

No. 21-2235

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

DAMION GLENROY VANDO DAVIS,

Petitioner,

-v.-

ATTORNEY GENERAL, UNITED STATES OF AMERICA,

Respondent.

Petition for Review of a Decision by the Board of Immigration Appeals
Agency No. A 042-256-487

**BRIEF FOR AMICI CURIAE OF ORGANIZATIONS ASIAN AMERICANS
ADVANCING JUSTICE-ATLANTA, NATIONAL IMMIGRATION
PROJECT OF THE NATIONAL LAWYERS GUILD, SOUTHERN
POVERTY LAW CENTER IN SUPPORT OF THE PETITIONER**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), counsel for Amici certifies that the Amici and the signatories are registered non-profits and have no parent corporations, nor does any publicly held corporation own ten percent or more of their stock.

FEDERAL RULE OF APPELLATE PROCEDURE 29 STATEMENTS

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), counsel for Amici certifies that the parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for Amici certifies that no counsel for the parties authored this brief in whole or in part, and no party, party's counsel or person or entity other than Amici and its counsel contributed money that was intended to fund the preparing or submitting of this brief.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES.....	iv
INTEREST OF AMICI CURAE.....	1
ASIAN AMERICANS ADVANCING JUSTICE – ATLANTA.....	1
NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS’ GUILD	1
SOUTHERN POVERTY LAW CENTER.....	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. Former 8 U.S.C. § 1432(a)(3)’s Exclusion of Fathers Leads to Family Separation, Discriminatory Treatment, and Damaged Lives	3
A. Kelvin Silva, a 45-year-old father and grandfather from Charlotte, NC, was deported to the Dominican Republic in 2022 after 30 months in immigration detention.	3
B. Robert Lodge, a 43-year-old who came to the U.S. as a child is now facing deportation to Jamaica	4
C. Noel Henry, a 46-year-old father, fiancé, and grandfather, was in ICE detention for more than a year before being deported to Jamaica	5
D. Derrick Roberts, a 43-year-old father and resident of Long Island, NY, is facing deportation to Saint Lucia	6

E. Omar Dale, a 42-year-old former resident of Queens, NY, was deported to Jamaica in 20197

F. Balbino Tavaréz Rivas was deported to the Dominican Republic in 2000, separating him from his wife and children7

CONCLUSION8

COMBINED CERTIFICATIONS10

CERTIFICATE OF SERVICE.....12

TABLE OF AUTHORITIES

Cases

<i>Agosto v. INS</i> , 436 U.S. 748	2
<i>Ng Fung Ho v. White</i> , 259 U.S. 276 (1922)	2

Statutes

Child Citizenship Act of 2000,

Pub. L. No. 106-395, 114 Stat. 1632	2, 3
8 U.S.C. § 1432	2, 3, 8

INTEREST OF AMICI CURIAE

Asian Americans Advancing Justice-Atlanta is the first nonprofit legal advocacy organization dedicated to protecting the civil rights of Asian Americans, Native Hawaiian, Pacific Islander (AANHPI) and Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities in Georgia and the Southeast. It works to promote equity, fair treatment, and self-determination for all communities of color.

National Immigration Project of the National Lawyers Guild (NIPNLG) is a nonprofit membership organization of immigration attorneys, legal workers, grassroots advocates, and others working to defend immigrants' rights and secure a fair administration of the immigration and nationality laws. Through litigation and advocacy, NIPNLG has worked to advance justice and equity in U.S. immigration laws and their enforcement.

Southern Poverty Law Center (SPLC) is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. The SPLC provides pro bono legal representation to people in immigration detention across the Deep South.

SUMMARY OF ARGUMENT

Former 8 U.S.C. § 1432(a)(3) treats fathers and mothers differently with respect to whether and how they can transmit citizenship to foreign-born, nonmarital children (in other words, children who were born “out of wedlock”). While the law was superseded by the Child Citizenship Act of 2000, Pub. L. No. 106-395, § 103(a), 114 Stat. 1632 (“CCA”), the CCA does not apply to individuals who were 18 years of age or older when the law took effect on February 27, 2001. That means that former § 1432(a) continues to impact children of unwed fathers who were born on or before February 27, 1983.

Deportation of someone “who so claims to be a citizen,” as Justice Brandeis stated in *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922), can result in the loss “of all that makes life worth living.” *Id.*; see also *Agosto v. INS*, 436 U.S. 748, 753 (1978). The threat of deportation has exposed long-time residents of this country who were unable to acquire citizenship under former § 1432(a)(3) to “a fate of ever-increasing fear and distress.” *Id.* at 102. Deportation of these individuals is devastating to their U.S. citizen families and community members.

ARGUMENT

I. Former 8 U.S.C. § 1432(a)(3)'s Exclusion of Fathers Leads to Family Separation, Discriminatory Treatment, and Damaged Lives.

In superseding 8 U.S.C. § 1432, the CCA provides that a child born outside the U.S. automatically becomes a citizen if at least one parent of the child is a citizen, and if the child is under 18 years of age and is in the legal and physical custody of the citizen parent. 8 U.S.C. § 1431(a)(1)-(3). However, the CCA did not apply to people who were already 18 years old on February 27, 2001. With regard to these individuals, § 1432(a)(3) still applies.

The personal accounts detailed below are from foreign-born, nonmarital children of naturalized U.S.-citizen fathers who turned 18 before the CCA took effect. Thus, each of these individuals have been adversely affected by § 1432(a)(3), which the Government contends does not allow children of unmarried parents to derive U.S. citizenship through their U.S. citizen fathers.

A. Kelvin Silva, a 45-year-old father and grandfather from Charlotte, NC, was deported to the Dominican Republic in 2022 after 30 months in immigration detention.

Kelvin Silva is a 45-year-old father and grandfather and a former resident of Charlotte, NC. Shortly after Mr. Silva was born in the Dominican Republic, his mother relinquished all responsibility over his care, so Mr. Silva's father assumed responsibility and became the primary caregiver. In 1988, Mr. Silva's father became

a naturalized U.S. citizen, and Mr. Silva began living with him in New Jersey. When Mr. Silva was 17, his father tragically passed away.

Prior to his deportation, Mr. Silva was in ICE detention for 30 months. His long incarceration exacted a heavy toll. He began sleeping with his shoes on, in case he was deported in the middle of the night. Most of all, he hoped not to be separated from his children and grandchildren:

I would never again be able to give my kids a hug or be there with them when I talk to them about their day and ask them how they're feeling. It would feel like I'm in the desert, completely stranded.

Now removed to a country where he faces hardship and lacks support, Mr. Silva tries to maintain hope while he appeals his case. "I went to school in the U.S., grew up over there, made friends, family. But here I know no one. It's weird, it's hard, it's rough."

"It's really disappointing, especially since he's been here since he was so young," says Jasmine Pena, Mr. Silva's sister. "It is so sad."

B. Robert Lodge, a 43-year-old who came to the U.S. as a child is now facing deportation to Jamaica.

Robert Lodge is a 43-year-old Georgia resident who was born in Jamaica, where he experienced hardship as a child. His mother gave up custody, and he came to the U.S. to live with his father when he was 12 years old. He grew up believing he became a U.S. citizen through his father, who naturalized.

Mr. Lodge was held in ICE detention for more than two years while fighting his citizenship claim. While in immigration detention, Mr. Lodge missed his family and suffered from numerous health issues. The thought of possibly being deported from the only country he knows shatters his nerves. He fears this would amount to a death sentence, as he has no home to go to in Jamaica and no access to medical care for his health conditions.

When they told me I was being detained [by immigration authorities], I was shell-shocked, and that made me depressed and stressed out I should be a citizen today. I feel cheated here, because I've been in the U.S. all my life.

C. Noel Henry, a 46-year-old father, fiancé, and grandfather, was in ICE detention for more than a year before being deported to Jamaica.

Noel Henry is a 46-year-old man who lived in the United States for more than 30 years. When Mr. Henry was 12 years old, his mother consented to give Mr. Henry's father full legal custody. Mr. Henry then left Jamaica and moved to the U.S. to live with his naturalized citizen father. He has always thought of himself as a U.S. citizen. He raised a family here, became the father of four children; met his fiancé, and welcomed his first grandson. However, he was deported after an immigration judge determined he did not acquire citizenship through his father.

Mr. Henry suffered from various health conditions while in ICE detention and now faces barriers to accessing healthcare in Jamaica. Since being deported, he has struggled with getting an ID because offices in Jamaica have no record of him. He

deeply misses his family, especially his grandmother, who is over 90 years old. Faced with many difficulties, he works hard to keep going, but admits it is “a struggle.”

D. Derrick Roberts, a 43-year-old father and resident of Long Island, NY, is facing deportation to Saint Lucia.

Derrick Roberts is a 43-year-old resident of Long Island, NY. He came to the U.S. from Saint Lucia at the age of nine, after going to live with his father in Brooklyn. He struck out on his own at the age of seventeen, got his license to be a barber, later obtained a certification in information technology, and started the process of earning a real estate license. As he moved through different stages of life, Mr. Roberts never had doubts about his U.S. citizenship. He stated:

For the longest time I believed I was a citizen and had derived citizenship from my father. I never had reason to question that.

Mr. Roberts now faces deportation. He is candid about his experience with the criminal justice system. “I made mistakes and when my family offered to help, I was too prideful.”

The birth of Mr. Roberts’ daughter gave him renewed purpose in life. When he saw his daughter for the first time, he knew he was “living for someone else now.” He is painfully aware that being deported would mean separation from his family, and he worries about how deportation will affect his daughter:

I don't know what impact that's going to have on my daughter. She's been patient and I've made promises to her, and I'd like the opportunity to do right for her. I carry that with me every day.

E. Omar Dale, a 42-year-old former resident of Queens, NY, was deported to Jamaica in 2019.

Omar Dale is a 42-year-old former resident of Queens, NY. He has a son in middle school and is much loved by an extended family of his grandmother, aunts, uncles, siblings, cousins – all of whom reside in the U.S.

Mr. Dale arrived to New York from Jamaica in 1981, when he was one year old. Mr. Dale thought he acquired citizenship through his father, who naturalized when Mr. Dale was a child. But since being deported to Jamaica in 2019, he has been separated from his grandmother, aunts, uncles, siblings, cousins, and his 14-year-old child. While in Jamaica, he has learned to live with the stigma surrounding individuals who have been deported, which complicates finding stable housing and work.

Reflecting on his family's suffering, Mr. Dale explains:

You're not just punishing me. You're punishing my family, my son. They should have made [the Child Citizenship Act] retroactive.

F. Balbino Tavaréz Rivas was deported to the Dominican Republic in 2000, separating him from his wife and children.

Balbino Tavaréz Rivas was born in the Dominican Republic in 1968. He came to the U.S. at nine years old as a lawful permanent resident, and was twelve years old when his father, with whom he lived, naturalized. However, an immigration

judge rejected his citizenship claim and ordered him deported to the Dominican Republic in 2000. Mr. Rivas struggled to adjust to life in the Dominican Republic and the separation from his U.S. citizen wife and two young children. Despite the distance, he has worked hard to maintain a strong and loving relationship with his wife, children—and recent grandchildren—who all live in the U.S. Based on what the Immigration Judge told him when he was deported, Mr. Rivas believed that if he waited ten years, he would be able to reapply for admission to the U.S. and rejoin his family. But when he and his wife applied for his legal permanent resident visa, they learned he was permanently inadmissible based on his criminal conviction. They were devastated to learn that Mr. Rivas would never again be able to live with his family in the U.S. Mr. Rivas describes the experience of deportation as a “life sentence,” a banishment from the country where he grew up, where all his family lives, and which he still considers home.

CONCLUSION

The exclusion of fathers in former 8 U.S.C. § 1432(a)(3) continues to have devastating consequences for the unfortunate pocket of long-time residents who lawfully entered the United States in the custody of their U.S. citizen fathers. The harms are too grievous, and the human costs too oppressive. To alleviate this suffering and remedy the constitutional infirmities Petitioner has identified, Amici

respectfully request that this Court declare Petitioner a citizen of the United States under a constitutional application of superseded § 1432(a)(3).

Submitted this 20th day of January, 2023.

/s/ Sarah H. Paoletti

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COMBINED CERTIFICATIONS

CERTIFICATE OF COMPLIANCE

I hereby state that the Brief of Amicus Curiae complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 1,911 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because the brief has been prepared in Times New Roman 14-point font using Microsoft Office Word.

CERTIFICATE OF GOOD STANDING

Pursuant to Rules 28.3(d) and 46.1(e) of the Local Rules of Appellate Procedure, I, Sarah H. Paoletti, hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

CERTIFICATE OF IDENTICAL COMPLIANCE OF BRIEFS

I hereby certify that the electronic version of the Brief of Amicus Curiae filed with the Court via the court's electronic docketing system is identical to the hard-copy version of this Brief to be filed with the Court by hand.

CERTIFICATE OF VIRUS SCAN

I hereby certify that a Bitdefender anti-virus attachment scan was performed on the electronic version of the Brief of Amicus Curiae before filing.

Dated: January 20, 2023

/s/ Sarah H. Paoletti

CERTIFICATE OF SERVICE

1. I hereby certify that on January 20, 2023, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.
2. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: January 20, 2023

By: /s/ Sarah H. Paoletti