

No. 17-50379

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARIO CANDELA-RIOS,
Petitioner,

v.

JEFFERSON SESSIONS,
Respondent.

On Appeal from the United States District Court for the Western District of Texas,
San Antonio Division, No. 5:16-cv-220 (Hon. John W. Primomo)

**BRIEF OF *AMICI CURIAE* CATHOLIC LEGAL IMMIGRATION
NETWORK, INC. AND ASIAN AMERICANS ADVANCING JUSTICE-
AAJC IN SUPPORT OF PETITIONER AND IN SUPPORT OF REVERSAL**

Bradley Jenkins
CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
(301) 565-4800

Niyati Shah
ASIAN AMERICANS
ADVANCING JUSTICE - AAJC
1620 L Street NW, Suite 1050
Washington, DC 20036
(202) 296-2300

Theodore A. Howard
P. Nicholas Peterson
Usha Neelakantan
Madeline J. Cohen
Luke J. Karamyalil
John T. Lin
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
thoward@wileyrein.com

Counsel for Amici Curiae

September 22, 2017

Table of Contents

	Page
STATEMENT OF INTEREST OF AMICI.....	1
STATEMENT IN COMPLIANCE WITH FED. R. APP. P. 29(A)(4)(A).....	2
STATEMENT IN COMPLIANCE WITH FED. R. APP. P. 29(A)(4)(E)	3
SUMMARY OF THE ARGUMENT	3
ARGUMENT.....	4
I. NATURAL BORN CITIZENSHIP IS A FUNDAMENTAL RIGHT	4
II. THE DECISION BELOW INVITES THE GOVERNMENT TO CHALLENGE NATURAL BORN CITIZENSHIP	7
III. SHIFTING THE BURDEN TO INDIVIDUALS INCREASES THE LIKELIHOOD THAT NATURAL BORN CITIZENS WILL BE ERRONEOUSLY DEPORTED.....	11
IV. THE DECISION BELOW RISKS TURNING NATURAL BORN CITIZENS INTO STATELESS PEOPLE.....	13
CONCLUSION	17

Table of Authorities

	Page(s)
Cases	
<i>Afroyim v. Rusk</i> , 387 U.S. 253 (1967).....	5
<i>Berenyi v. District Director, INS</i> , 385 U.S. 630 (1967).....	9
<i>Bridges v. Wixon</i> , 326 U.S. 135 (1945).....	6
<i>Bustamante-Barrera v. Gonzales</i> , 447 F.3d 388 (5th Cir. 2006).....	8, 9
<i>Klapprott v. United States</i> , 335 U.S. 601 (1949).....	4
<i>Kungys v. United States</i> , 485 U.S. 759 (1988).....	4, 5
<i>Lyttle v. United States</i> , 867 F. Supp. 2d 1256 (M.D. Ga. 2012).....	7
<i>Ng Fung Ho v. White</i> , 259 U.S. 276 (1922).....	8
<i>Nowak v. United States</i> , 356 U.S. 660 (1958).....	7
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010).....	5, 6
<i>Perez v. Brownell</i> , 356 U.S. 44 (1958).....	4
<i>Schneiderman v. United States</i> , 320 U.S. 118 (1943).....	7
<i>Speiser v. Randall</i> , 357 U.S. 513 (1958).....	8

	Page(s)
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993).....	9
<i>Trop v. Dulles</i> , 356 U.S. 86 (1958).....	4
<i>United States v. Perlaza</i> , 439 F.3d 1149 (9th Cir. 2006).....	9
<i>Woodby v. Immigration & Naturalization Service</i> , 385 U.S. 276 (1966).....	6
<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001)	14
U.S. Constitution	
U.S. Const. amend XIV, § 1.....	4
Statutes, Rules and Regulations	
8 U.S.C. § 1401(a)	4
8 C.F.R. § 1240.8.....	8
Other Authorities	
Aarti Kohli, Peter L. Markowitz and Lisa Chavez, <i>Secure Communities by the Numbers: An Analysis of Demographics and Due Process</i> (Oct. 2011), http://www.mygreencard.com/downloads/SecureCommunities_February2012.pdf	11, 12
Ana Gonzalez-Barrera and Mark Hugo Lopez, <i>U.S. Immigrant Deportations Fall to Lowest Level Since 2007</i> , Pew Research Center (Dec. 16, 2016), http://www.pewresearch.org/fact-tank/2016/12/16/u-s-immigrant-deportations-fall-to-lowest-level-since-2007/	12
Catholic Legal Immigration Network, Inc., <i>Emergency Planning for Immigrant Families: A 50-State Resource</i> , https://cliniclegal.org/emergency-planning-for-immigrant-families	10

	Page(s)
<i>Choosing Between U.S. and Chinese Citizenship: Pros and Cons</i> , Chodorow Law Offices (Apr. 20, 2014), http://lawandborder.com/advantages-of-us-naturalization-versus-keeping-chinese-citizenship/ ;	15
<i>Citizens of Nowhere: Solutions for the Stateless in the U.S.</i> (December 2012), https://www.opensocietyfoundations.org/sites/default/files/citizens-of-nowhere-solutions-for-the-stateless-in-the-us-20121213.pdf	16
Department of Homeland Security, U.S. Immigration and Custom Enforcement, Operations and Support Fiscal Year 2018 Congressional Justification 196 (2017)	15
<i>Dual Nationality</i> , U.S. Embassy & Consulates in India, https://in.usembassy.gov/u-s-citizen-services/citizenship-services/dual-nationality/	15
Eyder Peralta, <i>You Say You’re An American, But What If You Had To Prove It Or Be Deported?</i> , NPR (Dec. 22, 2016), http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported	11
Ingrid Eagly and Steven Shafer, <i>Access to Counsel in Immigration Court</i> , American Immigration Council (2016), https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf	12
Institute for Women in Migration (IMUMI), <i>Prevention: Acquiring Dual Citizenship</i> , available at https://ia601503.us.archive.org/31/items/DobleNacionalidad_20170819/Doble%20nacionalidad.pdf	10
International Covenant on Civil and Political Rights, <i>opened for signature</i> Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) (entered into force Mar. 23, 1976).....	14
Rachel E. Rosenbloom, <i>The Citizenship Line: Rethinking Immigration Exceptionalism</i> , 54 B.C. L. Rev. 1965 (2013)	11

	Page(s)
Renata Robertson, <i>The Right to Court-Appointed Counsel in Removal Proceedings: An End to Wrongful Detention and Deportation of U.S. Citizens</i> , 15 Scholar.....	13
Richard D. Seel, <i>Steel on Immigration Law</i> 5:24 (2016 ed.).....	5
<i>Statelessness</i> , U.S. Department of State, https://www.state.gov/j/prm/policyissues/issues/c50242.htm	15
The New Americans Campaign, Top 5 Benefits of Citizenship, available at http://newamericanscampaign.org/top-5-benefits-of-citizenship/	5
USCIS, U.S. Citizenship, available at https://www.uscis.gov/us-citizenship	6

Statement of Interest of Amici

Amicus curiae Catholic Legal Immigration Network, Inc. (“CLINIC”) is a nonprofit organization that helps low-income and vulnerable populations navigate the complexities of United States immigration and nationality laws. CLINIC serves the community in partnership with a dedicated network of nonprofit legal services programs. CLINIC’s nonprofit network includes more than 300 diocesan and other affiliated immigration programs with 400 offices in 47 states, Puerto Rico, and the District of Columbia. The network employs roughly 1,200 BIA accredited representatives and attorneys who, in turn, serve hundreds of thousands of low-income people each year, including applicants for naturalization, U.S. citizens filing visa petitions on behalf of family members, and persons in removal proceedings. CLINIC also collaborates with pro bono attorneys through its BIA Pro Bono Project, which matches vulnerable people appearing before the Board of Immigration Appeals with volunteer attorneys. The BIA Pro Bono Project frequently secures representation for United States citizens whom the government alleges are deportable foreign nationals. CLINIC’s regular interaction with persons detained by the Department of Homeland Security renders it well-positioned to speak to the evidentiary and other challenges faced by those subjected to immigration detention.

Amicus curiae Asian Americans Advancing Justice | AAJC (“AAJC”) is a national nonprofit organization founded in 1991. Based in Washington, D.C., AAJC works to advance and protect civil and human rights for Asian Americans and to build and promote a fair and equitable society for all. AAJC is one of the nation’s leading experts on issues of importance to the Asian American community, including immigration and immigrants’ rights. Along with its Advancing Justice affiliates, AAJC works to promote justice and bring national and local constituencies together through community outreach, advocacy, and litigation.

Amici have a substantial interest in the Court’s resolution of this case because the issues this Court will decide have a direct impact on their clients. Additionally, *amici* want to ensure that the evidentiary standards imposed on United States citizens placed in removal proceedings do not lead to unnecessary, erroneous deportations.

Statement in Compliance with Fed. R. App. P. 29(a)(4)(A)

CLINIC is a nonstock corporation. It has no parent corporation, and no publicly held corporation owns any stock in CLINIC. AAJC is a nonprofit corporation. It has no parent corporation, and no publicly held corporation owns any stock in AAJC.

Statement in Compliance with Fed. R. App. P. 29(a)(4)(E)

No party or party's counsel has authored any portion of this brief, and no one other than *amici curiae* or their counsel have contributed money to fund the preparation or submission of this brief.

Summary of the Argument

The Fourteenth Amendment to the U.S. Constitution guarantees every individual born in the United States the fundamental right to American citizenship. The Government cannot deport a putative citizen unless it proves alienage by clear, unequivocal, and convincing evidence. The court below flipped this burden, requiring an individual who claims to be a natural born citizen to prove his own American birth. By shifting this burden, the District Court opens the door for natural born American citizens to be stripped of their citizenship and emboldens the Government to challenge citizenship wherever possible to gain a strategic advantage in litigation. Moreover, this backwards scheme will have the heaviest impact on America's most vulnerable citizens—those without the resources to hire counsel or even obtain the documentation necessary to definitively establish their citizenship. These individuals may become particularly ripe targets for citizenship challenges by the Government. If deprived of their American citizenship, some of these persons could even be rendered stateless. This Court should not permit the lower court's

burden-flipping decision to stand. If it does, any number of natural-born Americans will almost certainly lose their rights and their homeland.

Argument

I. NATURAL BORN CITIZENSHIP IS A FUNDAMENTAL RIGHT

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” U.S. Const. amend XIV, § 1. With these words, the United States Constitution explicitly bestows upon every person born in the United States the fundamental right to American citizenship. *See Trop v. Dulles*, 356 U.S. 86, 93 (1958).¹

That right is one “no less precious than life or liberty.’ For the native-born citizen it is a right that is truly inalienable.” *Kungys v. United States*, 485 U.S. 759, 784 (1988) (Stevens, J., concurring), *citing Klapprott v. United States*, 335 U.S. 601, 616-617 (1949). The right to citizenship embodies the core principles of the Constitution, “for it is nothing less than the right to have rights.” *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, J., dissenting). Citizenship is so fundamental, that every person born in America possesses “a constitutional right to remain a

¹ This fundamental right has also been reaffirmed by federal statute. *See* 8 U.S.C. § 1401(a).

citizen . . . unless he voluntarily relinquishes that citizenship.” *Afroyim v. Rusk*, 387 U.S. 253, 268 (1967).

In addition to entitling people to the protections of the Constitution and freedoms attendant to life in America, citizenship carries with it a host of unique benefits and opportunities. Citizenship opens the door to civic engagement, the backbone of American democracy. Only citizens have the right to vote, serve on a federal jury, obtain many federal jobs, and run for certain public offices. *See* Richard D. Steel, *Steel on Immigration Law* 5:24 (2016 ed.). Further, citizenship provides access to benefits including a United States passport, certain licenses, and better access to healthcare. *See id.* Citizens can also apply to bring family members to the United States and obtain citizenship for their children. The New Americans Campaign, Top 5 Benefits of Citizenship, available at <http://newamericanscampaign.org/top-5-benefits-of-citizenship/>.

The rights and privileges attendant to United States citizenship are so valuable that they cannot and must not be easily stripped away. The Supreme Court has recognized that a loss of citizenship and deportation is a “severe penalty” that may result not just “in loss of both property and life” but in a loss “of all that makes life worth living.” *Kungys*, 485 U.S. at 792. Deported persons are “exile[d]” and “separate[ed] from their families.” *Padilla v. Kentucky*, 559 U.S. 356, 370 (2010). They are “compelled by our Government to forsake all the bonds formed here and

go to a foreign land where” they often have no family or community ties. *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 285 (1966). As the Court has noted, this may be a fate worse than imprisonment. *Padilla*, 559 U.S. at 368 (“[P]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.” (internal quotation marks omitted)).

Our Government should not subject any of its people to such a drastic and harsh penalty lightly. As the Supreme Court has previously stated:

Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. . . . *Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness.*

Bridges v. Wixon, 326 U.S. 135, 154 (1945) (emphasis added). This “[m]eticulous care” is particularly crucial where an individual has secured citizenship by birth.

Individuals may obtain U.S. citizenship in four ways: (1) naturalization, whereby an individual files an application, passes an examination, and is granted citizenship; (2) acquisition, whereby an individual is born to U.S. citizen parents and acquires citizenship through them; (3) derivation, whereby an individual’s parents become naturalized citizens and she obtains derivative citizenship through them; and (4) natural-born citizenship. See USCIS, U.S. Citizenship, available at <https://www.uscis.gov/us-citizenship>.

Only natural born citizenship is at issue in this case. Unlike the other means of obtaining citizenship—which have been created by statute and may be restricted or rescinded by Congress—natural born citizenship is guaranteed by the U.S. Constitution. Whereas Congress and the Executive have significant power to require strict compliance with statutory conditions for citizenship, the judiciary must more closely scrutinize Government claims that an individual is not entitled to natural born citizenship. The court below neglected to do so, undermining the right to citizenship granted by the Constitution. Flipping the burden of proving citizenship onto individuals ostensibly born in the United States based on the Government’s unadorned assertions of foreign birth undercuts the fundamental character of the right to natural born citizenship.

As a Constitutional right, natural born citizenship must be protected from arbitrary and easy derogation. The Constitution demands no less.

II. THE DECISION BELOW INVITES THE GOVERNMENT TO CHALLENGE NATURAL BORN CITIZENSHIP

Generally, “[w]here citizenship is at stake the Government carries the heavy burden of proving its case by ‘clear, unequivocal, and convincing’ evidence which does not leave ‘the issue in doubt.’” *Nowak v. United States*, 356 U.S. 660, 663 (1958) (quoting *Schneiderman v. United States*, 320 U.S. 118, 125 (1943)). American-born citizens cannot be deprived of their constitutional rights unless the Government proves alienage. *See Lyttle v. United States*, 867 F. Supp. 2d 1256,

1283 (M.D. Ga. 2012) (“Deporting one who claims to be a citizen is a deprivation of liberty implicating Fifth Amendment constitutional concerns.”) (citing *Ng Fung Ho v. White*, 259 U.S. 276, 284–85 (1922)). The imposition of this heavy burden of proof and persuasion upon the Government in this context is critical. “There is always in litigation a margin of error, representing error in factfinding.” *Speiser v. Randall*, 357 U.S. 513, 525 (1958). To protect a party whose freedoms are at stake, “this margin of error is reduced as to him by the process of placing on the other party the burden of producing a sufficiency of proof in the first instance, and of persuading the factfinder.” *Id.* at 525–26. The District Court’s decision inverts the traditional placement of the burden, leaving American-born citizens to prove their own constitutional rights.

This dispute arose in the context of a deportation proceeding, in which the Government bears the burden of proving removability. *See* 8 C.F.R. § 1240.8. Nevertheless, the District Court held that the petitioner “has the burden of establishing his citizenship by a preponderance of the evidence.” Findings and Conclusions and Order at 1 (Doc. 49). The court went on to state that it must “resolve all doubts ‘in favor of the United States’ and against those seeking citizenship.” *Id.* at 31 (quoting *Bustamante-Barrera v. Gonzales*, 447 F.3d 388, 395 (5th Cir. 2006)). In reaching this conclusion, the court relied incorrectly on a facially inapposite case that involved a foreign-born individual’s burden to demonstrate that

he qualifies for naturalization.² In doing so, the court disregarded the petitioner's assertion of *natural born* citizenship and extensive proof of his birth in Texas, holding that "petitioner's citizenship has not yet been determined and is precisely the matter the Court must resolve." *Id.* at 1 n. 1. By treating the petitioner as a presumptively "alien applicant," the lower court relieved the Government of its duty to prove alienage by clear and convincing evidence.

Shifting the burden not only undermines Constitutional principles, it creates perverse incentives for the Government to engage in efforts to abuse its power. The flipped burden crafted by the lower court gives the Government such a significant advantage in litigation, *cf. Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993) (applying incorrect burden of proof was a structural error and required reversal); *United States v. Perlaza*, 439 F.3d 1149, 1172 (9th Cir. 2006) ("improper burden-shifting statement" could not be considered harmless error), that upholding the decision below would provide an open invitation for challenges to claims of natural born citizenship. Government officials will now have an incentive to contest American

² The court in *Bustamante-Barrera* addressed whether the petitioner, who "was not born in the United States," qualified for naturalized citizenship. *Bustamante-Barrera*, 447 F.3d at 394-95 ("[N]aturalization is his sole source for a claim of citizenship. Naturalization is available 'only as provided by Acts of Congress' and, even then, only 'in strict compliance with the terms of' such acts. Petitioner has the burden of proving that he qualifies *for naturalization*, and he must do so in the face of the Supreme Court's mandate that we resolve all doubts 'in favor of the United States and against' those seeking citizenship." (quoting *Berenyi v. Dist. Dir., INS*, 385 U.S. 630, 637 (1967))) (emphasis added).

citizens' place of birth as part of a greater litigation strategy. Multiple birth certificates, a foreign birth certificate of someone with the same name as the respondent, a dual-citizen's foreign passport, a foreign-issued identification card, and any number of other documents that a natural-born American citizen might rightfully and routinely possess could be used by the Government to contest American citizenship.³ Indeed, this burden shift so benefits the Government that it could become worthwhile for the Government to highlight even minor problems with a person's birth certificate. An incorrect birth date, a misspelled name, or inadvertently omitted information could all form the basis for a challenge, leaving the respondent in the unfair position of having to produce additional affirmative evidence of natural born citizenship in order to avoid deportation. Misallocating the

³ U.S.-born dual nationals may be particularly susceptible to challenges as there may be numerous and inaccurate documents issued by the foreign government. For instance, when undocumented immigrants are detained or deported, CLINIC's 300 affiliated legal services programs often advise clients about how to provide for the care of their U.S. citizen children. *See* Catholic Legal Immigration Network, Inc., Emergency Planning for Immigrant Families: A 50-State Resource, <https://cliniclegal.org/emergency-planning-for-immigrant-families>. For those families who make the difficult choice to relocate to Mexico, they can encounter numerous obstacles to obtain basic services for their children. *See* Institute for Women in Migration (IMUMI), Prevention: Acquiring Dual Citizenship, available at https://ia601503.us.archive.org/31/items/DobleNacionalidad_20170819/Doble%20nacionalidad.pdf. The obstacles are so pronounced that CLINIC and its partners have received reports that local Mexican authorities have even counseled parents of U.S.-born dual nationals to register their children's birth as if they were born in Mexico. *See id.*

burden thus gives the Government a significant advantage while saddling American citizens with significant obstacles to proving their own citizenship.

III. SHIFTING THE BURDEN TO INDIVIDUALS INCREASES THE LIKELIHOOD THAT NATURAL BORN CITIZENS WILL BE ERRONEOUSLY DEPORTED.

Another concerning aspect of the lower court's decision is that it puts an immense burden on some of the country's most vulnerable citizens, increasing the likelihood that some natural born citizens will mistakenly be deported. Too many American citizens already find themselves wrongfully ensnared in immigration proceedings.⁴ From 2007 through July 2016, at least 693 American citizens were held in local jails on federal immigration detainers and 818 American citizens were held in immigration detention centers. Eyder Peralta, *You Say You're An American, But What If You Had To Prove It Or Be Deported?*, NPR (Dec. 22, 2016), <http://www.npr.org/sections/thetwo-way/2016/12/22/504031635/you-say-you-re-an-american-but-what-if-you-had-to-prove-it-or-be-deported>. Further, a study of the Secure Communities program⁵ found that "approximately 3,600 US citizens

⁴ Immigration courts do not have jurisdiction over U.S. citizens and immigration officials do not have authority to detain them. Rachel E. Rosenbloom, *The Citizenship Line: Rethinking Immigration Exceptionalism*, 54 B.C. L. Rev. 1965, 1981–82 (2013).

⁵ Secure Communities is a program managed by U.S. Immigration and Customs Enforcement ("ICE") that "mobilizes local law enforcement agencies' resources to enforce federal civil immigration laws." Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and*

have been apprehended by ICE from the inception of the program [in 2008] through April 2011.” Kohli, Markowitz & Chavez, *supra* at 4, http://www.mygreencard.com/downloads/SecureCommunities_February2012.pdf.⁶ American citizens are already being erroneously apprehended and detained by immigration officials. Shifting the burden of proving natural born citizenship will only serve to exacerbate the danger that these citizens will be wrongly deported.

Under the District Court’s holding, the burden is removed from the Government, with its vast resources, and pushed onto individual citizens, many of whom cannot shoulder the expense of proving their citizenship. As *amici* have experienced first-hand in advising vulnerable populations, many Americans lack documentation of citizenship and the means required to obtain such proof. Further, most people in immigration proceedings are unrepresented, without an advocate to help them locate, obtain, and explain Government documents. See Ingrid Eagly and Steven Shafer, *Access to Counsel in Immigration Court* at 2, American Immigration

Due Process, at 1 (Oct. 2011), http://www.mygreencard.com/downloads/SecureCommunities_February2012.pdf.

⁶ These numbers will likely increase as removal proceedings surge. In 2002, around 165,000 individuals were removed from the United States, and that number has climbed almost every year since. Ana Gonzalez-Barrera and Mark Hugo Lopez, *U.S. Immigrant Deportations Fall to Lowest Level Since 2007*, Pew Research Center (Dec. 16, 2016), <http://www.pewresearch.org/fact-tank/2016/12/16/u-s-immigrant-deportations-fall-to-lowest-level-since-2007/>.

Council (2016),
https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf (finding only 37% of all individuals, and 14% of detained individuals, had counsel in removal cases). Requiring a detained person to rebut the presumption of alienage without the benefit of counsel is likely to end in failure.

Moreover, as explained above, shifting the burden directly affects the outcome of proceedings, giving the Government a significant advantage. *See supra* p. 9. Putting the burden on vulnerable individuals with limited resources will thus undoubtedly increase the likelihood that American citizens will be erroneously deported in close cases. And, with ICE agents “under pressure to increase detentions and deportations in order to fill empty beds” in detention centers, these problems are likely to affect an increasing segment of the population. *See Renata Robertson, The Right to Court-Appointed Counsel in Removal Proceedings: An End to Wrongful Detention and Deportation of U.S. Citizens*, 15 *Scholar: St. Mary’s L. Rev. & Soc. Just.* 567, 585 (2013).

IV. THE DECISION BELOW RISKS TURNING NATURAL BORN CITIZENS INTO STATELESS PEOPLE.

The decision below could not only strip natural born citizens of their American citizenship, but also render them stateless if no other country accepts them as a citizen. Individuals who are deemed removable aliens but cannot be deported

are stateless, unable to enjoy the privileges of U.S. citizenship, but also unable to leave and live as citizens of another state. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 684 (2001) (noncitizen ordered removed could not be deported because no other country would accept him as a citizen). Such stateless individuals are relegated to a second-class status in America.

Statelessness is in contravention of American values and obligations. As just one example of the United States' fundamental aversion to statelessness, the Fourteenth Amendment's Citizenship Clause ensures that a parent's status as a stateless person is not inherited by a child born in the United States. American's promise of citizenship under the Fourteenth Amendment is also consistent with Article 24.3 of the International Covenant on Civil and Political Rights, to which the United States is a signatory. That Article guarantees the right of every child to acquire nationality. *See International Covenant on Civil and Political Rights, opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) (entered into force Mar. 23, 1976).

Indeed, the United States takes such positions because statelessness has a significant and detrimental impact on individuals. Stateless people suffer a host of challenges that include limited legal protections, no right to vote, less access to educational funds, fewer employment opportunities, worse health care and property rights, travel restrictions, social exclusion, and vulnerability to criminal enterprises

and manipulation by foreign interests. *See Statelessness*, U.S. Department of State, <https://www.state.gov/j/prm/policyissues/issues/c50242.htm>.

U.S. citizenship acquired through birth in the U.S. is different than citizenship acquired through naturalization, where all parties generally acknowledge and agree as to an individual's original nationality. When the Government challenges U.S. citizenship bestowed through birth, there is a greater risk of creating stateless individuals as there is necessarily a dispute regarding the person's country of origin. This problem is most significant where natural born citizens are accused of coming to the United States from countries that do not permit dual citizenship. For instance, neither China nor India allows dual citizenship. *See Choosing Between U.S. and Chinese Citizenship: Pros and Cons*, Chodorow Law Offices (Apr. 20, 2014), <http://lawandborder.com/advantages-of-us-naturalization-versus-keeping-chinese-citizenship/>; *Dual Nationality*, U.S. Embassy & Consulates in India, <https://in.usembassy.gov/u-s-citizen-services/citizenship-services/dual-nationality/>. Such countries could deny an individual's citizenship (based on proof offered by the individual himself) and claim that he is a citizen of the United States regardless of any determination made by the U.S. Government.

Further, ICE currently lists 20 "uncooperative" nations that are unlikely to take their own citizens back after removal from the United States. Department of Homeland Security, U.S. Immigration and Custom Enforcement, Operations and

Support Fiscal Year 2018 Congressional Justification 196 (2017). ICE identifies an additional 55 countries as “at-risk” of failing to comply with U.S. deportations. *Id.* These countries are even less likely to accept individuals whose citizenship is in doubt. Indeed, “it is rare that *any* country other than the country of citizenship will accept an individual who has been ordered removed from the United States.” *Citizens of Nowhere: Solutions for the Stateless in the U.S.* (Dec. 2012), <https://www.opensocietyfoundations.org/sites/default/files/citizens-of-nowhere-solutions-for-the-stateless-in-the-us-20121213.pdf> (emphasis added).

Under the District Court’s ruling, if an individual cannot satisfy the heavy burden imposed on him to prove he was born in the United States, there is a real risk that no other country will accept him. An individual who cannot be deported but is not recognized as an American citizen is stuck in limbo. By placing the burden on the individual to prove he was born in the United States, the lower court’s decision has the potential to increase the number of such stateless people.

Conclusion

For the reasons discussed above, the judgment of the District Court should be reversed.

Bradley Jenkins
**CATHOLIC LEGAL IMMIGRATION
NETWORK, INC.**
8757 Georgia Avenue, Suite 850
Silver Spring, MD 20910
(301) 565-4800

Niyati Shah*
**ASIAN AMERICANS
ADVANCING JUSTICE - AAJC**
1620 L Street NW, Suite 1050
Washington, DC 20036
(202) 296-2300

** Admitted in New Jersey and New York only. DC
practice limited to federal courts.*

Respectfully submitted,

s/ Theodore Howard
Theodore A. Howard (Bar
No.)
P. Nicholas Peterson
Usha Neelakantan
Madeline J. Cohen
Luke J. Karamyalil
John T. Lin
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
thoward@wileyrein.com

Counsel for Amici Curiae

September 22, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2017, I electronically filed the foregoing Brief Amici Curiae of the Catholic Legal Immigration Network, Inc. in Support of Petitioner, with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Theodore Howard
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
thoward@wileyrein.com

Counsel for Amici Curiae

September 22, 2017

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,608 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) and L.R. 32.1 because it has been prepared in a proportionally-spaced typeface using Microsoft Word, font size 14 Times New Roman for body text, and font size 14 for footnotes.

s/ Theodore Howard
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
(202) 719-7000
thoward@wileyrein.com

Counsel for Amici Curiae

September 22, 2017