

U.S. Dept. of Justice Seeks to Deny Birthright Citizenship in U.S. Territories in 10th Circuit Argument

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On Wednesday, lawyers for the U.S. Department of Justice will argue that the U.S. Court of Appeals for the Tenth Circuit should reverse [Fitisemanu v. United States](#), a landmark ruling recognizing that individuals born in U.S. territories have the same right to citizenship as individuals born in the 50 states or the District of Columbia, Equally American, a nonprofit committed to achieving equal rights for Americans living in U.S. territories, has announced.

Lead plaintiff John Fitisemanu was born in American Samoa – a U.S. territory since 1900. For the last 20 years he has been a taxpaying, U.S. passport holding resident of Utah. However, based on a discriminatory federal law, he is labeled a “national, but not a citizen, of the United States.” In December, a district court recognized that he is a natural-born U.S. citizen. The next day, Mr. Fitisemanu registered to vote. But because the district court later stayed its ruling pending appeal,

Mr. Fitisemanu will be unable to vote in November unless the district court's ruling is affirmed by the Tenth Circuit, according to the release.

"With an important election around the corner, I am hopeful the Tenth Circuit will act quickly so that I will be finally be able to vote," Mr. Fitisemanu said in advance of the argument. "All my life I've met my obligations as an American, it is time I'm able to exercise my rights as a citizen."

The Tenth Circuit arguments in Fitisemanu will be held via video conference. Audio of the argument will be streamed live and recorded at <https://www.youtube.com/watch?v=xYizIdJz2L4>. Fitisemanu is the final case of the day, so is anticipated to start around a bit after 10:30am Mountain Time (12:30pm ET). The panel includes Chief Judge Timothy Tymkovich and Judges Carlos Lucero & Robert Bacharach.

"It is astounding that 120 years after the U.S. flag first began flying over American Samoa and other island territories that the U.S. Department of Justice continues to argue that these places are not part of the 'United States' when it comes to the Constitution's guarantee of birthright citizenship," said Neil Weare, co-counsel in Fitisemanu and president and founder of [Equally American](#). "But what's even more shocking is that DOJ is relying on a series of controversial and racist Supreme Court decisions that just this summer the Supreme Court said should not be expanded in this way."

According to the release, the United States arguments against birthright citizenship rely on an expansive interpretation of the Insular Cases, which established a doctrine of "separate and unequal" status for residents of overseas U.S. territories. The Insular Cases have long been compared to Plessy v. Ferguson, which provided the legal foundation for racial segregation in the United States. However, unlike Plessy, the Insular Cases have not yet been overruled, although in June the Supreme Court [cited](#) approvingly to earlier decisions saying the Insular Cases "should not be further extended." Nonetheless, the United States cited the Insular Cases on a quarter of the pages of its opening brief and fully half the pages of its reply brief before the Tenth Circuit, relying on many of the Insular Cases' most openly racist passages.

The Fitisemanu plaintiffs have found [support](#) from current and former elected officials representing Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands – American Samoa is supporting the U.S. position that Congress has the unilateral power to extend or deny citizenship in the territories. Also supporting the Fitisemanu plaintiffs is the Samoan Federation of America, the Virgin Islands Bar Association, a diverse array of legal scholars, and the ACLU.

The Tenth Circuit is unlikely to issue an immediate decision, said the release, with an opinion expected in the coming months. However the Tenth Circuit rules, the case is likely to be appealed to the U.S. Supreme Court.