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U.S. Constitution Provides No Guarantee of Citizenship For People Born in U.S. Territories, Court of Appeals Judge Rules

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US and USVI flags.

Writing for a divided panel on the U.S. Court of Appeals for the Tenth Circuit, Judge Carlos Lucero on Tuesday [ruled](#) that the U.S. Constitution provides no guarantee of citizenship to people born in U.S. territories, reversing a 2019 district court decision [holding](#) that the Citizenship Clause of the Fourteenth Amendment applied in states and territories alike.

According to Equally American, which advocates for equal rights for residents of U.S. territories, Chief Judge Timothy Tymkovich wrote a short separate concurrence. Judge Robert Bacharach wrote a powerful 55-page dissent setting forth how the Constitution's text, purpose, and history all

“unambiguously” support recognizing that the Constitution’s guarantee of birthright citizenship extends to people born in U.S. territories.

“We are disappointed, and frankly surprised, by this result. Last year the Supreme Court made clear that the Insular Cases should not be expanded beyond their limited scope, yet here the Tenth Circuit did just that to deny the right of citizenship to people born in U.S. territories,” said Neil Weare, president and founder of Equally American. “We are considering our options moving forward in light of the Tenth Circuit’s decision to ignore the Supreme Court’s recent guidance narrowing the application of the Insular Cases in U.S. territories.”

Last June, in response to calls to overrule the Insular Cases, the U.S. Supreme Court [stated](#) in upholding the constitutionality of the Puerto Rico Oversight Board that “the Insular Cases should not be further extended,” questioning their “continued validity” and calling them “much-criticized.”

“The Tenth Circuit’s majority opinion fundamentally misunderstands the historical record when it comes to questions of citizenship in American Samoa,” said Charles Ala’ilima, a prominent American Samoan attorney who serves as co-counsel to the Fitisemanu plaintiffs. “It is not that American Samoans have a ‘preference against citizenship,’ or that citizenship is ‘not wanted’ – I take Congresswoman Amata and the Government of American Samoa to simply be arguing that the question of citizenship should be decided by Congress, not recognized as a constitutional right.”

Ala’ilima added, “Indeed, American Samoa’s traditional leaders believed they became citizens the moment they transferred sovereignty to the United States through the Deeds of Cession in 1900 and 1904. When the United States informed our traditional leaders in the 1920s that citizenship was being withheld from American Samoans, they fought for decades to be recognized as full U.S. citizens, only to be repeatedly denied by Congress because of racism and opposition from the U.S. Navy. Today, concerns about U.S. citizenship in American Samoa largely turn on fears that it would threaten the preservation of our land and culture or limit self-determination, but these fears, as explained in Judge Bacharach’s dissent and by other legal experts, are simply not supported by relevant legal precedent or the historical experience of other territories.”

In terms of next steps, the Fitisemanu plaintiffs have 45 days to consider making a request for review of the panel’s decision by the full Tenth Circuit, a process known as “en banc” review, or 90 days to consider seeking review from the U.S. Supreme Court, a process known as a petition for certiorari, according to Equally American.

The Tenth Circuit’s decision in *Fitisemanu v. United States* is available [here](#). All court filings and additional information about the case is available [here](#).

An FAQ about citizenship and American Samoa is available [here](#).