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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Minh Khac Nguyen, Petitioner, v. Fred Figueroa, *et al.* Respondents.	**Case No: 2:25-CV-03958-DJH-JFM** **PETITIONER'S RESPONSE BRIEF IN SUPPORT OF DERIVATIVE U.S. CITIZENSHIP CLAIM**

I. Introduction and Summary

Petitioner Minh Nguyen submits this memorandum in response to the Government's opposition, to clarify the correct legal framework and evidence establishing his U.S. citizenship by derivation. The Government's opposition misapplies former Immigration and Nationality Act (INA) § 321 (formerly 8 U.S.C. § 1432) to Mr. Nguyen's case. In fact, Mr. Nguyen's claim is governed by former INA § 320 (formerly 8 U.S.C. § 1431), which specifically provides for derivative citizenship of a foreign-born child when one parent is a U.S. citizen and the other parent naturalizes during the child's minority. Section 320 –

not § 321 – is the controlling law for children, like Mr. Nguyen, who were adopted by one U.S. citizen parent and one alien parent who became naturalized.

Mr. Nguyen was born abroad on [redacted] was lawfully admitted to the United States as a permanent resident in 1975 as the adopted child of U.S. citizen parents, and his adoptive mother became a naturalized U.S. citizen on July 3, 1979, before Mr. Nguyen's 18th birthday. As demonstrated below, all the statutory requirements of former INA § 320 are satisfied. The Government's arguments to the contrary rely on the wrong statute and misunderstand the evidentiary record.

First, we explain why former § 320 (8 U.S.C. § 1431 (1952–2000)) — not § 321 — governs Mr. Nguyen's derivative citizenship. The Ninth Circuit and other courts have made clear that § 321 applied only to children "born … of alien parents," *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1066 (9th Cir. 2003), whereas § 320 governed cases where one parent was a U.S. citizen. Here, Mr. Nguyen's adoptive father was a U.S. citizen and thus Mr. Nguyen was not born to two alien parents; accordingly, § 321's stricter requirements do not control. Instead, § 320 provided Mr. Nguyen a pathway to derivative citizenship as the adopted child of one citizen parent and one parent who naturalized during his youth.

Second, we show that Mr. Nguyen meets each element of former INA § 320 (including § 320(b)'s provisions on adopted children). The evidence – including Mr. Nguyen's lawful permanent resident ("LPR") admission as an adopted child and his mother's 1979 naturalization certificate – demonstrates that: (1) at least one of Mr. Nguyen's parents was a U.S. citizen (his adoptive father) during his childhood; (2) his other

parent (adoptive mother) was naturalized while Mr. Nguyen was under 18; (3) Mr. Nguyen was residing in the United States as a lawful permanent resident in the custody of his U.S. citizen parent(s) at the time of that naturalization; and (4) Mr. Nguyen's adoption was lawfully finalized pursuant to INA § 101(b)(1)(E) or (F) such that he qualified as the parents' "child" for immigration and nationality purposes. Each of these facts satisfies the statutory criteria of § 320.

Finally, we address the Government's procedural and factual objections. The Government's challenge to this Court's jurisdiction is meritless. This Court is empowered under 8 U.S.C. § 1503(a) (and, if applicable, 8 U.S.C. § 1252(b)(5)) to adjudicate Mr. Nguyen's citizenship claim de novo, because he has been denied documentation of citizenship and no prior proceeding has conclusively resolved his nationality. In such an action, the Court may and should resolve any genuine dispute of fact – here, the fact of Mr. Nguyen's adoption – through appropriate fact-finding measures. The absence of the original 1970s adoption decree in the present record is not fatal; the Government's own records and the circumstances of Mr. Nguyen's LPR status strongly indicate the adoption's existence and validity. The Court can direct the Government to produce Mr. Nguyen's immigration A-file and any State Department consular records, which likely contain the adoption evidence, and may hold an evidentiary hearing if necessary to resolve any remaining factual questions. The law does not require Mr. Nguyen to produce the original foreign adoption decree where secondary evidence and official records establish the material facts.

For these reasons, and as detailed below, Mr. Nguyen respectfully asks this Court to reject the Government's opposition, find that he derived U.S. citizenship under former INA § 320, and direct the issuance of evidence of his citizenship.

II. Background

A. Mr. Nguyen's Adoption, Lawful Residence, and Parents' Citizenship Status.

Mr. Nguyen was born in Vietnam on [redacted] While still a child, he was legally adopted by an American citizen parent and his spouse. In 1975, at the age of 13, Mr. Nguyen was admitted to the United States as a lawful permanent resident based on his adoption – an immigrant visa was issued to him as the adopted son of a U.S. citizen or pursuant to an orphan adoption provision, as evidenced by the U.S. Consulate's processing of his case. The U.S. consular authorities at the time required proof of a full, final adoption or an orphan eligibility finding under INA § 101(b)(1)(E) or (F) before granting Mr. Nguyen an IR-2 (child) immigrant visa. It can therefore be inferred that Mr. Nguyen's adoption had been legally finalized and all statutory requirements met when he immigrated to the United States. The adopted child provisions of the INA require, inter alia, that an adoption occur while the child is under the age of 16 (or 18 in certain sibling cases) and that the adoptive parent(s) had legal custody of and resided with the child for at least two years, unless the child qualified as an "orphan" under INA § 101(b)(1)(F). Mr. Nguyen's immigration history suggests these criteria were satisfied, given that the consular officer had possession of the adoption records and approved his entry as an adopted child.

Mr. Nguyen's adoptive father was a United States citizen (indeed, the family's ability to bring Mr. Nguyen to the U.S. so quickly in 1975 was likely due to his father's citizenship). His adoptive mother was a foreign national who became a naturalized U.S. citizen on July 3, 1979. Mr. Nguyen was 17 years old on that date – unmarried and still residing in the legal and physical custody of his adoptive parents in the United States. Thus, by mid-1979, both of Mr. Nguyen's adoptive parents were U.S. citizens (one by birth and one by naturalization). Mr. Nguyen turned 18 in December 1979. In summary, before Mr. Nguyen's 18th birthday: he was a U.S. lawful permanent resident living with his U.S. citizen family; his mother had naturalized; and his father was a long-standing U.S. citizen. These facts, if applied under the correct law, establish that Mr. Nguyen automatically acquired U.S. citizenship as a matter of law in 1979.

B. Procedural Posture and Government's Opposition.

Mr. Nguyen has brought this action to confirm his U.S. citizenship, after the Government refused to recognize his derivative citizenship. The Government's opposition brief erroneously relies on the requirements of former INA § 321, 8 U.S.C. § 1432 (repealed 2000), arguing that Mr. Nguyen did not derive citizenship because both adoptive parents did not naturalize and there was no "legal separation" or death of one parent. The Government also contests whether the Court has jurisdiction to decide citizenship, and whether Mr. Nguyen has adequately proven the fact of his adoption without the original decree. As explained below, each of these arguments fails.

III. Applicable Law: Derivative Citizenship Under Former INA § 320 versus § 321

This case turns on which derivative citizenship statute applied to Mr. Nguyen before he turned 18 (in 1979). Congress has since restructured the law (with the Child Citizenship Act of 2000), but because Mr. Nguyen was already over 18 in 2000, his claim is governed by the law in effect during his childhood. Two statutes potentially conceivably apply: former INA § 320 (8 U.S.C. § 1431, 1952–2000) and former INA § 321 (8 U.S.C. § 1432, 1952–2000). Critically, however, these statutes covered different situations. Section 321 governed derivation for children born to two alien parents, while § 320 governed derivation when a child had one U.S. citizen parent (by birth or naturalization) and one alien parent. Mr. Nguyen squarely falls under § 320. The Government's attempt to impose § 321's conditions is therefore mistaken.

A. Former INA § 321 Applied Only to Children "Born of Alien Parents."

Section 321(a) (8 U.S.C. § 1432(a)) provided that a child born outside the U.S. of alien parents would become a U.S. citizen upon the fulfillment of certain conditions – generally, the naturalization of *both* parents while the child is a minor, or the naturalization of one parent if specific alternatives are met (such as the other parent's death, legal separation with the citizen parent having custody, or in the case of an out-of-wedlock birth where paternity was not established). In other words, § 321 addressed the scenario in which neither parent was a U.S. citizen at the time of the child's birth, and it required that a sole or surviving parent become a citizen, or both parents do so, to prevent conflict with any remaining alien parent's rights. The Ninth Circuit has explicitly noted this threshold trigger

for § 321. For example, in *Barthelemy v. Ashcroft*, the court explained that "because [the petitioner] was born abroad to alien parents, derivative citizenship in this case is governed by [former] INA § 321(a), 8 U.S.C. § 1432(a)".[1] By negative implication, if a person was not born to two alien parents, then § 321(a) did not govern their citizenship claim. This interpretation is supported by other courts as well. The Third Circuit, for instance, has observed that § 321 does not apply when an individual "was not born of alien parents," in which case derivative citizenship must be evaluated under the alternative statute (former § 320) applicable to children of U.S. citizens.[2]

The policy rationale for § 321's requirement that both parents be or become U.S. citizens (absent limited exceptions) was to protect the rights of an alien parent who did not naturalize. Congress sought to avoid a scenario in which one parent's naturalization could "usurp" the parental rights of an alien parent by changing the child's nationality without the other parent's consent. See *Barthelemy*, 329 F.3d at 1070-71 (noting § 321's general rule reflects a policy of protecting the parental rights of a non-naturalizing parent); *Fierro v. Reno*, 217 F.3d 1, 6 (1st Cir. 2000) (under § 321, Congress intended to prevent children from being automatically separated from an alien parent who retains custody). In the typical biological parent context, therefore, a child could derive citizenship via one parent only if the other parent was out of the picture (deceased or legally separated) or if the other

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[1] *See Barthelemy v. Ashcroft*, 329 F.3d 1062, 1066–67 (9th Cir. 2003) (holding that petitioner failed to derive citizenship under § 321(a)(3) because his non-citizen mother retained joint custody and the parents had not legally separated; emphasizing that § 321 requires strict compliance to safeguard the custodial rights of the non-naturalizing parent).

[2] *See* Joseph v. Att'y Gen., 421 F.3d 224, 228 n.6 (3d Cir. 2005) ("Because [petitioner] was not born of alien parents, he cannot satisfy the requirements of § 321(a). Instead, his eligibility for derivative citizenship must be evaluated under § 320.")

parent was already a U.S. citizen or otherwise incapable of asserting conflicting custodial interests.

B. Former INA § 320 Governed Derivation for Children of U.S. Citizens – Including Adopted Children – and Is the Correct Statute for Mr. Nguyen.

Former INA § 320, 8 U.S.C. § 1431 (1952–2000), provided a different avenue to citizenship, covering cases where one parent was a U.S. citizen. Specifically, § 320(a) stated (in substance) that a child born outside the United States, "one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States," shall become a citizen upon the naturalization of the alien parent, provided the child is under 18, unmarried, and residing in the U.S. as a lawful permanent resident in the custody of the naturalized parent. In short, if one parent was a U.S. citizen (from birth or by naturalization acquired before the child's birth) and the other parent later naturalized while the child was a minor and an LPR, the child would automatically acquire citizenship by operation of law.

Importantly, in 1978 Congress amended § 320 to include adopted children in this provision. Before 1978, adoptees were excluded from derivation, but Pub. L. 95-417 (effective October 5, 1978) reversed that exclusion. The amended § 320(b) provided that subsection (a) "shall apply to an adopted child" so long as the child was residing in the U.S. at the time of the adoptive parent's naturalization, in the custody of the adoptive

parent(s), pursuant to a lawful permanent residence.[3] Congress thereby made clear that an adopted child could derive citizenship through one citizen and one naturalizing parent under § 320, once the child qualified as an adopted "child" under INA § 101(b)(1). The only additional requirements were those inherent in the definition of "child": the adoption must be legally final, and (for a standard adoption under § 101(b)(1)(E)) the adoption occurred before age 16 with the requisite 2-year legal custody and residence, or (for an orphan adoption under § 101(b)(1)(F)) the orphan petition and adoption process were properly completed.[4] Congress further loosened the restriction in 1981 by eliminating a prior requirement that the adoption occur by age 16 in the text of § 320(b), instead deferring to the INA § 101(b)(1) definition (which generally requires adoption by 16).[5]

In short, former § 320 was tailor-made for cases like Mr. Nguyen's. It applies where one parent was a U.S. citizen all along and the other parent naturalized while the child was a minor. It expressly covers adopted children in those circumstances (post-1978). By contrast, § 321 was aimed at children of two alien parents and included no language referencing an already-citizen parent. Mr. Nguyen's situation – one citizen parent (father) and one parent who naturalized (mother) before he turned 18 – falls squarely under the

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[3] *See* Act of Oct. 5, 1978, Pub. L. No. 95-417, § 1, 92 Stat. 917 (codified at 8 U.S.C. § 1431(b) (1982)) (providing that subsection (a) "shall apply to an adopted child if such child is residing in the United States at the time of the naturalization of the adoptive parent or parents, in the custody of the adoptive parent or parents, pursuant to a lawful admission for permanent residence").

[4] *See* Pub. L. No. 95-417, § 1, 92 Stat. 917 (1978) (amending 8 U.S.C. § 1431 to extend derivative citizenship under subsection (a) to adopted children meeting certain residency and custody requirements); see also 8 U.S.C. § 1101(b)(1)(E)–(F) (defining "child" for immigration purposes to include adopted children, provided the adoption occurred before age 16 and included two years of legal custody and joint residence, or was processed as an orphan adoption under proper procedures)

[5] *See* Act of Dec. 29, 1981, Pub. L. No. 97-116, § 18(q), 95 Stat. 1611, 1620 (amending 8 U.S.C. § 1431(b) to remove the age-16 requirement from the statute's text and instead incorporate the cross-reference to the definition of "child" under INA § 101(b)(1)).

ambit of § 320. The Government's reliance on § 321 is misplaced. Mr. Nguyen was not "born … of alien parents", so § 321(a) is not the governing law for his case. Rather, his derivative citizenship is governed by § 320(a)-(b).

Multiple courts have recognized that where a child had one U.S. citizen parent, § 320 (8 U.S.C. § 1431) provides the rule for derivation, not § 321.[6] For example, the district court in *Gilkes v. Ridge* rejected a § 321 claim specifically because the individual "was not born of alien parents," indicating that § 320 was the proper framework in such a scenario. [7] And even the Government's own agency guidance acknowledges that before 2001, "adopted children could not derive under INA 321" but could derive citizenship under INA 320 once Congress amended the law in 1978. The Ninth Circuit has never required an adopted child of a U.S. citizen to fulfill § 321's conditions, instead applying § 320 where applicable.

Accordingly, this Court should apply former INA § 320 (8 U.S.C. § 1431 as in effect in 1979) to evaluate Mr. Nguyen's citizenship claim. Under that section, Mr. Nguyen automatically became a U.S. citizen in 1979 if the evidence shows that:

- One of his parents was a U.S. citizen at the time of his birth and remained a U.S. citizen thereafter;
- His other parent naturalized as a U.S. citizen while he was under 18;

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[6] *See, e.g.,* Gilkes v. Ridge, 332 F. Supp. 2d 27, 31 (D. Conn. 2004) (holding that INA § 320, not § 321, governs derivative citizenship when a child has one U.S. citizen parent); *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1066 (9th Cir. 2003) (noting § 321 applies only to children "born … of alien parents"); *see also* Fierro v. Reno, 217 F.3d 1, 6–7 (1st Cir. 2000)

[7] *See* Gilkes v. Ridge, 332 F. Supp. 2d 27, 31 (D. Conn. 2004) (holding that derivative citizenship for a child with one U.S. citizen parent is governed by former § 320, not § 321, and rejecting the government's attempt to apply § 321 to such cases)

- He was lawfully residing in the United States as a permanent resident in the custody of his citizen parent(s) at the time of the naturalization; and
- If adopted, he met the requirements applicable to adopted children under INA § 101(b)(1) (e.g., a valid legal adoption before age 16, etc.).

We now turn to the application of these requirements to the facts of Mr. Nguyen's case.

IV. Mr. Nguyen Satisfies All Requirements of Former INA § 320 for Derivative Citizenship

Under the correct statute (§ 320), Mr. Nguyen meets every element needed to establish that he acquired U.S. citizenship automatically in 1979. We address each element in turn.

A. One of Mr. Nguyen's Parents Was a U.S. Citizen During His Childhood (Satisfied).

Mr. Nguyen's adoptive father was a U.S. citizen. It appears the father was a U.S. citizen by birth (or at the very least had become a U.S. citizen prior to Mr. Nguyen's birth). The statutory language requires that at the time of the child's birth one parent "was, and never thereafter ceased to be, a citizen of the United States". Mr. Nguyen's adoptive father meets this description – he was a U.S. citizen well before and after Mr. Nguyen's birth. Notably, although Mr. Nguyen's adoption occurred after his birth, the law treats an adopted child as if born to the adoptive parents once the adoption is finalized. The intent of § 320(a) was to cover families in which one parent is an American and the other is not, giving the family a chance to unify their citizenship status once the alien parent naturalizes. Mr. Nguyen grew up in exactly such a family.

The record of Mr. Nguyen's admission as an LPR in 1975 strongly implies his father's U.S. citizenship. Typically, a U.S. citizen parent would file an I-130 petition or similar to sponsor an adopted child. The fact that Mr. Nguyen was admitted outside the quota system as a child of a U.S. citizen (IR-2 or IR-3 category) confirms his father's status. Thus, the first prong of § 320 is satisfied: Mr. Nguyen had a U.S. citizen parent throughout his childhood.

B. Mr. Nguyen's Other Parent Naturalized While He Was Under 18 (Satisfied).

Mr. Nguyen's adoptive mother naturalized on July 3, 1979. Mr. Nguyen was 17 years old (and about five months shy of 18) at that time. This squarely satisfies § 320's requirement that the alien parent be naturalized before the child's 18th birthday. There is no dispute that the mother's naturalization occurred while Mr. Nguyen was a minor.

We note that under § 320(a)(1) as it stood in 1979, the child also needed to be *unmarried* when the parent naturalized. Mr. Nguyen was unmarried at 17 (there is no indication otherwise), so this condition is also met. (He in fact could not lawfully have been married at 17 in his state of residence without parental consent, which did not occur.)

C. Mr. Nguyen Was Residing in the United States as an LPR in His Parents' Custody at the Time of Naturalization (Satisfied).

Section 320 required that the child be "residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter begin to reside permanently in the U.S. while under 18". Mr. Nguyen easily fulfills this requirement. He had been admitted as a lawful permanent resident in 1975 and was

physically residing in the U.S. with his adoptive parents continuously from that time. In July 1979, when his mother naturalized, Mr. Nguyen was still a resident in the family home in the U.S. and had LPR status for approximately four years. Thus, he was "residing in the United States pursuant to a lawful admission for permanent residence at the time of [his mother's] naturalization".

Additionally, § 320 implicitly required that the child be in the legal custody of the naturalizing parent (or citizen parent) when only one parent naturalizes. In Mr. Nguyen's case, both adoptive parents were together and jointly raising him through 1979; there is no issue of split custody. Mr. Nguyen was in the legal and physical custody of his adoptive mother (and father) in 1979 by virtue of the intact adoptive family unit. There was no other biological parent competing for custody – the biological parents' rights had been terminated by the adoption. Therefore, the concern under INA § 320/321 about custody and consent of an alien parent does not arise here. Mr. Nguyen's circumstances present an even stronger case for derivation than the typical § 320 scenario: not only did his one alien parent naturalize, but *both* of his legal parents were U.S. citizens after 1979. In effect, by late 1979, Mr. Nguyen was the child of two U.S. citizen parents – which far exceeds the statutory minimum of one citizen parent under § 320.

D. Mr. Nguyen's Adoption Was Legally Finalized and Meets INA § 101(b)(1) Definitions (Satisfied).

The last component is the adoption itself. Former INA § 320(b) makes § 320 applicable to an adopted child "only if" the child is residing in the U.S. at the time of the

adoptive parent's naturalization, "in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence." As already discussed, Mr. Nguyen was residing in the U.S. in his adoptive parents' custody as an LPR in 1979. The statute's reference to "adoptive parent" in the singular (naturalizing parent) and "adoptive parents" in the plural (custody) simply reflects that at least one parent must naturalize, and the child must be in the custody of the adoptive family. Mr. Nguyen fulfilled these criteria.

The statute also required that the child meet "the requirements applicable to adopted children" under the INA. In practice this meant Mr. Nguyen had to qualify as a "child" under INA § 101(b)(1)(E) or (F).[8] All evidence indicates that he did. The U.S. Consulate in 1975 would not have issued Mr. Nguyen an immigrant visa as the child of his adoptive parents unless a valid adoption had already occurred or was ensured. If Mr. Nguyen was processed under § 101(b)(1)(E), an adoption decree (from either Vietnam or a U.S. state, depending on the circumstances) was required, and likely a period of custody by the adoptive parents (or guardianship) was documented. If he was processed under § 101(b)(1)(F) as an "orphan," then either the adoption was completed abroad or the adoptive parents had legal custody for emigration and undertook to finalize the adoption in the U.S. within two years. Either route establishes a lawful adoption. The fact that Mr. Nguyen was only 13 when he immigrated means any adoption happened well before he

[8] To derive citizenship under former INA § 320 as an adopted child, the individual must first meet the statutory definition of "child" under INA § 101(b)(1)(E) (for standard adoptions) or § 101(b)(1)(F) (for orphan adoptions). This includes requirements such as legal adoption before age 16, two years of legal custody and residence with the adoptive parent (§ 101(b)(1)(E)), or completion of a valid orphan petition and adoption process under § 101(b)(1)(F). *See* 8 U.S.C. § 1101(b)(1)(E)–(F); *see also* USCIS Policy Manual, Vol. 12, Pt. H, Ch. 2, § C.

turned 16, satisfying the age limit. Moreover, he has lived as the legal son of his adoptive parents ever since 1975, which implies that any remaining formalities (if an IR-4 orphan visa was used requiring re-adoption in a U.S. court) would have been completed by the family shortly after arrival.

In short, there is substantial circumstantial evidence that Mr. Nguyen's adoption was legally finalized and recognized under U.S. immigration law by 1975. The Government itself, via INS and the State Department, treated Mr. Nguyen as the legitimate child of his adoptive parents when granting him LPR status. This gives rise to a presumption of the adoption's validity. Mr. Nguyen has also provided sworn testimony regarding his adoptive parent-child relationship. There is no contrary evidence suggesting the adoption did not occur. Thus, Mr. Nguyen meets the INA § 320(b) requirement that he be an adopted child in the custody of the adopting parents. All the material elements for derivative citizenship under former § 320 are therefore present.

To summarize: (1) One parent (father) was a U.S. citizen at Mr. Nguyen's birth and remained so; (2) the other parent (mother) naturalized while Mr. Nguyen was 17; (3) Mr. Nguyen was a lawful permanent resident, residing in the U.S. in his parents' custody at that time; and (4) Mr. Nguyen was an adopted child as defined by the INA. Under former 8 U.S.C. § 1431(a)-(b), these facts conferred U.S. citizenship automatically on Mr. Nguyen as a matter of law in 1979. No further action (such as an application or oath) was required of Mr. Nguyen; the statute effected his naturalization by operation of law. Therefore, Mr. Nguyen is today a U.S. citizen, and has been since 1979, unless the Government can show

a failure of one of the statutory prerequisites – which it cannot. The Government's opposition, however, has focused on the wrong statute and wrongly suggested a lack of proof. We address those points next.

V. The Government's Objections Lack Merit

A. Jurisdiction Is Proper in This Court to Decide Mr. Nguyen's Citizenship De Novo.

The Government's brief raises a threshold jurisdictional objection, asserting that this Court lacks authority to adjudicate Mr. Nguyen's derivative citizenship claim. That objection is misplaced. While 8 U.S.C. § 1503(a) does not apply because Mr. Nguyen was previously subject to removal proceedings and has not sought a U.S. passport, his citizenship claim remains judicially cognizable under the framework of 8 U.S.C. § 1252(b)(5).

Section 1252(b)(5) governs how federal courts resolve nationality claims arising "in connection with" removal proceedings. Subsection (A) mandates that "[i]f the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court… for a new hearing on the nationality claim and a decision on that claim as if an action had been brought under section 2201 of Title 28."

Although Mr. Nguyen's final deportation order was issued in 1999, he now presents a bona fide claim that he acquired citizenship by operation of law in 1979—two decades before that removal. This is not a collateral attack on a removal order; it is a direct request

for recognition of his preexisting U.S. nationality. Federal courts have consistently held that even after a removal order has been issued, an individual who asserts a colorable citizenship claim is entitled to have that claim resolved by the judiciary. See, e.g., *Hughes v. Ashcroft*, 255 F.3d 752, 755 (9th Cir. 2001) (holding that § 1252(b)(5) provides an independent basis for courts to determine nationality even when jurisdiction over the removal order is restricted).

In line with § 1252(b)(5)(B), this Court may properly adjudicate Mr. Nguyen's nationality claim de novo, particularly where, as here, the original removal proceedings never addressed or resolved his U.S. citizenship status. At minimum, if the Court finds that factual questions remain (e.g., the validity and timing of the adoption), it is authorized to conduct an evidentiary hearing on those matters.

Thus, the Court is not barred from reviewing Mr. Nguyen's claim. Congress has expressly provided for federal judicial resolution of citizenship disputes in removal contexts, and this Court retains jurisdiction to do so now.

Here, Mr. Nguyen does not even present that complication, as he proceeds via a civil action, not a petition for review of a removal order. If the Court harbors any doubt about jurisdiction under § 1503, the action could also be construed under 28 U.S.C. § 2201 (Declaratory Judgment Act) and 28 U.S.C. § 1331, given that Mr. Nguyen's claim arises under federal law (the INA). Either way, there is no procedural impediment to the Court adjudicating the merits of derivative citizenship.

Furthermore, to the extent this case might have arrived in this Court by transfer from a Circuit Court pursuant to 8 U.S.C. § 1252(b)(5)(B) (in the event Mr. Nguyen's claim had been raised in a petition for review), this Court's mandate is to hold a de novo hearing and decide the nationality claim as if originally filed here. Section 1252(b)(5) specifically provides that if the petitioner's citizenship is in dispute, the Circuit must transfer to a District Court to make a de novo determination of the claim. Thus, however one views the posture, the Court unquestionably has authority to determine Mr. Nguyen's citizenship on the evidence, and indeed has a duty to do so. The Government's jurisdictional argument appears to misunderstand or ignore these statutory authorizations. Mr. Nguyen is exactly the kind of claimant – a resident of the U.S. denied proof of citizenship – for whom Congress intended judicial recourse in district court. The Court should proceed to decide the merits.

In addition, the government suggested that the Petitioner "may file a motion to reopen his removal proceedings with an immigration judge", ECF No. 8 at 14, however it misapplied the law because immigration judges and the Board of Immigration Appeals lack the statutory authority to conclusively adjudicate claims to U.S. citizenship. Their jurisdiction is limited to determining removability based on alienage; they may not issue declarations of nationality or grant affirmative relief under 8 U.S.C. § 1503(a) or any other provision. When a respondent raises a non-frivolous claim to U.S. citizenship, the burden is on the government to establish alienage by clear and convincing evidence. If the claim cannot be resolved on the record or presents a genuine factual dispute, it must be

adjudicated de novo in federal district court pursuant to 8 U.S.C. § 1252(b)(5). See *Matter of H-G-G-*, 27 I&N Dec. 617, 632 (BIA 2019); *Rodriguez-Tejedor v. INS*, 23 I&N Dec. 153, 164 (BIA 2001).[9] The immigration court and BIA may terminate proceedings if DHS fails to meet its burden, but they cannot themselves decide the question of citizenship with finality. Accordingly, Mr. Nguyen's derivative citizenship claim must be decided by this Court as the appropriate judicial forum under the statutory framework.

The Government's reliance on *Iasu v. Smith*, 511 F.3d 881 (9th Cir. 2007), is misplaced. *Iasu* involved a habeas petitioner who claimed that he was a naturalized U.S. citizen and challenged his continued detention after his removal order became final. The Ninth Circuit held that § 1252(a)(5) barred district court jurisdiction over his nationality-based habeas claim because it was, in substance, an indirect challenge to a final removal order. In contrast, Mr. Nguyen does not claim citizenship by naturalization, but by operation of law as a minor under former INA § 320. This distinction is critical. Courts, including the Ninth Circuit, have held that derivative citizenship claims—particularly those raising factual disputes over birthright or statutory derivation—are properly adjudicated through the framework of 8 U.S.C. § 1252(b)(5), which expressly authorizes judicial determination of nationality and transfer to district court if material facts are disputed. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *Joseph v. Att'y Gen.*, 421 F.3d

[9] *See Matter of H-G-G-*, 27 I&N Dec. 617, 632 (BIA 2019) (holding that immigration judges cannot adjudicate claims to U.S. citizenship and must defer to the procedures under 8 U.S.C. § 1252(b)(5)); *see also Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 164 (BIA 2001) (reaffirming that immigration judges lack jurisdiction to conclusively determine U.S. nationality and must terminate or defer when the claim presents a genuine issue)

224, 229 (3d Cir. 2005).[10] Mr. Nguyen's claim does not attack the removal order itself; it asserts that he is not subject to removal at all because he became a U.S. citizen in 1979—decades before his removal proceedings—based on facts that were likely never adjudicated. *Iasu* involved no such preexisting citizenship theory or statutory derivative framework. Accordingly, *Iasu* is not controlling here, and § 1252(b)(5) remains the applicable pathway for adjudicating Mr. Nguyen's nationality claim.

In conclusion, federal district courts—not immigration courts or the Board of Immigration Appeals—have the exclusive authority to adjudicate citizenship claims in removal contexts where factual disputes exist. Under 8 U.S.C. § 1252(b)(5), if a genuine issue of material fact about nationality is raised during judicial review, the court of appeals must transfer the case to a U.S. district court for a de novo hearing. The Ninth Circuit has consistently held that immigration judges and the BIA lack jurisdiction to conclusively determine nationality. *See Hughes v. Ashcroft*, 255 F.3d 752, 755–57 (9th Cir. 2001) (finding court retains jurisdiction to resolve citizenship claim even where review of the removal order is barred); *Minasyan v. Gonzales*, 401 F.3d 1069, 1074–75 (9th Cir. 2005) (recognizing that immigration courts cannot resolve nationality claims and affirming de novo review in federal court); *Rivera v. Ashcroft*, 394 F.3d 1129, 1135–37 (9th Cir. 2005) (holding exhaustion of administrative remedies is not required for a citizenship claim because the agency lacks authority to decide it). Other circuits agree. *See Joseph v. Att'y*

[10] *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005) (holding that courts—not immigration judges—have authority to determine U.S. citizenship and that derivative citizenship claims are reviewed de novo); *see also Joseph v. Att'y Gen.*, 421 F.3d 224, 229 (3d Cir. 2005) (remanding derivative citizenship claim to district court under 8 U.S.C. § 1252(b)(5)(B) for de novo hearing on factual disputes)

Gen., 421 F.3d 224, 229 (3d Cir. 2005) (remanding for de novo district court determination under § 1252(b)(5)(B)); *Ricketts v. Att'y Gen.*, 897 F.3d 491, 494–96 (3d Cir. 2018); *Nehme v. INS*, 252 F.3d 415, 420–22 (5th Cir. 2001). These decisions affirm that when citizenship is credibly in dispute, resolution lies with the federal judiciary, not the immigration court system.

C. The Government's Reliance on INA § 321 Is Misplaced and Irrelevant.

We have already demonstrated in Section III, supra, that former INA § 321 does not govern Mr. Nguyen's case. But to directly rebut the Government's points: the Government argues that Mr. Nguyen fails to meet § 321(a) because both of his adoptive parents did not naturalize and neither of the exceptions (death of one parent, legal separation with custody, etc.) apply. This argument collapses because § 321(a) simply does not apply to a child who had a U.S. citizen parent from the outset. Mr. Nguyen was not required to have both parents naturalize; he only needed his one alien parent to naturalize, since the other parent was already a U.S. citizen. Former INA § 320 expressly contemplated this one-naturalization scenario, whereas § 321 required two naturalizations only for children who initially had two alien parents. The Government's strict reading of § 321, while a correct statement of § 321's terms, is irrelevant here. It is akin to arguing that Mr. Nguyen fails to meet the requirements of the wrong law. That is not a valid reason to deny his citizenship.

Notably, courts have consistently rejected attempts to shoehorn facts like Mr. Nguyen's into INA § 321. In *Barthelemy*, the Ninth Circuit noted that § 321's purpose was to avoid affecting the rights of an alien parent, and it recognized that Congress "carved

out" other avenues to citizenship for cases where only one parent naturalizes – which includes the scenario where the other parent was already a citizen (the very text of § 320) or where the other parent is out of the picture (the exceptions within § 321). The Government's position would create an absurd result: it would leave children of U.S. citizens *worse off* than children of two aliens, by holding them to an inapplicable standard and denying recognition of their citizenship even when Congress provided for it. Such an outcome is contrary to the letter and spirit of the INA. Mr. Nguyen satisfied the law's conditions to derive citizenship; the Government cannot insist on additional conditions that Congress never imposed on him.

D. The Evidentiary Record Supports Mr. Nguyen's Citizenship; Any Gaps Can Be Filled by Court-Ordered Discovery or Fact-Finding.

The Government suggests that Mr. Nguyen has not *proven* his adoption because he has not produced the 50-year-old foreign adoption decree. This argument is both unfair and easily addressed through available evidence. Mr. Nguyen's inability to personally obtain the decades-old decree (likely issued in wartime or immediate post-war Vietnam) should not be held against him, especially when the U.S. Government likely has – or had – those records in its own files. Indeed, it was the U.S. Government (INS and the consular officer) that reviewed and approved the adoption paperwork to grant Mr. Nguyen his immigrant visa and green card. The A-file maintained by U.S. immigration authorities for Mr. Nguyen, as well as State Department consular archives, are the most likely repositories of the adoption documentation. Mr. Nguyen, through undersigned counsel, has requested such

records via FOIA, but the process is slow and often incomplete. However, in the context of this litigation the Court can compel the Government to produce relevant documents from Mr. Nguyen's A-file or other files. The Government, as the defendant/respondent in this action, is obligated to turn over evidence in its possession that is relevant to Mr. Nguyen's citizenship status. This includes the visa application, the I-130 or I-600 petition, the consular officer's report, or any mention of the adoption decree or legal custody order.

It would be fundamentally inequitable for the Government to withhold the very evidence that it now claims Mr. Nguyen lacks. If the Government's position is that there is a genuine factual dispute as to whether a qualifying adoption took place, the proper course is not dismissal of Mr. Nguyen's claim, but rather fact-finding by the Court. Under 8 U.S.C. § 1503(a), these proceedings are de novo and akin to a bench trial in a civil case. Mr. Nguyen bears the burden of proving his citizenship by a preponderance of evidence (as is standard in civil nationality claims), but he is entitled to use all forms of relevant evidence, direct or circumstantial, to meet that burden. Secondary evidence, such as immigration records, testimony, or other documentation, can establish the fact, timing, and validity of the adoption.

Here, the existing evidence strongly supports the adoption: Mr. Nguyen's admission as a minor child of U.S. citizens (or of a U.S. citizen parent) in 1975; his long residence with and treatment as the son of his adoptive parents; and the lack of any contrary claim by a biological parent. The Government has not presented any evidence to refute the fact of adoption – they point only to the absence of the decree. In law, an official record of an

event (the visa issuance) can serve as proof that the underlying prerequisites (the adoption) were satisfied. The Court may draw reasonable inferences from the fact that INS and consular officials found Mr. Nguyen qualified as the adoptive child of his U.S. citizen parent. Moreover, the Court may take testimony from Mr. Nguyen and other witnesses with knowledge of the family history. Mr. Nguyen is prepared to testify regarding his adoption and upbringing, and can provide corroborating witnesses if needed (such as siblings, adoptive parents, or community members aware of his adoption).

If, after permitting such evidence, any doubt remains, this Court has the authority to resolve the disputed fact of adoption by ordering an evidentiary hearing. Courts facing similar issues in citizenship cases have conducted evidentiary proceedings to determine facts like parentage or legitimacy when the paper trail was incomplete. For example, the Third Circuit in *Gilkes* remanded a derivative citizenship claim to the district court for an evidentiary hearing on a factual question of paternity, including DNA evidence, when primary records were inconclusive. Here, an evidentiary hearing could likewise resolve the adoption question definitively – although we submit that the Government's own files likely contain direct confirmation, obviating the need for extensive testimony.

The Court should also note that the legal standard does not require absolute proof of every detail of the foreign adoption if the totality of the evidence demonstrates that Mr. Nguyen meets the statutory definition of an adopted "child." Under Federal Rule of Evidence 803(14), for instance, records of documents affecting an interest in family status (like a judgment of adoption) are admissible to prove the content and resultant relationship.

Certified copies of Mr. Nguyen's immigrant visa or any State Department report of his birth and parentage may serve as self-authenticating evidence of the adoption. If such records are unavailable due to the passage of time or loss, Mr. Nguyen is entitled to rely on the presumption of regularity – that official acts (here, the grant of an IR-visa) were done in compliance with legal requirements, including verifying the adoption.

Finally, it bears emphasizing that the Government has not actually disputed that an adoption occurred – it merely says the decree is "*not currently available*." ECF No. 8 at 13 (emphasis added). The Government has access to resources to confirm the adoption (such as contacting the Department of State's visa office or checking archived A-files). If the Government truly doubted the adoption, one would expect an affidavit from DHS or State declaring that they found no evidence of it in their records. No such evidence is presented. The silence of the Government's records on this point would itself be noteworthy (and might violate record-keeping regulations given that a certificate of citizenship for an adopted child could have been applied for in 1979). In any event, the Court can and should insist that the Government produce whatever it has. Under the Federal Rules of Civil Procedure, Mr. Nguyen can seek discovery from the Government as needed; given the narrow scope (documents relating to his own immigration and adoption), this is a reasonable and focused inquiry.

E. The Court Can Resolve Any Remaining Fact Questions Without Dismissing the Case.

In summary, there is no fatal evidentiary gap here – only a technical hurdle that can be overcome through the Court's fact-finding process. If the Court, after reviewing the evidence submitted (e.g. Mr. Nguyen's LPR entry documentation, his parents' naturalization records, affidavits, etc.), finds that a factual question persists as to whether Mr. Nguyen's adoption met INA §320's requirements, the proper step is to hold a limited evidentiary hearing or bench trial on that question. The Court may hear live testimony, receive further documents, and make a finding on the record. Given the substantial compliance already shown, we are confident the Court will conclude the adoption was valid.

It is also worth noting that no other potential impediments to Mr. Nguyen's derivative citizenship have been raised. For instance, Mr. Nguyen's legitimacy status or custody technicalities are not at issue – he was not born out of wedlock to his adoptive parents (those terms don't apply in adoption), and his adoptive parents were married and jointly raising him. There is no suggestion that he left the U.S. to live abroad after 1979 in a way that might argue he never "began to reside permanently" – on the contrary, he has been a long-time U.S. resident. Thus, the only conceivable missing puzzle piece is the proof of adoption, which, as discussed, is well supported. The Court can find that element satisfied on the current record or after supplemental evidence, and thereby conclude that Mr. Nguyen has carried his burden of proof.

VI. Conclusion

Mr. Nguyen's case is precisely what Congress envisioned when providing for derivative citizenship of children in mixed-citizenship families. By the late 1970s, both of Mr. Nguyen's legal parents were Americans; he was a teenager, legally present and integrated into American life, and Congress determined that such children should automatically acquire citizenship without having to undergo a separate naturalization process on their own. Former INA § 320 was the governing law, and under its plain terms Mr. Nguyen became a U.S. citizen when his mother naturalized in 1979 while he was a minor. The Government's opposition not only cites the wrong statute, but also seeks to impose an evidentiary burden that is unreasonable given the passage of time and the Government's control of key records. When the correct law is applied to the essentially undisputed facts, Mr. Nguyen's citizenship is established. Any lingering questions can be readily resolved through the Court's de novo review of the evidence.

For the foregoing reasons, Mr. Nguyen respectfully requests that the Court:

1. Declare that he acquired U.S. citizenship by operation of law as a child under former INA § 320;
2. Order the Government to produce any documentation in its possession pertaining to Mr. Nguyen's adoption and status, for inclusion in the record (if not already provided);

3. Grant summary judgment or conduct an evidentiary hearing (as appropriate) to resolve the fact of Mr. Nguyen's adoption, and thereafter enter judgment in his favor; and
4. Direct the appropriate officials to issue evidence of Mr. Nguyen's U.S. citizenship, such as approving his application for a Certificate of Citizenship or U.S. passport.

Mr. Nguyen has waited decades for formal recognition of what the law provided him since his youth. He respectfully urges this Court to correct the error and confirm his status as an American citizen.

Dated: November 2, 2025.

Respectfully submitted

/s/Daniel M Huynh

Daniel M Huynh, Esq.

Counsel for Petitioner Minh Nguyen

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2025, I electronically filed the foregoing

PETITIONER'S RESPONSE BRIEF IN SUPPORT OF DERIVATIVE U.S. CITIZENSHIP CLAIM

with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record registered to receive electronic service.

Respectfully submitted,

/s/Daniel M Huynh

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