

US Insular Law Considerations on the Origin and Classification of “Aliens”

	Area/Region	Insular Area of USA?	Examples	Native Population?	Sovereignty Held By?	Present or Historical Classification as “Alien” under US law	Alternative Nomenclature	Relevant Dates when Entitled to Carry “Non-citizen Passport” Issued under US Administrative Authority
1	Foreign Country	No	France, Poland, Greece, Morocco, Tanzania, etc.	Yes	Each respective country	Alien (Type I)	---	---- (Note 1)
2A	Domestic Territory (Domestic Country) (Note 2)	Yes	Puerto Rico (1899→present)	Yes	USA	Alien (Type II)	island citizen of the Puerto Rico cession	April 11, 1899→ March 2, 1917 (Note 3)
			Guam (1899→present)	Yes	USA	Alien (Type II)	island citizen of the Guam cession	April 11, 1899→ August 1, 1950 (Note 4)
2B	Domestic Territory	Yes	Midway Island (1867→present)	No	USA	N/A	---	---
			Wake Island (1897→present)	No	USA	N/A	---	---
3	Foreign Territory under the temporary dominion of the USA (Note 5)	Yes	Cuba (April 11, 1899→May 20, 1902)	Yes	USA	Alien (Type III)	island citizen of the Cuba cession	April 11, 1899→ May 20, 1902
			Taiwan (April 28, 1952→present)	Yes	USA	Alien (Type III)	island citizen of the Taiwan cession TRA alien	April 28, 1952→present (Note 6) January 1, 1979→ present (Note 7)
4	Foreign Territory leased by the USA	No	Guantanamo Bay, Cuba (Feb. 1903→present)	No	Cuba	N/A	---	---

This chart extrapolates the concept of having “eligibility” to carry some type of US passport back to earlier eras, even though most persons did not carry passports before the 1950’s. The special circumstances of (1) trust territories, or (2) Indian reservations in the fifty states may overlap with insular law to some extent, but are not considered. Foreign Territory held by US military forces under belligerent occupation (without any territorial cession) may be said to be under the administrative control of the USA, but is not insular and hence is not considered here.

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[Note 1]: A person who is a dual citizen of his/her home country and the USA would of course be qualified to carry a US passport.

[Note 2]: The terminology of “domestic country” and “island citizen” comes from the ruling in *Gonzales v. Williams*, 192 U.S. 1 (1904).

[Note 3]: The people of Puerto Rico were collectively naturalized in March 1917.

[Note 4]: The people of Guam were collectively naturalized in August 1950.

[Note 5]: Cuba and Taiwan were both “limbo cessions” with the USA as principal occupying power and qualify as insular areas. US Insular Law applies to Taiwan and Cuba because they are “inside” the principle of *cession by conquest* which was confirmed by *cession by treaty*. In *DeLima v. Bidwell* 182 U.S. 1 (1901), it was held that “Cuba is under the dominion of the United States.”

[Note 6]: In the Insular Cases (beginning 1901) the US Supreme Court held that even without any actions by the US Congress, “fundamental rights” under the US Constitution apply in all unincorporated territories. So-called “fundamental rights” include life, liberty, property, and due process of law under the Fifth Amendment. According to the precedent in *Kent v. Dulles*, 357 U.S. 116 (1958), and subsequent INS interpretations, the right to travel is a part of the “liberty” of which a citizen, or other person owing allegiance to the United States, cannot be deprived without due process of law under the Fifth Amendment. The right to travel also includes the right to obtain a passport. Hence, the Taiwanese are entitled to carry new Taiwan passports issued under US administrative authority.

[Note 7]: The Taiwan Relations Act came into effect in early 1979, and is a domestic law of the United States. According to the US Constitution, the USA must provide for the “common defense.” None of the pre-existing five major unincorporated territories (Guam, Northern Mariana Islands, American Samoa, Puerto Rico, and the US Virgin Islands) have their own Ministry of National Defense, or have they instituted military conscription laws over their local populace. All defense matters for the fifty states and territories under US administrative authority are handled by the Department of Defense in the Pentagon.

N/A is used to indicate “Not Applicable.”

Source: This chart is an expanded analysis of a similar chart taken from “Understanding the San Francisco Peace Treaty’s Disposition of Formosa and the Pescadores,” in the *Harvard Asia Quarterly*, published Fall 2004 by the Harvard Asia Center, Cambridge, Massachusetts. Author: Richard W. Hartzell