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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

**Reply Brief of Petitioner Minh Khac
Nguyen**

I. Introduction

Plaintiff Minh Khac Nguyen submits this reply to address the government's sur-reply (Doc. 13) opposing injunctive relief. The government's sole remaining objection is jurisdictional: it contends that 8 U.S.C. § 1252 and the Ninth Circuit's decision in *Iasu v. Smith*, 511 F.3d 881 (9th Cir. 2007), deprive this Court of authority to consider Mr. Nguyen's derivative citizenship claim. This reply rebuts that argument and reaffirms that the Court can and should adjudicate Mr. Nguyen's claim of U.S. citizenship under the framework of 8 U.S.C. § 1252(b)(5) and governing precedent.

Importantly, Mr. Nguyen is *not* asking this Court to naturalize him or to reopen his 1999 removal order. He instead asserts that he already acquired U.S. citizenship by operation of law decades ago, based on his adoption and childhood residency with his naturalized U.S. citizen mother. In other words, Mr. Nguyen claims nationality as a matter of status, which, if proven, means the 1999 removal order was void ab initio for lack of jurisdiction. As shown below, Congress and the courts have long recognized that such a citizenship claim must be heard and decided by a court, notwithstanding the general limits of § 1252. At a minimum, Mr. Nguyen has presented a colorable (non-frivolous) claim to U.S. citizenship that raises a genuine issue of material fact. This Court is empowered to resolve that claim under § 1252(b)(5), and doing so is essential to prevent the irreparable harm of wrongfully removing a U.S. citizen.

II. Factual Background: Colorable Claim of Derivative Citizenship

Mr. Nguyen was born in Vietnam and was legally adopted as a young child by his sister who would later become a naturalized citizen of the United States. He was lawfully admitted to the U.S. as a permanent resident in the 1975 and grew up in the care and custody of his adoptive parents in the United States. In 1979, when Mr. Nguyen was still a minor, his mother naturalized as a U.S. citizen. Mr. Nguyen remained a lawful permanent resident residing in the United States with his mother throughout his childhood.

Mr. Nguyen's immigration history is consistent with evacuees processed during Operation Frequent Wind and Operation New Life. Exh. 9. Like others who entered the U.S. in May 1975 under the Indochina Migration and Refugee Assistance Act, Mr. Nguyen was granted lawful permanent resident status upon arrival, likely in reliance on an adoptive

family relationship. This pattern of refugee processing—including LPR adjustments for adopted minors without formal decrees—was accepted by INS at the time and later supported derivative citizenship findings in comparable cases. The government's own declaration confirms Mr. Nguyen's admission on May 20, 1975, consistent with these operations. His factual posture thus mirrors that of similarly situated evacuees whose citizenship claims were adjudicated under former § 320.¹

In addition, Minh Khac Nguyen's immigration and family history aligns with the statutory requirements of former § 320. Larry Clapp's sworn declaration confirms that he and his wife, Lisa Clapp (a naturalized U.S. citizen), adopted Minh in Vietnam in 1975 and submitted the adoption paperwork to the U.S. Embassy prior to evacuating under Operation New Life. Mr. Nguyen was admitted to the U.S. as a lawful permanent resident and lived continuously with Larry and Lisa Clapp from 1975 through his minority in both Guam and California. He was claimed as a dependent on military records and recognized by the Navy's Family Allowance Activity as a ward in Larry's custody. Lisa Clapp's declaration confirms these facts and further states that she naturalized on July 3, 1979, when Mr. Nguyen was 17 years old and residing in the Clapp household. These sworn declarations establish the required legal and physical custody, residence, and parental naturalization necessary to support a claim of derivative citizenship under the statute then in effect.²

¹ See, e.g., Decl. of Terrell Peck, ¶¶ 4–7, ECF No. 8-1 (describing Nguyen's admission as a lawful permanent resident on May 20, 1975, consistent with contemporaneous processing of Vietnamese evacuees under the Indochina Migration and Refugee Assistance Act); S. Rep. No. 94-293, at 3–5 (1975) (discussing the expedited resettlement of Indochinese children and family units under Pub. L. 94–23);

² See Decl. of Larry Clapp ¶¶ 2–6, previously submitted as Exhibit 1; Decl. of Lisa Clapp ¶¶ 2–5, previously submitted as Exhibit 2 (confirming Mr. Nguyen's 1975 adoption, evacuation under Operation New Life, continuous residence and custody with the Clapps, and Ms. Clapp's naturalization on July 3, 1979, prior to Nguyen's 18th birthday)

The Department of the Navy formally recognized Minh Nguyen and his brother Bon as wards of GMGL Larry J. Clapp, USN, in 1980, approving their dependency status for military benefits. This Navy Family Allowance authorization confirms that the Clapps maintained legal and physical custody of Minh through his minority, consistent with the requirements of former INA § 320. The contemporaneous federal recognition of Minh as a dependent ward strengthens the claim that he satisfied the statute's custody and residence prongs prior to age 18, when his adoptive mother had already naturalized.³

These facts give rise to a straightforward claim of derivative citizenship under former INA § 320 (8 U.S.C. § 1431, as in effect prior to 2001). At the relevant time, the statute provided that a foreign-born child would automatically acquire U.S. citizenship upon the naturalization of a parent, so long as the child was: (1) lawfully residing in the United States as a permanent resident, (2) under 18 years of age, and (3) in the legal custody of the naturalized parent. An adopted child is included in the definition of "child" for these purposes, provided the adoption was final and met statutory requirements. Mr. Nguyen satisfied each element before his 18th birthday:

- Lawful Residence: He was admitted as a lawful permanent resident during childhood (age of 13).
- Minor Age: He was under 18 years old at the time his mother naturalized (age of 17).

³ See U.S. Navy Family Allowance Approval for Minh and Bon Nguyen (Feb. 28, 1980), previously submitted as Exhibit 5

- Custody of Citizen Parent: He was in the legal and physical custody of his U.S. citizen mother, who was his sole parent after the adoption.

The record amply supports Mr. Nguyen's satisfaction of all three statutory requirements for derivative citizenship under former § 320. First, he was admitted as a lawful permanent resident at age 13. Second, his adoptive mother, Lisa Clapp, naturalized when Mr. Nguyen was still a minor. Third, the declarations of both Larry and Lisa Clapp, combined with contemporaneous Navy records (Exh. 5), confirm that Mr. Nguyen resided with and was in the legal and physical custody of his adoptive U.S. citizen mother throughout his minority. These facts satisfy the statutory definition of "child" and the custody requirement for automatic citizenship. No further administrative step was necessary to perfect that citizenship, which vested by operation of law on the date of his mother's naturalization.⁴

Accordingly, under the law then in effect, Mr. Nguyen acquired U.S. citizenship by operation of law on the date of his mother's naturalization. He did not need to take any oath or affirmative act; the citizenship status vested automatically by statute. There is no evidence that Mr. Nguyen ever affirmatively relinquished this citizenship or that any authority took it away – indeed, "American citizenship must be intentionally relinquished and cannot be established by waiver".

Despite his citizenship, in 1999 the former INS initiated removal proceedings against Mr. Nguyen (then a young adult) and obtained an order of removal. It appears that

⁴ See Decl. of Larry Clapp ¶¶ 2–6, previously submitted as Exhibit 1; Decl. of Lisa Clapp ¶¶ 2–5, previously submitted as Exhibit 2; U.S. Navy Family Allowance Approval for Minh and Bon Nguyen (Feb. 28, 1980), previously submitted as Exhibit 5.

neither Mr. Nguyen nor the immigration judge formally addressed his derivative citizenship at that time – likely due to lack of awareness or factual development of his adoption and parentage circumstances. Mr. Nguyen did not appeal the removal order, and the government now points to that failure to argue he is forever barred from judicial review. However, Mr. Nguyen’s claim to citizenship has never been adjudicated on the merits by any court. He now comes before this Court seeking a declaration of his citizenship and appropriate injunctive relief, in order to prevent the erroneous removal of a person who may in fact be a United States citizen.

Given the above history, Mr. Nguyen’s citizenship claim is at least “substantial” and non-frivolous. He has presented concrete evidence of his adoption, his mother’s naturalization, and his residency as a minor – all of which strongly support his claim to derivative U.S. citizenship. At the very least, there is a genuine dispute of material fact regarding his nationality. Under federal law, such a dispute *must* be resolved by a judicial determination, rather than by executive fiat. The question before the Court is thus not whether Mr. Nguyen will be “naturalized” or whether his old removal order should be reopened, but simply whether he is or is not a U.S. citizen. This Court has both the authority and the responsibility to make that determination, as explained below.

III. Argument

A. 8 U.S.C. § 1252 and *Iasu v. Smith* Do Not Strip the Court’s Jurisdiction

The government argues that the REAL ID Act’s amendments to 8 U.S.C. § 1252 divest this Court of jurisdiction because Mr. Nguyen is subject to a final removal order. It relies on *Iasu v. Smith*, 511 F.3d 881, 885 (9th Cir. 2007), cert. denied, 555 U.S. 815 (2008),

where the Ninth Circuit held that after REAL ID, a petitioner generally may not use a 28 U.S.C. § 2241 habeas petition to challenge a removal order, and instead must file a petition for review with the court of appeals as the “sole and exclusive” route. But the government’s reading of *Iasu* is overbroad and misapplies that decision to Mr. Nguyen’s very different circumstances. Neither § 1252 nor *Iasu* forecloses this Court from deciding Mr. Nguyen’s citizenship claim.

To begin, *Iasu* concerned a petitioner who “did not raise [his citizenship] contention during removal proceedings and did not appeal the IJ’s final order,” but later filed a habeas petition in district court challenging his removal. *Iasu*, 511 F.3d at 886. The Ninth Circuit in *Iasu* enforced § 1252’s channeling requirement because the petitioner had bypassed the opportunity for direct appellate review and was essentially mounting a late challenge to his removal order. *Id.* at 884–85. *Iasu* held that § 1252(b)(9) and (a)(5) funnel challenges “arising from” removal orders into the petition-for-review process, thereby generally precluding district court habeas jurisdiction in such cases. *Id.* at 887. Crucially, however, *Iasu* did not hold that a colorable citizenship claim can never be heard if the petitioner missed the 30-day window to file a petition for review. In fact, *Iasu* acknowledged that Congress “left intact 8 U.S.C. § 1252(b)(5) regarding nationality claims.” *Id.* at 888. The decision stressed that § 1252(b)(5) – which mandates judicial resolution of citizenship claims on direct review – “applies to nationality claims made on direct review of a final order of deportation,” and does not itself provide an independent habeas remedy. *Id.* at 889. *Iasu* did not purport to eliminate all judicial recourse for citizenship claims raised outside a petition for review; rather, it declined to entertain a belated habeas claim under the

specific procedural posture before it. *Id.* at 891. Mr. Nguyen's case is materially different from *Iasu*.

Here, Mr. Nguyen's claim to citizenship goes to the very foundation of the removal order's validity – it is a denial that he was ever properly subject to removal at all. This is not a request for discretionary relief or a challenge to the *grounds* of removal; it is an assertion that Mr. Nguyen, as a U.S. citizen, was never an “alien” who could be removed in the first place. The Supreme Court long ago held that “*jurisdiction in the executive to order deportation exists only if the person arrested is an alien,*” such that “[t]he claim of citizenship is thus a denial of an essential jurisdictional fact.” *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). In other words, if Mr. Nguyen's claim is valid, the government lacked authority *ab initio* to remove him. The courts have consistently recognized this unique status of citizenship claims. For example, even when a non-citizen is otherwise barred from judicial review (such as certain criminal aliens), the court must determine alienage if the person claims to be a U.S. citizen, because “*where, as here, the petitioner claims he is a United States citizen not subject to removal, we have jurisdiction to determine whether the petitioner is an alien or a citizen.*” (quoting *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1064 (9th Cir. 2003)). Mr. Nguyen's citizenship claim, like that in *Barthelemy*, raises a fundamental jurisdictional fact that cannot simply be presumed away by invoking § 1252's general provisions.

Moreover, subsequent Ninth Circuit authority makes clear that § 1252's channeling rules do not bar consideration of a citizenship claim in every posture. In *Flores-Torres v. Mukasey*, 548 F.3d 708, 709–10 (9th Cir. 2008), the petitioner was in immigration custody

with a pending removal case and filed a habeas petition asserting he was a U.S. citizen (derivatively through his mother). The district court dismissed for lack of jurisdiction, but the Ninth Circuit reversed, holding that § 1252 did not strip the court of jurisdiction to determine the citizenship claim in that context. *Id.* at 710–11. The Ninth Circuit distinguished *Iasu* and emphasized that § 1252(b) “by its terms . . . applies only to citizenship claims raised in connection with review of an order of removal.” *Id.* at 710. In Mr. Flores-Torres’s case, because there was no final order yet under direct review, his habeas petition was not the type of claim that § 1252 strictly channels into a petition for review. The court explicitly noted that § 1252(b)(5) “does not . . . prescribe the exclusive method of determining nationality claims in all circumstances,” but only in cases where a final removal order is currently before a court. *Id.* at 711. In short, *Flores-Torres* confirms that jurisdiction remains in the district court to hear a non-frivolous citizenship claim when the claim would otherwise escape judicial review.

While *Flores-Torres* involved a pending removal proceeding, its reasoning applies forcefully here. Mr. Nguyen presently has no petition for review pending in the Ninth Circuit (the usual vehicle for § 1252(b)(5) to operate), yet he faces imminent removal under a decades-old order. If this Court were to shut its doors, Mr. Nguyen’s citizenship claim could evade any judicial determination whatsoever, a result that would raise serious constitutional concerns. The Ninth Circuit has held that “because [a petitioner] has a colorable citizenship claim, [he] has a constitutional right to judicial review” of that claim, “even after accepting deportation and waiving his right to appeal the IJ’s decision.” *Rivera v. Ashcroft*, 394 F.3d 1129, 1136–37 (9th Cir. 2005) (emphasis added). In *Rivera*, the court

explained that “[t]he Constitution is violated when a person with a non-frivolous claim to U.S. citizenship is deported without receiving a judicial determination of that claim.” *Id.* at 1137. This fundamental principle did not vanish with the REAL ID Act. Rather, Congress sought to preserve judicial review of citizenship claims by routing them to the courts of appeals, not by eliminating such review entirely. Indeed, *Iasu* itself acknowledged the maxim that “there is always jurisdiction to determine jurisdiction,” meaning a court will always have the power to verify the facts of its own jurisdiction – here, the fact of Mr. Nguyen’s citizenship or alienage. *Iasu*, 511 F.3d at 888.

In short, the government’s jurisdictional argument fails because it ignores the unique nature of citizenship claims and overreads *Iasu*. Three key points rebut the government’s position:

- *A citizenship claim challenges a jurisdictional fact, not the merits of a removal order:* Only an “alien” is subject to removal, and Mr. Nguyen’s claim that he is a U.S. citizen “*is thus a denial of an essential jurisdictional fact*” of the removal order.⁵ Such a claim cannot be dismissed without resolution, or the executive would exceed its lawful authority by removing a citizen.
- *Section 1252 was never intended to preclude all review of nationality claims:* By its own terms, § 1252’s channeling provisions apply to claims “*in connection with*” direct review of a removal order, not to every circumstance in which citizenship is

⁵ *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (“Jurisdiction in the executive to order deportation exists only if the person arrested is an alien. The claim of citizenship is thus a denial of an essential jurisdictional fact.”)

asserted.⁶ Congress preserved judicial review of citizenship through § 1252(b)(5), and the Ninth Circuit has confirmed that § 1252 “does not... prescribe the exclusive method of determining nationality claims in all circumstances.”⁷

- Constitutional due process requires a judicial forum for non-frivolous citizenship claims: Removing or detaining an American citizen is a grave constitutional wrong. As the Supreme Court observed, “To deport one who claims to be a citizen... obviously deprives him of liberty... and may result also in loss of all that makes life worth living.”⁸ Thus, “the Fifth Amendment affords protection” by guaranteeing a meaningful opportunity to be heard on the citizenship claim.⁹ Courts avoid interpreting statutes in a manner that would deny any forum for such a fundamental claim.¹⁰

In addition, the Second Circuit’s recent decision in *Lainez v. Bondi* confirms that an un-appealed removal order does not extinguish judicial review of a derivative citizenship claim.¹¹ In *Lainez*, the petitioner had failed to administratively appeal his 2012 removal order, yet the Second Circuit exercised jurisdiction under 8 U.S.C. § 1252(b)(5) to consider his citizenship claim and ultimately granted the petition for review, vacating the old removal order after determining that he derived U.S. citizenship through his mother. This

⁶ See *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008) (“Section 1252(b)(5) applies only to nationality claims made on direct review of a final order of deportation, and it does not purport to prescribe the exclusive method of determining nationality claims in all circumstances.”)

⁷ *Flores-Torres*, 548 F.3d at 711.

⁸ *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922)

⁹ *Bridges v. Wixon*, 326 U.S. 135, 161 (1945)

¹⁰ *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 63 (1993) (“We will not read a statute to ... deny any judicial forum for a colorable constitutional claim.”)

¹¹ *Lainez v. Bondi*, No. 21-6386 (2d Cir. June 23, 2025) (derivative citizenship via former INA § 321; petition granted and removal order vacated)

holding makes clear that a final removal order cannot bar a court from deciding a citizenship claim on the merits, which is precisely what Nguyen argues here.

Minh Khac Nguyen's derivative citizenship claim is fully subject to judicial review notwithstanding his prior removal order.¹² Courts consistently recognize that a claim of U.S. citizenship must be resolved by the judiciary – as reflected in 8 U.S.C. § 1252(b)(5), which ensures nationality claims raised in removal cases are adjudicated in federal court (with factual disputes referred to a district court). For example, in *Lopez v. Doe*, the Eastern District of Virginia exercised jurisdiction over a habeas petition asserting derivative citizenship during ongoing removal proceedings, explicitly holding that the ordinary immigration appeal process was not an “adequate” or “effective” means to resolve the citizenship question (since any relief would come only after the petitioner's detention/removal). Likewise, in *Souvannarath v. ICE*, the court intervened despite an existing removal order, issuing a TRO to halt the petitioner's deportation in light of his “substantial claim of U.S. citizenship” and the “irreparable harm” that would result from removing a potential American citizen.

Further, the Eleventh Circuit has similarly emphasized that jurisdictional bars in the INA apply only to *aliens*, not U.S. nationals: in *Belleri v. United States*, the court remanded for a determination of the plaintiff's citizenship because a final decision on nationality was

¹² See 8 U.S.C. § 1252(b)(5) (requiring courts to decide nationality claims raised in removal proceedings and transfer factual disputes to district court); *Lopez v. Doe*, No. 1:23-cv-68, 2023 WL 4401302, at *5–6 (E.D. Va. July 10, 2023) (holding that §§ 1252(b)(9) and (g) did not bar habeas jurisdiction over a pending citizenship claim, and that § 1503(a) did not apply because removal proceedings were ongoing); *Souvannarath v. ICE*, No. 3:25-cv-00938 (M.D. La. Oct. 23, 2025) (TRO order) (finding substantial likelihood of success on derivative citizenship claim and irreparable harm from removal)

a prerequisite to assessing jurisdiction (since 8 U.S.C. § 1252(g) “barred complaints only by aliens”).¹³ And in *Henry v. Quarantillo*, the Second Circuit affirmed the availability of a de novo declaratory judgment action to decide a derivative citizenship claim even after the conclusion of removal proceedings – the district court had jurisdiction to adjudicate Henry’s nationality once his removal case was over, effectively giving him the same review opportunity contemplated by § 1252(b)(5).¹⁴ Together, these cases underscore that a prior removal order does not extinguish the court’s power to decide a citizenship claim. Indeed, whether raised during removal or years later, a colorable derivative citizenship claim entitles the claimant to an Article III determination of nationality before the executive can strip him of the benefits of U.S. citizenship.¹⁵ This uniform line of authority reinforces that the district court here retains jurisdiction to hear Nguyen’s citizenship claim despite his old removal order, consistent with Congress’s mandate in § 1252(b)(5) that claims of U.S. nationality receive judicial review.

For all these reasons, § 1252 and *Iasu* do not bar this Court from hearing Mr. Nguyen’s case. To the contrary, binding precedent and constitutional principles *compel* a judicial determination of his nationality before the government can take the irrevocable step of removal. The exclusive-review provisions of § 1252 were meant to channel and consolidate review, not to insulate potential wrongful removals of citizens from any review

¹³ *Belleri v. United States*, 712 F.3d 543, 546–47 (11th Cir. 2013).

¹⁴ *Henry v. Quarantillo*, 414 F. App’x 363, 366 (2d Cir. 2011).

¹⁵ See 8 U.S.C. § 1252(b)(5); see also *Lopez v. Doe*, No. 1:23-cv-68, 2023 WL 4401302, at *6 (E.D. Va. July 10, 2023) (affirming Article III review of colorable citizenship claims despite procedural posture).

at all. The Court should therefore reject the government's jurisdictional objection and proceed to evaluate Mr. Nguyen's citizenship claim on the merits.

B. The Court's Authority to Resolve the Nationality Claim Is Affirmed by 8 U.S.C. § 1252(b)(5)

Not only is jurisdiction proper in the face of a colorable citizenship claim, but the text of § 1252(b)(5) itself affirms this Court's role in adjudicating such claims (in the appropriate procedural posture). Section 1252(b)(5) – titled “Treatment of nationality claims” – lays out Congress's chosen mechanism to ensure that claims of U.S. nationality are decided by the courts. In a petition for review of a removal order, **if the petitioner claims to be a U.S. national and the court of appeals finds no genuine issue of fact, the court of appeals decides the nationality claim outright; but if the court finds a genuine issue of material fact, it “shall transfer the proceeding to the district court”* for a new hearing and decision on the citizenship claim (emphasis added). The statute further provides that the district court hearing the claim on transfer shall treat it *“as if an action had been brought in the district court under 28 U.S.C. § 2201”* (the Declaratory Judgment Act)¹⁶. In other words, Congress explicitly contemplated that district courts will adjudicate disputed citizenship claims de novo, with full fact-finding, whenever such a claim is properly raised in the context of a removal case.

While § 1252(b)(5) technically operates through the petition-for-review process, its import is much broader: it reflects a firm directive that nationality claims be resolved on

¹⁶ See 8 U.S.C. § 1252(b)(5)(B)–(C)

their facts, rather than ignored or dismissed on procedural grounds. The statute is a safeguard – described by the Ninth Circuit as a “fail safe against inadvertent or uninformed execution of a final order of removal against a person with a claim to United States nationality.”¹⁷ Congress’s intent was to prevent the tragic scenario of a U.S. citizen being removed without a judicial determination of citizenship. In *Iasu*, the Ninth Circuit recognized this purpose, noting that had Mr. Iasu timely filed a petition for review, the court “would have had jurisdiction to review his nationality claim under § 1252(b)(5), notwithstanding his status as an aggravated felon,” and could have transferred to a district court for fact-finding if needed.¹⁸ Thus, even *Iasu* accepted that § 1252(b)(5) ensures a forum for citizenship claims raised on direct review.

Mr. Nguyen’s claim arrives in a different procedural posture – via an original action for declaratory and injunctive relief – only because the normal petition-for-review route is no longer available (the 30-day window having closed over two decades ago). But this does not mean his claim is jurisdictionally barred; rather, it means the Court must exercise its traditional equity and habeas jurisdiction to fill the gap so that the intent behind § 1252(b)(5) is not thwarted. The basic principle remains the same: if there exists a “*genuine issue of material fact*” about Mr. Nguyen’s nationality, a U.S. district court is the proper forum to resolve that issue after an evidentiary hearing. That is precisely what Mr. Nguyen seeks here. Functionally, this case is akin to a § 1252(b)(5)(B) transfer proceeding – the only difference is that the transfer comes by way of Mr. Nguyen’s proactive filing

¹⁷ *Theogene v. Gonzales*, 411 F.3d 1107, 1110 n.4 (9th Cir. 2005).

¹⁸ *Iasu v. Smith*, 511 F.3d 881, 889 (9th Cir. 2007), cert. denied, 555 U.S. 815 (2008).

rather than a directive from the court of appeals. Such a difference in form should not deprive the Court of power to do what Congress envisioned: determine the citizenship question on the merits.

Allowing this claim to be heard is also consistent with a long line of cases emphasizing that procedural missteps do not extinguish citizenship claims. The Ninth Circuit has held that a petitioner's failure to raise a derivative citizenship claim earlier or to exhaust it in administrative proceedings does not defeat judicial review, so long as the claim is not "*patently frivolous*." See, e.g., *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005) (exercising jurisdiction over an unexhausted citizenship claim because it was non-frivolous and "denying review would foreclose any possibility of judicial review of [petitioner's] citizenship claim"); *Theagene v. Gonzales*, 411 F.3d 1107, 1110 (9th Cir. 2005) (court of appeals must evaluate citizenship claim "*regardless of whether the claim was raised below*"). These cases underscore that the substance of citizenship must be addressed even if normal procedural avenues were bypassed. Here, Mr. Nguyen's claim has clear substantive merit (as outlined in the Factual Background above), easily meeting the "non-frivolous" threshold. Denying him a forum now would run contrary to Congress's design and the judiciary's practice of ensuring one full and fair determination of citizenship.

Finally, recognizing this Court's authority to decide Mr. Nguyen's status accords with core constitutional and equitable principles. As discussed, the Fifth Amendment's due process guarantee would be hollow if an individual could be removed as an alien without any judicial inquiry into a credible claim of U.S. citizenship. The writ of habeas corpus has

traditionally been available to test the legality of executive detention and removal, particularly on the ground that the detainee is not subject to deportation (*Ng Fung Ho*). Although the REAL ID Act rechanneled most such habeas cases into petitions for review, it did so on the premise that an adequate alternative forum (the court of appeals, and by extension the appropriate district court on transfer) would be available. In the unusual posture of Mr. Nguyen's case, where the petition-for-review mechanism is no longer literally available, the Court retains its inherent habeas jurisdiction to prevent a fundamental miscarriage of justice – namely, the unlawful removal of a U.S. citizen. This is consistent with the Supreme Court's admonition that statutes should not be read to suspend or deny habeas review absent a clear statement, especially where issues of nationality are concerned (*INS v. St. Cyr*, 533 U.S. 289, 305-08 (2001); *Ng Fung Ho*).

In sum, this Court has the authority to decide Mr. Nguyen's derivative citizenship claim, and indeed § 1252(b)(5) points to the Court as the appropriate fact-finder if a factual dispute exists. Mr. Nguyen has presented ample evidence to, at minimum, create a genuine issue of fact regarding his U.S. citizenship. Under the statute's framework, that is enough to warrant a full hearing and adjudication of the claim. This Court's intervention is not an evasion of § 1252, but a fulfillment of its fundamental guarantee that no person with a potentially valid citizenship claim will be removed without judicial review. Mr. Nguyen respectfully urges the Court to embrace the role Congress envisioned – to hold a hearing, weigh the evidence of his citizenship, and decide the issue on the merits.

IV. Conclusion

For the foregoing reasons, the Court has jurisdiction and the duty to resolve Mr. Nguyen's claim of derivative citizenship. Mr. Nguyen has made a strong prima facie showing that he *automatically acquired U.S. citizenship* in his youth by virtue of his mother's naturalization and his fulfillment of the INA's conditions. At the very least, there is a substantial question as to his nationality, and justice requires that this question be answered by the judiciary before any irreparable steps are taken to remove him from the United States. The Court should therefore reject the government's jurisdictional objection under 8 U.S.C. § 1252 and *Iasu*, and proceed to adjudicate Mr. Nguyen's citizenship claim pursuant to 8 U.S.C. § 1252(b)(5).

Accordingly, Mr. Nguyen respectfully asks that the Court grant the requested injunctive relief to prevent his removal during the pendency of these proceedings, and ultimately declare that he is a citizen of the United States by operation of former INA § 320. Such a ruling would be firmly supported by the law and facts, and would uphold the fundamental principle that no United States citizen should be erroneously expelled from their own country without a judicial hearing on their claim.

Dated on November 5, 2025

Respectfully submitted,

/s/Daniel M Huynh

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