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Americans Born in U.S. Territory Who are Denied Citizenship Seek Review by Full Tenth Circuit

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Three Americans born on U.S. soil in American Samoa – a U.S. territory since 1900 – are seeking en banc review by the U.S. Court of Appeals for the Tenth Circuit after a fractured panel reversed an historic district court decision in *Fitisemanu v. United States* that recognized them as U.S. citizens, Equally American, which represents the *Fitisemanu* plaintiffs and advocates for equality and civil rights in U.S. territories, has announced.

The Citizenship Clause of the Fourteenth Amendment guarantees that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” But because of a discriminatory federal law, people born in American Samoa are labeled as “nationals, but not citizens, of the United States,” Equally American said.

According to the release, last month, the Tenth Circuit panel relied on an expansive interpretation of the much-criticized Insular Cases and ignored the clear command of the Supreme Court in *Wong Kim Ark* to rule that citizenship is not a “fundamental right” in overseas territories and depends on Congress’ whims, not the Constitution. The decision puts at risk the citizenship status of more than 3.5 million Americans living in the territories, since the federal government only recognizes those born in other territories as U.S. citizens by statute, stated Equally American.

“Just last year the Supreme Court made clear that the Insular Cases should not be expanded, yet that is precisely what the divided Tenth Circuit panel did in denying citizenship to our clients,” said Neil Weare, president and founder of Equally American. “The full Tenth Circuit should review the panel’s decision both because it ignores clear Supreme Court precedent and because citizenship is the foundation of who we are as Americans. It is absurd that John Fitisemanu is recognized as a passport-holding American, but not a U.S. citizen.”

The divided Tenth Circuit panel also grounded its ruling on an assumption that there is a “preference against citizenship” based on opposition to the case from elected officials in American Samoa, and unsupported concerns that recognition of citizenship might impact cultural and political self-determination in American Samoa.

“American Samoans are proud to be Americans and do not wish to establish any political relationship with the United States other than under the sovereignty deeded by their forefathers and represented by the U.S. flag. This sentiment is expressed by all American Samoans I have encountered in my lifetime, including those now opposing full citizenship. If that is the case then people born in American Samoa have a U.S. constitutional right to be recognized as full U.S. citizens and not this lesser status that is now assigned them at birth,” said Charles Ala’ilima, a prominent American Samoan attorney who represents the Fitisemanu plaintiffs.

He added, “Concerns that citizenship could threaten our land and culture are misplaced, and the ongoing denial of U.S. citizenship to American Samoans has real-life consequences for thousands of American Samoans every day.”

Equally American said it has heard directly from more than a thousand American Samoans living both in American Samoa and throughout the 50 states who are denied recognition of citizenship and want to be recognized as citizens without having to naturalize. They have shared how being denied citizenship has made them feel, and how it has impacted their lives, according to the release.

Hundreds of the American Samoans the nonprofit has heard from are denied citizenship despite distinguished military careers. You can read what they think, in their own words, at https://www.equalrightsnow.org/american_samoan_voices.

Others born in American Samoa who wish to share their thoughts can take Equally American’s “Citizenship Survey” at https://www.equalrightsnow.org/citizenship_survey.

“While the Tenth Circuit simply assumes American Samoans do not want citizenship, the American Samoans we have heard from tell a different story. Their powerful voices also deserve to be heard, not just the voices of elected officials in American Samoa,” Mr. Weare added.

Amicus parties supporting review of the panel’s decision by the Tenth Circuit will be filing their briefs by Friday, August 6, 2021. The Tenth Circuit is likely to decide whether to grant review by the full court in the coming months.

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