

In the
Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF
THE UNITED STATES, ET AL.,
PETITIONERS,

v.

BARBARA, ET AL.,
RESPONDENTS.

On Writ of Certiorari Before Judgment to the
United States Court of Appeals for the First Circuit

**BRIEF OF CURRENT AND FORMER
ELECTED OFFICIALS AND JUDGES FROM
U.S. TERRITORIES AS AMICI CURIAE
SUPPORTING RESPONDENTS**

NEIL C. WEARE
Counsel of Record
ADI MARTÍNEZ-ROMÁN
RIGHT TO DEMOCRACY PROJECT
1300 Pennsylvania Ave. NW
190-413
Washington, DC 20004
202.304.1202
neil@righttodemocracy.us

PAUL M. KRIEGER
PATRICIO G. MARTÍNEZ
LLOMPART
KKL LLP
350 5th Ave, 77th Floor
New York, NY 10118
Counsel for Amici Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	6
I. The Citizenship Clause Provides a Bright-Line Rule That Is Not Subject to Political Manipulation.....	6
II. Because of this Court’s Unjustified Defer- ence, the Political Branches Have Imper- missibly Tried to Define the Scope of Cit- izenship in the Territories	9
A. After the Spanish-American War, the Executive Branch Sought to Deny Citizenship to People in Territories it Deemed Racially and Culturally Infe- rior	9
B. This Court Has Improperly Allowed the Political Branches to Redefine the Citizenship Clause to Exclude People in the Territories.....	14
III. This Court’s Unjustified Deference to the Political Branches Unsettles Citizenship in U.S. Territories and has Resulted in American Samoans Facing Discrimina- tion and Criminal Prosecution.....	21

A. “Statutory” Citizenship in the Territories Remains Under Threat From the Political Branches.....	21
1. 2021 State Department Foreign Affairs Manual	22
2. 2001 DOJ Letter to Congress	23
3. 1996 House Report on United States-Puerto Rico Political Status Act.....	24
4. 1989 Congressional Research Service Memo	26
B. American Samoan “Non-Citizen” U.S. Nationals Face Broad Discrimination and Even Criminal Prosecution.....	27
CONCLUSION	32
APPENDIX: LIST OF <i>AMICI CURIAE</i>	1-A

TABLE OF AUTHORITIES

	<i>Page(s)</i>
Cases	
<i>Afroyim v. Rusk</i> , 387 U.S. 253 (1967)	3, 5, 6, 26, 27
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	27
<i>Downes v. Bidwell</i> , 182 U.S. 244 (1901)	13
<i>Elk v. Wilkins</i> , 112 U.S. 94 (1884)	8, 10, 11, 18
<i>Fitisemanu v. United States</i> , 20 F.4th 1325 (10th Cir. 2021).....	19
<i>Fitisemanu v. United States</i> , 426 F. Supp. 3d 1155 (D. Utah 2019)	19, 20, 29
<i>Gonzales v. Williams</i> , 192 U.S. 1 (1904)	14-16, 24, 25
<i>Inglis v. Trs. of Sailor’s Snug Harbor</i> , 28 U.S. (3 Pet.) 99 (1830)	6
<i>Loughborough v. Blake</i> , 18 U.S. 317 (1820)	7
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803)	5
<i>Nat’l Bank v. County of Yankton</i> , 101 U.S. 129 (1880)	8
<i>Perez v. Brownell</i> , 356 U.S. 44 (1958)	5

<i>Picquet v. Swan</i> , 19 F. Cas. 609 (C.C.D. Mass. 1828)	7
<i>Plessy v. Ferguson</i> , 163 U.S. 537 (1896)	14
<i>Rogers v. Bellei</i> , 401 U.S. 815 (1971)	24-26
<i>Slaughter-House Cases</i> , 83 U.S. 36 (1873)	7-8
<i>Tuaua v. United States</i> , 788 F.3d 300 (D.C. Cir. 2015)	18, 20, 28
<i>United States v. Vaello Madero</i> , 596 U.S. 159 (2022)	14, 20
<i>United States v. Wong Kim Ark</i> , 169 U.S. 649 (1898)	2, 3, 6-8, 10, 11, 18, 19
<i>Veneno v. United States</i> , 607 U.S. __ (2025)	27
Constitutional Provisions	
U.S. Const. amend. XIV	2, 3, 7, 10, 13, 23-26, 30
Statutes, Rule and Regulations	
10 U.S.C. § 532(a)(1)	28
32 C.F.R. § 154.16(a)	28
32 C.F.R. § 154.3(dd)	28
Alaska Admin. Code tit. 7 § 41.350 (a)(4)	29
Alaska Admin. Code tit. 7 § 44.900(22)	29
Alaska Admin. Code tit. 11 § 64.230(1)	29
Alaska Admin. Code tit. 13 § 85.010(a)(1)	31

Alaska Stat. Ann. § 47.45.302(3)	29
Nationality Act of 1940 § 204, Pub. L. 76-852, 54 Stat. 1139 (1940)	18
Other Authorities	
8 <i>Foreign Affairs Manual</i> (FAM) 301.1-1(b).....	22
Br. For ACLU as <i>Amici Curiae</i> Supporting Plain- tiffs-Appellees, <i>Fitisemanu</i> , 1F.4th 862 (10th Cir. 2021)	28
Br. for the United States, <i>Gonzales v. Williams</i> , 192 U.S. 1 (1904)	15
Br. of Federal Respondents in Opposition, <i>Tuaua v. United States.</i> , 579 U.S. 902 (2016) (No. 15-981)	20, 21
Alex Burness, <i>Americans by Name, Punished for Believing it</i> , Bolts (Jan. 8, 2026), https://boltsmag.org/prosecuted-for-voting- american-samoans-alaska/	30
Cong. Globe, 39th Cong., 1st Sess. (1865)	6, 7
Convention Between the United States and Denmark, Etc., Den.-U.S., art. VI, Aug. 4, 1916, 39 Stat. 1706.....	17
Ross Dardani, <i>Citizenship in Empire: The Legal History of U.S. Citizenship in American Sa- moa, 1899-1960</i> , 60 Am. J. Legal Hist. 311 (2020)	28
Christina Duffy Burnett, “ <i>They Say I Am Not an American. . .</i> ”: <i>The Noncitizen National and the Law of American Empire</i> , 48 Va. J. Int’l L. 659 (2008)	16

Sam Erman, <i>Almost Citizens: Puerto Rico, the U.S. Constitution, and Empire</i> (2018)	8-10
H.R. Rep. No. 69-2065 (1927).....	17
H.R. Rep. No. 104-713 (1996).....	24
Luther Harris Evans, <i>The Virgin Islands: From Naval Base to New Deal</i> (1945).....	17-18
Headquarters, U.S. Dep't of Army, Exec. Order 107-18 (18 March 2018)	28
Arnold Leibowitz, <i>Defining Status: A Comprehensive Analysis of United States Territorial Relations</i> (1989).....	17
Letter from Carlos Felipe Uriarte, Assistant Att'y Gen., to Raúl M. Grijalva, U.S. Representative (May 2024).....	20
Letter from Robert Raben, Assistant Att'y Gen, to Frank H. Murkowski, Senator and Chairman of Comm. on Energy and Natural Resources (Jan. 18, 2001).....	23, 24
Charles E. Littlefield, <i>The Insular Cases (II: Dred Scott v. Sandford)</i> , 15 Harv. L. Rev. 281 (1901)	7
Charles E. Magoon, <i>Additional Memoranda to the Report on Legal Status of the Territory and Inhabitants of the Islands Acquired by the United States During the War with Spain</i> (1900)	11, 12
Charles E. Magoon, <i>Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the</i>	

<i>United States Submitted to Hon. Elihu Root, Secretary of War</i> (2d ed. 1902)	10, 11, 12, 13
Memorandum from Am. Law Div., Cong. Rsch. Serv., to Senator Bennett Johnston (Mar. 9, 1989)	26
Memorandum from Brett A. Shumate, Assistant Att’y Gen., U.S. Dep’t of Justice, to Civil Division Employees (June 11, 2025).....	22
Michael D. Ramsey, <i>Originalism and Birthright Citizenship</i> , 109 Georgetown L.J. 405 (2020).....	8
William Rawle, <i>A View of the Constitution of the United States of America</i> (2d ed. 1829)	7
Anna Williams Shavers, <i>A Century of Developing Citizenship Law and the Nebraska Influence: A Centennial Essay</i> , 70 Neb. L. Rev. 462 (1991)	8
Supplemental Br. for the United States, <i>Gonzales v. Williams</i> , 192 U.S. 1 (1904).....	15
Tr. of Oral Arg., <i>De Lima v. Bidwell</i> , 182 U.S. 1 (1901)	12
Tr. of Oral Arg., <i>Goetze v. United States</i> , 182 U.S. 221 (1901)	12
Treaty of Peace Between the United States and the Kingdom of Spain, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754.....	9

William-José Vélez González, *Advocacy Grows as Alaska Prosecutes American Samoans Over Voter Eligibility*, Pasquines (Dec. 24, 2025), <https://pasquines.us/2025/12/24/advocacy-grows-as-alaska-prosecutes-american-samoans-over-voting-eligibility/> 31

City of Whittier Alaska, *04.29.2025 City Council Special Meeting* (YouTube Apr. 29, 2025), <https://www.youtube.com/live/3t3G5sUK-KVM?t=1455s> 31

INTEREST OF *AMICI CURIAE*¹

Amici are current and former elected officials and judges from the U.S. Virgin Islands, Puerto Rico, Guam, the Northern Mariana Islands (“NMI”), and American Samoa. They span the political spectrum and have diverse views on issues of political status. They each reject the idea that Congress or the President can—consistent with the Citizenship Clause of the Fourteenth Amendment—unilaterally deny U.S. citizenship to those born under the sovereignty and jurisdiction of the United States. At the same time, they each support the distinct issue of a right to self-determination and decolonization—whether that is towards a continuing or separate relationship with the United States. The full list of *amici* appears in the Appendix.

Amici are uniquely positioned to illustrate what happens when this Court—as Petitioners urge here—mistakenly defers to the political branches on the meaning and scope of the Citizenship Clause.

For 125 years, this Court’s unjustifiable deference has permitted the Executive Branch and Congress to try and impermissibly narrow the geographic reach of the Citizenship Clause to exclude those born in island Territories. Because of this, those born in most Territories are recognized by the political branches as only “statutory” U.S. citizens, with those born in American Samoa labeled U.S. nationals *but*

¹ No counsel for a party authored this brief in whole or in part and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission.

not U.S. citizens. The consequences are far from abstract. Those born in Territories that enjoy statutory citizenship live under the looming specter of pronouncements by Congress and the U.S. Department of Justice (“DOJ”) asserting that their citizenship can be revoked by Congress, *even retroactively*. And American Samoan “non-citizen” U.S. nationals residing in the 50 States are regularly discriminated against, with some even facing criminal prosecution based on their status.

By centering the history and experience of people in the Territories as a troubling object lesson, *amici* urge the Court to affirm, rejecting the invitation to again allow the political branches to break from well-settled understandings of the Citizenship Clause.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Citizenship Clause guarantees U.S. citizenship to anyone born “in the United States” and “subject to the jurisdiction thereof.” U.S. Const. amend. XIV, § 1. At issue in this case is whether the President—by mere Executive Order—can redefine the Constitution’s guarantee of birthright citizenship.

Amici agree with Respondents that the Court should reject any attempts by the Executive Branch “to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship.” *Wong Kim Ark*, 169 U.S. 649, 703 (1898). As this Court unequivocally held in *Wong Kim Ark*: the “established rule of citizenship by birth” cannot be

“superseded or restricted, in any respect,” by any “authority, legislative, executive or judicial.” *Id.* at 674. This Court later reiterated that “Fourteenth Amendment citizenship [is] not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit.” *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967).

The experience of those born in the U.S. Virgin Islands, Puerto Rico, American Samoa, Guam, and the NMI—where U.S. citizenship turns on political whim rather than constitutional right—demonstrates what goes wrong when this Court allows the Executive Branch and Congress to improperly define for themselves the scope and meaning of the Citizenship Clause. The question of constitutional birthright citizenship in the Territories primarily turns on the meaning of “in the United States” rather than “subject to the jurisdiction thereof.” U.S. Const. amend. XIV, § 1. But there are troubling parallels between how the Executive Branch is acting today and how the Executive Branch acted unilaterally following the 1898 Spanish-American War to try narrow the scope of the Citizenship Clause to exclude people born in newly acquired island territories.

From the Founding through this Court’s landmark decision in *Wong Kim Ark*, the scope of birthright citizenship was universally understood to encompass anyone born within the sovereign’s “dominion,” which unequivocally included U.S. Territories. But this well-settled understanding came under siege with changing political tides after the Spanish-American War. At that time, the Executive Branch—ani-

mated by prejudice—sought to deny citizenship to people in island territories they considered racially and culturally inferior. Secretary of War Elihu Root and his Bureau of Insular Affairs led the charge, arguing that territories under the full sovereignty and jurisdiction of the United States were nevertheless not “in the United States” for constitutional purposes. The Department of War’s reasoning infected this Court’s decisions in the now deeply discredited *Insular Cases*, which invented an unprecedented category of “unincorporated” territories. Yet the Court avoided resolving the application of birthright citizenship in the new island territories, leaving a vacuum that the Executive Branch improperly filled by inventing yet another unprecedented category: that of U.S. nationals who are *not* U.S. citizens, but who owe “permanent allegiance” to the United States despite not enjoying the full rights of citizens. The political branches subsequently imposed that unprecedented status on millions of people born in the Territories, all without basis in the text, purpose, or history of the Citizenship Clause.

For people in the Territories, the Court’s 125-year-plus history of unjustifiable deference to the political branches on matters of citizenship has real consequences. The political branches have for decades incorrectly insisted that citizenship in the Territories exists *solely* at Congress’s discretion and can be *restricted, modified or even withdrawn at will*. For the 3.6 million residents of the Territories—and millions more born there but now living in the continental United States—this is no abstract concern. At a time when denaturalization has become an enforcement priority for the federal government, the political

branches' incorrect view that Congress can unilaterally deny citizenship in the Territories because it is "statutory" is deeply concerning.

Nothing better illustrates the dangers of such a constitutionally ungrounded approach to citizenship than the experience of those born in American Samoa, who the political branches continue to categorize as non-citizen U.S. nationals. The State of Alaska is currently prosecuting felony charges against eleven American Samoans who, relying on guidance from public officials, indicated on voter registration forms that they were "U.S. citizens" in the absence of any box for "U.S. national." They now face up to ten years' incarceration simply for exercising a fundamental constitutional right. Such an outcome flows directly from allowing the political branches to bypass the Citizenship Clause and leave people born in American Samoa as citizens of nowhere without what Chief Justice Earl Warren called the "basic right" of citizenship, which "is nothing less than the right to have rights." *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, C.J., dissenting), overruled in part by *Afroyim*, 387 U.S. at 253.

When the political branches are allowed to define for themselves the meaning of the Constitution's guarantees "the distinction between a government with limited and unlimited powers is abolished." *Marbury v. Madison*, 5 U.S. 137, 176 (1803). The Court should treat the Territories' experience as a dangerous object lesson and affirm the decision below.

ARGUMENT

I. The Citizenship Clause Provides a Bright-Line Rule That Is Not Subject to Political Manipulation

This Court has explained that “the framers of the [Fourteenth] Amendment . . . wanted to put citizenship beyond the power of any governmental unit to destroy.” *Afroyim*, 387 U.S. at 263. To accomplish this, they designed a bright-line rule that is clear in its scope and meaning. As Senator Jacob Howard explained when he introduced the Amendment, the Citizenship Clause simply declared what was “the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States.” Cong. Globe, 39th Cong., 1st Sess. 2890 (1865).

During the first 125 years of United States history, the geographic touchstone for who was recognized as a citizen was understood to be “birth locally *within the dominions* of the sovereign.” *Wong Kim Ark*, 169 U.S. at 659 (quoting *Inglis v. Trs. of Sailor’s Snug Harbor*, 28 U.S. (3 Pet.) 99, 155 (1830) (opinion of Story, J.)) (emphasis added). That is, “the party must be born within a place where the sovereign is at the time in full possession and exercise of his power.” *Id.* Prior to American Independence, it was “universally admitted . . . that all persons within the colonies of North America, whilst subject to the crown of Great Britain, were natural born British subjects.” *Inglis*, 28 U.S. (3 Pet.) at 120 (majority opinion). After the Revolution, nothing “displaced in this country the funda-

mental rule of citizenship by birth within its sovereignty.” *Wong Kim Ark*, 169 U.S. at 674. That included the Territories. As Justice Joseph Story explained in 1828: “A citizen of one of our territories is a citizen of the United States.” *Picquet v. Swan*, 19 F. Cas. 609, 616 (C.C.D. Mass. 1828); *see also, e.g.*, William Rawle, *A View of the Constitution of the United States of America* 86 (2d ed. 1829) (“[E]very person born within the United States, its territories or districts, whether the parents are citizens or aliens, is a natural born citizen in the sense of the Constitution.”).

When Congress debated the Citizenship Clause in the late 1860s, “[e]ach member [of Congress] knew and properly respected the old and revered decision in the Loughborough-Blake case, which had long before defined the term ‘United States.’” Charles E. Littlefield, *The Insular Cases (II: Dred Scott v. Sandford)*, 15 Harv. L. Rev. 281, 299 (1901). In that case, Chief Justice John Marshall explained in no uncertain terms that “the United States” is “the name given to our great republic, which is composed of States and territories.” *Loughborough v. Blake*, 18 U.S. 317, 319 (1820). Senator Lyman Trumbull, Chair of the Senate Judiciary Committee, explained during the congressional debates over the Fourteenth Amendment that the Citizenship Clause “refers to persons everywhere, whether in the States *or in the Territories* or in the District of Columbia.” Cong. Globe, 39th Cong., 1st Sess. 2894 (1865) (emphasis added). Just five years after the Citizenship Clause was ratified, this Court concluded in the *Slaughter-House Cases* that the Fourteenth Amendment “pu[t] at rest” any notion that those “who had been born and resided always in the District of Columbia or in the Territories, though

within the United States, were not citizens.” 83 U.S. 36, 72-73 (1873).

The Court subsequently confirmed this understanding in its 1884 decision in *Elk v. Wilkins*. There, the Court explained that “Indians born *within the territorial limits* of the United States”—in Elk’s case the Iowa Territory²—were “in a geographical sense born in the United States.” 112 U.S. 94, 102 (1884). And the next decade, in *Wong Kim Ark*, the Court held that the Citizenship Clause “reaffirmed” the “fundamental principle of citizenship by birth *within the dominion*”—a term it used more than 30 times throughout its opinion. 169 U.S. at 675 (emphasis added). By then, the Court was clear that the “Territories are but political subdivisions of the outlying dominion of the United States.” *Nat’l Bank v. County of Yankton*, 101 U.S. 129, 133 (1880).

Thus, from the country’s early history through this Court’s 1898 decision in *Wong Kim Ark*, the geographic scope of birthright citizenship was universally understood to include States and Territories alike. See generally Sam Erman, *Almost Citizens: Puerto Rico, the U.S. Constitution, and Empire* 8-16 (2018); Michael D. Ramsey, *Originalism and Birthright Citizenship*, 109 *Georgetown L.J.* 405, 424-432 (2020). In the months following *Wong Kim Ark*, however, this longstanding understanding of birthright citizenship began to face political pressure as the United States

² See Anna Williams Shavers, *A Century of Developing Citizenship Law and the Nebraska Influence: A Centennial Essay*, 70 *Neb. L. Rev.* 462, 480 (1991) (“The 1880 census records reveal that John Elk was born in Iowa.”)

acquired sovereignty over several island territories in the aftermath of the Spanish-American War.

II. Because of this Court's Unjustified Deference, the Political Branches Have Impermissibly Tried to Define the Scope of Citizenship in the Territories

A. After the Spanish-American War, the Executive Branch Sought to Deny Citizenship to People in Territories it Deemed Racially and Culturally Inferior

In 1898, as a result of the Spanish-American War, the United States acquired sovereignty over Puerto Rico, Guam, and the Philippines. *See Treaty of Peace Between the United States and the Kingdom of Spain, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754.* The U.S. public was split on whether the United States should rule overseas territories. However, there was wide agreement—based on the prevailing racial attitudes of the time—that most inhabitants of these new territories were unfit to be recognized as U.S. citizens. Erman, *supra*, at 28-34. The established constitutional understanding that the Citizenship Clause applied to States and Territories alike thus presented a political and legal dilemma for President William McKinley and other avowed “imperialists:” how to acquire new territories *without* expanding the reach of U.S. citizenship.

Enter Elihu Root, an eminent lawyer who became President McKinley’s Secretary of War. To address the political dilemma facing the President, Root

and his Bureau of Insular Affairs “proposed a revolution in Fourteenth Amendment citizenship doctrine.” Erman, *supra*, at 41. In 1900, the Department of War argued in a report to Congress that, although “the United States had acquired sovereign title” to Puerto Rico, Guam, and the Philippines through the Treaty of Paris, “these islands were outside the boundaries of the United States.” Charles E. Magoon, *Reports on the Law of Civil Government in Territory Subject to Military Occupation by the Military Forces of the United States Submitted to Hon. Elihu Root, Secretary of War* 49 (2d ed. 1902). In the Department’s view, the new island territories “became land appertaining to the United States and in the possession of the United States, but not within the territorial boundaries of the United States.” *Id.* at 50. The Department thus took the position that “the United States is *not* bound and privileged by our Constitution” when acting in those territories, even while claiming exclusive “sovereignty” and “jurisdiction” over them. *Id.* at 50, 61 (emphasis added). Accordingly, the Department concluded that the people of these island territories did not “fulfill the requirements of the fourteenth amendment to the Constitution, for while they are subject to the jurisdiction of the United States they are not ‘persons born or naturalized in the United States.’” *Id.* at 60. Under this twisted logic, those born in the new territories would “owe[] allegiance to our Government” but would not be “a member of the civil state, entitled to all its privileges.” *Id.*

As Petitioners do here, the Department of War offered strained readings of *Elk* and *Wong Kim Ark* to justify eroding the longstanding understanding that

the Citizenship Clause applied in States and Territories alike. In support of the proposition that “[c]itizenship is not a necessary resultant of an acknowledgment of allegiance,” the Department relied on language from *Elk* asserting that it is not enough to be “merely subject in some respect or degree to the jurisdiction of the United States” but that one must be “completely subject to their political jurisdiction and owing them direct and immediate allegiance.” Magoon, *supra*, at 119-120 (quoting *Elk*, 112 U.S. at 102). Thus, despite acknowledging that the “sovereignty and jurisdiction of the United States” fully extended to the newly acquired territories—and that the people there “are subject to the laws put in force therein by the United States”—*id.* at 61, the Department insisted that, under *Elk*, those born in the newly acquired territories could “become citizens only by a specific act of Congress,” *id.* at 120.

The Department of War, like Petitioners in this case, U.S. Br. 32-40, similarly sought to minimize *Wong Kim Ark*’s broad recognition of birthright citizenship at common law. A “careful reading” of *Wong Kim Ark*, the Department explained, did not support the automatic extension of citizenship “to all classes of inhabitants of any territory which may be acquired by the United States.” Charles E. Magoon, *Additional Memoranda to the Report on Legal Status of the Territory and Inhabitants of the Islands Acquired by the United States During the War with Spain* 73 (1900). Instead, the Department argued *Wong Kim Ark* supported the conclusion that “the [citizenship] status of the inhabitants of the acquired territory” is subject to the “plenary power” of the federal government, which

could “control all territory that may be acquired in such manner, as it deems for the best interests of the States composing the Union.” *Id.* at 76. Presaging Petitioners’ purported policy concerns, U.S. Br. at 8-9, the Department of War further grounded its opposition to expanding citizenship on the basis that the new territories were “largely peopled by an alien race, ignorant of our laws, customs, and institutions, unable to distinguish the difference between the Constitution of the United States and a map of the country.” Magoon, *Reports, supra*, at 89.

The Department of War’s legal arguments and racial sentiments soon made their way to this Court in a series of decisions known as the *Insular Cases*. In a 1901 case considering whether Puerto Rico remained a “foreign country” for purposes of U.S. tariff laws, U.S. Solicitor General John K. Richards argued that the Treaty of Paris “never intended to make these tropical islands, *with their savage and half-civilized and civilized people*, a part of the United States in the constitutional sense” because the treaty only made “them a part of the United States in the international sense.” Tr. of Oral Arg. at 22, *De Lima v. Bidwell*, 182 U.S. 1 (1901) (emphasis added).

In another case addressing similar tariff issues, the Solicitor General warned about the dangers of recognizing citizenship for the inhabitants of overseas territories “whether they be *cannibals*, or whether they be *wild savages*, no matter how unfit they may be to exercise the duties of citizens.” Tr. of Oral Arg. at 77, *Goetze v. United States*, 182 U.S. 221 (1901) (emphasis added). In the Solicitor General’s view, the

Fourteenth Amendment simply “did not refer to” the inhabitants of island territories “who belonged to other races in other climes in the distant islands of the sea, uncivilized tribes in Sulu or Panay [in the Philippines, or], uncivilized tribes in Tutuila [American Samoa].” *Id.* at 76-77.

This Court adopted the Solicitor General’s unsupported constitutional view of the Territories—and concomitant racial sentiments—nearly wholesale when it ruled on these tariff cases. In *Downes v. Bidwell*, a deeply fractured Court ruled tariffs on Puerto Rico oranges did not have to be uniform because Puerto Rico was not “a part of the United States” for purposes of the Uniformity Clause. 182 U.S. 244, 287 (1901). Adopting the distinction proposed by the Solicitor General and originally set forth by the Department of War, Justice White devised a new doctrine of territorial incorporation positing that:

[W]hile in an international sense Porto Rico [sic] was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession.

Id. at 341-42.

Although *Downes* only concerned the Uniformity Clause—not the Citizenship Clause—the Justices nonetheless opined in *dicta* on the question of cit-

izenship. Justice Brown, who authored *Plessy v. Ferguson*, 163 U.S. 537 (1896), expressed concerns that annexation of the new territories would mean that “children thereafter born, *whether savages or civilized*, are . . . entitled to all the rights, privileges and immunities of citizens.” 182 U.S. at 279 (emphasis added). Justice White echoed these pernicious sentiments, arguing that the acquisition of overseas territory “peopled with an *uncivilized race*, yet rich in soil, and valuable to the United States” would not be possible if annexation meant “the immediate bestowal of citizenship on those *absolutely unfit* to receive it.” 182 U.S. at 306 (White, J., concurring) (emphasis added).

All these views were as wrong then as they are wrong now, as nothing in our Constitution authorizes the political branches or “judges to engage in the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion.” *United States v. Vaello Madero*, 596 U.S. 159, 185 (2022) (Gorsuch, J., concurring); *see also id.* at 180-89 (explaining how the *Insular Cases* “rest on a rotten foundation” and that their “departure from the Constitution’s original meaning has never been much of a secret”).

B. This Court Has Improperly Allowed the Political Branches to Redefine the Citizenship Clause to Exclude People in the Territories

The question of citizenship in the new territories soon squarely reached this Court in *Gonzales v. Williams*, 192 U.S. 1 (1904). In that case, Isabel Gon-

zales, who was born in Puerto Rico, challenged attempts to detain and deport her in New York as an “alien immigrant” on grounds that she was in fact a “U.S. citizen.” The Solicitor General opposed recognizing Gonzales and other Puerto Ricans as U.S. citizens in significant part based on racial and cultural considerations:

It is evident that from the point of view of our civilization and well-being the perils aimed at, or some of them, would proceed especially from *oriental and tropical countries* as well as from certain other parts of the world *remote in space, culture, or race ideals from our own country*. For it is matter of common knowledge that in the Orient and the Tropics, as a rule, unfavorable climatic conditions, overcrowding of population, primitive notions and methods in hygiene, *different (and, to our conceptions, low) standards of living and moral conduct*, extreme and willing indigency, all combine to produce in most marked degree many of the very evils at which the law was aimed.

Br. for the United States at 57-58, *Gonzales*, 192 U.S. 1 (emphasis added). In a supplemental brief, the United States concluded “that dangerous or feeble defectives among our island inhabitants are not to be admitted to this country as if they were citizens.” Supplemental Br. for the United States at 40, *Gonzales*, 192 U.S. 1.

But rather than resolving whether the Citizenship Clause applied in the new territories, the *Gonza-*

les Court avoided the question entirely. The Court concluded that, although Puerto Ricans owe “permanent allegiance . . . to the United States,” it was “not required to discuss . . . the contention . . . that a citizen of Porto Rico [sic] . . . is necessarily a citizen of the United States” because the question at issue “is the narrow one whether Gonzales was an alien within the meaning of” the relevant statute. *Gonzales*, 192 U.S. at 12. The Court thus only held that Puerto Ricans were not “aliens.” *Id.* at 13. In so doing, the Court’s “strategic silence” and “vagueness” on citizenship opened “the possibility of a status somewhere between citizens and alien” and served as “an invitation to resolve the matter politically and administratively” rather than through the federal courts. Erman, *supra*, at 87. This left “lawmakers and administrators room to maneuver in governing new territorial acquisitions,” creating “a vacuum to be filled by bureaucratic and legislative decisions and discretion.” *Id.* Thus, the Executive Branch continued to impose the subordinate status of “non-citizen” U.S. national on people born in Puerto Rico, Guam, and later American Samoa and the U.S. Virgin Islands. *See, e.g.*, Christina Duffy Burnett, “*They Say I Am Not an American. . .*”: *The Noncitizen National and the Law of American Empire*, 48 Va. J. Int’l L. 659, 715 (2008).

The purported denial of citizenship to U.S. Virgin Islanders was particularly egregious. After the United States purchased the U.S. Virgin Islands from Denmark in 1917, the U.S. State Department relied on the *Insular Cases* to deny Virgin Islanders recognition as U.S. citizens—despite language in the 1916 Treaty of Cession between the United States and Denmark expressly providing that “[t]hose who remain in

the islands . . . shall be held . . . to have accepted citizenship in the United States.” Convention Between the United States and Denmark, Etc., Den.-U.S., art. VI, Aug. 4, 1916, 39 Stat. 1706. When Congress finally recognized Virgin Islanders as U.S. citizens in 1927, a House Report explained that “it was understood by all that when the United States purchased these islands the citizenship of the inhabitants thereof was transferred to the United States.” H.R. Rep. No. 69-2065, at 1 (1927). The House Report emphasized that because the State Department “put a different interpretation upon the treaty,” Virgin Islanders, “formerly citizens of Denmark, ha[d] been a people ‘without a country’” since 1917. *Id.*

According to a 1919 State Department memo, “Danish citizens did not, by the mere fact of the cession of the islands, acquire American citizenship. This view is based upon the well-known statements of the Supreme Court in the so-called Insular Cases.” Arnold Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* 249 (1989). Performing linguistic gymnastics not unlike those of Petitioners, State argued “the word ‘citizenship’ in the Danish Treaty appears to have that broad significance which means all those who may owe allegiance to the United States because of the cession, and not the technical term ‘citizenship’ with all the civil and political rights which may be attached thereto.” *Id.* at 250. In 1920, Acting Secretary of State Frank Polk similarly concluded that “inhabitants of the Virgin Islands . . . have American nationality and are entitled to the protection of the government, but have not the civil and political status of citizens of the United States.” Luther Harris Evans, *The Virgin Islands: From Naval*

Base to New Deal 62 (1945). The Department’s strained reasoning was that the Treaty spoke of citizenship “*in*” the United States rather than citizenship “*of*” the United States. *Id.*

Thus, from 1898 to 1940, the anomalous status of non-citizen U.S. national was based *solely* on the unilateral actions of the Executive Branch, much as Petitioners are attempting to do with Executive Order 14,160. Only with the Nationality Act of 1940 did Congress label people born in Guam and American Samoa to be “nationals, but not citizens, of the United States at birth.” Nationality Act of 1940, § 204, Pub. L. 76-852, 54 Stat. 1139 (1940).

Today, those born in American Samoa remain labeled as U.S. nationals—not citizens—at birth as a direct result of this Court’s deference to discriminatory policies of the political branches. In 2015, the D.C. Circuit denied American Samoan plaintiffs’ right to citizenship, dismissing relevant textual and historical evidence as “ambiguous” and concluding that the “scope of the Citizenship Clause, as applied to territories, may not be readily discerned . . . absent resort to the Insular Cases’ analytical framework.” *Tuaua v. United States*, 788 F.3d 300, 302, 306 (D.C. Cir. 2015). As Petitioners do here, the D.C. Circuit relied on a narrow reading of *Wong Kim Ark* and a convoluted reading of *Elk* to dismiss the unambiguous support both cases provide for birthright citizenship in States and Territories alike. *Id.* at 304-306.

In later litigation, the U.S. District Court for the District of Utah reached the opposite conclusion. That court held in 2019 that American Samoans “are

citizens by virtue of the Citizenship Clause of the Fourteenth Amendment” because “American Samoa is a territory that is within the dominion of the United States,” and “is therefore ‘in the United States.’” *Fitisemanu v. United States*, 426 F. Supp. 3d 1155, 1196 (D. Utah 2019). The court set aside the *Insular Cases* as not “control[ing] the outcome of this case” because the cases “did not concern the Fourteenth Amendment” and instead engaged in a straightforward application of *Wong Kim Ark*. *Id.* at 1157-58, 1182-91.

In 2021, the Tenth Circuit reversed the *Fitisemanu* district court in a fractured decision. The majority concluded that “the district court erred by relying on *Wong Kim Ark*,” and that instead “the *Insular Cases* supply the correct framework for application of constitutional provisions to the unincorporated territories.” *Fitisemanu v. United States*, 1 F.4th 862, 869, 875 (10th Cir. 2021). But as set out methodically in the dissent, “[s]ince colonial days, Americans understood that citizenship extended to everyone within the sovereign’s dominion. So those in territories like American Samoa enjoy birthright citizenship, just like anyone else born in our country.” *Id.* at 907-908 (Bacharach, J., dissenting). The Tenth Circuit declined *en banc* review, but two dissenting judges lamented that “[d]espite the unambiguous, uniform historical meaning of the term ‘in the United States,’ our country has denied constitutional citizenship for over a century to virtually everyone born in U.S. territories like American Samoa.” *Fitisemanu v. United States*, 20 F.4th 1325, 1343 (10th Cir. 2021).

At each stage of litigation in both *Tuaua* and *Fitisemanu*, DOJ argued against recognizing constitutional citizenship for people born in the Territories. Opposing this Court’s review of the D.C. Circuit’s decision in *Tuaua*, Solicitor General Donald Verrilli agreed that “the Citizenship Clause does not apply to unincorporated territories of the United States,” relying on the *Insular Cases* as “set[ting] out a ‘general rule’ that in an ‘unincorporated territory,’ the Constitution does not necessarily apply in full.” Br. of Federal Respondents in Opposition at 9, 12, *Tuaua v. United States*, 579 U.S. 902 (2016) (No. 15-981). Most recently, when opposing this Court’s review in *Fitisemanu*, Solicitor General Elizabeth Prelogar disclaimed any express reliance on the *Insular Cases*³ yet agreed that “[b]irth in a territory does not automatically confer citizenship under the Citizenship Clause,” going so far as to declare that people in U.S. territories

³ In July 2024, following statements by Justices Neil Gorsuch and Sonia Sotomayor calling for the *Insular Cases* to be overruled, *United States v. Vaello Madero*, 596 U.S. 159, 180 (2022) (Gorsuch, J., concurring); *id.* at 189 (Sotomayor, J., dissenting), DOJ adopted as official policy “that the racist language and logic of the *Insular Cases* deserve no place in our law.” Justice Manual 1.21.100. This followed a May 2024 letter to Congress stating that “[t]he Department unequivocally condemns the racist rhetoric and reasoning of the *Insular Cases*,” calling them “irreconcilable with foundational American principles of equality, justice, and democracy.” Letter from Carlos Felipe Uriarte, Assistant Att’y Gen., to Raúl M. Grijalva, U.S. Representative (May 2024). DOJ committed to “not rely on or seek to extend the doctrine of territorial incorporation established by the *Insular Cases*,” instructing its litigators to “not rely on the racist rhetoric and reasoning of the *Insular Cases*.” *Id.* at 1. What impact this has on DOJ’s position on citizenship in the Territories remains to be seen.

are not part of the constitutional “We the People of the United States.” Br. of Federal Respondents in Opposition at 8, 16, 18, *Fitisemanu*, 143 S. Ct. 362 (2022) (No. 21-1394).

Ultimately, this Court once again failed to act, denying review in both cases and leaving in place 125 years of unwarranted judicial deference towards the political branches on the question of birthright citizenship in the Territories.

III. This Court’s Unjustified Deference to the Political Branches Unsettles Citizenship in U.S. Territories and has Resulted in American Samoans Facing Discrimination and Criminal Prosecution

This Court’s unsupported deference to the political branches on the question of citizenship in the Territories has significant consequences, not just for those denied citizenship but also for those labeled as “statutory” citizens. Until the Court recognizes that the political branches are bound by the Citizenship Clause in the Territories as they are anywhere else in the United States, the citizenship status for the 3.6 million residents of the Territories—and millions more born in the Territories now living stateside—will remain under threat and subject to political whims.

A. “Statutory” Citizenship in the Territories Remains Under Threat From the Political Branches

Ever since 1898 when the Executive Branch broke from the settled understanding that the Citizenship Clause applies in States and Territories alike, the

political branches have taken the consistent position that the question of citizenship in the Territories is left to the full discretion of Congress, whether prospectively or even retroactively. None of this comports with the Citizenship Clause. With DOJ making “denaturalization” a top priority of its Civil Division,⁴ *amici*’s concern is no abstract fear. The following examples of political branch statements from the past four decades illustrate the specter that continues to loom over people in the Territories.

1. 2021 State Department Foreign Affairs Manual

The current version of the State Department’s Foreign Affairs Manual affirms the view of the Executive Branch following the 1898 Spanish-American War that “persons born or inhabiting territory acquired by the United States through conquest or treaty” were “U.S. non-citizen nationals.” 8 *Foreign Affairs Manual* (FAM) 301.1-1(b). “Nationals of the United States who are not citizens owe allegiance to the United States,” the State Department explains, but “are not entitled to voting representation in Congress and, under most state laws, are not entitled to vote in Federal, State, or local elections except in their place of birth.” *Id.*

⁴ See Memorandum from Brett A. Shumate, Assistant Att’y Gen., U.S. Dep’t of Justice, to Civil Division Employees (June 11, 2025).

2. 2001 DOJ Letter to Congress

During the waning days of the Clinton Administration, DOJ sent a letter to the Chair of the Senate Committee on Energy and Natural Resources—which has jurisdiction over the Territories—to address legal issues relating to Puerto Rico’s political status, including questions about citizenship. Letter from Robert Raben, Assistant Att’y Gen, to Frank H. Murkowski, Senator and Chairman of Comm. on Energy and Natural Resources (Jan. 18, 2001). DOJ was careful not to foreclose the political branches’ options when it came to citizenship in the Territories. As a starting point, DOJ recognized that those born in Puerto Rico were “statutory United States citizens” rather than “persons whose citizenship is based on the Fourteenth Amendment.” *Id.* at 3, 11. Assuming continued U.S. sovereignty over Puerto Rico, DOJ concluded it was “unclear” whether Congress could “withhold prospectively non-Fourteenth Amendment citizenship from those born in an area subject to United States sovereignty, when persons previously born in that area received statutory citizenship by birthright.” *Id.* at 10-11. And DOJ similarly described as “unclear whether Congress could revoke the U.S. citizenship of persons already holding such citizenship” if a U.S. territory became independent.” *Id.* at 11.

Most troubling, although DOJ remarked that “we *think* Congress could not revoke the United States citizenship of persons who already possess that citizenship by virtue of their birth in Puerto Rico,” it still entertained the “counter-argument” that Congress could unilaterally revoke the citizenship of those born in Puerto Rico, whether U.S. sovereignty continued or

Puerto Rico became independent. *Id.* (emphasis added). In support of this counter-argument, DOJ cited *Rogers v. Bellei*, 401 U.S. 815 (1971), where this Court allowed Congress to strip the citizenship of someone who had “non-Fourteenth Amendment citizenship.” *Id.* Moreover, DOJ’s apparent basis for distinguishing between “statutory” and “Fourteenth Amendment” citizenship in Puerto Rico was the *Insular Cases*, which it expressly cited for the dangerous and constitutionally ungrounded notion that “not all provisions of the United States Constitution are fully applicable to Puerto Rico.” *Id.* at 3.

3. 1996 House Report on United States-Puerto Rico Political Status Act

In 1996, the House Natural Resources Committee issued a report on the United States-Puerto Rico Political Status Act that included significant discussion on the question of citizenship in the Territories. H.R. Rep. No. 104-713 (1996). The House Report declared that it was “self-evident” that “the current U.S. citizenship of persons born in Puerto Rico during the territorial period is restricted and less-than-equal,” on the basis that Puerto Rico was “an unincorporated territory” and “the U.S. Supreme Court has ruled that Congress can exercise its Territorial Clause powers” to discriminate against its residents. *Id.* at 33. The House Report cited *Gonzales v. Williams* for the principle that “the specific citizenship status of the population of the territory is subject to the discretion of Congress under the Territorial Clause,” *id.*, even as that decision expressly avoided answering the question of citizenship in Puerto Rico. In doing so, the

House Report emphasized that “the U.S. citizenship granted [Puerto Ricans] by statute since 1917 is limited, restricted and less-than-equal citizenship.” *Id.* That is, according to the House Report, “the statutory right of U.S. citizenship based on birth in Puerto Rico as it is today . . . is not full Constitutionally-protected citizenship.” *Id.* at 35. In support of this view, the House Report emphasized that DOJ “has long taken the position, and is on record before Congress, that the statutory citizenship which Congress has conferred on people born in Puerto Rico during the territory period is not full, equal citizenship protected by the Fourteenth Amendment to the Constitution.” *Id.* at 33.

The House Report then bluntly declared that “the current citizenship status of Puerto Ricans exists at the discretion of Congress.” *Id.* at 34. While conceding that Congress “cannot exercise its discretion in an arbitrary and irrational way,” the House Report stated “that the current statutory citizenship of people born in Puerto Rico can be regulated *or even rescinded* without violating the equal protection and due process rights which have been extended to Puerto Rico by Congress and the Federal courts.” *Id.* (emphasis added). Citing *Rogers v. Bellei*, the House Report concluded that “the statutory citizenship of the residents of Puerto Rico . . . could be *restricted, modified or even withdrawn* by Congress as long as the fundamental rights test of the *Insular Cases* . . . is met,” meaning, in its view, “the existence of a *legitimate* Federal purpose achieved in a manner *reasonably related* to that purpose.” *Id.* at 11.

4. 1989 Congressional Research Service Memo

The 1996 House Report relied significantly upon a 1989 Congressional Research Service (“CRS”) Memo addressing the “Discretion of Congress Respecting Citizenship Status of Puerto Ricans.” *See id.* at 11, 33, 34. This CRS memo considered “whether Congress may be constitutionally constrained in decision making with regard to the citizenship status of Puerto Ricans.” Memorandum from Am. Law Div., Cong. Rsch. Serv., to Senator Bennett Johnston (Mar. 9, 1989). While as a general matter CRS recognized that this Court’s decision in *Afroyim v. Rusk* meant that Congress lacked “the power to expatriate United States citizens against their will for any reason,” in CRS’s view, “*Afroyim* is inapplicable in the instance of Puerto Rico.” *Id.* at 2. Instead, CRS argued that the specific question of Puerto Rico was governed by *Rogers v. Bellei* because Puerto Ricans—like the claimant in *Bellei*—are not “Fourteenth Amendment citizen[s].” *Id.* Rather than consider the text or history of the Citizenship Clause, CRS instead relied on the *Insular Cases* to conclude “that Puerto Rico, whatever its exact status and relationship to the United States is not itself *in* the United States.” *Id.* (emphasis in original). Based on the “incorporation” doctrine set forth by the *Insular Cases*, CRS concluded that the Citizenship Clause does “not restrain Congress’ discretion in legislating about the citizenship status of Puerto Rico.” *Id.* at 4. Thus, under *Bellei*, CRS explained that any “denaturalization provision” need “only to be reasonable and not arbitrary.” *Id.* at 2.

In sum, the Court’s actions have engendered a confused state of affairs where the political branches incorrectly assume they can unilaterally deny citizenship to people born in the Territories, a view that directly contravenes the Citizenship Clause’s express purpose of removing governmental discretion to deny birthright citizenship. *See Afroyim*, 387 U.S. at 263.⁵

B. American Samoan “Non-Citizen” U.S. Nationals Face Broad Discrimination and Even Criminal Prosecution

The political branches’ unilateral redefinition of the Citizenship Clause to exclude people born in the Territories—and this Court’s repeated refusal to provide a judicial check to this constitutional overreach—is most acutely felt by people born in American Samoa.

⁵ It also contradicts this Court’s more recent statements, in *Boumediene v. Bush*, that “[t]he Constitution grants Congress and the President the power to acquire, dispose of, and govern territory, *not* the power to decide *when and where its terms apply*,” expressly rejecting the idea that “the political branches have the power to switch the Constitution *on or off at will*.” 553 U.S. 723, 735 (2008) (emphasis added). The Court emphasized that the federal government’s powers—even in the Territories—“are not ‘absolute and unlimited’ but are subject ‘to such restrictions as are expressed in the Constitution,’” relying on a pre-*Insular Cases* decision. *Id.* (quoting *Murphy v. Ramsey*, 114 U.S. 15, 44 (1885)); *see also Veneno v. United States*, 607 U.S. __ (2025) (Gorsuch, J., dissenting from denial of certiorari) (concluding that “the [Territories] Clause, rightly understood, [does not] endow the federal government with plenary power even within the Territories themselves.”)

The political branches have labeled them as U.S. nationals *but not* U.S. citizens over the objections and contrary to the expectations of the American Samoan leaders who transferred sovereignty to the United States in 1900 and 1904. *See generally* Ross Dardani, *Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899-1960*, 60 *Am. J. Legal Hist.* 311 (2020).

Under federal law, so-called “non-citizen” U.S. nationals are often denied the same rights and privileges “citizen” U.S. nationals take for granted.⁶ For instance, although American Samoans have the highest rate of military service of any U.S. jurisdiction, non-citizen U.S. nationals cannot serve as military officers. 10 U.S.C. § 532(a)(1). Often, it is just not clear whether and how a federal law or regulation might—or might not—apply to non-citizen U.S. nationals. For example, Department of Defense regulations provide that “[o]nly U.S. citizens shall be granted a personnel security clearance,” 32 C.F.R. § 154.16(a), but then later define an eligible “United States Citizen (Native Born)” to include someone “born in . . . American Samoa,” 32 C.F.R. § 154.3(dd). Despite this clear language, following the D.C. Circuit’s decision in *Tuaua*, the U.S. Army issued an order prohibiting American Samoan non-citizen U.S. nationals from holding a “secret clearance” because they “are not citizens by birth,” impacting thousands of American Samoan service members. Headquarters, U.S. Dep’t of Army, Exec. Order 107-18 (18 March 2018).

⁶ Br. for ACLU as *Amici Curiae* Supporting Plaintiffs-Appellees at 8–13, *Fitisemanu*, 1 F.4th 862 (10th Cir. 2021).

This becomes even more challenging at the state and local level, where each of the 50 states treat the rights and obligations of “non-citizen” nationals differently and often arbitrarily.⁷ Understanding these distinctions can be extraordinarily difficult for someone who is trained in the law, much less the average government bureaucrat or American Samoan. This confusion at the federal, state, and local level highlights the kind of administrability problems that could arise if Petitioners succeed in establishing a new category of non-citizens who often, like American Samoans, will be citizens of nowhere.

Nothing better illustrates the human impact of non-citizen U.S. national status than recent developments in Alaska. After this Court left unresolved the question of birthright citizenship in the Territories, *Fitisemanu*, 143 S. Ct. 362 (2022), the State of Alaska pressed felony voter misconduct and perjury charges against eleven American Samoans living in the state who, following the advice of public officials, indicated

⁷ For example, Alaska sometimes recognizes people born in American Samoa as *U.S. citizens*, Alaska Admin. Code tit. 7, § 44.900(22) (defining eligible “United States citizen” to include “a national from American Samoa” for Alaska Heating Assistance Program), sometimes treats them *equal to* citizens, *id.* § 41.350 (a)(4) (both “a United States citizen” and “a United States national” are eligible for Child Care Assistance Program), sometimes treats them *worse than* citizens, Alaska Admin. Code tit. 11, § 64.230(1) (requiring an applicant for a shore fisheries lease to be a “citizen of the United States”), and sometimes treats them *worse than foreign nationals*, Alaska Stat. Ann. § 47.45.302(3) (limiting eligibility for cash assistance under Senior Benefit Program to someone who “is a citizen of the United States or qualified alien”).

on voter registration forms that they were “U.S. citizens” in the absence of any box for “U.S. national.” Alex Burness, *Americans by Name, Punished for Believing it*, Bolts (Jan. 8, 2026), <https://boltsmag.org/prosecuted-for-voting-american-samoans-alaska/>. If convicted, they could face up to five to ten years’ incarceration on each offense. These prosecutions reflect a dangerous confusion under federal, state, and local law that should discourage this Court from allowing the Executive Branch to craft new exceptions to Fourteenth Amendment birthright citizenship.

On November 30, 2023, Tupe Smith, an American Samoan woman living in the small town of Whittier, Alaska, heard a knock on her door. She thought it might be her mother-in-law, Miliama Suli, coming to visit. Instead, it was two Alaska State Troopers who were there to arrest her. A month earlier, Ms. Smith had been elected to the Whittier School Board with 96 percent of the vote after being told by city officials that as a “U.S. national” she was eligible to run and vote for local office. Ms. Smith told the Troopers that had she known she was not allowed to vote or run for office, she would not have. Nonetheless, the officers arrested her for felony “voter misconduct,” punishable by up to five years’ incarceration. They handcuffed her in front of her children and drove her two hours in the back of a patrol vehicle to a processing facility where she was strip-searched and forced to wear a prison uniform before being released on bail.

Nine months later there was another knock on Ms. Smith’s door. Once again it was two Alaska Troopers, this time with questions for Ms. Smith’s husband,

Michael Pese. These troopers were among two dozen officers who descended on Whittier after an anonymous complaint alleged non-citizen voting by “a large family group.” *Id.* The investigating officers themselves were often confused about “non-citizen” national status, for example, repeatedly asserting that only “U.S. citizens” can serve as police officers, when Alaska law is clear anyone who is “a citizen of the United States *or* a United States National” is eligible. Alaska Admin. Code tit. 13 § 85.010(a)(1) (emphasis added). During a Whittier City Council Meeting held the week before arraignment, city officials conceded they had told members of the American Samoan community they could vote.⁸ Nonetheless, Alaska proceeded to indict Michael Pese, Miliama Suli, and eight other family members and friends with voter misconduct and felony perjury.

American Samoa’s Governor and Congresswoman have rallied to the family’s defense, calling on Alaska to pursue an administrative resolution rather than criminal prosecution based on the widespread confusion that exists over “non-citizen” U.S. national status at the federal, state, and local level. William-José Vélez González, *Advocacy Grows as Alaska Prosecutes American Samoans Over Voter Eligibility*, Pasquines (Dec. 24, 2025), <https://pasquines.us/2025/12/24/advocacy-grows-as-alaska-prosecutes-american-samoans-over-voting-eligibility/>. But Alaska prosecutors are

⁸ City of Whittier Alaska, *04.29.2025 City Council Special Meeting*, at 24:15 (YouTube Apr. 29, 2025), <https://www.youtube.com/live/3t3G5sUKKVM?t=1455s>.

undeterred, continuing to aggressively prosecute, including the family matriarch, Miliami Suli, who has stage IV cancer and only weeks to live.

These prosecutions in Alaska are the absurd culmination of the anomalies of non-citizen U.S. national status. Until this Court enforces the constitutional guarantee of birthright citizenship for those born in the Territories, federal, state, and local governments will continue unconstitutionally harming American Samoans caught in the confusion. All this should serve as a stark lesson on what could happen if this Court allows the Executive Branch to redefine the Citizenship Clause and create a novel status for the children who would become “non-citizens” because of Executive Order 14,160.

CONCLUSION

Over a century ago, bowing to the political exigencies of the time, this Court improperly turned a blind eye to the Executive’s unilateral attempts to narrow the scope of the Citizenship Clause in order to exclude subordinated classes of people in island Territories from its guarantee of birthright citizenship. The Court should not repeat the same mistake here. For the foregoing reasons, *amici* urge the Court to affirm.

Respectfully submitted,

NEIL C. WEARE

Counsel of Record

ADI MARTÍNEZ-ROMÁN

RIGHT TO DEMOCRACY

PROJECT

1300 Pennsylvania Ave.

NW 190-413

Washington, DC 20004

202.304.1202

neil@righttodemocracy.us *Attorneys for Amici Curiae*

PAUL M. KRIEGER

PATRICIO G. MARTÍNEZ

LLOMPART

KKL LLP

350 5th Ave, 77th Floor

New York, NY 10118

APPENDIX

APPENDIX TABLE OF CONTENTS

	<i>Page</i>
APPENDIX: LIST OF <i>AMICI CURIAE</i>	1-A

APPENDIX: LIST OF *AMICI CURIAE*

1. **Stacey E. Plaskett:** U.S. House of Representatives, U.S. Virgin Islands (2015-Present)
2. **Albert Bryan Jr.:** Governor, U.S. Virgin Islands, (2019-Present)
3. **Tregenza Roach:** Lieutenant Governor, U.S. Virgin Islands (2019-Present); Senator, U.S. Virgin Islands Legislature (2013-2018)
4. **B.J. Cruz:** Public Auditor of Guam (2018-Present); Speaker, Guam Legislature (2017-2018); Senator, Guam Legislature (2005-2016); Chief Justice, Supreme Court of Guam (1999-2001); Associate Justice, Supreme Court of Guam (1997-1999); Judge, Superior Court of Guam (1984-1997)
5. **Aníbal Acevedo Vilá:** Governor, Puerto Rico (2005-2009)
6. **Sila M. Calderón:** Governor, Puerto Rico (2001-2005)
7. **Alejandro García Padilla:** Governor, Puerto Rico (2013-2017)
8. **Kenneth E. Mapp:** Governor, U.S. Virgin Islands (2015-2019)
9. **Donna M. Christian-Christensen:** U.S. House of Representatives, U.S. Virgin Islands (1997-2015)

10. **Gregorio Kilili Sablan:** U.S. House of Representatives, Northern Mariana Islands (2009-2025)
11. **Sheila Babauta:** Northern Mariana Islands House of Representatives (2021-2023)
12. **Eduardo Bhatia:** Puerto Rico Senate (2009-2021), President of the Senate (2013-2017)
13. **Zoé Laboy:** Puerto Rico Senate (2017-2019)
14. **José Bernardo Márquez Reyes:** Puerto Rico House of Representatives (2021-2025)
15. **Ana Irma Rivera Lassén:** Puerto Rico Senate (2021-2025)
16. **Andra Samoa:** American Samoa House of Representatives (2019-22)
17. **Mary Camacho Torres:** Senator, Guam Legislature (2015-2023)
18. **Charles Ala'ilima:** High Court of American Samoa District Court Judge/Acting Associate Justice (1981-1985); District Court Judge Pro Tempore (1996-1998)
19. **Adam G. Christian:** Judge, Superior Court of the Virgin Islands (2010-2016)
20. **Soraya Diase Coffelt:** Judge, Superior Court of the Virgin Islands (1994-2000)

21. **Liana Fiol Matta:** Chief Justice, Supreme Court of Puerto Rico (2014-2016); Associate Justice (2004-2014); Judge, Puerto Rico Court of Appeals (1992-2002)