The Honorable David G. Estudillo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Ilai Kanutu KOONWAIYOU,

Plaintiff,

v.

Anthony BLINKEN, Secretary of State; U.S. DEPARTMENT OF STATE,

Defendants.

Case No. 3:21-cv-05474-DGE

SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

Plaintiff Ilai Kanutu Koonwaiyou (Mr. Koonwaiyou) respectfully submits this supplemental brief pursuant to the Court's order following a hearing on February 10, 2022. Dkt. 19. During the hearing, Mr. Koonwaiyou's counsel explained that the purpose of Section 15(b)(1) of Pub. L. No. 99-396, 100 Stat. 837 (1986) was to ensure the orderly processing of certain claims to nationality among those made U.S. nationals by the 1986 law. Because Congress created a new category of U.S. nationals among existing individuals, it decided to implement a mechanism to verify nationality claims as to those individuals. Section 15(b)(1) achieves this goal. And while all nationals "*may* apply" for a certificate of nationality pursuant to 8 U.S.C. § 1452(b) (emphasis added), only those who were retroactively granted nationality status under this statute were *required* to go through this verification process to enjoy the benefits of being a U.S. national.

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The legislative history of Section 15 helps illustrate both this specific purpose of Section 15(b)(1), as well as the broader purpose of Section 15. Statements made in Congress first explain that Section 15 was designed to ensure that certain "residents of America Samoa [could] take their place with other members of their community" as U.S. nationals. 132 Cong. Rec. 18619 (1986). The goal was to guarantee that these individuals, who were born outside of American Samoa to a U.S. national parent and non-U.S. national parent, could obtain nationality, as they were "presently American Samoan in every other respect other than U.S. nationality." *Id*. These statements in Congress also touched on Section 15(b)(1), explaining that the statute would require newly nationalized individuals to "substantiate the residency of their parents." *Id.* However, the legislative history also notes that in conducting this inquiry, the Department of State should "rely on whatever information can be provided and use liberal discretion as they do to qualify every individual who can reasonably be presumed to be eligible." *Id.*

These statements underscore Mr. Koonwaiyou's point during the Court's hearing. First, Congress designed Section 15(b)(1) as a verification process for some U.S. nationals, even if that standard was to be a "liberal" one. Second, Congress also set out to ensure that people who were otherwise American Samoan in every respect could become U.S. nationals and enjoy the rights to that status, including by becoming full members of their community. This interpretation of Section 15(b) provides all the text with a clear purpose. Importantly, it also does not negate any part of the statute. It ensures that the "at birth" language in 8 U.S.C. § 1408, the language in Section 15(b) making the statute retroactive to persons born before its passage, and the language of Section 15(b)(1) are all given full effect. Doing so honors Congress's goal of verifying nationality *and* making these new U.S. nationals full members of their community in every respect. Notably, as Defendants admitted during the hearing, their proposed interpretation

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eliminates the words "at birth" from the statute for individuals like Mr. Koonwaiyou's mother, violating a cardinal principle of statutory interpretation. *See City of Los Angeles v. U.S. Dep't of Commerce*, 307 F.3d 859, 870 (9th Cir. 2002).

Second, Mr. Koonwaiyou's citation to the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416 § 103, 108 Stat. 4305, 4307–08 ("ICTA") (codified at 8 U.S.C. § 1435(d)(1)), provides a useful example that shows how Congress has also made status retroactive to birth in other situations. Under ICTA, Congress explained that certain persons who had lost citizenship could "after taking the oath of allegiance . . . have the status of a citizen of the United States by birth." 8 U.S.C. § 1435(d)(1). In this sense, ICTA and Section 15(b) are similar. In both cases, an individual does not become a citizen or national "at birth" until passing through a procedural hurdle Congress enacted. *See Friend v. Holder*, 714 F.3d 1349, 1352 (9th Cir. 2013) (confirming that similar language "describes the point at which one's citizenship status, if successfully established, takes effect").

However, ICTA also shows that when Congress does *not* want to make a status fully retroactive despite using the "at birth" language, it knows how to do so. In ICTA, Congress did that explicitly, stating that while these citizens' status was retroactive to birth, they were not made citizens for any periods during which they had lost citizenship for failing to maintain physical presence in the United States. *See* 8 U.S.C. § 1435(d)(1). Congress specified that for such individuals, the law could not "be construed as conferring United States citizenship retroactively upon such person during any such period in which the person was not a citizen." *Id.* Thus, Congress made clear that there would be periods when the person will not be considered to enjoy the rights and privileges of citizenship. For example, the person would not have been entitled to pass their U.S. citizenship on to children born during that time.

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In contrast, Congress did not carve out any exception under 8 U.S.C. § 1408(4) as to an individual's rights to enjoy the full privileges of nationality. Instead, Congress expressly confirmed they are U.S. nationals "at birth" once the Department of State verifies the individual's claim to nationality under Section 15(b)(1). *See* 8 U.S.C. § 1408. The difference between the language in Section 15(b) and Section 103 of ICTA—both of which are part of the Immigration and Nationality Act—only further underscores that in drafting 8 U.S.C. § 1408(4), Congress did not intend to create a separate class of U.S. nationals who would not enjoy the full rights that accompanies that status. *See Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)). As a result, once confirmed as a U.S. national, Mr. Koonwaiyou's mother's rights of nationality were retroactive to her birth, affording her the privilege of extending U.S. national status to her children.

For these reasons and those stated in Mr. Koonwaiyou's response and at the hearing, he asks that the Court deny Defendants' motion to dismiss.

DATED this 18th day of February, 2022.

s/ Matt Adams
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s/ Aaron Korthuis
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s/ Margot Adams
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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 18th day of February, 2022.

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