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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

JOHN FITISEMANU; PALE TULI;
ROSAVITA TULI; and SOUTHERN
UTAH PACIFIC ISLANDER
COALITION;

Plaintiffs,

v.

UNITED STATES OF AMERICA;
U.S. DEPARTMENT OF STATE;
JOHN J. SULLIVAN, in his official
capacity as Acting Secretary of the U.S.
Department of State; and
CARL C. RISCH, in his official
capacity as Assistant Secretary of State
for Consular Affairs;

Defendants.

Case No. 1:18-cv-00036-CW

**BRIEF OF THE SAMOAN
FEDERATION OF AMERICA, INC.
AS *AMICI CURIAE* IN SUPPORT
OF PLAINTIFFS**

Honorable Judge Clark Waddoups

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**BRIEF OF AMICUS CURIAE SAMOAN FEDERATION OF AMERICA
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

INTEREST OF AMICUS CURIAE

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 the last 33 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 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 118 years, American Samoans have saluted the American flag, lived on American soil, and been governed by American laws. In 1900, the people of what would become American Samoa voluntarily ceded sovereignty of their islands to the United States, becoming a United States territory. As the United States flag rose over Pago Pago harbor on April 17, 1900, those who signed the Deeds of Cession believed that the transfer of sovereignty would mean they 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.

The reaction in American Samoa was swift, and a new political movement known as the Mau coalesced to demand recognition of citizenship and greater local self-governance. In the following decades, American Samoan leaders were unrelenting in their demand to be recognized equally 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 2018, federal courts should recognize 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.

ARGUMENT

I. AMERICAN SAMOANS UNDERSTOOD, CORRECTLY, THAT THE TRANSFER OF SOVEREIGNTY TO THE UNITED STATES CREATED A RIGHT TO U.S. 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. 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 Claim to Sovereignty Before 1900

Prior to 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 (Comm. Print 1960)

[Exhibit 1 at 9¹]. 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 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

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

over the eastern Samoan islands, including Tutuila, in favor of the United States.
31 Stat. 1878.

**B. In 1900, Samoans Believed U.S. Citizenship Followed 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 powers 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 . . . 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.²

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 Manu’a . . . 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 Manu’a Islands 2, (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).

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 (1931) (“[T]he Samoans understood first that annexation by the United States

² April 17th, “Flag Day,” is the largest annual public celebration in American Samoa and is commemorated by American Samoan communities throughout the United States.

meant the people would receive American citizenship.”) [Exhibit 4 at 53]; Ex. 4 at 55 (“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 (1931) [Exhibit 5 at 71] (statement of Chief Sotoa) (“[W]e underst[oo]d in that annexation that we automatically became American citizens.”).

C. Settled Law Supported Belief of Right to U.S. Citizenship Following Transfer of Sovereignty

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 accorded with the settled legal precedent of the time. 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 less than a decade 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 OF NON-CITIZEN NATIONAL STATUS, AMERICAN SAMOANS RELENTLESSLY SOUGHT EQUALITY AS U.S. CITIZENS FOR DECADES.

In the 1920’s, 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.³ *See, e.g.*, Ex. 5 at 78 (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

³ Statutory recognition of American Samoans as “nationals, but not citizens, of the United States” did not occur until 1940. Nationality Act, ch. 876, § 204(a), 54 Stat. 1137, 1139 (1940) (current version at 8 U.S.C. § 1408(1) (2018)).

known as the Mau to press for recognition of U.S. citizenship and greater rights to self-government. Ex. 6 at 116-135.⁴ In the face of repeated inaction from Congress, efforts to be recognized as U.S. citizens continued through the 1960s.

A. Mau Movement and 1930's Testimony Supporting Recognition of Citizenship

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. The Mau's protest 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]. Word of political unrest in American Samoa reached Senator Hiram Bingham of Connecticut. Sen. Bingham introduced legislation to study the

⁴ 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.*

political discontent in American Samoa and was appointed chair of the resulting American Samoa Commission (the “Commission”). Ex.6 at 135.

Comprised of four members of Congress and three American Samoan chiefs, in 1930 the Commission convened extensive field hearings in American Samoa. Ex. 4 at 35-36, 39-40, 52-56. Throughout the hearings, American Samoans repeatedly and uniformly stated their desire to be recognized as U.S. citizens. American Samoans emphasized the importance of being treated 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.**” Ex. 5 at 74 (statement of Chief Nua) (emphasis added). They viewed the denial of citizenship as unfair and desired to enjoy the same rights as 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.

Ex. 5 at 67 (statement of Napoleon Tuiteleleapaga, composer of American Samoa’s anthem) (emphasis added). A chief representing Pago Pago 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.

Ex. 5 at 78 (statement of Chief Fanene). A chief representing Ta'u of the Manu'a Islands stated: "I wish . . . that the people of Samoa should obtain true American citizenship." Ex. 5 at 76 (statement of Chief Matoa). A high chief emphasized the contradiction of being under the sovereignty of the United States while not being recognized as citizens:

[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.

Ex. 5 at 83 (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." Ex. 5 at 71 (statement of Chief Sotoa). "[E]very person in American Samoa . . . earnestly requests . . . the people of Samoa to be a true American Citizen." Ex. 5 at 73 (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.” Ex. 5 at 75 (statement of Chief Taula).

Opposition to citizenship for American Samoans was limited to written testimony to the Commission from former Naval Governor to American Samoa Henry Francis Bryan, who expressed racially paternalistic views towards the American Samoan people: “The people are primitive They become savage only when deeply aroused They are like grown-up, intelligent children who need kindly guidance.” Ex. 5 at 96 (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.” Ex. 5 at 97.

The passionate testimony by American Samoa’s leaders persuaded the Commission otherwise. At the close of the hearings, Commission Chair Senator Bingham reported that the seven commissioners unanimously supported recognition of U.S. citizenship: “We shall make a report to the Congress of the United States which will contain, among other things . . . [t]hat full American citizenship be granted to the inhabitants of Tutuila-Manua.” Ex. 5 at 86. The Commission’s report characterized the hearing testimony as, “sincere, and

expressed with deep emotion...that the inhabitants of American Samoa be given full recognition as citizens of the United States.” S. Doc. No. 71-249 6 (1931) [Exhibit 8 at 159]. The Report reflected American Samoans’ principal aims of obtaining recognition of citizenship while preserving their customs and traditions:

The information furnished . . . by personal contact and observation made in American Samoa has brought the commission to the . . . conclusion[] . . . that the Samoans are capable of accepting and should receive full American citizenship . . . yet maintaining those native customs which they may wish to preserve.

Ex. 8 at 159. The Report concluded that in addition to being the just reward for American Samoans’ loyalty and allegiance, the Deeds of Cession *necessitated* a grant of citizenship:

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.

B. Congressional Recognition of Citizenship Stymied by Racial Animus

Despite the Commission’s 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 on H.R. 9698 Before the H. Comm. on Insular Affairs, 72nd Cong. 26, 32 (1932) [Exhibit 9 at 173, 179]. However, the bill 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 Carroll Beedy, who served on the American Samoa Commission, described the bill as fulfilling the wishes of American Samoans for recognition as U.S. citizens. Beedy spoke to his personal knowledge of American Samoans' desires, stating that "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) (emphasis added). "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:

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 200, 207 (statement 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. Hopper).

The legislation was again defeated in the House. Ex. 11 at 202. 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, 213]. The

legislation again failed to clear House, and similar bills also failed in 1936 and 1937.⁵

In 1945 the American Samoan Fono,⁶ an advisory body of American Samoan leaders, passed a resolution demanding recognition of American Samoans as U.S. citizens. 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 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 221].

⁵ 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).

⁶ In present-day American Samoa, the Fono is the official name of the legislative branch of the territorial government.

In 1960, American Samoan leaders passed another resolution demanding U.S. citizenship for American Samoans. In December 1960, a congressional subcommittee visited American Samoa. 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 (Comm. Print 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' desire to remain a part of the United States has continued unabated to the present, 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 States Require Citizenship to Enjoy 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 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,

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].

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 50 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. *See* Brief in Opposition by Respondents American Samoa Government & Office of Congressman Aumua Amata of American Samoa, *Tuaua v. United States* (U.S. May 11, 2016) (No. 15-981), *petition for cert. denied*, (U.S. June 13, 2016),

[Exhibit 24 at 440]. But these elected officials' 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 or not 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 the American Samoan government's own 2007 political status commission as well as 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 Statutes*, 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 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 have a right to be recognized as U.S. citizens. They were right then, and they remain right today. By granting the Plaintiffs’ motion for summary judgment, this Court would grant American Samoans the long-overdue recognition that they are the equals of all others born within the United States, as the Fourteenth Amendment requires.

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Respectfully submitted.

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