

Nos. 20-4017 and 20-4019

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA;
U.S. DEPARTMENT OF STATE; MICHAEL R.
POMPEO, in his official capacity as U.S. Secretary of
State; and CARL C. RISCH, in his official capacity as
U.S. Assistant Secretary of State for Consular Affairs,
Defendants-Appellants,
and

THE AMERICAN SAMOA GOVERNMENT and
THE HONORABLE AUMUA AMATA,
Intervenor Defendants-Appellants,

v.

JOHN FITISEMANU, PALE TULI, ROSAVITA TULI,
and SOUTHERN UTAH PACIFIC ISLANDER
COALITION,
Plaintiffs-Appellees.

On Appeal from the District of Utah, No. 1:18-cv-00036-CW

**BRIEF OF *AMICUS CURIAE*
SAMOAN FEDERATION OF AMERICA, INC. IN SUPPORT OF
PLAINTIFFS-APPELLEES AND TO AFFIRM**

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ORAL ARGUMENT REQUESTED

May 12, 2020

CORPORATE DISCLOSURE STATEMENT

Counsel for *amicus* certifies that *amicus curiae*, Samoan Federation of America, Inc. (“Samoan Federation”), is a non-profit corporation. The Samoan Federation has no parent corporation and no publicly held corporation owns 10 percent or more of its stock.

Dated: May 12, 2020

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BRIEF OF *AMICUS CURIAE*
SAMOAN FEDERATION OF AMERICA, INC.
IN SUPPORT OF PLAINTIFFS-APPELLEES AND TO AFFIRM

INTEREST OF *AMICUS CURIAE*¹

The Samoan Federation of America, Inc. (“Samoan Federation”) is a 501(c)(3) non-profit organization located in Carson, California that serves to advance the cultural, economic, and social well-being of the Samoan community in the greater Los Angeles area and across the United States. Founded in 1969, it is one of the oldest Samoan organizations in the continental United States. For over 35 years, the Samoan Federation has hosted an annual “Flag Day” celebration that serves as the largest annual gathering of Samoans in the continental United States, attracting approximately 30,000 attendees each year from across the country, including many attendees from Utah. The

¹ Pursuant to Fed. R. App. P. 29, counsel for *Amicus* states that all parties have consented to the filing of this brief. No party’s counsel authored any part of this brief, no party, party’s counsel, or any person other than *Amicus* or its counsel contributed any money that was intended to fund preparing or submitting this brief.

Flag Day event commemorates American Samoa's decision to become part of the United States in 1900 and celebrates the many contributions American Samoans make to their communities across the nation.

The Samoan Federation was a plaintiff in *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015), where it argued that people born in American Samoa have an individual constitutional right to citizenship that does not require legislative approval by Congress or any other elected officials. The Samoan Federation believes that recognition of citizenship is critical to the political and economic empowerment of American Samoan communities throughout the United States. Discriminatory federal laws that require American Samoans to naturalize to be recognized as U.S. citizens create significant barriers to the political participation of American Samoans living in Utah and other states, in effect serving as a poll tax, literacy test, voter identification requirement, and felon disenfranchisement provision all rolled into one. Federal, state, and local laws that restrict certain

employment opportunities to U.S. citizens also make it harder for many American Samoans to provide for themselves and their families and diminish their standing in their communities.

SUMMARY OF ARGUMENT

For 120 years, American Samoans have pledged allegiance to the American flag, lived on American soil, and been governed by American laws. In 1900, the people and leaders of what would become American Samoa voluntarily ceded sovereignty of their islands to the United States, believing that their voluntary transfer of sovereignty would mean American Samoans would be recognized as U.S. citizens. Two decades later, the federal government informed American Samoans they were not recognized as U.S. citizens. Instead, they were later labeled with a new, unprecedented, and inferior legal status of “non-citizen national.” The historical record is clear that this second-class status was motivated by racial animus towards the native-born inhabitants of American Samoa and other overseas territories.

Whatever the correct citizenship status of those residing on the islands before 1900, for those born in American Samoa after the United States took possession on April 17, 1900, the Constitution makes their status clear—they are citizens.

The people of American Samoa swiftly organized a political movement to demand recognition of their citizenship and greater local self-governance. In the following decades, American Samoan leaders were unrelenting in their demand to be recognized as U.S. citizens.

Despite inaction from the federal government to remedy their second-class status, American Samoans have remained loyal and patriotic Americans who have never wavered in their desire to remain part of the United States. In 2019, the district court correctly recognized what American Samoa's leaders understood in 1900: so long as the U.S. flag flies over American Samoa, every person born in American Samoa has a right to be recognized as a U.S. citizen. This Court should affirm that decision.

ARGUMENT

I. IN 1900, AMERICAN SAMOANS UNDERSTOOD, CORRECTLY, THAT THEIR TRANSFER OF SOVEREIGNTY TO THE UNITED STATES CREATED A RIGHT TO CITIZENSHIP.

American Samoa is a U.S. territory that consists of Tutuila, the Manu'a Islands, Swains Island, and a number of smaller islands and atolls located in the South Pacific about 2,500 miles southwest of Hawaii. *See* 48 U.S.C. §§ 1661–62 (2018). American Samoans ceded sovereignty to the United States by treaty in 1900 and in return expected, among other things, to be recognized as U.S. citizens consistent with the prevailing laws of the time. As American Samoans, they believed—with good reason—that by becoming subject to the sovereignty of the United States government, they had a right to be recognized as U.S. citizens.

A. The United States had no sovereignty claim before 1900.

Before 1900, the United States had frequent interactions with the islands that became American Samoa, but the people of these islands retained their own sovereignty separate from the

United States. In 1838, the first United States expedition set sail for the Samoan islands. *See* Staff of S. Comm. on Interior & Insular Affairs, 86th Cong., Information on the Government, Economics, Public Health, and Education of American (Eastern) Samoa 4 (G.P.O. 1960) [Exhibit 1 at 9²]. In 1872, U.S. Navy Commander Richard W. Meade, Jr., reached an agreement with the leaders of Tutuila to establish a coaling station for U.S. steamships at Pago Pago harbor, although the agreement was never properly ratified. Ex. 1 at 9. In 1878, the United States ratified a new treaty “of friendship and commerce,” which permitted the U.S. Navy to establish a coaling station at Pago Pago harbor in Tutuila. 20 Stat. 704. In 1889, the United States ratified a treaty with Great Britain and Germany to preserve the independence of the Samoan islands, which included the assent of the hereditary chiefs who governed the Samoan islands. 26 Stat. 1497. In 1899, as a result of external pressures for imperial

² Documents not readily available online are appended as consecutively numbered exhibits, citations to exhibits are pincited to these numbers, *e.g.*, Ex. 1 at 10, Ex. 22 at 346.

expansion and internal divisions among Samoan chiefs, a second treaty was entered among the United States, Germany, and Great Britain—without any formal Samoan participation. Ex. 1 at 10. In that treaty, ratified by the United States on February 16, 1900, Germany and Great Britain renounced any claims over the eastern Samoan islands, including Tutuila, in favor of the United States. 31 Stat. 1878.

B. In 1900, Samoans believed citizenship flowed from their transfer of sovereignty.

On April 17, 1900, the Samoan chiefs of the islands of Tutuila and Aunu'u signed a treaty granting the United States government “full power and authority” to govern the islands. Cession of Tutuila and Aunu'u at 1–2 (April 17, 1900) (codified at 48 U.S.C. § 1661 (2018)) [Exhibit 2 at 15–16]. Acting as “the hereditary representatives of the people” of Tutuila and Aunu'u, the chiefs “CEDED, TRANSFERRED, AND YIELDED UP . . . all sovereign rights . . . thereunto belonging and possessed by us . . . unto the Government of the United States of America” Ex. 2 at 16 (original emphasis). The Cession created a duty of loyalty

from the people of these islands to the United States, pledging that they would “obey and owe allegiance to the Government of the United States of America.” Ex. 2 at 17. Following the Cession signing, the U.S. Navy raised the American flag and took control of the islands.³

On July 14, 1904, the Tui Manu’a (King of Manu’a) and the chiefs of the eastern Samoan island group of Manu’a similarly granted sovereignty to the United States, “placing the Islands of Manua . . . under the full and complete sovereignty of the United States of America to enable said Islands, with Tutuila and Aunuu, to become a part of the territory of said United States.” Cession of the Islands of Manu’a, (July 14, 1904) (codified at 48 U.S.C. § 1661) [Exhibit 3 at 26]. In 1925, American Samoa was expanded to include Swains Island, an atoll north of Tutuila. 48 U.S.C. § 1662 (2018).

³ April 17th, “Flag Day,” is the largest annual public celebration in American Samoa and is commemorated by American Samoan communities throughout the United States.

The people of these islands believed that by transferring sovereignty to the United States, they would be recognized as U.S. citizens. *See* Reuel S. Moore and Joseph F. Farrington, *The American Samoan Commission's Visit to Samoa* 45 (G.P.O. 1931) (“[T]he Samoans understood first that annexation by the United States meant the people would receive American citizenship.”) *Aplee*. Supp. App. at 23; *id.* at 25 (“After the American flag was raised in 1900 the people thought they were American citizens.”); *American Samoa: Hearings Before the Comm’n Appointed by the President of the United States* 217 (G.P.O. 1931) *Aplee*. Supp. App. at 41 (statement of Chief Sotoa) (“[W]e underst[oo]d in that annexation that we automatically became American citizens.”).

C. Settled law supported their belief of a right to citizenship following their transfer of sovereignty.

In 1900, settled legal precedent affirmed the understanding of the American Samoan people in 1900 that the transfer of sovereignty to the United States resulted in a right to U.S. citizenship. In 1900, American law recognized only two legal statuses related to nationality: citizen and alien. *See* Christina

Duffy Burnett, *They Say I Am Not an American* . . . , 48 Va. J. Int'l L. 659, 668–82 (2008) (explaining that in 1900 the legal status of “noncitizen national” did not exist).

Moreover, as the U.S. Supreme Court had explained just eight years earlier, “[m]anifestly the nationality of the inhabitants of territory acquired by . . . cession becomes that of the government under whose dominion they pass[.]” *Boyd v. Nebraska*, 143 U.S. 135, 162 (1892). Just two years before American Samoa became a U.S. territory, the Supreme Court authoritatively interpreted the Citizenship Clause of the Fourteenth Amendment as reaffirming “the ancient and fundamental rule of citizenship by birth *within the territory*, in the allegiance and under the protection of the country.” *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898) (emphasis added). Thus, by all accepted legal standards, American Samoans reasonably expected recognition of U.S. citizenship as a consequence of transferring sovereignty to the United States through the Deeds of Cession.

II. ONCE INFORMED THEY WERE NOT CITIZENS, AMERICAN SAMOANS RELENTLESSLY SOUGHT CITIZENSHIP FOR DECADES.

In the 1920s, U.S. Naval officers informed the American Samoan people for the first time that they were not recognized as U.S. citizens by the federal government.⁴ *See, e.g.*, Aplee. Supp. App. at 48 (statement of Chief Liu that the U.S. Navy informed American Samoans that they learned they were not citizens); David A. Chappell, *The Forgotten Mau*, 69 Pac. Hist. Rev. 217 (2000) [Exhibit 6]. In response, prominent American Samoans organized a new political movement known as the Mau to press for recognition of U.S. citizenship and greater rights to self-government. Ex. 6 at 116–135.⁵ Despite repeatedly

⁴ Statutory recognition of American Samoans as “nationals, but not citizens, of the United States” did not occur until 1940. Nationality Act, Pub. L. No. 76–853, 54 Stat. 1137, 1139 (1940) (current version at 8 U.S.C. § 1408(1) (2018)).

⁵ The American Samoan Mau movement was separate and distinct from the more well-known Mau movement that formed around the same time in Western Samoa, which laid the foundation for Western Samoa’s eventual independence. Ex. 6, p.100-01. Independence was not a goal of the American Samoan Mau. *Id.*

being denied a citizenship vote in Congress, American Samoans continued their efforts to be recognized as U.S. citizens into the 1960s.

A. The uproar for citizenship in American Samoa launched a congressional investigation.

The Mau pushed for recognition of U.S. citizenship, organized public demonstrations, petitioned President Coolidge, and drew significant attention from Congress. Ex. 6 at 132–35. American Samoan protests for “their denied rights became an uproar, although without violence.” Hearing on H.R. 3564 Before the Subcomm. on Territorial & Insular Possessions of the H. Comm. on Pub. Lands, 80th Cong. 241 (June 2, 1947) (Statement of Harold Ickes, former Secretary of the Interior) [Exhibit 7 at 148]. As a result of these efforts, Congress formed the American Samoa Commission (the “Commission”) to respond to the demonstrations and petition for U.S. citizenship. Ex. 6 at 135.

In September and October 1930, the Commission convened extensive field hearings in Hawaii and American Samoa, led by four members of Congress and three American

Samoan chiefs, including a high chief who signed the 1900 Deed of Cession. Aplee. Supp. App. at 5–6, 9–10, 22–26.

B. American Samoans unanimously requested American citizenship.

The seven members of the Commission unanimously agreed to recommend that “full citizenship be granted to the inhabitants of Tutuila-Manua as of February 20, 1929, and to their children; and also to those inhabitants of Tutuila-Manua who were residing on the mainland of the United States or in the Territory of Hawaii.” Aplee. Supp. App. at 56. The Commission reported that all who testified wanted U.S. citizenship, “none disagreeing therewith.” S. Doc. No. 71-249 (G.P.O. 1931) [Exhibit 8 at 159]. American Samoans were unanimous in their desire for U.S. citizenship, making the Commissioners’ job an easy one.

American Samoans repeatedly and uniformly stated their desire to be recognized as U.S. citizens. Throughout the hearings, leader after leader emphasized that citizenship meant treating American Samoans as equals: “I desire . . . that the people of

American Samoa should be true American citizens; receive American citizenship, **to be equal with the true American.**”

Aplee. Supp. App. at 44 (statement of Chief Nua) (emphasis added). The leaders viewed the denial of citizenship as unfairly denying American Samoans the rights enjoyed by other Americans:

I appeal to the commission to give those people what they want. Give them American citizenship. **Give them the privilege of other people of the United States** I ask the commission to . . . try your best to give us American citizenship.

Aplee. Supp. App. at 37 (statement of Napoleon Tuiteleleapaga, composer of American Samoa’s anthem) (emphasis added). A chief representing Pago Pago, the capital of American Samoa, explained that American Samoans wanted full equality after years of living on American soil and under American governors:

[M]any years we have been under the American flag But . . . [w]e are not taken yet as citizens of America; . . . I pray . . . that we may be made citizens of the United States to serve the United States . . . we wish to become loyal and peaceful citizens of the United States.

Aplee. Supp. App. at 48 (statement of Chief Fanene). A chief representing Tau of the Manu'a Islands stated: "I wish . . . that the people of Samoa should obtain true American citizenship."

Aplee. Supp. App. at 46 (statement of Chief Matoa). A high chief emphasized the contradiction of the United States taking sovereignty over the land but denying citizenship to the American Samoan people:

[T]he soil of Tutuila and Manua has been made a part of America but the people of Tutuila and Manua are not American Citizens . . . I therefore pray that the people of Tutuila and Manua may also become citizens of America.

Aplee. Supp. App. at 53 (statement of High Chief Samuel Tulele Galeai).

American Samoans were unequivocal in their desire to be recognized as U.S. citizens: "[I]t is requested to . . . make recommendations for the people of American Samoa to become true American citizens." Aplee. Supp. App. at 41 (statement of Chief Sotoa). "[E]very person in American Samoa . . . earnestly

request . . . the people of Samoa to be a true American Citizen.” Aplee. Supp. App. at 43 (statement of Tui Manu’a Chris T. Young). “I request the commission to make a recommendation to Congress to take certain acts to have the people of Samoa as true American citizens.” Aplee. Supp. App. at 45 (statement of Chief Taulala).

Opposition to citizenship for American Samoans was expressed in racially paternalistic terms in the written testimony of former Naval Governor to American Samoa Henry Francis Bryan, “The people are primitive They become savage only when deeply aroused They are like grown-up, intelligent children who need kindly guidance” Aplee. Supp. App. at 66 (written statement of former Gov. H.F. Bryan). Bryan stated that, “the people of American Samoa are, at present, not at all prepared to become citizens of the United States; and have given the subject little or no thought.” Aplee. Supp. App. at 67.

The Commission ignored racist sentiments and advocated that American Samoans deserved U.S. citizenship for their loyalty and allegiance to the United States:

The people of American Samoa freely and without reserve offered the sovereignty of their islands to the United States. This offer Congress has accepted. These people owed no allegiance to any foreign government Their loyalty to the United States and their intense longings to have made certain their national status demand recognition.

Ex. 8 at 161.

C. The Commission recognized that American Samoans could be citizens and preserve their customs and traditions.

The Commission recognized the importance of preserving and protecting American Samoan customs and traditions, Fa'a Samoa, yet concluded that American Samoans could enjoy full U.S. citizenship and protect these customs. After considering “[t]he information furnished . . . by the persons appearing before the commission, by personal contact and observation made in American Samoa,” the Commission concluded “that the Samoans are capable of accepting and should receive full

American citizenship” and that they should “be given a bill of rights and a form of government, flexible in nature, which w[ould] allow them to . . . **maintain[] those native customs which they may wish to preserve.**” Ex. 8 at 159 (emphasis added). Private land would remain in American Samoan hands; “the ownership of private land [would] be confined to persons who [were] citizens of American Samoa” Ex. 8 at 165.

Other Commission recommendations were adopted in time. The Commission recommended that the Fono, the traditional council of American Samoa’s leaders, become the legislative assembly. Ex. 8 at 162. The Fono is now the American Samoan Legislature. Intervenor Defs.-Appellants Br. at 19.

D. Congressional recognition of American Samoans’ citizenship was stymied by racial animus.

Despite the Commissioners’ unanimous recommendation to recognize American Samoans as U.S. citizens, Congress repeatedly failed to act on the desires of the American Samoan people, largely due to racial animus, and partly due to opposition from the U.S. Navy, which at the time administered the islands.

In 1931, the U.S. Senate unanimously passed a bill to recognize American Samoans as citizens. *See* A Bill to Provide a Government for American Samoa: Hearing Before the H. Comm. on Insular Affairs on H.R. 9698, 72nd Cong. 26, 32 (G.P.O. 1933) [Exhibit 9 at 173, 179]. It was not reported out of the House Committee on Insular Affairs. Ex. 9 at 184. The Senate passed identical legislation in the next session, S. 417. *See* 75 Cong. Rec. 4133, 4591, 4844 (1932) [Exhibit 10 at 190, 191, 193]. But the legislation again failed in the House. *See* 76 Cong. Rec. 4926, 4937 (1933) [Exhibit 11 at 196, 207].

Speaking on the House floor, Representative Guinn Williams, a Commission member, said the bill fulfills the wishes of American Samoans for recognition as U.S. citizens, “the bill carries out the recommendations of the commission . . . the people there are desirous of being made citizens. **They are entitled to citizenship.**” Ex. 11 at 197 (1933) (statement of Rep. Williams) (emphasis added). Representative Carroll Beedy, another Commission member, explained that American

Samoans desired U.S. citizenship above all else, “Section 4 is the citizenship section, which is the one thing the Samoans must have if they are to be satisfied. They now have no citizen status in the world. They feel this very keenly.” Ex. 11 at 200 (statement of Rep. Beedy).

House opposition to recognizing American Samoans as U.S. citizens was fueled by archaic claims of racial inferiority, including the following:

- “What I am opposed to is taking American citizenship and flinging it . . . out to a group of people absolutely unqualified to receive it.”
- “[T]hese poor unsophisticated people.”
- “Let us not load upon them the responsibility of American citizenship. They can not take it.”
- “I say to you that this is a right that we ought to circumscribe with safeguards and is something that should never be given except as a privilege, and let us not give it to these people until they are able to appreciate the privilege. [Applause.]”

Ex. 11 at 202, 207 (statements of Rep. Jenkins). Responding to this racially charged language, a supporter called for setting aside racial prejudices to recognize American Samoans as citizens:

“[The people of American Samoa] want American citizenship, and that is about all they do want from us I think we can well waive our racial prejudices and scruples and give it to them” Ex. 11 at 202 (statement of Rep. Hooper).

The legislation was again defeated in the House. Ex. 11 at 207. In 1934, the Senate again unanimously passed legislation to recognize American Samoans as U.S. citizens. 78 Cong. Rec. 4895, 4899 (1934) [Exhibit 12 at 209–13]. The legislation again failed to clear House, and similar bills also failed in 1936 and 1937.⁶

In 1945, the American Samoan Fono passed a resolution demanding recognition of American Samoans as U.S. citizens. See Harold L. Ickes, Opinion, *Navy Withholds Samoan and Guam Petitions from Congress*, Honolulu Star-Bulletin, Apr. 16, 1947, at 9 [Exhibit 13 at 217]. Little was written of the 1945

⁶ See also Charles R. Venator-Santiago, *Citizens and Nationals...*, 10 Charleston L. Rev. 251, 271-72 (2016) (collecting, from 1931 to 2013, 31 bills introduced in Congress concerning U.S. citizenship for American Samoans).

resolution until 1947 when U.S. Representative C. Norris Poulson, accompanying U.S. Interior Secretary J.A. Krug on a visit to American Samoa, accused the Navy Department of intentionally withholding knowledge of the resolution from Congress. Ex.13 at 217. During Secretary Krug's visit, high talking chief Tuiasosopo of Pago Pago told U.S. Interior Secretary J.A. Krug that American Samoans still desired U.S. citizenship. *Samoans Said Anxious for Citizenship*, Honolulu Advertiser, Feb. 28, 1947, at 13 [Exhibit 14 at 220 and 221].

In 1960, American Samoan leaders passed another resolution demanding U.S. citizenship for American Samoans. In December 1960, a congressional subcommittee visited American Samoa. See Study Mission to E. [Am.] Sam., S. Comm. on Interior & Insular Affairs, 86th Cong., Rep. of Senators Oren E. Long, of Hawaii, and Ernest Gruening, of Alaska VII (G.P.O. 1961) [Exhibit 15 at 229]. Prior to the subcommittee's visit, radio broadcasts and local newspapers solicited American Samoans' views on U.S. citizenship and whether American Samoa should

remain a part of the United States. Ex. 15 at 247. American Samoan leaders presented their resolution requesting recognition as U.S. citizens to the commission. Ex. 15 at 246, 248. The congressional subcommittee reviewed the resolutions and, after meeting with American Samoan leaders, concluded:

[T]he people on the islands of Eastern Samoa choose America [T]he people of Eastern Samoa are desirous of remaining a part of the United States, that they are loyal to the United States, and that they are dedicated to political and economic development with the United States.

Ex. 15 at 236.

III. AMERICAN SAMOANS HAVE NEVER WAVERED IN THEIR COMMITMENT TO REMAIN PART OF THE UNITED STATES.

American Samoans have continuously pledged their allegiance to the United States, even as misconceptions about what citizenship would mean for American Samoa have arisen. In 1979, the American Samoa government produced a report on the future political status of the territory. It concluded that American Samoa should remain as a “territory of the United States.” American Samoa Government, Report from the Second

Temporary Future Political Status Study Commission 45 (Sept. 14, 1979) [Exhibit 16 at 256]. In 2007, an American Samoan government commission stated that “[t]he Samoan public . . . overwhelmingly emphasized . . . that American Samoa must remain part of the American family of states and territories” Am. Sam. Future Political Status Study Comm’n, Final Report 42 (2007) [Exhibit 17 at 272]. The Commission recommended that “American Samoa shall continue as [a U.S.] territory and that a process of negotiation with the U.S. Congress for a permanent political status be initiated.”⁷ Ex. 17 at 273.

⁷ Although the Commission recommended that “American Samoa not seek US citizenship for its people at this time,” Ex. 17, p.278, the Commission emphasized that concerns regarding U.S. citizenship such as federal taxation and loss of collective property rights, were unsupported:

We know now that taxes are based on income, not on nationality. Also, we know now that land is sold only by agreement of the owner, and that over 90 percent of land in American Samoa is communally owned and may not be alienated without consent of the entire family.

Ex. 17, p.276.

In 2017, the American Samoan government issued a statement to the United Nations that American Samoans remain loyal to the United States: “In spite of the democratic deficiencies, our loyalty and patriotism as a people [to the United States] is un-challenged.” Statement of Daniel Aga at the Caribbean Regional Seminar on the Implementation of the Third International Decade for the Eradication of Colonialism 5 (May 16–18, 2017) [Exhibit 18 at 285].

Throughout American Samoa’s territorial history, American Samoans have continually reaffirmed their loyalty, allegiance, and desire to remain a part of the United States. So long as American Samoa remains a part of the United States, all persons born in American Samoa are entitled to U.S. citizenship as a matter of right.

IV. CITIZENSHIP PROVIDES IMPORTANT BENEFITS, AND CONCERNS OVER CITIZENSHIP ARE MISPLACED.

A. American Samoans living in the 50 states require citizenship to enjoy the same rights as other Americans.

More American Samoans now live in the fifty states than in American Samoa. Ex. 17 at 269. The 2010 U.S. Census reported American Samoa's population was 55,519, while the population for Samoans living in the 50 states was 184,440.⁸ U.S. Census Bureau, CB11–CN.177, U.S. Census Bureau Releases 2010 Census Population Counts for American Samoa [Exhibit 20 at 309]. 60,876 Samoans live in California alone, and there are sizable Samoan populations in Hawai'i (37,463), Washington (18,351), Utah (13,086), and Alaska (5,953). See EPIC & Asian Americans Advancing Justice, Native Hawaiians & Pacific

⁸ The 2010 Census figures do not distinguish between Samoans (1) born in American Samoa; (2) born in independent Samoa or another foreign country; and (3) born in states to parents from either American Samoa or independent Samoa. See U.S. Census Bureau, 2010 Census Summary File 1 F-45 (2012) [Exhibit 19, p.305].

Islanders: A Community of Contrasts in the United States at 67 (2014) [Exhibit 21 at 333].

The distinction between citizen and non-citizen national has a disproportionate effect on American Samoans living outside American Samoa. In American Samoa, non-citizen nationals enjoy all the same rights as U.S. citizens—they can vote, run for office, and do not face obstacles to employment. *See e.g.*, Am. Sam. Const. art. II, §§ 3, 7 [Exhibit 22 at 346–347, 349]. But once a non-citizen national moves to another part of the United States, they are immediately disenfranchised at the federal, state, and local level, can no longer run for office, are prohibited from serving on juries, are often ineligible to serve as police officers or firefighters, and are even blocked from serving as officers in the U.S. military. *See* Brief of Amicus Curiae David B. Cohen in Support of Plaintiffs-Appellants, *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015) (No. 1492657) (describing the rights and benefits denied non-citizen nationals who live in the states) [Exhibit 23]. Each of the fifty states treats non-citizen nationals

differently, making it difficult for non-citizen nationals to understand their rights as they move to different jurisdictions. Ex. 23 at 384–85. In many circumstances, non-citizen nationals actually enjoy fewer rights and benefits than foreign nationals who have a green card. Ex. 23 at 385–86.

B. Concerns raised over impacts of citizenship are misplaced.

Despite the long history of American Samoan support for recognition as U.S. citizens, elected officials in American Samoa today have opposed recognizing citizenship as a right for people born in American Samoa, arguing instead that citizenship should be a privilege subject to congressional approval. Intervenor Defs.-Appellants Br. at 28. Concerns that birthright citizenship presents a threat to American Samoan self-determination or cultural preservation are misplaced. The question of self-determination for the American Samoan people to decide is whether to be a part of the United States, a question that continues to be answered in the affirmative. So long as the United States flag flies over American Samoa, the U.S. Constitution

provides an individual right to be recognized as a citizen that is not subject to the views of elected officials.

Fears that recognition of citizenship would increase federal control or judicial scrutiny over land ownership or traditional cultural practices have been disabused by American Samoa's 2007 political status commission and by leading constitutional scholars. *See, e.g.,* Christina Duffy Ponsa, Opinion, *Are American Samoans American?*, N.Y. Times (June 8, 2016) [Exhibit 25 at 450–52]; Noah Feldman, Opinion, *People of American Samoa Aren't Fully American*, Bloomberg View (March 13, 2016) [Exhibit 26 at 454–56]; Rogers Smith, *Differentiated Citizenship and Territorial Statuses*, in *Reconsidering the Insular Cases* 103, 124 (Gerald L. Neuman & Tomiko Brown-Nagin eds., 2015) (noting that “it is not evident, however, why treating [American Samoans'] citizenship as constitutionally based would raise the bar against accommodationist policies” structured to preserve American Samoans' land and cultural traditions) [Exhibit 27 at 484]. To the

extent American Samoa's land ownership rules or cultural protections raise constitutional concerns, these concerns exist separate and apart from whether American Samoans are recognized as citizens or non-citizen nationals. "The tension between traditional self-government and constitutional equality will have to be worked out regardless of the residents' citizenship status." Ex. 26 at 456.

CONCLUSION

In 1900, American Samoa's leaders believed that by transferring sovereignty to the United States, they would earn the right to be recognized as U.S. citizens. They were correct then, and they remain correct today. By affirming the district court's summary judgment for appellees, this Court will confirm for American Samoans the long-overdue recognition that they are the equals of all others born within the United States, as the Fourteenth Amendment requires.

STATEMENT REGARDING ORAL ARGUMENT

Amicus request oral argument to address the history of American Samoans seeking United States citizenship.

Dated: May 12, 2020

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. Rules 29(a)(5) and 32(a)(7)(B) and 10th Cir. R. 32 because it contains 5,123 words as determined by the word counting feature of Microsoft Word for Office 365, excluding the parts of the brief exempted by Rule 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Georgia and Palantino Linotype fonts.

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**CERTIFICATE OF DIGITAL SUBMISSION
AND PRIVACY REDACTIONS**

I certify that with respect to this brief:

- All required privacy redactions have been made in compliance with 10th Cir. R. 25.5.
- Consistent with this Court's General Order No. 95-1, *In re: Restrictions on Public Access to the Byron White United States Courthouse and Temporary Suspension of Paper Copy Requirements* (Mar. 16, 2020), *Amicus* have not submitted paper copies of their Brief or their exhibits, but stand ready to do so if the Court lifts its current suspension of the paper-copy requirements.
- The digital submission has been scanned for viruses with the latest version of Symantec Endpoint Protection, and according to that program, the digital submission is free of viruses.

Dated: May 12, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system, which will send notice of the filing to all counsel of record.

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