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Constitutional Confines: Determining the Applicability of the Citizenship Clause to American Somoa, *Tuaua v. United States*, No. 12-01143, 2013 U.S. Dist. Lexis 89602 (D.D.C. June 26, 2013)

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CASE COMMENT

**CONSTITUTIONAL CONFINES: DETERMINING THE
APPLICABILITY OF THE CITIZENSHIP CLAUSE TO
AMERICAN SAMOA**
***TUAUA v. UNITED STATES*, NO. 12-01143, 2013 U.S. DIST.
LEXIS 89602 (D.D.C. JUNE 26, 2013)**

*Andrew Petrey**

I. FACTS

Plaintiffs, the Samoan Federation of America and a group of five non-citizen U.S. nationals born in American Samoa, brought this case in the U.S. District Court for the District of Columbia asserting that the Fourteenth Amendment's Citizenship Clause extends to American Samoa and that people born in American Samoa are therefore U.S. citizens at birth.¹ Defendants, the United States and the related parties that execute its citizenship laws,² moved to dismiss Plaintiffs' complaint for lack of subject-matter jurisdiction and failure to state a claim.³ The court HELD that it did have subject-matter jurisdiction over the matters⁴ and granted Defendants' Motion to Dismiss for failure to state a claim, concluding that "[t]he Citizenship Clause does not guarantee birthright citizenship to American Samoans."⁵

II. HISTORY

"American Samoa is located on the eastern islands of an archipelago in the South Pacific. The United States claimed [American Samoa] in a 1900 treaty with Great Britain and Germany and Samoan leaders formally ceded sovereignty to the United States in 1900 and 1904."⁶ American Samoa is classified as an "outlying possession" of the United

* J.D. expected May 2014, University of Florida Levin College of Law; B.S. May 2011, Auburn University. This Comment is dedicated to the Wagner family for their continued love and support.

1. *Tuaua v. United States*, No. 12-01143, 2013 U.S. Dist. LEXIS 89602, at 1–2 (D.D.C. June 26, 2013).

2. *Id.* at 2.

3. *Id.*

4. *Id.* at 9–12.

5. *Id.* at 14.

6. *Id.*

States.⁷ As such, people born in American Samoa are U.S. nationals but not U.S. citizens at birth.⁸ “The State Department’s Foreign Affairs Manual . . . categorizes American Samoa as an unincorporated territory and states that ‘the citizenship provisions of the [U.S.] Constitution do not apply to persons born there.’”⁹ Plaintiffs allege a variety of harms due to their non-citizen status.¹⁰ All of Plaintiffs’ claims are based on the same legal argument: “the Citizenship Clause applies to American Samoa, so contrary law and policy must be invalidated.”¹¹

Under the Citizenship Clause of the Fourteenth Amendment, “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”¹² Thus, the question becomes whether the territory qualifies as a part of the “United States” as used within the Citizenship Clause.¹³

“The Supreme Court . . . addressed the extent to which the Constitution applies in territories in a series of cases known as the Insular Cases.”¹⁴ In an oft-cited Insular Case, *Downes v. Bidwell*, the Supreme Court decided whether territories of the United States were subject to the protections of the U.S. Constitution.¹⁵ More specifically, the Court was tasked with determining whether the Revenue Clause of the U.S. Constitution applied to the newly acquired territory of Puerto Rico.¹⁶ *Downes*, a merchant in New York, imported merchandise from

7. *Id.* at 6 (citing 8 U.S.C. § 1101(a)(29) (2013)).

8. *Id.* (citing 8 U.S.C. § 1401(1) (2013)); *see also* 8 U.S.C. § 1101(a)(29) (2013).

9. *Tuaua*, 2013 U.S. Dist. LEXIS 89602, at 6. *See also* 8 U.S.C. § 1408(1) (2013).

10. *Tuaua*, 2013 U.S. Dist. LEXIS 89602, at 7.

Plaintiffs allege a variety of harms that have befallen them due to their non-citizen national status. Several plaintiffs, despite long careers in the military or law enforcement, remain unable to vote or to work in jobs that require citizenship status. Other harms include: ineligibility for federal work-study programs in college, ineligibility for firearm permits, and inability to obtain travel and immigration visas.

Id. (citations omitted).

11. *Id.* at 2.

12. U.S. CONST. amend. XIV, § 1.

13. *Tuaua*, 2013 U.S. Dist. LEXIS 89602, at 15.

14. *Id.* at 15. The Insular Cases include: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. N.Y. & Porto Rico Steamship Co.*, 182 U.S. 392 (1901); *Juan R. Torruella, One Hundred Years of Solitude: Puerto Rico’s American Century*, in *FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, THE AMERICAN EXPANSION, AND THE CONSTITUTION*, 248, 248 (Christina Duffy Burnett & Burke Marshall eds., 2001).

15. *Downes*, 182 U.S. at 249.

16. *Id.*

Puerto Rico.¹⁷ Downes was forced to pay an import tax on the merchandise.¹⁸ He filed suit against the U.S. Customs Agent, alleging that the Revenue Clause of the U.S. Constitution applied to Puerto Rico, and thus taxes on imports from Puerto Rico should be in uniformity with imports from other states.¹⁹ The Court held, “the Island of Puerto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the [R]evenue [C]lauses of the Constitution.”²⁰ The Court also noted that Congress had continually made special provisions for extending citizenship to newly acquired territories.²¹ “[T]here is an implied denial of the rights of the inhabitants to American citizenship until Congress by further action shall signify its assent thereto.”²²

The Supreme Court affirmed the Insular Cases in *Boumediene v. Bush*.²³ *Boumediene* carefully analyzed the Insular Cases, as well as a number of subsequent cases, to help clarify the applicability of the U.S. Constitution to unincorporated territories.²⁴ In *Boumediene*, foreign nationals designated as enemy combatants were detained at the U.S. Naval Station at Guantanamo Bay, Cuba.²⁵ Separate courts determined that each detainee was a member of the al Qaeda network.²⁶ Each detainee sought a writ of habeas corpus in the U.S. District Court for the District of Columbia, but the cases were dismissed for lack of jurisdiction because the naval base was outside of sovereign territory.²⁷ The Supreme Court overturned the District Court’s decision and held that the detainees were entitled to the privilege of habeas corpus as provided by the Suspension Clause of the U.S. Constitution even though the detainees were not U.S. citizens.²⁸

In *Eche v. Holder*, the U.S. Court of Appeals for the Ninth Circuit addressed the question of whether the Naturalization Clause applied to the “Commonwealth of the Northern Mariana Islands” (CNMI) prior to

17. *Id.* at 247–48.

18. *Id.*; The Foraker act required the payment of “fifteen per centum of the duties which are to be levied, collected and paid upon like articles of merchandise imported from foreign countries.” *id.* at 247–48.

19. *Id.* at 248–49.

20. *Id.* at 287.

21. *Id.* at 280; Congress reserved the right to grant birthright citizenship to the people of Louisiana, Florida, Alaska, Mexico, Puerto Rico, and the Philippines. *id.*

22. *Id.*

23. *Boumediene v. Bush*, 553 U.S. 723, 764 (U.S. 2008).

24. *Id.* at 755–62.

25. *Id.* at 732.

26. *Id.* at 734.

27. *Id.*; see also *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002).

28. *Boumediene*, 553 U.S. at 798.

the enactment of a federal immigration law.²⁹ Plaintiff-Appellants, Eche and Lo, became residents of CNMI before Congress enacted a statute that made federal immigration laws applicable to CNMI.³⁰ In order to apply for naturalization as U.S. citizens, lawful permanent residents of the United States were required to show that they had resided in the United States continuously for five years.³¹ Eche and Lo filed applications to naturalize as U.S. citizens, but the applications were denied because they had not fulfilled the five-year residency requirement under the statute.³² Eche and Lo contended that their time living in CNMI before the enactment of the immigration laws should count towards the five-year period.³³ The court disagreed, holding that “[t]he Naturalization Clause does not apply of its own force and the governments have not consented to its applicability.”³⁴

In *Rabang v. INS*, seven individuals appealed “from the district court’s dismissal of their complaints for failure to state a claim for relief.”³⁵ Plaintiffs alleged that they were U.S. citizens under the Citizenship Clause.³⁶ Plaintiffs claimed “that they or their parents were born in the Philippines during its territorial period, [and] that during this time the Philippine Islands were ‘in the United States’” as used in the Citizenship Clause.³⁷ The Ninth Circuit affirmed the district court’s decision, holding that birth in the Philippines during its territorial period did not give rise to U.S. citizenship.³⁸

III. INSTANT CASE

In the instant case, the U.S. District Court for the District of Columbia granted Defendants’ motion to dismiss for failure to state a claim.³⁹ The standard of review for a motion to dismiss is “whether the plaintiff has pleaded facts sufficient to ‘raise a right to relief above the speculative level,’ assuming that the facts alleged are true.”⁴⁰

First, the court concisely concluded that it had jurisdiction over

29. *Eche v. Holder*, 694 F.3d 1026, 1027 (9th Cir. 2012).

30. *Id.* at 1028.

31. *Id.* at 1027; *see also* 8 U.S.C. § 1427(a)(1)(2013).

32. *Eche*, 694 F.3d at 1028.

33. *Id.*

34. *Id.* at 1031.

35. *Rabang v. INS*, 35 F.3d 1449, 1450 (9th Cir. 1994).

36. *Id.*

37. *Id.* at 1451.

38. *Id.* at 1452.

39. *Tuaua v. United States*, No. 12-01143, 2013 U.S. Dist. LEXIS 89602, at *3 (D.D.C. June 26, 2013).

40. *Id.* at *8 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Plaintiffs' claims.⁴¹ Next, the court moved to the more tedious question of whether Plaintiffs had pleaded facts sufficient to "raise a right to relief above the speculative level."⁴² The court concluded that Plaintiffs failed to state a claim for relief.⁴³ The court reached this conclusion based upon "the Constitution's plain language, rulings from the Supreme Court and other federal courts, longstanding historical practice, and pragmatic considerations."⁴⁴

The court based its decision largely on the Insular Cases,⁴⁵ especially *Downes*,⁴⁶ concluding that only certain "fundamental" constitutional rights are extended to inhabitants of unincorporated territories.⁴⁷ The court also noted that "[w]hile none of the Insular Cases directly addressed the Citizenship Clause, they suggested that citizenship was not a 'fundamental' right that applied to unincorporated territories."⁴⁸ In *Downes*, Justice Brown suggested that "citizenship and suffrage are not 'natural rights enforced in the Constitution.'"⁴⁹ Justice Brown also contrasted, in dicta, the language of the Citizenship Clause with the language of other parts of the Constitution, stating that "there is a limitation to persons born or naturalized in the United States, which is not extended to persons born in any place 'subject to their jurisdiction.'"⁵⁰

In addition, the district court concluded that the past practice in other unincorporated territories was to treat citizenship as a statutory right, not a constitutional right.⁵¹ In both *Eche* and *Rabang*, the Ninth Circuit concluded that citizenship was not afforded to unincorporated territories because of the geographic limitations of the phrase "in the United States" as used in the Citizenship Clause.⁵² Furthermore, the court in the instant case points out that Congress specifically enacted laws that would provide a path to citizenship for the people of the Philippines and the CNMI.⁵³ The district court affirmed this view of the Citizenship Clause, holding "[i]f the Citizenship Clause guaranteed birthright

41. *Id.* at *9–13.

42. *Id.* at *9–14 (quoting *Twombly*, 550 U.S. at 555).

43. *Id.* at *14.

44. *Id.*

45. *See id.* at *15.

46. *See id.* at 15–19 (citing *Downes v. Bidwell*, 182 U.S. 244, 282 (1901)).

47. *Id.* at *16 (citing *Dorr v. United States*, 195 U.S. 138, 148–49); *Balzac v. Porto Rico*, 258 U.S. 298, 312 (1922); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1990).

48. *Id.*

49. *Id.* at *17–18 (citing *Downes*, 182 U.S. at 282).

50. *Id.* at *18 (citing *Downes*, 182 U.S. at 251).

51. *Id.* at *26.

52. *See Rabang v. INS*, 35 F.3d 1449, 1452 (9th Cir. 1994); *Eche v. Holder*, 694 F.3d 1026, 1031 (9th Cir. 2012).

53. *See Tuaua*, 2013 U.S. Dist. LEXIS 89602, at *26–27.

citizenship in unincorporated territories, these statutes would have been unnecessary.”⁵⁴

IV. ANALYSIS

Throughout the tortured history of cases exploring the applicability of the U.S. Constitution to unincorporated territories, a bright-line rule has never formed. The main rule that has emerged is that certain fundamental rights apply to the territories.⁵⁵ Unfortunately, little guidance has been given regarding which rights are fundamental.

To date, the courts have determined that inhabitants of unincorporated territories are entitled to Due Process⁵⁶ and the writ of habeas corpus.⁵⁷ No case has specifically defined what all of the fundamental rights are. The courts have been hesitant to expand the applicability of the U.S. Constitution to unincorporated territories.⁵⁸ In contrast, courts have held that the Revenue Clause did not apply to Puerto Rico,⁵⁹ the Citizenship Clause did not apply to the Philippines,⁶⁰ the Naturalization Clause did not apply to the Northern Mariana Islands,⁶¹ and that there was no right to a jury trial in the Philippines.⁶² These decisions chip away at what could be considered fundamental.

In addition to the courts’ decisions regarding whether certain rights are fundamental or apply of their own force, many of the cases including the instant case, look at the plain language of the U.S. Constitution to show that the founders did not intend for citizenship to be automatically extended to all territories over which the United States exercises dominion.⁶³ Discrepancies in wording indicate that the Citizenship Clause should be applicable to a limited class of people. The wording of the Citizenship Clause limits its applicability to “persons born or naturalized in the United States, and subject to the

54. *Id.* at *27.

55. *See* Balzac v. Porto Rico, 258 U.S. 298, 309, 312–13 (U.S. 1922). “The guaranties of certain fundamental personal rights declared in the Constitution, as for instance that no person could be deprived of life, liberty or property without due process of law, had from the beginning full application in the Philippines and Porto Rico. . . .” *Id.* at 312–13.

56. *See id.* at 313.

57. Boumediene v. Bush, 553 U.S. 723, 798 (2008).

58. *See Tuaua*, 2013 U.S. Dist. LEXIS 89602, at *27–28 (“While longstanding practice is not sufficient to demonstrate constitutionality, such a practice requires special scrutiny before being set aside”).

59. Downes v. Bidwell, 182 U.S. 244, 287 (1901).

60. Rabang v. INS, 35 F.3d 1449, 1453–54 (9th Cir. 1994).

61. Eche v. Holder, 694 U.S. 1026, 1031 (9th Cir. 2012).

62. Dorr v. United States, 195 U.S. 138, 149 (U.S. 1904).

63. *See Tuaua*, 2013 U.S. Dist. LEXIS 89602, at *14–15; *Downes*, 182 U.S. at 251.

jurisdiction thereof.”⁶⁴ However, the Equal Protection Clause applies to “any person within its jurisdiction.”⁶⁵ Thus, it can be inferred that the Citizenship Clause is extended to a more limited group than the Equal Protection Clause.

Furthermore, the courts have treated territorial citizenship as a statutory right, not a constitutional right.⁶⁶ The district court in the instant case states that the various statutes enacted by Congress to confer citizenship to some of its territories would be unnecessary if citizenship was guaranteed to inhabitants of unincorporated territories by the Constitution.⁶⁷ American Samoans will not have birthright citizenship until that right is bestowed upon them by Congress.⁶⁸

As a practical matter, it is interesting that the Court in the instant case dismissed the case before reaching trial.⁶⁹ Despite the fact that the courts have not directly answered the question presented, the court was confident enough to dismiss the case for failure to state a claim, concluding that even if it construed the facts in a manner most favorable to Plaintiffs there was not sufficient information to suggest that there was any recognized legal theory by which relief could be granted.⁷⁰ The court’s decision appears to be based upon all of the above information. Perhaps any one of the reasons would not be sufficient to deny citizenship to American Samoans, but taken together the court was confident enough to dismiss the complaint.

V. CONCLUSION

The court’s dismissal of the complaint likely will result in fewer challenges to the applicability of the Citizenship Clause in unincorporated territories. By dismissing the complaint for failure to state a claim, the court held that even if all of the facts were tilted in the Plaintiffs’ favor there was still no right to relief.⁷¹ In the eyes of the court, there was not even room for argument over whether the Citizenship Clause applied to American Samoa.⁷²

64. U.S. CONST. amend. XIV, § 1.

65. *Id.*

66. Tuaua v. United States, No. 12-01143, 2013 U.S. Dist. LEXIS 89602, at *26 (D.D.C. June 26, 2013).

67. *Id.* at *27.

68. *Id.* at *27–28.

69. *See id.* at *28.

70. *See id.* at *8–14.

71. *See id.* at *14–28.

72. *See id.* at *23 (“In short, federal courts have held over and over again that unincorporated territories are not included within the Citizenship Clause, and this Court sees no reason to do otherwise!”).

The instant case demonstrates that U.S. citizenship is not a fundamental right guaranteed by the U.S. Constitution to inhabitants of unincorporated territories.⁷³ The instant case also demonstrates that the provisions of the U.S. Constitution rarely apply of their own force. Even though this was only a memorandum opinion, potential future challengers will likely be hesitant to challenge this issue because of the ease with which the court seemed to reach its conclusion. In light of this case, inhabitants of unincorporated territories do not have birthright citizenship until Congress has bestowed that privilege upon them.⁷⁴

73. *See id.* at *28.

74. *See id.* at *26–28.