

MICHAEL F. WILLIAMS, P.C. (*pro hac vice* pending)
KATHLEEN A. BROGAN (*pro hac vice* pending)
BRITNEY A. LEWIS (*pro hac vice* pending)
LAUREN N. BEEBE (*pro hac vice* pending)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000
mwilliams@kirkland.com

JESS M. KRANNICH (Utah Bar #14398)
TREVOR J. LEE (Utah Bar #16703)
MANNING CURTIS BRADSHAW
& BREDNAR PLLC
136 E. South Temple
Salt Lake City, UT 84111
(801) 363-5678
jkrannich@mc2b.com

Counsel for the American Samoa Government and the Hon. Aumua Amata

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

JOHN FITISEMANU, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 1:18-cv-00036

Judge Clark Waddoups

**INTERVENORS' REPLY IN SUPPORT
OF MOTION TO DISMISS, OR, IN THE
ALTERNATIVE, CROSS-MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs decline to respond substantively to, or engage in any way with, the American Samoan Government and Congresswoman Aumua Amata’s arguments. *See* Opp’n to Intervenor’s Mot. to Dismiss and Cross-Mot. for Summ. J. [ECF No. 93]. And nowhere in Plaintiffs’ prior pleadings do they sufficiently address why the Court should ignore the position of the Intervenor and impose U.S. citizenship on all American Samoans—over the objections of their democratically elected representatives and despite their unique cultural and historical circumstances.

In contrast to Plaintiffs’ position, Supreme Court precedent directly invites the Court to consider American Samoan culture and the potential effect of imposition of U.S. citizenship by judicial fiat. As this Court recognized, this case involves the question of “whether, under the Insular Cases framework, persons born in American Samoa are entitled to a fundamental right to citizenship.” Order Den. Mot. for Intervention of Right but Granting Mot. for Permissive Intervention 10-11 [ECF No. 92]. Under this framework, courts consider whether imposing birthright citizenship “would be ‘impracticable and anomalous,’” considering the “particular circumstances” of American Samoa. *Boumediene v. Bush*, 553 U.S. 723, 759 (2008) (quoting *Reid v. Covert*, 354 U.S. 1, 75 (1957)); *see Tuaua v. United States*, 788 F.3d 300, 310 (D.C. Cir. 2015). Intervenor described at length multiple aspects of *fa’a Samoa* that are unique to American Samoa and that could be jeopardized by a decision imposing citizenship that it does not want. Intervenor’s Mot. to Dismiss, or in the Alternative, Cross-Mot. for Summ. J. [ECF No. 89]. Nowhere do plaintiffs dispute any of the aspects of *fa’a Samoa* described by Intervenor. Because of these unique traditional aspects alone, it would be impractical and anomalous for the Court to impose U.S. citizenship upon American Samoa against its will. But moreover, imposing U.S. citizenship—and all the privileges and responsibilities associated with it—on all American Samoans would constitute “an exercise of paternalism—if not overt cultural imperialism—

offensive to the shared democratic traditions of the United States and modern American Samoa.”
Tuaua, 788 F.3d at 312.

The Court should dismiss the Complaint in its entirety for failure to state a claim upon which relief can be granted, and deny Plaintiffs’ motion for summary judgment as moot. In the alternative, the Court should deny Plaintiffs’ motion for summary judgment, and grant Defendants’ and Intervenor’s cross-motions for summary judgment, on all claims.

Dated: September 28, 2018

Respectfully submitted,

MICHAEL F. WILLIAMS, P.C. (*pro hac vice* pending)
KATHLEEN A. BROGAN (*pro hac vice* pending)
BRITNEY A. LEWIS (*pro hac vice* pending)
LAUREN N. BEEBE (*pro hac vice* pending)
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5000
mwilliams@kirkland.com

By: /s/ Jess M. Krannich
JESS M. KRANNICH (Utah Bar #14398)
TREVOR J. LEE (Utah Bar #16703)
MANNING CURTIS BRADSHAW
& BREDNAR PLLC
136 E. South Temple
Salt Lake City, UT 84111
(801) 363-5678
jkrannich@mc2b.com

Counsel for the American Samoa Government and the Hon. Aumua Amata

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7-1(a)(3)(C) of the Local Rules of Civil Practice, I hereby certify that the textual portion of the foregoing motion (exclusive of the signature blocks, certificates of service and compliance, but including footnotes) contains 392 words as determined by the word counting feature of Microsoft Word 2016.

I also hereby certify that electronic files of this reply have been scanned for viruses and are virus-free.

/s/ Jess M. Krannich

Jess M. Krannich

CERTIFICATE OF SERVICE

I certify that on September 28, 2018, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system, which will accomplish service through the Notice of Electronic Filing for parties and attorneys who are Filing Users.

/s/ Jess M. Krannich

Jess M. Krannich