam-210528.aspx>. and Ronald Martin Katsigazi became Tra ̣n Le ̣ Martin.⁶ Vietnam Decree No. 838/2009/QĐ-CTN (June 9, 2009), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-838-QD-CTN-cho-nhap-quoc-tich-Viet-Nam/90548/loi-dung.aspx>. Others, however, abandoned their former names entirely and stepped into a fully Vietnamese legal identity. Marcos Jeferson Valentim became Nguyē ̣n 1. 5. 6. 494 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 Trung Sơn,⁷ Vietnam Decree No. 954/2010/QĐ-CTN (July 5, 2010), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-954-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-109389.aspx>. Jonathan Quartey became Le ̣ Va ̣n Ta ̣n,⁸ Vietnam Decree No. 681/2011/QĐ-CTN (May 11, 2011), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-681-QD-CTN-cho-nhap-quoc-tich-Viet-Nam/125627/loi-dung.aspx>. and Oladoja Abdullahi Suleiman became Nguyē ̣n Trung Đa ̣ i Dươ ̣ng.⁹ Vietnam Decree No. 2676/2016/QĐ-CTN (Dec. 13, 2016), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-2676-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-2016-336519.aspx>. While each athlete approached the formulation of their new names differently, what is striking is the fact that the government required all of them to hold, at a minimum, a Vietnamese surname. In Section 4 of Article XIX—a peculiar provision in Vietnam’s Law on Nationality—the Vietnamese gov ̣ernment states that naturalization applicants “must” bear a Vietnamese name after receiving citizenship.¹⁰ Vietnam Law on Nationality, art. 19.4 (2014), <https://www.refworld.org/docid/4ac49b132.html>. Strangely, the government does not enforce Section 4 for all naturalization applicants. This appears to be the case for H ̣Hen Nie ̣, a professional model and beauty pageant contestant. In 2017, Nie ̣ became the first person from an indigenous ethnic minority group to win the title of Miss Universe Vietnam.¹¹ Viē ̣t Nam among Miss Universe 2018 Top 5, VIE ̣ ̣T NAM NEWS. (Dec. 17, 2018, 1:00 PM), <https://vietnamnews.vn/life-style/482198/viet-nam-among-miss-universe-2018-top-5.html#tOU5gZ4rtYVLUZyO.97>. The following year, she also became the first Miss Vietnam to reach the top five in the overall Miss Universe competition, the furthest any Vietnam representative has reached in the contest’s history.¹² *Id.*; see also H ̣Hen Nie Is the First Vietnamese to Make Top 5 of Miss Universe, SAIGONEER (Dec. 17, 2018), <https://saigoneer.com/vietnam-news/15269-h-hen-nie-is-the-first-vietnamese-to-make-top-5-of-miss-universe>. She has since become an extremely popular subject for both Vietnamese residents and its diaspora.¹³ See, e.g., Celine Nguyen, We Need to Talk About Miss Vietnam 2018, ODYSSEY (Dec. 23, 2018), <https://www.theodysseyonline.com/hhen-nie> (“Being a Vietnamese-American, my heart secretly cheered for her win.”); Pâté and Prejudice: A Baguette-bedecked Beauty Queen Bedevils Bigots in Vietnam, ECONOMIST (Jan. 5, 2019), <https://www.economist.com/asia/2019/01/05/a-baguette-bedecked-beauty-queen-bedevils-bigots-in-vietnam> (noting the Vietnamese government “seems to look kindly upon Ms. Nie” and media coverage “is glowing”); Adrial Chun, OMG Can We Talk About Miss Universe Vietnam, H ̣Hen Niē, E! ONLINE (Dec. 25, 2018), <https://www.eonline.com/ap/news/999244/omg-can-we-talk-about-miss-universe-vietnam-h-hen-nie> (noting Nie ̣ has great popularity); see also ECONOMIST, H ̣Hen Nie Is an Unlikely Idol for Vietnam, FACEBOOK (Jan. 7, 2019), <https://www.facebook.com/TheEconomist/posts/10157142204364060> (displaying a social media post with approximately 2,200 likes, 267 comments, and 363 shares). However, Nie ̣ is not a Vietnamese surname.¹⁴ See Nguyē ̣n Long Thao, Số Tên Ho ̣ Ta ̣ i Viē ̣t Nam [Number of Last Names in Vietnam], HI ̣NH ANH VIE ̣ ̣T NAM [Pictures of Vietnam] (Dec. 19, 2004), <https://hinhanhvietnam.com/tinh-danh-hoc-viet-nam-so-ten-ho>

tai-viet-nam/ (exhibiting an author-compiled list of Vietnamese surnames that does not include Nie[^]). Born to Y[^]Krin E[^] ban and H[^]Ngõn Nie[^], two people belonging to the Rade, or E[^] Đe[^], ethnic group,¹⁵ See Thie[^]n Anh, BỐ mẹ H[^]Hen Niê: ‘Mong cả nước Viê:t Nam ai cũng ha[~] ÷ nh phúc như chúng tôi [H[^]Hen Nie[^]’s Parents: ‘I hope everybody in Vietnam is as happy as we are’] (Dec. 17, 2018, 12:42 PM), <http://kenh14.vn/doc-quyen-tu-nha-bo-me-hoa-hau-hoan-vu-hhen-nie-thay-con-gai-khoc-toi-cung-khoc-du-khong-biet-con-doat-giai-gi-20180108071106556.chn>. The Rade people sequence their names with given names coming first, followed by a family name. They are unusual among Vietnam’s ethnic groups in doing this, and some scholars suspect this is due to French influence. VA[^] N HOA[^] VIE[^] T Nie[^] was likely born as a stateless person. Neither of Nie[^]’s parents hold Vietnamese surnames and Nie[^] herself did not learn how to 7. 8. 9. 10. 11. 12. 13. 14. 15. 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 495 [Vietnamese Culture], Dân tộc Ê-Đê [Rade ethnic group], <http://www.vanhoaviet.info/Ede.htm> (last visited Jan. 13, 2019). speak Vietnamese until eighth grade.¹⁶ Mò[^]c Đa[^]o, H[^]Hen Niê từng làm giúp viê:c, nợ 4 triê:u khi đi thi [H[^]Hen Nie[^] worked as a maid, owed four million VNĐ when competing], 24H (Jan. 10, 2018, 1:38 PM), <https://www.24h.com.vn/nguoi-mau-hoa-hau/hhen-nie-tung-lam-giup-viec-no-4-trieu-khi-di-thi-c214a930933.html>. Assuming Nie[^] traveled to the 2018 Miss Universe competition in Bangkok, Thailand¹⁷ Thailand to Host Miss Universe 2018 as Pageant Returns to Asia, ABS-CBN NEWS, (July 31, 2018, 9:07 PM), <https://news.abs-cbn.com/life/07/31/18/thailand-to-host-miss-universe-2018-as-pageant-returns-to-asia>. on a Vietnamese passport, she would have had to naturalize as a Vietnamese citizen, and, pursuant to Section 4, adopt a Vietnamese surname. Nie[^]’s indigenous last name implies that despite Section 4’s mandatory lan[^]guage (“[p]ersons applying . . . must have a Vietnamese name”),¹⁸ the govern[^]ment enforces Section 4 unevenly. Certainly, it is possible Nie[^] automatically received Vietnamese citizenship from her parents through jus sanguine, thereby bypassing the naturalization process.¹⁹ See Vietnam Law on Nationality, art. 16.1 (2014), <https://www.refworld.org/docid/4ac49b132.html> (“A child born inside . . . the Vietnamese territory either of whose parents is a Vietnamese citizen . . . is a Vietnamese citizen”). It is also possible that her pub[^]lic persona is H[^]Hen Nie[^], and her legal name complies with Section 4, as is the case with the singer Che[^] Linh, a Cham singer whose legal name is Lưu Va[^]n Lie[^]n.²⁰ Lần đầu tiên Chế Linh bật mí về cả 4 người vợ [The first time Che[^] Linh talks about all four wives], VIETNAMNET (Oct. 12, 2011, 3:31 PM), <https://vietnamnet.vn/vn/tin-nhanh/lan-dau-tien-che-linh-bat-mi-ve-ca-4-nguoi-vo-43328.html>. However, other prominent people from the Rade ethnic group appear to keep their indigenous last names officially. Well-known singers Y Moan Eno[^]l²¹ Hoa[^]ng Thie[^]n Nga, Đêm nhà[^] c đặc biê:t cho ca sĩ Y Moan [A special night of music for singer Y Moan], TIE[^] N PHONG (July 28, 2010, 7:26 AM), <https://www.tienphong.vn/van-nghe/dem-nhac-dac-biet-cho-ca-si-y-moan-508046.tpo>. and Y Garia Eno[^]l²² Sy[^] Tha[^] ng, Sao Mai 2007: Xa[^]c đi[^] nh thêm 3 thí sinh cuối cùng [Morning Star 2007: Three more finalists named], TIE[^] N PHONG (July 10, 2007, 7:00 AM), <https://www.tienphong.vn/van-nghe/sao-mai-2007-xacnbspdinhnbspthem-3-thi-sinh-cuoi-cungnbsp-89389.tpo>. are such examples. Additionally, the Vietnamese National Assembly’s website lists Y Tru Alio, a Rade politician, officially by his full in[^]digenous name.²³ Hoa[^]t động đạ[^] i biê:u quốc hội – Y Tru Alio [National Assembly’s Activities – Y Tru Alio], NAT’L ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM, <http://quochoi.vn/hoatdongdbqh/Pages/dai-bieu-quoc-hoi.aspx?dbqh=4704;YpTruAlio> (last visited Jan. 10, 2019). The official nature of the National Assembly’s website implies that Alio does not go by a public name that differs from his legal docu[^]ments. Other government officials currently keep their indigenous surnames on government websites, such as Ksor Phươ:c,²⁴ Ngo[^]c Thie[^]n, Vi[^] tướng của đạ[^] i ngàn [General of a great thousand], CẢNH SA[^]T TOA[^]N CA[^] U [Global Police] (Feb. 13, 2015, 8:00 AM),

<http://web.archive.org/web/20171223111921/http://cstc.cand.com.vn/anh-hung-mac-thuong-phuc/Vi-tuong-cua-dai-ngan-341409/>. Ksor H' Bơ Kha' p, Yring Adrông, 25 Cơ quan quản lý về công tác Dân tộc tại địa phương – Tỉnh Đắk Lắk [Local authorities for work regarding ethnic minorities – Dak Lak Province], VIETNAMESE COMM. FOR ETHNIC MINORITY AFFAIRS (Nov. 10, 2015, 2:50 PM), <http://www.cema.gov.vn/gioi-thieu/co-quan-quan-ly-ve-cong-tac-dan-toc-tai-dia-phuong/tinh-dak-lak.htm>. 16. 17. 18. Vietnam Law on Nationality, art. 19.4 (2014). 19. 20. 21. 22. 23. 24. 25. 496 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 Ywơn Bkro'ng, 26 Sùng A Ho'ng, 27 Thông tin chi tiết – Sùng A HỒNG [Details – Sùng A Ho'ng], NAT'L ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM, <http://dbqh.na.gov.vn/daibieu/64/2177/Sung-A-Hong.aspx> (last visited Jan. 13, 2019). H'Yim Kđoh, 28 Thông tin chi tiết – H'Yim Kđoh [Details – H'Yim Kđoh], NAT'L ASSEMBLY OF THE SOCIALIST REPUBLIC OF VIETNAM, <http://dbqh.na.gov.vn/daibieu/17/2462/H%60Yim-K%C4%91oh.aspx> (last visited Jan. 13, 2019). and No'ng Va'n Lung, 29 Cơ quan quản lý về công tác Dân tộc tại địa phương – Tỉnh Bắc Kạn [Local authorities for work regarding ethnic minorities – Bac Kan Province], VIETNAMESE COMM. FOR ETHNIC MINORITY AFFAIRS (Nov. 10, 2015, 3:10 PM), <http://www.cema.gov.vn/gioi-thieu/co-quan-quan-ly-ve-cong-tac-dan-toc-tai-dia-phuong/tinh-bac-kan.htm>. For the Cham people, who traditionally carry no surnames, I found no individuals who possessed a Cham first name legally. Indeed, my research found that imperial Vietnamese governments have forced entire Cham villages to change their names to fully Vietnamese ones since as far back as the 1800s.³⁰ Today, the prominent Cham poet Inrasara carries Phu' Tra' m as his legal name.³¹ Zelda Rudzitsky, Meet Inrasara, the Poet Keeping Cham Culture Alive, SAIGONEER (Aug. 9, 2015, 3:12 PM), <https://saigoneer.com/saigon-arts-culture/arts-culture-categories/7669-meet-inrasara,-the-poet-keeping-cham-culture-alive>. In short, it appears that Section 4 is mandatory for some groups and permissive for others. But why have a surname requirement in the first place, particularly in twenty-first century, postcolonial Vietnam? Would not a citizen, by any other name, smell just as sweet? Why would a citizen by another name be considered “better”? What kinds of names are already good enough? This Note explores the motivation, history, and impacts behind Section 4. To understand the meaning of citizenship in Vietnam, this Note performs two analyses of Section 4 in Vietnam's Law on Nationality. First, the Note examines Section 4 in the context of Vietnam's nation-building project. Second, it looks at Section 4's actual effects, or lack thereof, on ethnic groups indigenous to Southeast Asia and groups exogenous from the region. Part II looks at the actual text of Section 4 and related provisions. Overall, it appears Section 4 should apply to every citizen, but this is not true in practice. Part III provides background information on three terrains: the history of Vietnam's naturalization laws, how the surname requirement appears to have been enforced prior to Article Section 4's passage, and how Vietnam, overall, has a low annual rate of naturalization (about 6,000 persons maximum per year). Part IV explores Vietnam's nation-building rhetoric, which helps explain Section 4's existence and the government's uneven enforcement of it. I suggest that for those who are “close” to the nation's notion of “family,” such individuals need not change their last name because they already “belong.” For those “further out,” the government will enforce the surname requirement to bring these individuals in line with the family. 26. Id. 27. 28. 29. 30. CHOI BYUNG WOOK, SOUTHERN VIETNAM UNDER THE REIGN OF MINH MANG (1820–1841): CENTRAL POLICIES AND LOCAL RESPONSE 144 (2004). 31. 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 497 In Part V, I look at the Vietnamese's policies towards indigenous ethnic groups more deeply. I describe how the Vietnamese have historically oppressed indigenous ethnic groups in the region. I then look at the violence Section 4 may inflict. In Part VI, I look at ethnic groups exogenous from the region, paying particular attention to African and South American migrants. Because the

number of people migrating into Vietnam remains low, conducting a robust analysis of the Vietnamese's policies towards exogenous racial and ethnic groups is not possible. However, because hints of anti-black and anti-brown racism percolate throughout Vietnamese popular discourse, I express worry over a citizenship requirement that blatantly places Vietnamese ethnicities at the top of a racial-ethnic hierarchy. I argue that Section 4 helps perpetuate, if not exacerbate, these anti-black and anti-brown sentiments. In conclusion, I argue that Section 4 should be repealed, because it amounts to a "postcolonial cop out." I argue that Section 4 encourages the government to administer a violent ethno-supremacist regime against indigenous ethnic minorities. Section 4 also encourages the Vietnamese majority, Vietnam's dominant ethnic group, to see African and South American migrants as cheap black and brown labor who can be "part" of Vietnam when it is convenient to the Vietnamese but are considered cultural contaminants when their inclusion is inconvenient to Vietnam's nation-building ethos. Because of this asymmetric consideration of its citizens, I believe countering the inertia of these forces is important, especially because non-Vietnamese people comprise such a small percentage of Vietnam's population and because the country will further enmesh itself within today's transnational corridors. This Note also includes two appendices. Appendix I describes my attempts to locate Section 4's legislative history. Appendix II illustrates how I came to the estimation that no more than 6,000 people naturalize annually in Vietnam.

II. THE TEXT OF SECTION 4

Section 4 in Vietnam's Law on Nationality requires that "[p]ersons applying for Vietnamese nationality must have a Vietnamese name. This name is chosen by the applicant for Vietnamese nationality and will be written clearly on the Decree granting Vietnamese nationality."³² The Section 4 text is ambiguous about whether an applicant must bear a Vietnamese first, middle, or last name. However, as demonstrated through the case of naturalized athletes and my review of government records, the government has historically applied Section 4 to surnames.³³ In terms of applicable persons, one would think Section 4 applies to everyone. Section 1 of Article XIX says foreign nationals and stateless ³². Vietnam Law on Nationality, art. 19.4 (2014). ³³. See Introduction; Part III.B. 498 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 persons can apply for naturalization if they meet a number of requirements, such as living in Vietnam for five years; commanding a certain level of Vietnamese language proficiency; agreeing to obey the Vietnamese Constitution; agreeing to obey Vietnamese traditions, customs, and practices; and adopting a Vietnamese name.³⁴ The law defines stateless persons as people who do not possess Vietnamese citizenship or any other citizenship.³⁵ This definition has been understood to encompass those who are unable to establish their birth on Vietnamese soil or the depth of their ties to Vietnam.³⁶ See Lyma Nguyen & Christoph Sperfeldt, *A Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia under Domestic and International Laws Governing Nationality and Statelessness*, at 63 (RegNet Working Paper, No. 50, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2514121 (describing how Vietnamese law provides procedures to prevent statelessness, such as situations in which requirements to produce documentation are waived because they were destroyed through war); UNHCR Welcomes Steps by Viet Nam to Tackle Statelessness, RELIEFWEB (Dec. 21, 2018), <https://reliefweb.int/report/viet-nam/unhcr-welcomes-steps-viet-nam-tackle-statelessness> (describing how Vietnamese government has provided nationality rights to 139 individuals from ethnic minority groups living in mountainous border regions). Such individuals tend to be those born in remote areas where registration is impossible; ethnic minority groups who are unaware of these requirements; unregistered children born in contravention of Vietnam's two-child policy; and Vietnamese people who fled Vietnam in the mid to late 1990s, lived undocumented in another country for a number of years, and subsequently returned to Vietnam to live permanently.³⁷

Joint Submission to the Human Rights Council at the 32nd Session of the Universal Periodic Review, BOAT PEOPLE SOS, STATELESSNESS NETWORK OF ASIA PACIFIC, & INST. ON STATELESSNESS & INCLUSION 10 (July 12, 2018), http://www.institutesi.org/UPR32_VietNam.pdf. The overseas Vietnamese, known as the *Vie` t Kie` u*,³⁸ must also bear a Vietnamese surname upon obtaining Vietnamese nationality, but under a different legal provision.³⁹ The overseas Vietnamese are those who are ethnically Vietnamese but reside abroad permanently either due to migration or being born abroad.⁴⁰ The term primarily refers to refugees who fled Vietnam throughout the 1980s.⁴¹ When invoked, the term is understood to refer to those who reside in Western countries such as Australia, Canada, France, Germany, and the United States.⁴² See *Cộng đồng người Việt Nam ở nước ngoài* [Overseas Vietnamese community], *QUE` HU`ONG* [HOMETOWN] (Dec. 24, 2006, 10:42 AM), <https://web.archive.org/web/20061224034320/http://www.quehuong.org.vn/vi/nr041215095635/nr050107191630/ns050111144902> (describing how humanitarian programs from 1980 to 1996 led to about two million Vietnamese people moving to the United States, Australia, Canada, Western Europe, and Northwestern Europe). 34. Vietnam Law on Nationality, art. 19. 35. *Id.* at art. 3.2 (2014). 36. 37. 38. Ivan V. Small, *Embodied Economies: Vietnamese Transnational Migration and Return Regimes*, 27 *J. SOC. ISSUES IN SOUTHEAST ASIA* 234, 235 (2012). 39. Vietnam Law on Nationality, art. 3.3, 23.1, 23.4 (2014) (defining overseas Vietnamese, restoring Vietnamese citizenship for overseas Vietnamese folks, and requiring restoration applicants to bear a Vietnamese name when granted, respectively). 40. Small, *supra* note 38, at 236. 41. Nguyen & Sperfeldt, *supra* note 36, at 52 (“[T]he legislature intended to provide opportunities for a greater scope of persons to access the naturalisation provisions – including persons of Vietnamese origin who fled from Vietnam as refugees in the 1980’s.”). 42. 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 499 Under the Law on Nationality, overseas Vietnamese individuals are automatically eligible for obtaining Vietnamese citizenship.⁴³ However, they obtain it through “restoration,” as opposed to “naturalization.”⁴⁴ While one would imagine the overseas Vietnamese are the same as foreign nationals, Vietnamese law has traditionally treated this population as a special category, considering them “an inseparable part” and resource of the Vietnamese nation.⁴⁵ See *Overseas Vietnamese – An Inseparable Part of the Vietnamese Nation*, *TA` P CHI` CO` NG SA`N* [Communist Review] (Oct. 24, 2012, 10:31AM), <http://english.tapchicongsan.org.vn/Home/Culture/Society/2012/953/Overseas-Vietnamese-an-inseparable-part-of-the-Vietnamese-nation.aspx>. As such, Vietnamese law sometimes subjects the *Vie` t Kie` u* to the same regulations as foreign nationals and sometimes not. For example, the overseas Vietnamese currently receive special treatment under Vietnam’s laws governing visas,⁴⁶ real estate,⁴⁷ See *Land Regulations*, *EMBASSY OF THE SOCIALIST REPUBLIC OF VIETNAM*, <http://vietnamembassy-usa.org/basic-page/land-regulations> (describing how overseas Vietnamese can lease land, but foreign nationals can only do so if they make qualified investments in the country) (last visited Jan. 13, 2019). and business licenses.⁴⁸ See Dan Q. Dao, *Saigon’s Food Scene Is Being Transformed by the Returning Vietnamese Diaspora*, *VICE* (Sept. 27, 2018, 1:30 PM) https://munchies.vice.com/en_us/article/pa83pz/saigons-food-scene-is-being-transformed-by-the-returning-vietnamese-diaspora (briefly mentioning that overseas Vietnamese individuals enjoy more lax requirements when obtaining a business license). In Vietnamese statutes governing land leases, the law refers to foreign investors, foreign nationals, and overseas Vietnamese as separate categories of persons, who then navigate different legal provisions.⁴⁹ However, for the purposes of paying taxes on foreign cars imported into Vietnam, the law treats overseas Vietnamese people the same as foreign nationals.⁵⁰ See *Vietnam Ends Tax Breaks on Car Imports for Overseas Vietnamese*, *VNEXPRESS* (Oct. 5,

2016, 4:14 PM), <https://e.vnexpress.net/news/news/vietnam-ends-tax-breaks-on-car-imports-for-overseas-vietnamese-3479119.html>. Nevertheless, even though the overseas Vietnamese undergo “restoration” rather than naturalization, the Law on Nationality requires applicants to “use their previous Vietnamese names.”⁵¹ Therefore, on its face, the Law on Nationality appears to require all applicants for Vietnamese citizenship to bear a Vietnamese surname. However, as aforementioned, this does not appear to be true in practice.

III. VIETNAM’S CITIZENSHIP LAWS

A. Naturalization Laws from 1945 to Present Day

In 1945, after Vietnam gained independence from France, the Provisional Revolutionary Government of the Democratic Republic of Vietnam, led by Ho Chi Minh, issued the country’s first official regulation on Vietnamese citizenship.⁵² See Nguyen Thi Ngoc Lam, A History of Vietnam’s Citizenship Laws, VIETNAM L. & LEG. FORUM (Jan. 7, 2009, 10:28 AM), <http://vietnamlawmagazine.vn/a-history-of-vietnams-citizenship-laws-4519.html>. This regulation, Decree No. 53, contained no provisions requiring the adoption of a Vietnamese surname.⁵⁴ See Decree No. 53 (Oct. 20, 1945), <https://thuvienphapluat.vn/van-ban/Quyen-dan-su/Sac-lenh-53-quy-dinh-quoc-tich-Viet-nam-35901.aspx>. It noted the principles of jus sanguine and how they apply to acquiring and inheriting Vietnamese citizenship.⁵⁵ Decree No. 53 also described how specific ethnic minority groups enjoyed the right to Vietnamese citizenship and how foreign women could obtain citizenship by way of marriage.⁵⁶ For the next forty-five years, the government would issue various decrees that modified or clarified Decree No. 53.⁵⁷ However, none would formally require a naturalization applicant to register a Vietnamese surname. In 1988, the National Assembly, Vietnam’s legislative body, enacted the 1988 Law on Nationality, which comprehensively replaced all former decrees on the subject.⁵⁸ See Law on Nationality of Vietnam, INT’L LABOR ORG., https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=38289 (last visited Dec. 20, 2018) (stating 1988 Law on Nationality repealed all naturalization-related decrees since 1945). While the new statute promulgated more specificities on acquiring citizenship, especially for Vietnamese children adopted by foreign nationals, the law still contained no provision about holding a Vietnamese surname.⁵⁹ See generally Vietnam Law on Nationality (1988), <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=2558>. Ten years later, in 1998, the Law on Nationality would similarly issue more procedural details, but it still lacked the requirement that naturalization applicants adopt a Vietnamese surname.⁶⁰ See generally Vietnam Law on Nationality (1998), <https://www.refworld.org/docid/3ae6b56010.html>. It was not until 2008—sixty-three years after Vietnam acquired its independence in 1945—that the Law on Nationality would express a naming requirement. Decree No. 24 gave birth to a new Law on Nationality, which contained Section 4.61 See Vietnam Law on Nationality (2008), <https://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=4ac49b132&page=search>. In 2014, Decree No. 56 partially modified the 2008 Law on Nationality, which clarified the 2008 statute’s rules regarding the overseas Vietnamese population.⁶² The surname requirement continues to exist in its original 2008 form.

B. The Law That Never Was

What is interesting, though, is an examination of dates. For example, Fabio Dos Santos, changed his last name on December 27, 2007.⁶³ Vietnam Decree No. 1674/2007/QĐ-CTN (Dec. 27, 2007), <https://thuvienphapluat.vn/van-ban/Quyen-dan-su/Quy-dinh-1674-2007-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-61743.aspx>.

However, 52. SPENCER C. TUCKER, VIETNAM 45 (Routledge 2000). 53. 54. 55. Id. 56. See id. at art. 2–3, 5. 57. See Nguyen, supra note 53. 58. 59. 60. 61. 62. See Vietnam Law on Nationality, Law No. 56/2014/QH13 (2014) (on file with author). 63. 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 501 Section 4 first appeared in 2008, with an effective date of July 1, 2009.⁶⁴ This sequence of dates—Dos Santos’s change in 2007 and Section 4’s activation in 2009—shows the Vietnamese government subjected Dos Santos to a surname requirement nearly two years before Vietnamese law officially required him to do so. The table above provides a small sample of naturalization applicants who have also changed their surnames prior to Section 4’s passage. Public records show government decrees have changed the names of applicants dating as far back as 2003. Decree No. Applicant Name Nationality and Birthplace* Vietnamese Name Date 668/2003/QĐ-CTN - Shabbir Ali - Kim Hak - Pakistan - Korea - Nguyễn Hữu Nghi - Hồ Minh Hoàng June 24, 2003⁶⁵ Vietnam Decree No. 668/2003/QĐ-CTN (June 24, 2003), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-357-2003-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-19252.aspx>. 755/2004/QĐ-CTN - Ea Chy Hao - Cambodia - Dieu Chi Hào Oct. 22, 2004⁶⁶ Vietnam Decree No. 755/2004/QĐ-CTN (Oct. 22, 2004), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-755-2004-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-17891.aspx>. 1138/2005/QĐ-CTN - Mahamas Bi Bi - Hassan Nang Chho Eun - Pakistan (B: Vietnam) - Cambodia - Ngô Thị Bi Bi - Nguyễn Ngô Cẩm Nov. 30, 2005⁶⁷ Vietnam Decree No. 1138/2005/QĐ-CTN (Nov. 30, 2005), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-1138-2005-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-4150.aspx>. 841/2006/QĐ-CTN - Beevi Fatima - Hasan Mohamed - Jahra - India (B: Vietnam) - India (B: Vietnam) - Yemen (B: Vietnam) - Laïc Tường Vy - Laïc Vi Cẩm Tra Nguyễn Kim Hoàng July 20, 2006⁶⁸ Vietnam Decree No. 841/2006/QĐ-CTN (July 20, 2006), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-841-2006-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-13518.aspx>. 1165/2007/QĐ-CTN - Lim Khim Haing Kheing - Cambodia - Vũ Hải Khiêm Oct. 11, 2007⁶⁹ Vietnam Decree No. 1165/2007/QĐ-CTN (Oct. 11, 2007), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-1165-2007-QD-CTN-cho-nhap-quoc-tich-Viet-Nam-57252.aspx>. 2238/2008/QĐ-CTN - Ninh - Laos - Hồ Văn Ninh Dec. 3, 2008⁷⁰ Vietnam Decree No. 2238/2008/QĐ-CTN (Dec. 3, 2008), <https://thuvienphapluat.vn/van-ban/Quyien-dan-su/Quyiet-dinh-2238-QD-CTN-2018-cho-nhap-quoc-tich-Viet-Nam-doi-voi-02-ca-nhan-cu-tru-tai-tinh-Ha-Tinh-403363.aspx>. * B designates place of birth. Otherwise, the country listed designates citizenship or, in the case of statelessness, ethnicity. I examined over seventy naturalization applications dated prior to July 1, 2009. In all decrees examined, every applicant had a Vietnamese name attached to their decree granting citizenship. Because every decree declared a Vietnamese name, it is likely all applicants were forced to bear a Vietnamese surname.⁷¹ 64. Vietnam Law on Nationality, art. 43 (2008). 65. 66. 67. 68. 69. 70. 71. In the sample I looked at, I did not find any decrees that granted citizenship to an indigenous person. But perhaps one would appear if every decree were examined. 502 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 Based on Dos Santos’s case and others, the surname requirement has clearly existed for some time, and has simply been imposed without a legal basis. Just how far back this requirement has existed requires additional research, though it is established that the imperial Vietnamese government has forced the Cham people to carry Vietnamese surnames as far back as the 1800s.⁷² While one could chastise the Vietnamese government for enforcing a “law” that did not formally exist and critique Vietnam’s lack of a rule of law, what is more interesting is the fact that such a requirement was important to a government at all, especially during the 2000s. There is no commentary on Section 4, or even the 2008 Law on Nationality, in *The Communist Review*, an official source for Vietnamese legislative history.⁷³ There is also a lack of media sources commenting on this

requirement. One reading of this radio silence implies that acquiring a Vietnamese surname has been a longstanding practice, one so routine and so unquestioned that it does not warrant political or social commentary. For example, perhaps because the Vietnamese have imposed name changes for centuries, news articles discussing Dos Santos's naturalization dedicate most of their discussions to Dos Santos's athletic career rather than reflect on the name-change requirement.⁷⁴ Even when discussing the name change, these news articles discussing Dos Santos contain no commentary on how the name change lacked a formal legal basis.⁷⁵ To fully understand Section 4's significance in numbers, I attempted an approximation of how many people actually naturalize every year in Vietnam. Overall, I found the number to be extremely low. C. Rates of Naturalization in Vietnam The low number of people naturalizing annually may explain why Section 4 has gained such little attention in the media and academia. Detailed in Appendix II, my examination of government records estimates a maximum of 6,000 people obtain Vietnamese citizenship every year (this is likely an overestimate).⁷⁶ With a total population of approximately 96.5 million people in 2018,⁷⁷ the number of people obtaining citizenship every year comprises only 0.006% of the population—a paltry amount. Moreover, Vietnam has a net emigration rate, meaning the number of people leaving Vietnam every year exceeds the number of people entering Vietnam. According to the CIA World Factbook, Vietnam's net migration 72. See CHOI, *supra* note 30, at 144. 73. See Appendix I. 74. See, e.g., Khieu, *supra* note 1. 75. *Id.* 76. See Appendix II. 77. Vietnam Population, WORLDOMETERS, <http://www.worldometers.info/world-population/vietnam-population/> (last visited Jan. 13, 2019). 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 503 rate in 2017 stood at -0.3 migrants for every 1,000 people in the country.⁷⁸ Net Migration Rate: Country Comparison to the World, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2112.html> (last visited Jan. 13, 2019). In prior years, the net migration rate was even lower. In 2000, 2005, and 2010, the net migration rate stood at -0.51, -0.43, and -0.37, respectively.⁷⁹ Historical Data Graphs Per Year – Vietnam, INDEX MUNDI, <https://www.indexmundi.com/g/g.aspx?c=vm&v=27> (last visited Jan. 13, 2019). This indicates that over time, the immigration-emigration ratio is closing, and in a few years, Vietnam may actually experience a net immigration rate. Therefore, even though little has been said about Section 4, it may gather greater significance as the number of migrants moving into Vietnam increases, making it worthy of attention. To explore why this provision exists at all and why its application is uneven, I turned to theories found in international relations studies. IV. NATION-BUILDING AND VIETNAM In this section, I argue the Vietnamese government promulgated Section 4 to further its ethno-supremacist “family” narrative of the nation. I also hypothesize that Section 4 is applied to some ethnic groups and not others, depending on their perceived proximity or threat to the country's dominant ethnic group—the Vietnamese, also known as the Việt Kinh. A. Nation-building, State-building, and Citizenship Theory Nation-building, at its core, weaves together ideas that link a nation to a state.⁸⁰ These ideas help form a common identity that connects people and, hopefully, secures their loyalties. Therefore, nations can be understood as the “idea” or the “imagined community”⁸¹ around which a group of people congregate. A nation's residents may have complex relationships to this imagined community, feeling both loyal and resistant to it. This is particularly true for migrants and diasporic communities, who often negotiate desires to be full or quasi-citizens of their “home country” from afar.⁸² Accordingly, the nation can be understood as the ethereal, psychological dimension of a nation-state. The state can then be understood as the bones and flesh of a nation, the physical territories upon which the dramas of a nation plays out and the institutional apparatuses that attempt to mediate how this drama unfolds. 1. Ethnic Nations Some countries rely on the notion of an ethnic nation, in which people feel connected to

the state through the social construction of race and ethnicity, as 78. 79. 80. See Claire Sutherland, Introduction: Nation-building in China and Vietnam, 29 EAST ASIA 3 (2012). 81. See generally BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (1983). 82. Id. at 6–7. 504 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 the thrust of their nation-building.83 Carolyn Stephenson, Nation Building, BEYOND INTRACTABILITY (Jan. 2005), https://www.beyondintractability.org/essay/nation_building/%3B. Ethnic nation constructs rely on ethnic affinity as a key aspect of nation building, and citizenship does not automatically equate to truly belonging to a nation.84 2. Civic Nations Contrastingly, some countries rely on a civic nation as their nation-building strategy. In mobilizing the image of a civic nation, a country attempts to forge a common identity through a set of attractive political ideas and principles.85 The United States' principles of a republican democracy and freedom from monarchy is an example of a nation-building project founded on a civic nation.86 In civic nations, the aspirations of these ideas engender people's loyalties, and the people adhere to these principles in spite of their different backgrounds.87 While the distinction between an ethnic and a civic nation is useful, many nation-building projects amalgamate both strategies and must navigate the resulting tensions.88 In this amalgamation, we can see how ethnic and civic nations conflict. Because an ethnic nation focuses on one ethnic group, it, by definition, must exclude others. For civic nations premised on shared principles that transcend race and ethnicity, the spirit of inclusivity directly conflicts with the exclusive requirements of an ethnic nation. Regardless of how a nation-building project actually plays out, the national "image" advanced must be powerful enough to allure people. One scholar describes nation-building in the national history museum context as a project concerned with "myth-making."89 Myth-making is applicable to nation-building in general, for the job of a nation builder is to unify people around a "potent" vision containing elements of historical fact and "legendary elaboration" to establish bonds and a commitment.90 These myths transmit social and cultural norms.91 Effective state-building processes—constructing national monuments, establishing uniform educational standards, and declaring national holidays—concretize the idea of a nation into a lived experience.92 Thus, nation-building and state-building work together to legitimize a regime and influence behavior to accord with the regime. 83. 84. See Fredrika Björklund, The East European 'Ethnic Nation' – Myth or Reality?, 45 EUR. J. POL. RES. 93, 93 (2006). 85. Stephenson, *supra* note 83. 86. Id. 87. Id. 88. See, e.g., Marina Germane, Civic or Ethnic Nation? Two Competing Concepts in Interwar Latvia, 18 NATIONS & NATIONALISM 439, 439 (2012). 89. CLAIRE SUTHERLAND, SOLDERED STATES: NATION-BUILDING IN GERMANY AND VIETNAM 99–100 (2010). 90. Id. 91. Id. 92. Id. 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 505 3. Citizenship confers legal status on people and allows them the right to formally become a member of a nation-state. However, "membership" involves much more than legal status. Scholars have identified three overarching dimensions to citizenship—the legal, political, and identity dimensions.93 Domonique Leydet, Citizenship, STANF. ENCYCLOPEDIA OF PHIL. (July 17, 2017), <https://plato.stanford.edu/entries/citizenship/>. The legal dimension involves the rights of a citizen, in which the citizen has the right to act as the law permits and the right to claim the law's protection.94 The political dimension considers a citizen's ability to act and participate in a nation-state's political institutions.95 The identity dimension of citizenship involves an individual's psychological relationship to the nation-state and is the most ambiguous dimension of citizenship.96 Authors examining this dimension have covered a number of topics—the conflict between the individual and the collective, the ethics and process of assimilation, negotiating one's sense of belonging, the flexible citizenship of diasporic communities, and problems of pluralism and numerous factions.97 Examining the identity dimension

of citizenship will naturally run into examining the nation-building project itself, be it an ethnic nation or a civic nation. Some scholars have organized citizenship into two categories—liberal citizenship and communitarian citizenship.⁹⁸ These beginning points of citizenship then determine the legal, political, and identity dimensions for a particular country. In a liberal conception of citizenship, the starting point is the individual, her rights, and her right to pursue her own goals and order her life as she envisions.⁹⁹ In a communitarian conception of citizenship, the collective is foregrounded.¹⁰⁰ The individual is placed in the background, and as such, her loyalties, responsibilities, and duties owed to the community are emphasized over her individual rights.¹⁰¹ Within a nation-state built around a communitarian conception of citizenship, the individual must always consider her people as a collective first and place her desire for unbridled self-determination second.¹⁰² Based on the frameworks articulated above, we can characterize Vietnam's nation-building project in three ways. First, the country has historically pursued a multiethnic nation agenda, which places the Viet[^]t Kinh as the dominant ethnic group.¹⁰³ Second, Vietnam's civic nation principles of a collaborative, unified family is an attempt to ameliorate the blatantly ethno-⁹³. 94. Id. 95. Id. 96. Id. 97. Id. 98. See id. 99. Id. 100. See id. 101. See id. 102. See id. 103. See infra Part IV.B. 506 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 supremacist ethnic nation rhetoric.¹⁰⁴ Third, Vietnam understands formal citizenship in communitarian terms.¹⁰⁵ Combined, these three nation-building strategies help explain Section 4's creation and uneven application. B. Vietnam's Multiethnic Nation: Fifty-four Ethnic Groups and Fifty-four "Siblings" The Vietnamese government primarily understands the country as a multiethnic nation, comprised of one dominant ethnic group and fifty-three subordinate groups.¹⁰⁶ See Ca'c dân tộc Viê:t Nam [All of Vietnam's ethnic groups], CỔNG THO^ NG TIN ĐIE' ^N TU' - TỈNH HA' ^ U GIANG [Electronic Information Portal – Ha' u Giang Province], <http://www.haugiang.gov.vn/Portal/Default.aspx?pageindex=1&pageid=5690&siteid=51> (last visited Jan. 13, 2019). In this nation-building image, the Viet[^]t Kinh occupy the highest position in the nation's image, with other groups relegated to lesser degrees of "sophistication." According to the Vietnamese Constitution, ethnic minority groups are included in the nation's "family" by virtue of the Socialist Republic of Vietnam being a "unified nation of all ethnicities living together."¹⁰⁷ As a family of fifty-four ethnic groups, the government has characterized Vietnam as a nation "rich" in "national features."¹⁰⁸ While this public appreciation paints a rosy picture of pluralist harmony, the government has taken a problematic framing of this setup. The Viet[^]t Kinh are described as the "elder brother" or the "nucleus" of Vietnamese culture.¹⁰⁹ Moreover, the Communist Party's official position opines that, as the country's administrator of cultural activities and leading force of the nation, it should "selective [ly]" adopt the "quintessence" of each ethnic group and fold their positive cultural values into Vietnamese society.¹¹⁰ This consolidation of national features enhances the country's "internal force."¹¹¹ For the less desirable traits found in ethnic minority groups, the government can invoke the Constitution to characterize practices as "depraved" and "harmful" and eliminate them for the betterment of the country.¹¹² See VIETNAM. COMM. ON HUM. RTS, VIOLATIONS OF THE RIGHTS OF ETHNIC AND RELIGIOUS MINORITIES IN THE SOCIALIST REPUBLIC OF VIETNAM 9 (Feb. 13, 2012-Mar. 9, 2012), https://tbinternet.org/hchr.org/Treaties/CERD/Shared%20Documents/VNM/INT_CERD_NGO_VNM_80_10313_E.pdf [hereinafter referred to as "VCHR"]. Indeed, the Viet[^]t Kinh has criminalized behavior considered "backward" or "barbaric" since imperial times¹¹³ and continues to do so in modern times.¹¹⁴ 104. See infra Part IV.C. 105. See infra Part IV.D. 106. 107. HIE' ^N PHA' P NU'ỐC CO' ^ NG HO' A XA' HO' ^ I CHỦ NGHĨA VIE' ^T NAM [CONSTITUTION] Nov. 28, 2013, art. 5.1 (Viet.). 108. Pham Duy Duc, Cultural Diversity under Conditions of Globalizations, 19 NATURE, SOCIETY, & THOUGHT 97, 102 (2006). 109.

SUTHERLAND, *supra* note 89, at 52. 110. Pham, *supra* note 108, at 103–04. 111. *Id.* at 104. 112. 113. See CHOI, *supra* note 30, at 142–46 (quotations original). 114. See generally VCHR, *supra* note 112. 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 507 C. Vietnam’s Civic Nation: One Family Vietnam’s civic nation messaging, which overwhelmingly relies on ideals of unity, family, and a coordinated people, complements its image as an ethno-supremacist nation.¹¹⁵ By emphasizing harmony and the larger collective, the Vietnamese government can ask individuals to humble themselves in the name of a larger project. We have already observed this in the context of indigenous ethnic minority groups, who must give up their traditional practices in order to strengthen the country’s “internal force.”¹¹⁶ This notion of the Vietnamese people as a single unit, a “whole” people working together as a family, is enshrined in the country’s various constitutions and is consistently expressed through the government’s messaging.¹¹⁷ Ho Chi Minh, The Imperialist Aggressors Can Never Enslave the Heroic Vietnamese People, MARXISTS.ORG (1952), <https://www.marxists.org/reference/archive/ho-chi-minh/works/1952/01/x01.htm> (last visited Jan. 13, 2019). For example, the government often refers to Ho Chi Minh as “Uncle Ho,” a tactic meant to create an aura of charisma, accessibility, and asceticism that instills intimacy and familiarity between the citizenry and the single-party government.¹¹⁸ See SUTHERLAND, *supra* note 89, at 44; see also Matthew Pike, Who Was Vietnam’s Ho Chi Minh?, CULTURE TRIP (Sept. 26, 2017), <https://theculturetrip.com/asia/vietnam/articles/who-was-vietnams-ho-chi-minh/> (“To many Vietnamese, he is a patriarch in their family—their revered Uncle Ho.”); Stanley Karnow, Ho Chi Minh, TIME (Apr. 13, 1998), <http://content.time.com/time/magazine/article/0,9171,988162,00.html> (noting Ho Chi Minh “cultivated” an image of a “humble, benign” persona called “Uncle Ho” despite his intense nationalism); Andrew Quinn, ‘Uncle Ho’ Still Revered Figure in Communist Vietnam, L.A. TIMES (Nov. 10, 1991), <https://www.latimes.com/archives/la-xpm-1991-11-10-mn-1896-story.html> (contrasting the modern imagery of “Uncle Ho,” which is gentle, with the “radical glamour” of similar leaders, such as Lenin, Stalin, Tito, and Che Guevara). The government also insists on a national history that characterizes the country as people who were always united, directly contradicting the fact that, at one point, North, Central, and South Vietnam were three separate kingdoms with their own imperial dynasties.¹¹⁹ The government has also manipulated Vietnam’s creation story to further promote the myth of a unified, civic nation. In its version of a popular Vietnamese fable, a dragon king and fairy queen sired one hundred sons, half of whom stayed in the flatlands and became the Viet Kinh.¹²⁰ The other fifty sons moved into the mountains, becoming the forefathers of Vietnam’s various minority groups.¹²¹ In its official interpretation of this story, the government describes all fifty-four of Vietnam’s ethnic groups as siblings belonging to the same family.¹²² In this family, the Viet Kinh enjoys status as the “older brother.”¹²³ The Vietnamese government has characterized this older brother as bearing the responsibility of helping its younger, “less developed” siblings “catch up.”¹²⁴ This strongly contradicts the fact that Vietnam’s current territory has been the

result of Viet `t Kinh conquest from as early as the 1000s to as late as the 1750s.¹²⁵ Accordingly, the country's fifty-three minority groups are not so much siblings born of two celestial beings as they are subjects forced under Viet `t Kinh rule via centuries of conquest and violent assimilation policies. The map below illustrates the Viet `t Kinh's southern conquest throughout the centuries. Map reprinted from original in St. John, *supra* note 125, at 6. ¹²³. Id. ¹²⁴. Id. (quotations and citations omitted). ¹²⁵. Ronald Bruce St. John, *The Land Boundaries of Indochina: Cambodia, Laos and Vietnam*, 2 *BOUNDARY & TERRITORY BRIEFING* 1, 6 (1998). 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 509

More recently, the government has targeted the overseas Vietnamese population with the same rhetoric of family. The government has promoted Vietnam as a site rich with family ties and ancestral links, encouraging the diaspora to dedicate themselves more spiritually to their homeland.¹²⁶ Their messages claim the diaspora's increased devotion to Vietnam will help the country achieve prosperity and become more unified.¹²⁷ Presumably, these warm, welcoming messages are pretextual—with the Vietnamese government actively targeting the overseas Vietnamese to reap financial returns in the form of remittances, investments, and human capital.¹²⁸ For the 2018 calendar year, Vietnam ranked in the top ten countries for receiving the largest amount in remittances, collecting US \$15.9 billion from its diaspora. See *WORLD BANK GROUP, Migration and Remittances: Recent Developments and Outlook* (Dec. 2018), <https://www.knomad.org/sites/default/files/2018-12/Migration%20and%20Development%20Brief%2030.pdf>. To encourage the circulation of remittances in the Vietnamese economy, Vietnam's central bank has issued a policy of not paying interest on deposits made in U.S. dollars, thereby encouraging this money to flow outwards from bank accounts and into the Vietnamese economy. *VN Set to be Among Top Ten Remittance Receivers*, *VIET `T NAM NEWS* (Dec. 11, 2018, 9:00 AM), <https://vietnamnews.vn/economy/481758/vn-set-to-be-among-top-ten-remittance-receivers.html>. It is therefore no wonder the government targets the Viet `t Kinh with family-heavy rhetoric. The government wishes to profit from their nostalgia and desires for exploring cultures, lands, traditions, languages, and world that are lost. With these two nation-building images—a multiethnic nation in which the Viet `t Kinh sit atop and a civic nation in which the rhetoric of family unity is mobilized to the government's advantage—the Vietnamese government can then mobilize its communitarian understanding of citizenship to enact state policies that prioritize the collective over the individual. D. Communitarian Citizenship As a nation founded on dreams of socialism and mobilized with the glittering rhetoric of harmony, the Vietnamese government understands citizenship in unequivocally communitarian terms. All land in Vietnam is collectively owned and managed by the Vietnamese state.¹²⁹ Otelo Carvalho, *How Socialist is Vietnam?*, *MEDIUM* (Apr. 17, 2018), <https://medium.com/@otelocarvalho/socialism-today-in-vietnam-ac22ce2edf47>. The government implements price controls over medicine, milk, rice, formula, and airline tickets.¹³⁰ State apparatuses supervise and hold a majority stake in most of the country's key industries, such as telecommunications, energy, and banking.¹³¹ One can practice religion, as long as the practice is at an institution registered with the government.¹³² See *VCHR, supra* note 112, at 11; see also Vietnam Decree No. 22/2005/NĐ-CP, art. 13, 15, 16 (Mar. 1, 2005), <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Nghi-dinh-22-2005-ND-CP-huong-dan-Phap-lenh-tin-nguong-ton-giao-52884.aspx#> (requiring religious organizations to register with the Prime Minister, religious classes to obtain approval from the provincial-level People's Committee, and religious leaders to register with the Government Commission for Religious Affairs). Further, the government is famous for censoring speech.¹³³ See Ralph Jennings, *Vietnam's Censorship Expands to Popular, Official News Website*, *VOA NEWS* (July 20, 2018, 3:09 AM), <https://www.voanews.com/a/vietnams-censorship-expands-to-popular-official-news->

website/4490729.html. 126. See Sutherland, *supra* note 80, at 6. 127. *Id.* at 6–7. 128. 129. 130. *Id.* 131. *Id.* 132. 133. 510 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 Overall, to be a citizen in Vietnam means one has the right to self-determination, but only to the extent that it does not interfere with the government’s agenda. In this context, Section 4 fits nicely with this scheme: an applicant who seeks Vietnamese citizenship is not simply applying to become a part of a nation. Rather, the applicant applies to become a member of a family. Their inclusion must be conducted in a manner that is most convenient for the family. E. A Hypothesis: The Government Enforces Section 4 Based on the Applicant’s Perceived Proximity and Threat to the Việt Kinh With these nation-building constructs in mind, I suggest the following: Section 4 exists to bolster the Vietnamese government’s two nation-building constructs—that of a Vietnamese-supremacist nation and that of a controlling “family.” Because citizenship applicants can be evaluated for their proximity to “Vietnamese-ness,” or the threat they pose to the national image, the government enforces Section 4 according to the distance or threat perceived. It then follows that an applicant who deviates too far from her “relatives” must humble herself by relinquishing her last name, among other requirements. In doing so, she demonstrates her willingness to belong and her willingness to give up a piece of her individuality for the Vietnamese collective. Similarly, indigenous groups who are too “far” from Vietnamese-ness must also embody a Vietnamese last name to become part of the Vietnamese nation. However, for those whose group affinity is “close enough,” Section 4 need not be enforced. For football players hailing from the African and South American continents, their disruption of Vietnam’s image as an ethnic nation of Southeast Asian groups so violently disturbs the government’s vision that the government will enforce Section 4 every time.¹³⁴ See René Cherez, *I’m a Black Women Who Traveled Asia for More Than a Year. Here’s What I Know About Anti-Blackness.*, HUFFPOST (Aug. 9, 2019), https://www.huffpost.com/entry/black-woman-travel-asia_n_5d31d61fe4b0419fd32c2355 (describing race-based microaggressions in Vietnam, such as people pointing, giggling, and shielding their children). In addition, the overseas Vietnamese who bear a non-Vietnamese last name must demonstrate their desire to become a part of the family “again,” and therefore they need to prove they truly want to “restore” their place through their return to “home.”¹³⁵ When viewed through the framework of family, Section 4 is not too different from the heteronormative Western tradition of women changing their surnames to join their husbands in marriage. It is also not so different from multiethnic or biracial children to carry hyphenated surnames reflecting their multiple ethnic heritages, or that of a trans person changing their name to reflect their gender identity. People change their names to signal their new affiliations and identities all the time. In Section 4’s context, though, the 134. 135. See Sutherland, *supra* note 80, at 6–7 (noting how the Vietnamese government encourages the diaspora to invest themselves into Vietnam financially and spiritually). 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 511 name change feels particularly violent, especially because it applies to “outer” indigenous groups and not others. 1. The Cham For the Cham people, it makes sense that the Vietnamese have forced them to adopt Vietnamese surnames. Up until the 1700s and 1800s, the Cham people used to command an empire spanning what is now Central and Southern Vietnam.¹³⁶ See Jean-Michel Filippi, *The Long Tragedy of Cham History*, PUBLIKAM (Mar. 27, 2012), <https://www.publikam.com/en/pages/ethnic-minorities/long-tragedy-cham-history.html>; see also Bao H. Nguyen, *Cham American Muslim, A Triple Minority?*, DIACRITICS (Dec. 13, 2010), <https://diacritics.org/2010/12/cham-american-muslim-a-triple-minority/>. Prior to Vietnamese conquest, Đàng Dương was known as Indrapura.¹³⁷ Ani, *President Kovind Visits Ancient Hindu Temple Heritage Site in Vietnam*, BUS. STANDARD (Nov. 19, 2018),

heritage-site-in-vietnam-118111900175_1.html. Under Cham rule, my family's hometown, Quy Nhơn, was known as Vijaya.¹³⁸ See Tra`n Ky` Phuong, *The Geography of the Ancient Kingdom of Champa in Central Vietnam*, <http://pnclink.org/annual/annual2003/program/presenpdf/110931.pdf> (last visited Jan. 13, 2019). Quảng Nam province used to be named Amaravati.¹³⁹ Additionally, the Cham people traditionally bore names with Sanskrit, Hindu, and Muslim influences. Their kings have carried names such as Harivarman, Suryavarman, and Indravarman.¹⁴⁰ Champa, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/place/Champa-ancientkingdom-Indochina>. Contrastingly, the Vietnamese are mostly Buddhist, Confucian, or Christian. All Vietnamese family names have a Chinese analog: Ly' correlates with Li (李), Pha' m with Fan (范), and Vương with Wang (王). Because the Cham are so "far" from Vietnamese-ness, and because their history with the Vietnamese is rife with war and conquest, it makes sense that the Vietnamese government has enforced name changes as far back as the 1800s.¹⁴¹ This policy likely endures today when applicants of Cham descent apply for naturalization through Section 4. 2. The Rade The Rade people, on the other hand, pose a smaller threat to Vietnam's nation-building project. While the Rade culture and language share many similarities with the Cham,¹⁴² the Rade people traditionally have held a smaller political presence throughout the Southeast Asian peninsula (read: less of a threat to the Vie' ^t Kinh).¹⁴³ All sources I located discussed the Rade group as an indigenous group that lives in the moun`stains of Vietnam, rather than as a group involved in empire and conquest. See, e.g., Ray Waddington, *The Ede People*, *PEOPLES OF THE WORLD FOUND.* (2003), <http://www.peoplesoftheworld.org/text?people=Ede>. Accordingly, because the Rade people do not threaten the Vie' ^t Kinh's cultural and political dominance, it can be 136. 137. 138. 139. Id. 140. 141. CHOI, *supra* note 30, at 144. 142. GRAHAM THURGOOD, *FROM ANCIENT CHAM TO MODERN DIALECTS: TWO THOUSAND YEARS OF LANGUAGE CONTACT AND CHANGE 1* (1999). 143. 512 *GEORGETOWN IMMIGRATION LAW JOURNAL* [Vol. 34:493 inferred the government has not enforced Section 4 on Rade people such as H'Hen Nie^, Y Garia Enuo^l, and Y Tru Alio. Certainly, more robust and thorough research is needed. However, it appears the government applies Section 4 based on the identity with an ethnic group, rather than on a particularized evaluation of an individual's proximity to Vie' ^t Kinh-ness. V. INDIGENOUS ETHNIC MINORITIES While my hypothesis helps contextualize the existence and uneven application of Section 4, it does not explain why this provision has received such little attention in media sources and scholarly writing. In this section, I pro`pose two reasons why so few people have looked at Section 4 closely. I also propose two reasons why the provision may be regarded as unproblematic for those upon which the Article is enforced. A. Other Oppressive Practices Dwarf Section 4's Symbolic Violence The modern Vietnamese government is well-known for inflicting physical violence onto indigenous minority groups.¹⁴⁴ These practices may explain why Section 4's demand for cultural erasure—a form of symbolic violence— has taken a backseat in cultural commentary. To justify oppressing minority groups legally, the government relies on its enumerated constitutional power as the promoter of Marxist-Leninist doctrine and Ho^` Chi' Minh thought.¹⁴⁵ This allows the government to evaluate indige`nous customs against the Marxist idea that civilizations can be categorized along an evolutionary line towards socialism.¹⁴⁶ Therefore, customs associ`ated with a primitive state of civilization or a primitive state of production, such as matriarchal societies and shamanism, are immediately considered sus`pect.¹⁴⁷ In the name of leading Vietnam towards a more evolved society, act`ing as an older brother, and improving the nation's "internal force," criminal punishment often befalls groups engaging in superstitious practices.¹⁴⁸ 144. See HUM. RTS. WATCH, *REPRESSION OF MONTAGNARDS: CONFLICTS OVER LAND AND RELIGION IN VIETNAM'S CENTRAL HIGHLANDS*, at 2 (Sidney Jones et al. eds., 2002) (listing oppressive practices such as arbitrary arrest and detention,

excessive use of force, and travel restrictions). 145. VIETNAM CONST., art. 4, § 1 (2013). 146. See Charles Keyes, Presidential Address: “The Peoples of Asia”— Science and Politics of Classification of Ethnic Groups in Thailand, China, and Vietnam, 61 J. ASIAN STUD. 1163, 1168–69 (2002) (explaining Lewis Henry Morgan’s categorization of cultures into three evolutionary stages— savagery, barbarism, and civilization—highly influenced Karl Marx and was later adopted in all countries led by a communist party); VCHR, *supra* note 112, at 8–9 (noting the Vietnamese Communist Party routinely evokes Article 4 of the Vietnamese Constitution to justify the suppression of opinions and thinking that is “at odds” with the Communist Party’s doctrine). 147. See VCHR, *supra* note 112, at 13–14; see also Bob Baulch et al., Ethnic Minority Poverty in Vietnam (Chronic Poverty Res. Ctr., Working Paper No. 169, 2010) (explaining the Việt Kinh have long perceived ethnic minorities as “economically backward” and should be “assisted” to “catch up” with the Việt Kinh). 148. See VCHR, *supra* note 112, at 27 (explaining how peaceful assemblies perceived as a threat to national security can be punishable by administrative detention without trial). 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 513 For example, numerous Hmong people have been arrested and killed when engaging in peaceful religious gatherings.149 Montagnard Christians (Montagnard here refers to ethnic groups living in the highlands; Montagnard means “mountain people” in French),150 whose faith the government has deemed a threat to national unity, have been denied public benefits.151 Montagnard Christians have also experienced arbitrary detention and have been forced to sign documents renouncing their religion.152 Significantly, many ethnic minority groups have been unduly punished through the hộ khẩu system, which allows people to register their family with the government, own their own home, and access public benefits.153 Local government officers can approve or deny the issuance of a hộ khẩu without a written explanation, which leaves many minority groups subject to the whims and fancies of local officials.154 This practice renders many ethnic minority groups undocumented and permanently stateless in Vietnam.155 The hộ khẩu stands as one of the government’s most powerful forms of control over ethnic minority groups.156 According to the Vietnam Committee on Human Rights, the government circulated a memo instructing high-level officials to “directly or indirectly” participate in “the struggle against religions,” and promote only state-sponsored Buddhism with socialist orientations.157 In 2015, the Vietnamese government identified ethnic minority groups as a greater national security threat than China’s encroachment onto Vietnamese territories in the South China Sea.158 Out of Sight: Ethnic Minorities in Vietnam, *ECONOMIST* (Apr. 4, 2015), <https://www.economist.com/asia/2015/04/04/out-of-sight> (“The Communist Party of Vietnam considers ethnic minorities its top national-security priority . . . more important even than territorial sovereignty in the South China Sea, where Vietnam worries about Chinese encroachment.”). Therefore, even though Section 4 inflicts a form of cultural violence on Vietnam’s indigenous minority groups, whatever harm Section 4 inflicts likely pales in comparison to the forms of oppression described above. This may explain why my research failed to locate any meaningful commentary. B. Low Numbers of Naturalization Applicants Means Section 4’s Impact May Not be Statistically Significant An additional reason why Section 4 has received little attention is the low number of people applying for citizenship in Vietnam. As described in Part III.C and in Appendix II, between 2003 and 2008, only 6,000 people at most seemed to naturalize every year. This figure is tiny when compared to the 149. *Id.* at 4. 150. TUCKER, *supra* note 52, at 3–4. 151. VCHR, *supra* note 112, at 4, 10. 152. *Id.* at 17, 23–24. 153. *Id.* at 10. 154. *Id.* at 10–11. 155. *Id.* at 10. 156. *Id.* at 11. 157. *Id.* at 12. 158. 514 *GEORGETOWN IMMIGRATION LAW JOURNAL* [Vol. 34:493 United States, wherein over 756,000 people were naturalized in the 2018 fiscal year.159 Naturalization Fact Sheet, U.S. CITIZEN & IMMIGR. SERVS. (Aug. 28, 2019),

sheets/naturalization-fact-sheet. The low naturalization rate could be attributed to any number of reasons—foreign nationals may not want to renounce their other citizenship upon naturalizing,¹⁶⁰ See Vietnam Law on Nationality, art 19.3 (2014), <https://www.refworld.org/docid/4ac49b132.html>. Stateless persons may be unduly denied their right to naturalize,¹⁶¹ See Kitty McKinsey, Vietnamese Local Governments Smooth the Way for Stateless Cambodians, UNHCR (Nov. 8, 2006), <http://www.unhcr.org/en-us/news/latest/2006/11/4551f38c2/vietnamese-local-governments-smooth-way-stateless-cambodians.html> (describing how Vietnamese local government used to deny stateless Cambodian refugees access to Vietnamese citizenship). or stateless persons may seek to live in countries with higher GDP's.¹⁶² The small number warrants little journalistic or scholarly attention. C. Many Indigenous Surnames are Similar to Vietnamese Ones, Resulting in Little Attention Paid to Section 4 Because ethnic groups throughout present-day Cambodia, China, Laos, Thailand, and Vietnam have lived in proximity for so many years, many last names resemble one another and may have blended into one another over time. This means Section 4's enforcement likely results in little affective—or emotional—violence for many citizenship applicants. For example, many Lu Mien people have the last name Li, which could become Ly' in Vietnamese.¹⁶³ See Nguyen[^] ~n, supra note 14 (listing Vietnamese surnames); see also Sakkarin Saechao, The Mien, SAKKARIN MIEN (Nov. 18, 2010, 2:10 AM), <http://sakkarinmien.blogspot.com/2010/11/mien.html> (listing Lu Mien last names). For the Hmong surname Vue or Xiong, applicants can change their names to V~u or Søn.¹⁶⁴ See Nguyen[^] ~n, supra note 14 (listing Vietnamese surnames); see also WHO ARE THE HMONG?, Hmong Surnames/Clans, <https://sites.google.com/site/whoarethehmongs/2> (last visited Jan. 27, 2019) (listing Hmong surnames). Therefore, when certain ethnic groups apply for legal status, the symbolic violence of changing their last names may feel incon~sequential. Applicants may have bigger concerns on their minds—such as obtaining the right to education, employment, healthcare, and property rights—when naturalizing.¹⁶⁵ Changing their name would feel like a small price to pay. VI. EXOGENOUS RACIAL AND ETHNIC GROUPS As described in Part V, no substantive commentary exists as to how Section 4 impacts ethnic groups indigenous to the Southeast Asia region. Similarly, no commentary exists on how Section 4 impacts racial and ethnic groups exogenous to the region. What we can observe, however, are glimmers of a second-class citizenship forming for those who have natural~ized but have no ethnic ties to Southeast Asia. While I found no sources of a second-class citizenship forming in daily life, I found some examples in the 159. 160. 161. 162. See Vietnam GDP – Gross Domestic Product, COUNTRY ECON. (2018), <https://countryeconomy.com/gdp/vietnam> (noting Vietnam's GDP ranks 47th out of 196 countries surveyed). 163. 164. 165. See BOAT PEOPLE SOS ET AL., supra note 37, at 5. 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 515 football industry. The disparate treatment of football players of racial and ethnic identities exogenous to Vietnam may foreshadow future policies on a larger scale. In 2009, the Vietnamese Football Federation (VFF), issued its “3 þ 1” rule, which restricts football teams to dispatching only one naturalized player and three foreign players on the field at any given time.¹⁶⁶ See Tien Thanh, New VFF Regulation Creates Controversy, VIE[^] T NAM NEWS (Nov. 29, 2009, 12:00 AM), <https://vietnamnews.vn/talk-around-town/194520/new-vff-regulation-creates-controversy.html#qOwMpW5LJcwtQmUt>.⁹⁷ Historically, the VFF President has always held an official government position, or main~tained close ties to the government, outside of his VFF presidency.¹⁶⁷ Trinh Thanh Thuy, Viê:t Nam Football Federation to appoint new president, VIE[^] T NAM NEWS (Nov. 27, 2018, 14:26), <https://vietnamnews.vn/sports/480843/viet-nam-football-federation-to-appoint~new-president.html#5qlLmCT3HrkMxC2h>.⁹⁷ (noting the current President of VFF is the Deputy Minister of Culture, Sports and Tourism). People both supported and opposed the VFF's 3 þ 1 rule. The general

director of Đò`ng Ta`m Long An, a VFF team, criticized the limitation on natu`ralized players, characterizing it as illegal: “[The naturalized players] have all the rights of a Vietnamese citizen.”¹⁶⁸ According to him, naturalized VFF athletes should be treated the same as those who gained citizenship through jus solis or jus sanguine.¹⁶⁹ The Đò`ng Ta`m Long An director therefore cri`tiques the second-class citizenship status of naturalized athletes, treating them differently from other Vietnamese citizens despite holding the same legal status. The vice chairman of the VFF countered these concerns: if football clubs could place a majority of foreign players on the field at any given time, “what will be the future of Vietnamese football? A balance is necessary to develop home-based young players and to not lose identity at the national level.”¹⁷⁰ The head coach of another V-League team, Cement Hải Pho`ng, supported the vice chairman’s position.¹⁷¹ He noted that Vietnam already stands as an anomaly: at the time, the Southeast Asian country allowed the largest pro`portion of expatriate players in Asia, making it more generous than Japan and South Korea, which only allowed teams to play three foreign players at a time.¹⁷² The Cement Hải Pho`ng coach felt that limiting the number of foreign players was necessary to have “an exciting championship.”¹⁷³ Through the VFF vice chairman and the coach of Cement Hải Pho`ng’s comments, we can discern a palpable anxiety over diversifying a highly visible sport, and, to some extent, an anxiety over diversifying a nation. These VFF regulations not only struck a nerve over “too much” ancestry exogenous from the region, but they also illuminated a problematic appetite for black and brown labor. A FIFA-agent in Vietnam commented, “Most of 166. 167. 168. VIE`T NAM NEWS, supra note 166. 169. Id. 170. Id. 171. Id. 172. Id. 173. Id. 516 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 V-League teams are looking for forwards from African countries as they are quite cheap, and they’re more powerful than local forwards, while good Europeans are expensive.”¹⁷⁴ V-League Lures Foreign Players, VIE`T NAM NEWS (Dec. 23, 2010, 8:46 AM), <https://vietnamnews.vn/sports/206969/v-league-lures-foreign-players.html> (emphasis added). In 2009, the Ho`a Pha`t Ha` No`i team signed a Nigerian-born player for a per annum salary of US \$3,000—167 times less costly than a European striker in his early thirties, whose salary expectations would fall at a minimum of US \$500,000 per year.¹⁷⁵ A coach for the Ninh Bi`nh football team said that due to his team’s limited funds, he was “keen” on signing African players: “We offer six-month or one-year contracts and decide to extend the deal if the player is a success in their first year. It’s the best option for us as we avoid risk.”¹⁷⁶ These comments reveal a desire for black and brown players for their inexpensive, but productive, labor. However, through the 3 p 1 rule, the government clearly permits teams to indulge in this desire until it inconveniently disrupts Vietnam’s ethnic nation imagery. Indeed, the VFF’s “market” for foreign-born players is sizeable. In 2012, over one hundred foreign players worked for twenty-eight teams within the VFF’s Super League and its First Division.¹⁷⁷ Federation to Impose Limits on Foreign Players, VIE`T NAM NEWS (Jan. 6, 2012, 9:53 AM), <https://vietnamnews.vn/sports/219404/federation-to-impose-limit-on-foreign-players.html#Hq1HKvLQrBdGBR0y>.⁹⁷ The aforementioned FIFA agent noted that “her job has become tougher” because teams have set “higher standards” for potential players.¹⁷⁸ The growth in foreign talent in the VFF almost certainly struck the VFF’s anxiety over a national “identity.” Three years after the 2009 “3 p 1” rule, the VFF tightened the restriction fur`ther, limiting teams to only one naturalized player and two foreign players to be on the field at any given time.¹⁷⁹ Consequently, the “3 p 1” rule became a “2 p 1” rule, further illustrating the government’s commitment to an ethnic nation. Conveniently, the 3 p 1 and 2 p 1 rules do not apply to overseas Vietnamese players.¹⁸⁰ Quang Tuye`n, Làn sóng cầu thủ Viê:t kiều về nước [Waves of overseas Vietnamese football players return home], THANH NIE`N, (Dec. 4, 2011, 1:49 AM), <https://thethao.thanhvien.vn/bong-da-vietnam/lan-song-cau-thu-viet-kieu-ve-nuoc-11084.html>.

VFF teams can recruit and play on the field as many Vietnamese athletes as they desire, regardless of their citizenship or their place of birth.¹⁸¹ The VFF's exception for Vietnamese players blatantly contradicts one goal of the 3 p 1 and 2 p 1 rules—affording “home-based” young players greater opportunities to show their talent.¹⁸² The VFF's gratuitous exception for the Vietnamese illustrates how strongly the Vietnamese government, and to an extent, its people, understand Vietnam: an ethnic nation in which the Vietnamese are the majority.^{174. 175. Id. 176. Id. 177. 178. VIETNAM NEWS, supra note 174. 179. See VIETNAM NEWS, supra note 177. 180. 181. Id. 182. VIETNAM NEWS, supra note 166. 2020]}

VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 517 Kinh form the main fixture of its national identity, with other groups secondary in importance or respectfully at the periphery. VII. CONCLUSION: SECTION 4 IS A POSTCOLONIAL COP OUT Section 4 fuels an unjust nation-building project. The Vietnamese government has oppressed minority groups for decades. It has only extended the Vietnamese favorable policies when doing so would yield a profit. It views African and South American athletes favorably, but only in small doses. At the end of the day, the Vietnamese government will always treat its domestic Vietnamese better than it treats any other group. Because Section 4 plays right into this project, it should be repealed. This leads me to understand Section 4, and most of the Vietnamese government's practices, as a postcolonial cop out. Much has been written about Kinh's suffering—millennia of imperial rule,¹⁸³ four Chinese dominations,¹⁸⁴ See TUCKER, supra note 52, at 7–11 (explaining first Chinese domination ended in 39 A.D., second Chinese domination lasted from 43 to 544, third Chinese domination ended in 938, and fourth Chinese domination lasted from 1407 to 1427. Source did not clearly note when third Chinese domination began); see also Sevin Nguyen, A Brief History of Vietnam: The 4 Periods of Chinese Domination, MEDIUM (Feb. 14, 2018), <https://medium.com/@sushisev/the-rich-history-of-vietnam-the-4-periods-of-chinese-domination-16acbf426071> (noting third period of Chinese domination began in 602 A.D.). seventy-one years of French colonization,¹⁸⁵ four years of informal Japanese occupation,¹⁸⁶ and four post-independence wars that spanned nearly fifty years.¹⁸⁷ Against this backdrop, I certainly sympathize with Vietnam's postcolonial desires to build a nation on its own terms. However, to conveniently forget the Kinh's history of conquering other ethnic groups, implementing culturally genocidal laws, viewing black and brown athletes as a “threat” to national identity, and playing favorites with the Vietnamese for their overseas wealth—this establishes a different kind of unjust system under the pretext of postcolonial self-determination. It mirrors the extractive, capitalist mindset that values the most productive Vietnamese players at the top and everybody else at the bottom. Granted, Vietnam currently has a net emigration rate, meaning Section 4 imposes a statistically insignificant impact.¹⁸⁸ However, this does not mean the provision will not be more prominent in the future. If Vietnam continues

183. Vu Hong Lien & Peter Sharrock, *Descending Dragon, Rising Tiger: A History of Vietnam*, at 247–50 (2014) (providing a timeline of Vietnamese dynasties spanning from 2879 B.C.E. to 2014). 184. 185. See VU & SHARROCK, supra note 183, at 250. I use the period from 1883 to 1954 as the period of French colonization, rather than 1887 to 1954. 186. See TUCKER, supra note 52, at 39–40 (noting in September 1940, Jean Decoux, a French government official, granted Japan the right to build three airfields and to station 6,000 men in Vietnam); see also Trần Mỹ-Vân, Working for the Japanese: Working for Vietnamese Independence, 1941–45, in *ASIAN LABOR IN WARTIME JAPANESE EMPIRE: UNKNOWN HISTORIES* 287, 287 (Paul H. Kratoska ed., 2005) (noting how dates of actual and formal Japanese occupation of Vietnam are up for debate). 187. See generally TUCKER, supra note 52 (noting the first Indochina War between Vietnam and France lasting from 1946 to 1954, the second Indochina War between North and South Vietnam—known in the United States as the Vietnam War—lasting from 1954

to 1975, the third Indochina War between Vietnam and Cambodia lasting from 1975 to 1989, and the fourth Indochina War between Vietnam and China lasting for a month in 1979, with battles along the Chinese-Vietnamese border lasting until 1990). 188. See CENT. INTELLIGENCE AGENCY, *supra* note 78. 518 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 its track record of increasingly privatizing its economy and deepening its trade relations with African and South American countries—namely, Argentina,¹⁸⁹ Vietnam, Argentina Target US\$5 Billion in Bilateral Trade Value, VOICE OF VIETNAM (May 6, 2018, 9:23 AM), <https://english.vov.vn/investment/vietnam-argentina-target-us5-billion-in-bilateral-trade-value-376220.vov>. Brazil,¹⁹⁰ Vietnam Boosts Investment Cooperation with Brazil, US, VOICE OF VIETNAM (Oct. 5, 2018, 8:57 AM), <https://english.vov.vn/diplomacy/vietnam-boosts-investment-cooperation-with-brazil-us-374287.vov>. Chile,¹⁹¹ See Latin America Widens Trade Relations in the Time of Trump, LATIN FIN. (June 5, 2018), <https://www.latinfinance.com/web-articles/2018/5/latin-america-widens-trade-relations-in-the-time-of-trump> (noting that the Trans-Pacific Partnership provides Chile and Peru access to trade with Vietnam). Nigeria,¹⁹² See VN, Nigeria Seek to Boost Trade Cooperation, VIE ^ T NAM NEWS (Dec. 4, 2017, 3:00 PM), <https://vietnamnews.vn/economy/418761/vn-nigeria-seek-to-boost-trade-cooperation.html>. Peru,¹⁹³ and South Africa,¹⁹⁴ See South Africa Remains Vietnam’s Biggest Trade Partner in Africa, NHA ^ N DA ^ N [The People] (Jan. 26, 2019, 6:51 PM), [http://en.nhandan.org.vn/business/item/7098702-south-africa-remains-vietnam %E2%80%99s-biggest-trade-partner-in-africa.html](http://en.nhandan.org.vn/business/item/7098702-south-africa-remains-vietnam%E2%80%99s-biggest-trade-partner-in-africa.html). — then we can expect more discourse surrounding Vietnamese citizenship and 2 þ 1-like rhetoric to surface. Where there is an uptick in goods and services traded, there is an uptick in migration.¹⁹⁵ For example, Vietnam’s higher trading volumes with African and South American countries will mean more citizens taking business trips among these continents. Frequent travel and stays will lead to more frequent con siderations for permanent residence and citizenship. Middle management and entry-level jobs for people proficient in both languages are likely to be stimulated. Thus, it is not only conceivable, but also likely, that more people of exogenous ethnicities will move to Vietnam, with an eye towards naturalization, if not permanent residence. It is therefore reasonable to expect that Section 4 will gain more prominence in the years to come as African and South American migrants consider living in Vietnam permanently. As we saw in the case of the VFF football players, an anxiety over the “national identity” of Vietnam could be triggered. This means the ethno-supremacist spirit of the VFF’s 2 þ 1 rules may spill over into other areas of Vietnamese law. Accordingly, I argue that this possibility should be minimized, beginning with the repeal of Section 4 and continuing with the axing of decrees, laws, and constitutional provisions that legalize the oppression of non-Vie ^ t Kinh people. It is high time the Vietnamese government reflects on its ethnic and civic nation constructs and takes a different approach to nation-building and ethno-racial relations. A citizen, by any name, should have the same worth under Vietnamese law. 189. 190. 191. 192. 193. See LATIN FIN., *supra* note 191. 194. 195. See Mathias Cazika & Hein de Haas, The Globalization of Migration: Has the World Become More Migratory?, 48 INT’L MIGRATION REV. 283, 285 (2014). 2020] VIETNAM’S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 519 APPENDIX I: SECTION 4’S (LACK OF) LEGISLATIVE HISTORY In writing this Note, I attempted to see if the government ever articulated a policy goal for the surname requirement. For this, I turned to the Communist Review (Ta ^ p chí Cộng sản). First published in 1955 as Academic Journal (Ta ^ p chí Ho ^ c Tập),¹⁹⁶ Chương II: Ta ^ p chí Ho ^ c tập (1955–1976) [Chapter II: Academic Journal], TA ^ P CHI ^ CO ^ NG SẢN [Communist Review] (Sept. 10, 2015), <http://www.tapchiconsan.org.vn/Home/Tap-chi-cong-san/nhung-chang-duong/2015/35140/Chuong-II-Tap-chi-Hoc-tap-19551976.aspx>. the Communist Review is the government’s official publication providing its political and theoretical assessments of the coun try.¹⁹⁷

The publication discusses a wide range of topics, such as the impact Vietnam's entry into the World Trade Organization will have,¹⁹⁸ See Vu Va ~ ~n Phu'c, Tác động của việc gia nhập Tổ chức Thương mại thế giới đến các địa phương [The impact of joining the World Trade Organization on localities], 177 TA' P CHI' CO' ^ NG SAN' (2006), http://tapchiconsan.org.vn/data/tcc/Html_Data/So_119.html. how to protect the environment in the age of rapid industrialization,¹⁹⁹ See Chu Thá'i Thà'nh, Bảo vệ: môi trường những yêu cầu của mới của thời kỳ đẩy ma'nh công nghiê:p hoá', hiê:n đa' i hoá' đa' i đất nước [Environmental protection requirements in a new era of accelerating industrialization and a modernizing country], 74 TA' P CHI' CO' ^ NG SAN' (2005), http://tapchiconsan.org.vn/data/tcc/Html_Data/So_74.html. and how to manage "youth culture."²⁰⁰ See Đa' ~ng Cảnh Khanh, Một vài suy nghĩ về văn hoá' thanh niên [Some thoughts on youth cul~t~ure], 103 TA' P CHI' CO' ^ NG SAN' (2006), http://tapchiconsan.org.vn/data/tcc/Html_Data/So_103.html. Attempting to locate the ideological birthplace of Section 4, I sifted through approximately 122 issues within The Communist Review's online database.²⁰¹ See generally TA' P CHI' CO' ^ NG SAN' [COMMUNIST REVIEW], <http://tapchiconsan.org.vn/data/tcc/tccs.html> (last visited Jan. 28, 2019). The issues available online appeared to span the years 2003 to 2007. When searching for keywords throughout all 122 issues, I found nothing related to naturalization requirements and Section 4. Granted, I may not have conducted the most thorough dive into these articles, but I feel my searches for cho nhập quốc tì'ch (naturalization), quốc tì'ch (nationality), and công dân (citizens, or citizenship) through 122 issues is a good faith effort.

APPENDIX II: TABLE OF NATURALIZED INDIVIDUALS Although I could not find an ideological thrust for Section 4, I could at least take stock of basic statistics on how many people have acquired citizen~ship in Vietnam throughout the years. If possible, I would try to identify what nationalities these individuals previously, or concurrently, held. It turns out: Not many people have sought Vietnamese citizenship, and people have been acquiring Vietnamese surnames before the 2008 law passed. I first tried to see if the government maintained any kind of statistics or reports on this issue. It does not. I then resorted to searching government data~bases and concluded that annually, only 6,000 individuals maximum would ^{196.} ^{197.} See Mark Sidel, Analytical Models for Understanding Constitutions and Constitutional Dialogue in Socialist Transitional States: Re-interpreting Constitutional Dialogue in Vietnam, in PUBLIC LAW IN EAST ASIA 211, 221 (Albert H.Y. Chen & Tom Ginsburg, eds., 2017) (article originally published in 2002) (explaining the Ta' p chí Cộng sản played a crucial role in explicating the Communist Party's revisions to the Constitution and other policy changes). ^{198.} ^{199.} ^{200.} ^{201.} 520 GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493 naturalize every year.²⁰² It should be noted that my estimate relates to natural~ization—not restoration of citizenship, which the Vie' ^t Kie' ^u would utilize. I arrived at this conclusion after examining the government's database of decrees. Thư Viê:n Pha'p Luật (The Law Library) is the Vietnamese govern~ment's official database of all laws, decrees, circulars, and regulations.²⁰³ See generally Thư Viê:n Pha'p Luật, <https://thuvienphapluat.vn/> (last visited Nov. 14, 2019). If an applicant is successful in their bid for naturalization, the government issues a decree. These decrees are serialized as Decree No. "Number/Year/ QĐ-CTN."²⁰⁴ The QĐ-CTN designation identifies the decree as one related to citizenship matters (as opposed to, say, a decree declaring new economic zones, stock market regulations, or establishing a power plant).²⁰⁵ The year identifies the year the decree was issued, and the number further organizes the government's numerous decisions.²⁰⁶ In my perusal of approximately eighty citizenship-related decrees from 2013 to 2018, I did not find a serial number exceeding 2,800. To err on the side of overcounting, I therefore assumed only 3,000 citizenship-related decrees were issued annually. This established a preliminary maximum of 3,000 people naturalizing every year. If there are an average of two individuals affixed to

each decree, then there are a maximum of 6,000 individuals naturalizing in Vietnam annually. There are some decrees, however, that naturalize four to fifteen individuals at a time. Fabio Dos Santos's decree is one example. I even found a decree in which 119 individuals born in Laos were naturalized.²⁰⁷ Vietnam Decree No. 2157/QĐ-CTN (Nov. 23, 2018), <https://thuvienphapluat.vn/van-ban/Quy-dan-su/Quy-yeu-dinh-2157-QD-CTN-2018-cho-nhap-quoc-tich-Viet-Nam-doi-voi-119-ca-nhan-cu-tru-tai-Quang-Tri-403360.aspx>. In my perusal of naturalization decrees, the majority involved one applicant. Additionally, decrees tagged as QĐ-CTN issued a variety of decisions. They can officiate the renunciation of Vietnamese citizenship, the forfeiture of Vietnamese citizenship, and the restoration of Vietnamese citizenship. Therefore, the 6,000 figure is likely to be an overestimate. Because I lacked the time and resources to read every single decree and compile a complete dataset myself, I then turned to see if any other organizations tracked similar information. It turns out the Pew Research Center's Global Migration Map, drawing from data collected by the United Nations Department of Economic and Social Affairs (UN-DESA), tracked the origins and destinations of migration across the world.²⁰⁸ See generally PEW RES. CTR., *Origins and Destinations of the World's Migrants, 1990–2017* (Feb. 28, 2018), <http://www.pewglobal.org/2018/02/28/global-migrant-stocks/?country=VN&date=2017>. Their estimates are shown below. ²⁰². See Appendix II for the explanation on how I reached the 6,000 figure. ²⁰³. ²⁰⁴. I figured this out after reviewing approximately two hundred decrees. ²⁰⁵. I determined this after reviewing approximately two hundred government decrees. I located no English-language guide to researching Vietnamese law, though there may be Vietnamese-language guides. Any misstatements or errors are therefore entirely my own. ²⁰⁶. Same comment as above. ²⁰⁷. ²⁰⁸. 2020] VIETNAM'S LAW ON NATIONALITY: SECTION 4, ARTICLE XIX 521 Year Number of people in Vietnam who were born outside of Vietnam 1990 30,000 2000 60,000 2010 60,000 2017 80,000 Generated from Pew Res. Ctr., supra note 208. Even though the Pew Resource Center and UN-DESA did not track naturalization rates, some insights could nevertheless be extrapolated. From 2010 to 2017, the number of foreign-born people in Vietnam grew by 20,000.²⁰⁹ This is an average increase of 2,857 people per year, which is approximately half of my maximum ceiling of 6,000. However, we can actually expect that the number of people naturalizing every year should be significantly lower than the United Nation's 2,857 number, as this figure likely counts individuals on worker visas, overseas-born Vietnamese individuals returning to Vietnam, and perhaps undocumented, irregular migrants. Thus, I settled on the estimation that, on average, approximately 6,000 individuals naturalized in Vietnam per year. ²⁰⁹. See id. 522

GEORGETOWN IMMIGRATION LAW JOURNAL [Vol. 34:493

<https://www.law.georgetown.edu/immigration-law-journal/wp-content/uploads/sites/19/2020/05/GT-GILJ200007.pdf>