COMMONWEALTH OF MASSACHUSETTS
Essex County Sheriff's Office
Offender Face Sheet

Date : 03/23/2017

(b)(6);(b)(7)(C)

Booking Date: 03/01/2017 Admit Date : 12/10/2016 Rel Date: Tag No:

Dec 10, 2016

May 11, 2017

(b)(6);(b)(7)(C)

LEGAL NAME :	(b)(6);(b)(7)(C)
DATE OF BIRTH :	
AGE :	28
PLACE OF BIRTH CITY :	Rio Piedras
PLACE OF BIRTH STATE:	PR
FBI NO # :	
PRIMARY SSN :	(b)(6);(b)(7)(C)
DRV LICENSE NO # :	STATE ISSUED: None
PRIOR BOOKING ID's/ INSTITUTION :	(b)(6);(b)(7)(C)
STREET :	(b)(6);(b)(7)(C)
CITY :	Lawrence
STATE :	Massachusetts
ZIP :	01840
PHONE :	()-
ARRIVED FROM :	Default
AGENCY :	Essex

INMATE'S CHARACTERISTICS

SEX :	MALE
HEIGHT :	5'11"
WEIGHT :	195
BUILD :	Stocky
GLASSES :	NO
CONTACT LENS :	NO
DEXTERITY :	Right
FACIAL HAIR :	Unshaved
HAIR COLOR :	Black
HAIR LENGTH :	Short
EYE COLOR :	Black
COMPLEXION :	Dark Brown
RACE :	Other
HISPANIC_FLAG :	YES
LANGUAGE :	Spanish
LANGUAGE 2ND :	None
COMPREHEND ENGLISH :	NO
CULTURE :	Puerto Rican
RELIGION :	None
MARITAL STATUS :	*Single
CITIZENSHIP :	United States Of America (USA)
LAST GRADE COMPLTD :	5th Grade
OCCUPATION :	
SCARS/MARKS/TATTOOS :	
SUICIDE QUERY :	NO

RELEASE ADDRESS

ADDRESS:

CITY:

STATE:

ZIP:

PHONE:

LAST EMPLOYER NAME:

COMPANY ADDRESS1:

COMPANY ADDRESS2:

STATE:

ZIP CODE:

LAST SUPERVISOR:

Date	Time	Type	Description	Location

User ID: (b)(6);(b)(7)(C)

Date: 03/23/2017 Time: 12:16 Page: 1 of 3

U.S. Citizenship and Immigration Services

Securing America's Promise

Main Content Home Rules of Behavior Change Password

Information/Notices: EOIR, BBSS, MyIT Show Details

DoS-CCD details for (b)(6);(b)(7)(C)

Applicant	
Last Name	(b)(6);(b)(7)(C)
First Name	
Middle Name	
Date of Birth	
Nationality Code	DOMR
Place of Birth	Dominican Republic (DOMR)
Passport Number	(b)(6);(b)(7)(C) Regular
Visa Control Number	(b)(6);(b)(7)(C)
SEVIS ID	
Issuing Post Name	SANTO DOMINGO (SDO)

Visa	
Class	B1/B2
Entries	M
Issue Date	
Expiration Date	08-05-2024
Foil Number	
Annotation Line 1	
Annotation Line 2	
Annotation Line 3	
Annotation Line 4	

Fingerprints	
10 Prints	Yes
Fingerprint 1	Fingerprint not Available
Fingerprint 2	Fingerprint not Available
IDENT Fingerprint ID	

Application Data	
Appointment Date	08-06-2014
Birth Place City	BANI

Passport Number	(b)(6);(b)(7)(C) Regular
Passport Issue Date	06-27-2014
Passport Expires	06-27-2020
Passport City	SANTO DOMINGO DOMR
Passport Country	DOMR
Address 1	(b)(6);(b)(7)(C)
Address 2	
City	SANTO DOMINGO OESTE
Country	DOMR
Postal Code	
Barcode Number	(b)(6);(b)(7)(C)
Visa Type	Regular
STC Name	
Telephone (home)	829339 (b)(6);(b)(7)(C)
Telephone (work)	809564
Telephone (other)	
Email Address	
Contact Name	(b)(6);(b)(7)(C)
Contact Phone(s)	347520 (b)(6);(b)(7)(C)
Arrival Date	
Misc Data	

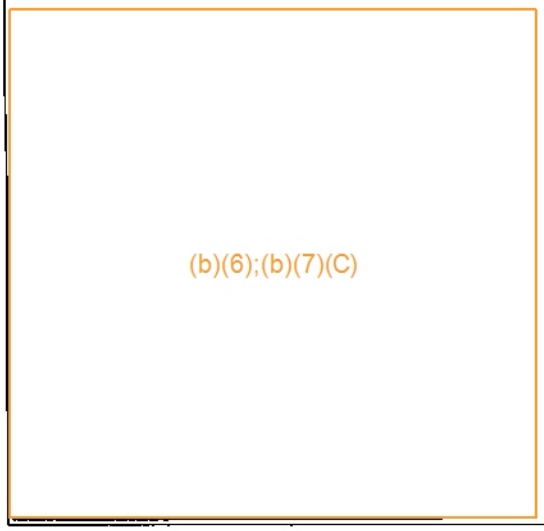
Case Memo(s)	
Date Entered	Memo
08-06-2014	(b)(7)(E)
08-06-2014	***REFUSAL REMARKS*** See previous remarks.

Adjudication History					
Adjudication Date	Adjudication Status	Refusal Code	Section of Law	OW	Approval Date
08-06-2014	Refused	R	214(B)		

Namecheck(s)		
	Local	Data

Seq #	Status	Source	DNC/Class Hits	DNC/Class Worst Hit	Worst Hit	Entry Date	Hit Override Description
1	RECEIVED	CLASS	3	1	NR	08-06-2014	
2	RECEIVED	CLASS	3	1	NR	08-06-2014	

Photograph



Signature

The image is unavailable.

Fingerprint

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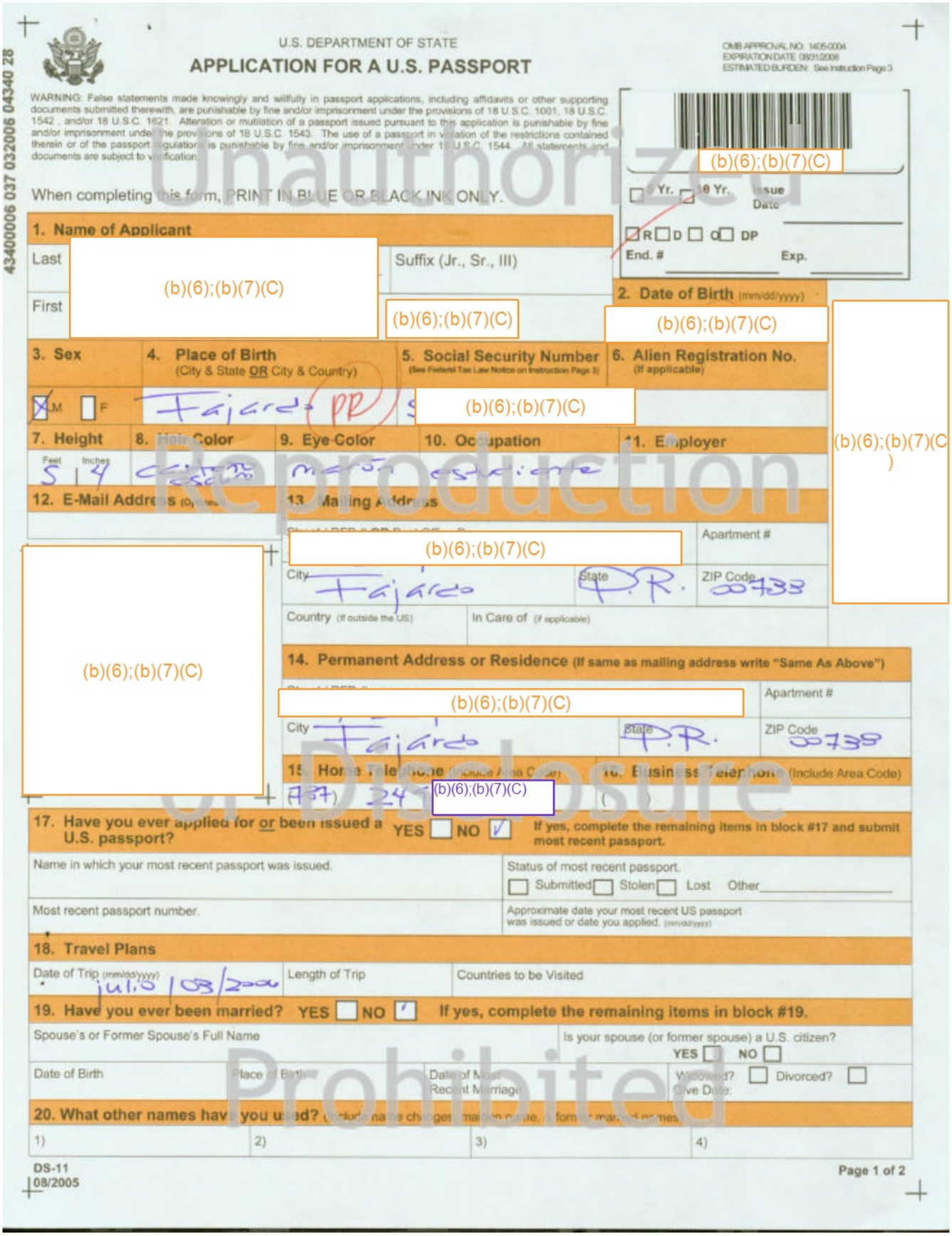
Accessibility Statement



U.S. DEPARTMENT OF STATE

APPLICATION FOR A U.S. PASSPORT

OMB APPROVAL NO: 1405-0004
EXPIRATION DATE: 08/31/2006
ESTIMATED BURDEN: See Instruction Page 3

43400006 037 032006 04340 28

WARNING: False statements made knowingly and willfully in passport applications, including affidavits or other supporting documents submitted therewith, are punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1001, 18 U.S.C. 1542 , and/or 18 U.S.C. 1621. Alteration or mutilation of a passport issued pursuant to this application is punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1543. The use of a passport in violation of the restrictions contained therein or of the passport regulations is punishable by fine and/or imprisonment under 18 U.S.C. 1544. All statements and documents are subject to verification.

When completing this form, PRINT IN BLUE OR BLACK INK ONLY.

(b)(6);(b)(7)(C)

☐ 5 Yr. ☐ 10 Yr. Issue Date

☐R ☐D ☐O ☐DP

End. # Exp.

1. Name of Applicant

Last (b)(6);(b)(7)(C) Suffix (Jr., Sr., III)

First (b)(6);(b)(7)(C)

2. Date of Birth (mm/dd/yyyy) (b)(6);(b)(7)(C)

3. Sex	4. Place of Birth (City & State OR City & Country)	5. Social Security Number (See Federal Tax Law Notice on Instruction Page 3)	6. Alien Registration No. (If applicable)
☒M ☐F	Fajardo PR	(b)(6);(b)(7)(C)	

7. Height	8. Hair Color	9. Eye Color	10. Occupation	11. Employer
Feet 5 Inches 4	castaño	marrón	estudiante	

(b)(6);(b)(7)(C)

12. E-Mail Address (Optional)

13. Mailing Address

(b)(6);(b)(7)(C) Apartment #

City Fajardo State P.R. ZIP Code 00738

Country (If outside the US) In Care of (If applicable)

(b)(6);(b)(7)(C)

14. Permanent Address or Residence (If same as mailing address write "Same As Above")

(b)(6);(b)(7)(C) Apartment #

City Fajardo State P.R. ZIP Code 00738

15. Home Telephone (Include Area Code) (787) 24[illegible] (b)(6);(b)(7)(C)

16. Business Telephone (Include Area Code) ( )

17. Have you ever applied for or been issued a U.S. passport? YES ☐ NO ☑ If yes, complete the remaining items in block #17 and submit most recent passport.

Name in which your most recent passport was issued.

Status of most recent passport. ☐ Submitted ☐ Stolen ☐ Lost Other

Most recent passport number.

Approximate date your most recent US passport was issued or date you applied. (mm/dd/yyyy)

18. Travel Plans

Date of Trip (mm/dd/yyyy)	Length of Trip	Countries to be Visited
julio 03/2006		

19. Have you ever been married? YES ☐ NO ☑ If yes, complete the remaining items in block #19.

Spouse's or Former Spouse's Full Name

Is your spouse (or former spouse) a U.S. citizen? YES ☐ NO ☐

Date of Birth Place of Birth Date of Most Recent Marriage Widowed? ☐ Divorced? ☐ Give Date:

20. What other names have you used? (Include name changes, maiden name, former married names)

1) 2) 3) 4)

DS-11
08/2005

Page 1 of 2

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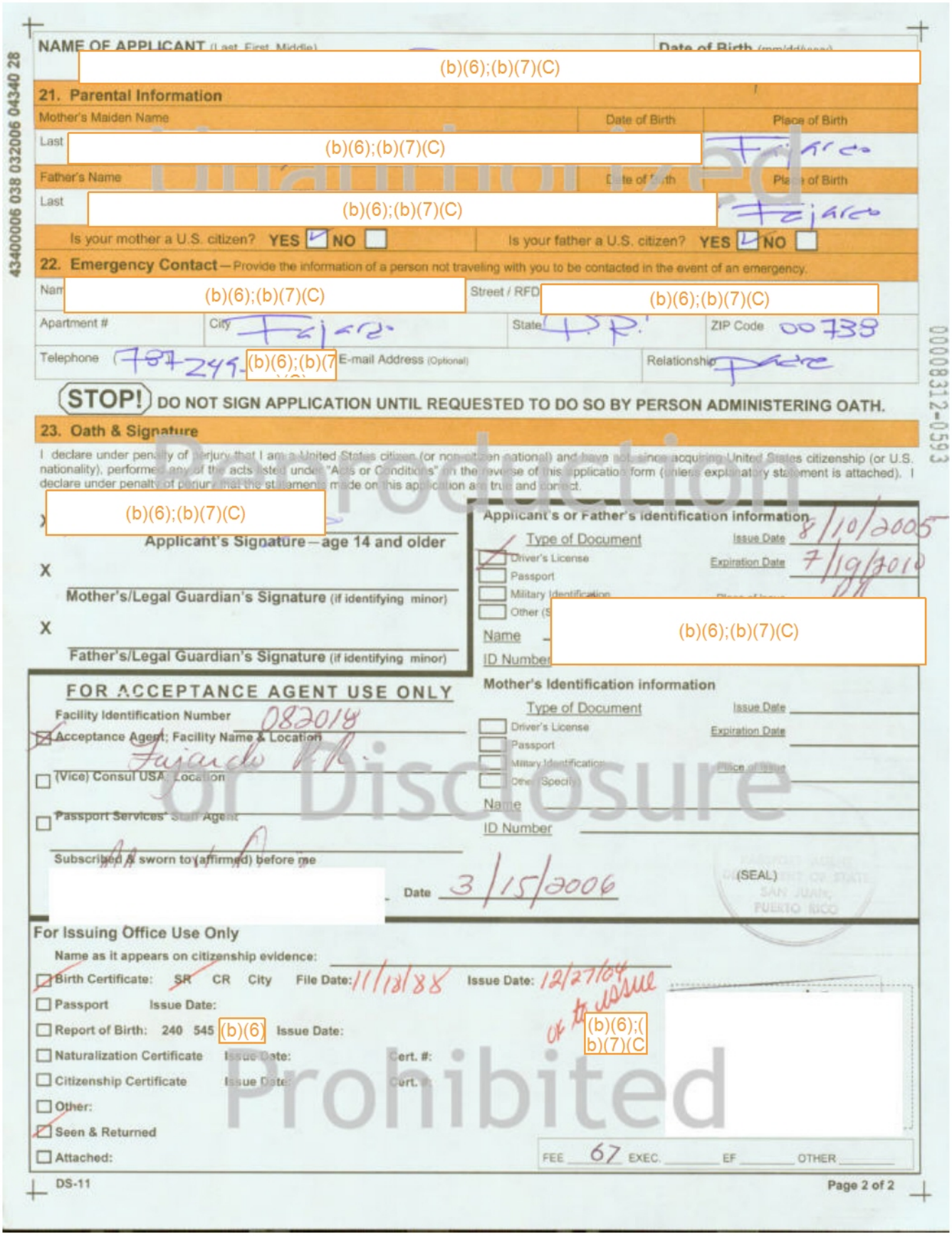

NAME OF APPLICANT (Last, First, Middle) (b)(6);(b)(7)(C) Date of Birth (mm/dd/yyyy)

43400006 038 032006 04340 28

21. Parental Information

Mother's Maiden Name	Date of Birth	Place of Birth
Last (b)(6);(b)(7)(C)		Fajardo
Father's Name	**Date of Birth**	**Place of Birth**
Last (b)(6);(b)(7)(C)		Fajardo

Is your mother a U.S. citizen? YES ☑ NO ☐ Is your father a U.S. citizen? YES ☑ NO ☐

22. Emergency Contact — Provide the information of a person not traveling with you to be contacted in the event of an emergency.

Name (b)(6);(b)(7)(C)	Street / RFD (b)(6);(b)(7)(C)		
Apartment #	City Fajardo	State P.R.	ZIP Code 00738
Telephone (787 249- (b)(6);(b)(7	E-mail Address (Optional)	Relationship Padre	

STOP! DO NOT SIGN APPLICATION UNTIL REQUESTED TO DO SO BY PERSON ADMINISTERING OATH.

23. Oath & Signature

I declare under penalty of perjury that I am a United States citizen (or non-citizen national) and have not, since acquiring United States citizenship (or U.S. nationality), performed any of the acts listed under "Acts or Conditions" on the reverse of this application form (unless explanatory statement is attached). I declare under penalty of perjury that the statements made on this application are true and correct.

X (b)(6);(b)(7)(C)
Applicant's Signature — age 14 and older

X
Mother's/Legal Guardian's Signature (if identifying minor)

X
Father's/Legal Guardian's Signature (if identifying minor)

Applicant's or Father's identification information

Type of Document: ☑ Driver's License ☐ Passport ☐ Military Identification ☐ Other (S

Issue Date 8/10/2005
Expiration Date 7/19/2010
Name (b)(6);(b)(7)(C)
ID Number

Mother's Identification information

Type of Document: ☐ Driver's License ☐ Passport ☐ Military Identification ☐ Other (Specify)

Issue Date
Expiration Date
Place of Issue
Name
ID Number

FOR ACCEPTANCE AGENT USE ONLY

Facility Identification Number 082018
☑ Acceptance Agent; Facility Name & Location Fajardo PR
☐ (Vice) Consul USA, Location
☐ Passport Services Staff Agent

Subscribed & sworn to (affirmed) before me

Date 3/15/2006

(SEAL)

For Issuing Office Use Only

Name as it appears on citizenship evidence:

☑ Birth Certificate: SR ☑ CR City File Date: 11/18/88 Issue Date: 12/27/04 or the issue (b)(6);(b)(7)(C
☐ Passport Issue Date:
☐ Report of Birth: 240 545 (b)(6) Issue Date:
☐ Naturalization Certificate Issue Date: Cert. #:
☐ Citizenship Certificate Issue Date: Cert. #:
☐ Other:
☑ Seen & Returned
☐ Attached:

FEE 67 EXEC. EF OTHER

DS-11 Page 2 of 2

00008312-0593

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Español | English

BIENVENIDO, Shirley Ann Pabon Cruz — Identidades | Vehículos | [Salir]

Información de Identidad

(b)(6);(b)(7)(C)

Nombre
Dirección Residencial
Fecha de Nacimiento
Número de Teléfono

(b)(6);(b)(7)(C)

Identificación
Número
Tipo

Licencia
Número
Categoría
Expiración
Emisión

Gravámenes
No tiene gravámenes registrados

Memos

03 abr 2016	DUP LIC
13 nov 2012	LICENCIA EXPIRA 03NOV2017
13 nov 2012	PLAN DE PAGO 14D.C2012 3311135010

Datos Personales

Genero
Estatura
Peso

Tez
Ojos
Pelo

Tipo de Sangre N/A
Donante de Organos N/A
Lugar de Nacimiento Puerto Rico

Información de Multas (0)

No tiene multas pendientes de pago

Información de Violaciones (0)

No tiene violaciones registradas

Información de Vehículos

Seleccione el título del vehículo que desea ver

Registro	VIN	Tablilla	Descripción	Marbete	Título
6460103	ZKMYSGZY345021432	(b)(6);(b)(7)(C)	2003 VENTO MOTORCYCLE PHANTOM RS ROJO CLARO	(b)(6);(b)(7)(C)	
6926435	JS3TE943761102124		2006 SUZUKI GRAND VITARA PREMIUM GRIS OBSCURO		
11303145	5YFBURHE3EP103203		2014 TOYOTA COROLLA LE BLANCO		

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
10400 Rancho Road
Adelanto, CA 92301

U.S. Immigration and Customs Enforcement

December 18, 2013

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: David Marin, Acting Field Office Director
Enforcement and Removal Operations, Los Angeles

Sandra D. Anderson, Chief Counsel
Office of Chief Counsel, Los Angeles

(b)(6);(b)(7)(C)
Senior Attorney, Adelanto, CA

REVIEWED BY: (b)(6);(b)(7)(C) Senior Attorney
Senior Attorney, Adelanto, CA

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
100 Montgomery St., (b)(6);(b)(
San Francisco, CA 94104

U.S. Immigration and Customs Enforcement

February 3, 2017

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: David W. Jennings, Field Office Director
Enforcement and Removal Operations, San Francisco

Leslie J. Ungerman, Chief Counsel
Office of Chief Counsel, San Francisco

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE[1]

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
125 E. John Carpenter Fwy.,
(b)(6);(b)(7
Irving, Texas 75062

U.S. Immigration and Customs Enforcement

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, Dallas, TX

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) Assis
Enforcement and Removal

(b)(6);(b)(7)(C)

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5);(b)(6);(b)(7)(C)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Kent Frederick, Chief Counsel
Office of Chief Counsel, Philadelphia

Thomas Decker, Field Office Director
Enforcement and Removal Operations,
Field Office Philadelphia

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

.

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Page 2392

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2393

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(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2394

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(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2395

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2396

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ellen Ardinger, Chief Counsel
Office of Chief Counsel, Boston

Chris Cronen, Field Office Director
Enforcement and Removal Operations, Field Office Boston

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5);(b)(6);(b)(7)(C)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Page 2403

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2404

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2405

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2406

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2407

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2408

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C), Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS[1]

(b)(5);(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C), Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS[1]

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

March 27, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, Field Office New York

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

2014 WL 130979
Only the Westlaw citation is currently available.
United States District Court,
D. Utah,
Central Division.

Niko MANUSINA, Plaintiff,
v.
John F. KERRY, Secretary of State; The United States Department of State; Does I–X; and Organizations and Agencies I–X, Defendants.

Civil No. 2:13CV286DN.
|
Jan. 14, 2014.

Attorneys and Law Firms

Alexander John Helfer, Reza Athari & Lui PLLC, T. Laura Lui, Murray, UT, for Plaintiff.

Jared C. Bennett, U.S. Attorney's Office, Salt Lake City, UT, for Defendants.

MEMORANDUM DECISION AND ORDER GRANTING MOTION TO DISMISS

DAVID NUFFER, District Judge.

***1** Under Fed.R.Civ.P. 12(b)(6), Secretary of State John F. Kerry, the United States Department of State, and the remaining defendants (collectively, "the Secretary") moved to dismiss this action because Mr. Manusina failed to state a claim upon which relief can be granted.[1] Specifically, the Secretary argued that even assuming that the facts stated in Mr. Manusina's complaint[2] are true, Mr. Manusina cannot obtain the relief he seeks because his complaint shows that he fails to meet the requirements of being a national of the United States. Mr. Manusina opted not to respond to the Secretary's motion. Under the local rules, failure to respond to a motion may provide a basis to grant the motion.[3] Nevertheless, even considering the merits of the Secretary's motion, this Court is persuaded, for the reasons discussed below, that Mr. Manusina has failed to state a claim upon which relief can be granted.

STANDARD OF REVIEW

"To survive a motion to dismiss [under Fed.R.Civ.P. 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' "[4] As shown below, even if the facts in Mr. Manusina's complaint are true, there is no plausible basis for him to obtain the relief he seeks.

ANALYSIS

I. THE SECRETARY APPROPRIATELY DENIED ISSUING MR. MANUSINA A PASSPORT BECAUSE MR. MANUSINA'S COMPLAINT SHOWS THAT HE IS NOT A NATIONAL OF THE UNITED STATES.

The facts of Mr. Manusina's complaint show that he is not a national of the United States. Where, as here, an individual claims to be a "national" of the United States who was allegedly denied a benefit under that status, Congress allows that individual to bring an action in federal district court for a declaration that the individual is a national of the United States.[5] Mr. Manusina claims to be a national of the United States at birth under 8 U.S.C. § 1408(4).[6] Section 1408(4) provides that

> the following shall be nationals, but not citizens, of the United States at birth:
>
> * * * *
>
> (4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, *prior to the birth of such person,* was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years—
>
> * * * *
>
> (B) at least five years of which were after attaining the age of fourteen years.[7]

Thus, to survive a motion to dismiss on his claim of being a national under section 1408(4), Mr. Manusina's complaint

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must allege that prior to his birth, one of his parents was a national of the United States who, for any ten-year period, resided in a possession of the United States for seven years, five years of which were after the nationalized parent attained the age of fourteen. As shown below, the facts of Mr. Manusina's complaint do not satisfy these requirements.

***2** Because Mr. Manusina's complaint alleges that his mother, Ms. Toloumu, was born in 1944 in American Samoa, this Court must assume that she is a national of the United States and that American Samoa is a possession of the United States.[8] Nevertheless, Mr. Manusina's complaint admits that Ms. Toloumu lived in American Samoa for two years and three months *after* she turned fourteen but before she moved to Western Samoa in December of 1960.[9] The complaint further admits that Ms. Toloumu physically resided again in American Samoa for two years and seven months between February 1961 and September 1963 before moving again to Western Samoa, where she physically resided until 1982.[10] Mr. Manusina was born in Western Samoa in 1974.[11] Thus, according to the allegations in the complaint, the total amount of time that Ms. Toloumu lived in American Samoa *after* turning fourteen but *before* Mr. Manusina's birth in 1974 was 4 years and 10 months. This is clearly short of the five-year requirement that section 1408(4) mandates in order to confer national status on Mr. Manusina.

CONCLUSION

For the reasons stated above and because Mr. Manusina did not oppose the Secretary's motion, the allegations in Mr. Manusina's complaint fail to establish that he is a national of the United States. Therefore, the motion to dismiss[12] is GRANTED, and this action is DISMISSED with prejudice.

All Citations

Not Reported in F.Supp.2d, 2014 WL 130979

Footnotes

1 ECF No. 10.
2 ECF No. 2.
3 DUCivR 7–1(d).
4 *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).
5 8 U.S.C. § 1503(a).
6 *See* ECF No. 2, ¶¶ 2–3.
7 8 U.S.C. § 1408(4) (emphasis added).
8 8 U.S.C. § 1408(1). The Court notes that American Samoa is a possession of the United States. 48 U.S.C. § 1661.
9 ECF No. 2, ¶ 21.
10 *Id.*
11 ECF No. 2, Exhibit 2.
12 Docket no. 10, filed July 8, 2013.

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2008 WL 4868702 (BIA)

** THIS IS AN UNPUBLISHED DECISION - NOT INTENDED FOR CITATION AS PRECEDENT **

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

IN RE: RIDGE SIOFELE

File: A035 046 144 - Lancaster, CA
October 17, 2008

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS:

Sandra J. Santos
Assistant Chief Counsel

CHARGE:

1 Notice: Sec. 237(a)(2)(A)(iii), I&N Act ¿8 U.S.C. § 1227(a)(2)(A)(iii)º - Convicted of aggravated felony
Sec. 237(a)(2)(B)(i), I&N Act ¿8 U.S.C. § 1227(a)(2)(B)(i)º - Convicted of controlled substance violation

APPLICATION: Termination

The Department of Homeland Security (DHS) has appealed from the Immigration Judge's decision dated August 22, 2007. The Immigration Judge terminated proceedings after concluding that the respondent appeared to meet the requirements for showing that he is a United States national under section 308(4) of the Immigration and Nationality Act, 8 U.S.C. § 1408(4). However, section 15(b) of the Act of August 27, 1986, Pub. L. No. 99-396, 100 Stat. 842, the statute that enacted section 308(4) of the Act, provides that "¿iºn the case of a person born before the date of enactment … the status of a national of the United States shall not be considered to be conferred upon the person until the date the person establishes to the satisfaction of the Secretary of State that the person meets the requirements of section 308(4) of the Immigration and Nationality Act." As the Immigration Judge noted in his decision, because the respondent was born in 1963, prior to the enactment of section 308(4), only the Secretary of State can confer the status of United States national on the respondent. Because the Immigration Judge does not have jurisdiction to rule on the respondent's nationality claim, we agree with DHS that the Immigration Judge acted prematurely in terminating proceedings.¿FN1º

Accordingly, the following orders will be entered:

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ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

Charles K. Adkins-Blanch
FOR THE BOARD

Footnotes

1 On remand, should both parties agree, there would be no bar to the Immigration Judge's administrative closure of proceedings to allow the respondent the opportunity to pursue his application before the Secretary of State. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996); *Matter of Lopez-Barrios*, 20 I&N Dec. 203 (BIA 1990); *Matter of Amico*, 19 I&N Dec. 652 (BIA 1988).

2008 WL 4868702 (BIA)

End of Document

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(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

RECORDS RETENTION

CASE CAPTION: _____ AGENCY NO.: _____

The following is provided in response to Counsel memorandum dated _____:
(*Attach additional pages as required.*)

1. PAPER RECORDS

The following relevant paper records have been retained:

_____

_____

_____

2. ELECTRONIC RECORDS: I have spoken with IT regarding the preservation of the following electronic information:

a. EMAIL

The following relevant email has been identified and saved:

_____

_____

b. OTHER ELECTRONIC FILES

(1) The following relevant electronic files have been identified and saved:

_____

_____

3. ADDITIONAL IDENTIFICATION AND PRESERVATION OF RELEVANT INFORMATION

a. I have directed the following individuals under my supervision to conduct a thorough search for any relevant records and notified them of the requirement to preserve them until further notice:

NAME	CODE	PHONE
_____	_____	_____
_____	_____	_____

b. The following organization(s), office(s), or personnel may also have potentially relevant records:

_____

_____

c. The following records have been sent to a Federal Records Center. The Federal Records Center has been notified, in writing and by accession number, to exempt these records from the automatic destruction schedule.

_____

STATEMENT OF NO RECORDS (*If you have no records relevant to the subject case, provide explanation below.*)

_____

_____

I have read and will comply with Counsel memo dated April 26, 2017.

Signature: _____

Printed name: _____ Phone: _____

_____

No. 17-1318

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

(b)(6);(b)(7)(C)

Petitioner,
v.

ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

UNOPPOSED MOTION TO SUSPEND BRIEFING AND TRANSFER THIS PROCEEDING TO THE DISTRICT COURT PURSUANT TO 8 U.S.C. § 1252(b)(5)(B)

(b)(6);(b)(7)(C) or "Petitioner") respectfully requests that briefing be suspended and that this proceeding be transferred to the district court, pursuant to 8 U.S.C. § 1252(b)(5)(B), to determine whether (b)(6);(b)(7)(C) is a citizen of the United States. As set forth more fully below, both parties agree that such a transfer is warranted.

Procedural Background

1. (b)(6);(b)(7)(C) is currently detained by United States Citizenship and Immigration Services ("USCIS") in Pike County, Pennsylvania.

2. In 2012, an immigration judge ("IJ") ordered (b)(6);(b)(to be removed from the United States following completion of a prison sentence. In December 2015, (b)(6);(b)(7 asked the IJ to reopen the proceeding in order to consider new evidence concerning (b)(6);(b)(7)(citizenship. In January 2016, the IJ denied the request to reopen.

3. In December 2016, (b)(6);(b)(7 appealed the IJ's decision to the Board of Immigration Appeals ("BIA"). In January 2017, the BIA denied (b)(6);(b)(7)(C appeal.

4. In February 2017, (b)(6);(b)(7 timely filed a petition for review of the BIA's decision pursuant to 8 U.S.C. § 1252(b), thereby initiating the instant case.

5. (b)(6);(b)(7)(C petition asserts that he is not subject to removal because he is a United States citizen.

6. Pursuant to a scheduling order issued on March 6, 2017, the Brief of Petitioner is currently due on April 17, 2017.

Reason for Transfer

7. Section 1252(b), which governs this proceeding, provides (in relevant part) as follows:

> (5) Treatment of Nationality Claims
>
> > (A) If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is

> presented, the court shall decide the nationality claim.
>
> (B) If 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 of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28 [United States Code].

U.S.C. § 1252(b)(5).

8. In the administrative proceedings below, (b)(6);(b)(7)(C) asserted that he was the son of (b)(6);(b)(7)(C), a U.S. citizen, and acquired U.S. citizenship at birth despite being born outside the United States.[1] The USCIS concluded that (b)(6);(b)(7)(failed to produce sufficient evidence that (b)(6);(b)(7)(C) was his biological father.

---

[1] (b)(6);(b)(7)(C) claim is governed by the law in effect at the time of his birth. *Minasyan v. Gonzales*, 401 F.3d 1075 (9th Cir. 2005). At that time, the relevant statute provided that U.S. citizenship extends to:

> a person born outside of the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years . . .

8 U.S.C. § 1407(a)(7)(1967).

9. In this proceeding, both parties agree[2] that (b)(6);(b)(7)(citizenship claim presents a genuine issue of material fact (namely, whether (b)(6);(b)(7)(C) was his biological father), which warrants a transfer to the district court, pursuant to Section 1252(b)(5)(B).[3]

10. Given these circumstances, (b)(6);(b)(7) respectfully submits that the interests of justice and efficiency favor an immediate transfer to the district court. The alternative course – proceeding with full briefing and submission to this Court before a transfer could occur – would result in unnecessary delay in having his claim adjudicated, as well as waste of time and other resources by the Court, parties and counsel.

11. Counsel for Respondent has authorized undersigned counsel to represent that Respondent does not oppose this motion.

---

[2] Counsel for Respondent has kindly authorized undersigned counsel to represent Respondent's agreement in this motion.

[3] *See Agosto v. Immigration & Naturalization Serv.*, 436 U.S. 748 (1978) (holding that transfer for a *de novo* hearing in the district court is necessary if a genuine issue of material fact as to nationality is presented); *Ogundoju v. Att'y Gen. of U.S.*, 316 F. Appx. 129, 132 (3d Cir. 2009) ("We may not decide the merits of Ogundoju's claim, [] because, as the parties recognize, there remains a genuine issue of material fact, which must be resolved by the District Court in the first instance."); *Joseph v. Att'y Gen. of U.S.*, 421 F.3d 224, 224–25 (3d Cir. 2005) (transferring to the district court for a *de novo* citizenship determination pursuant to 8 U.S.C. § 1252(b)(5)(B)).

WHEREFORE, (b)(6);(b)(7 requests that the Court suspend briefing and transfer this proceeding to the United States District Court for the Middle District of Pennsylvania pursuant to 8 U.S.C. § 1252(b)(5)(B).

Dated: April 10, 2017

Respectfully submitted,

(b)(6);(b)(7)(C)

DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
215-994(b)(6);(b

Counsel for Petitioner

CERTIFICATE OF SERVICE

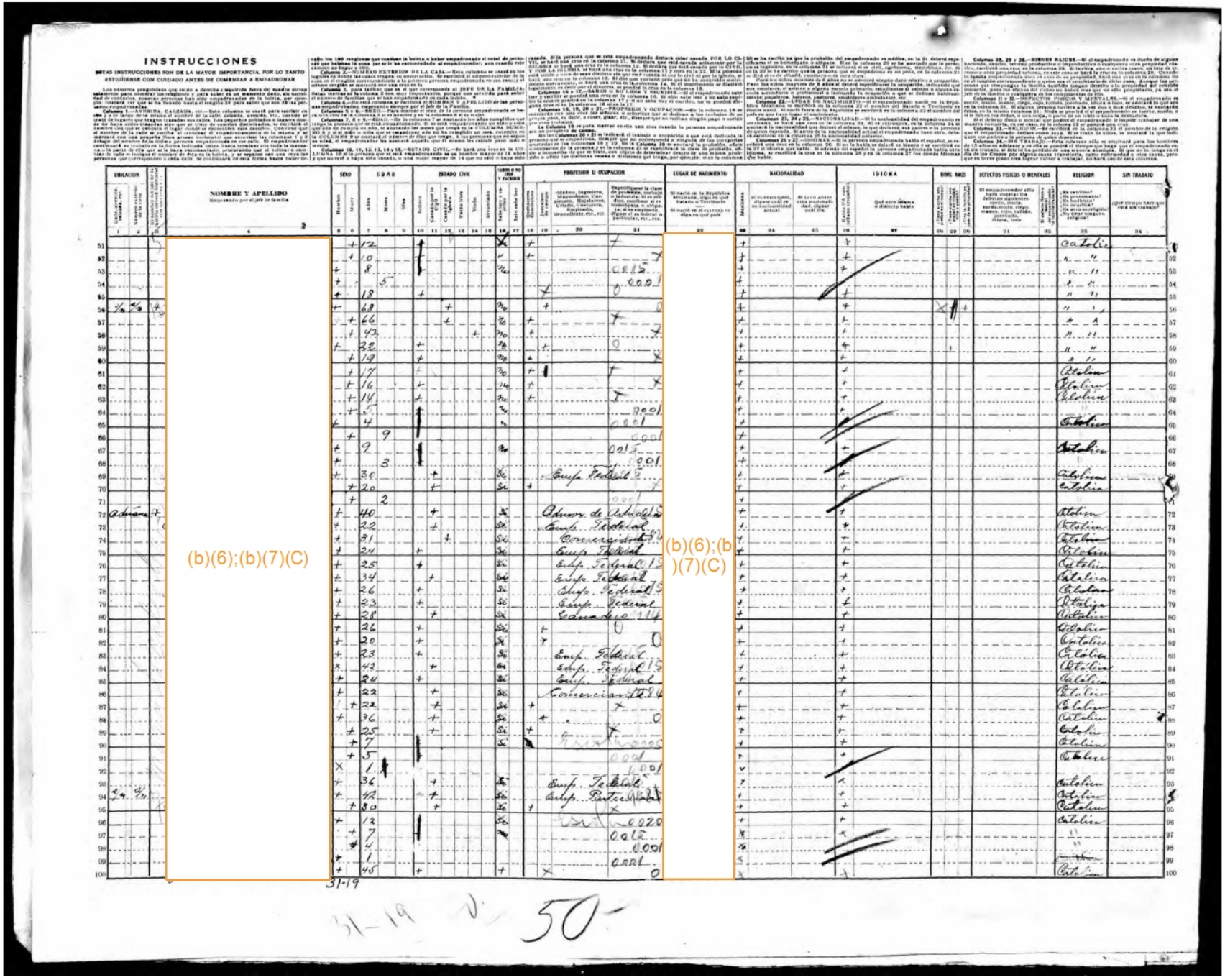
I hereby certify that on April 10, 2017, I caused the foregoing "Unopposed Motion To Suspend Briefing And Transfer This Proceeding To The District Court Pursuant to 8 U.S.C. § 1252(b)(5)(B)" to be filed via the Third Circuit's CM/ECF system, which automatically served all parties entitled to service.

Dated: April 10, 2017

(b)(6);(b)(7)(C)

DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104
215-994-(b)(6);(b)(7)(C)

Counsel for Petitioner



INSTRUCCIONES

NOTAS INSTRUCCIONES SON DE LA MAYOR IMPORTANCIA, POR LO TANTO ESTUDIENSE CON CUIDADO ANTES DE COMENZAR A EMPADRONAR

Los números progresivos que rezan a derecha y izquierda fuera del margen sirven solamente para numerar las renglones y para saber en un momento dado, en hoja-lidad de cualquier, cuantas personas han sido empadronadas en la boleta, por ejemplo: Usted ve que se ha llenado hasta el renglón 20 para saber que son 20 las personas empadronadas.

Columna 1.—VIVIENDA, CALZADA, etc.—Esta columna se usará para escribir en ella y a lo largo de la misma el nombre de la calle, calzada, avenida, etc., cuando en el lugar de la boleta que se trate existan tales calles. Los calles longitudinales se escribirán de tal forma que queden a la izquierda de aquellas que corten a las transversales. Cuando no existan calles con que se relacionar el lugar de residencia de las personas que censan, escribirán el nombre de la calle se escribe al terminar el empadronamiento de la manta y se marcará con una pequeña línea horizontal que atraviese las columnas 1 y 2 debajo del nombre de la última persona empadronada en esa calle. El empadronador continuará de la misma manera indicada antes, hasta terminar con toda la manzana o la parte de ella que se le haya encomendado, procurando que el nombre o número de calle se indique el número de casa en la boleta, y se separen con una raya las personas que correspondan a cada calle. Se continuará en esta forma hasta haber llenado 100 renglones que contiene la boleta o haber empadronado el total de personas que hubiera en esa que se le ha encomendado al empadronador, aun cuando este número no llegue a 100.

Columna 2.—NUMERO EXTERIOR DE LA CASA.—Esta columna se usará en los lugares en donde las casas tengan su numeración. Se escribirá el número exterior de la casa en el renglón correspondiente a la primera persona empadronada en esa casa; y el mismo renglón se marcará con una raya en la.

Columna 3.—NUMERO DE FAMILIA.—Se escribirá el número correspondiente al JEFE DE LA FAMILIA. Estas cifras se ha columna 3 son muy importantes, porque son precisas para saber el número de familias que se han empadronado en cada boleta. *

Columna 4.—En esta columna se escribirá el NOMBRE Y APELLIDO de las personas empadronadas, empezando siempre por el Jefe de la Familia.

Columnas 5 y 6.—SEXO.—Para marcar el sexo de la persona empadronada se hará una cruz en la columna 5 si es hombre y en la columna 6 si es mujer.

Columnas 7, 8 y 9.—EDAD.—Se escribirá la edad que tenga cumplidos que tenga la persona que se está empadronando, si es edad cumplidos. Si se está empadronando un niño o niña que aún no cumple un año, se anotarán los meses que tenga en la COLUMNA NUMERO 8 y si es niño o niña que no cumplidos aún un mes, colocará una cruz en la COLUMNA 9 se anotará el número de días que tenga. A las personas que no sepan su edad, el empadronador les anotará aquella que el mismo les calcule pero nada o menos.

Columnas 10, 11, 12, 13, 14 y 15.—ESTADO CIVIL.—Se hará una cruz en la COLUMNA 10 si la persona que se está empadronando es de menos mayor de 16 años y que no esté o haya sido casado, o una mujer mayor de 14 que no esté o haya sido casada. Si la persona que se está empadronando declara estar casada POR LO CIVIL se hará una cruz en la columna 11. Si declara que está casada solamente por la IGLESIA se hará una cruz en la columna 12. Si declara que está casada por lo CIVIL Y POR LA IGLESIA se hará una cruz en la columna 13 y otra en la 12. Si la persona está unida a otra de sexo distinto sin que esté casada ni por lo civil ni por la iglesia, se hará una cruz en la columna 14. Si la persona que se está empadronando está separada legalmente, es decir por el divorcio, se pondrá la cruz en la columna 15.

Columnas 16 y 17.—SABIA O NO LEER Y ESCRIBIR.—Si el empadronador sabe leer y escribir se pondrá una cruz en la columna 16. Si sólo sabe leer y no sabe escribir se pondrá una cruz en la columna 17. Si no sabe leer ni escribir, no se pondrá ninguna cruz en ninguna de las dos columnas.

Columnas 18, 19, 20 y 21.—PROFESION U OCUPACION.—Se la columna 18 se anotarán con una cruz las personas a quienes que se dediquen a los trabajos de su propia casa, es decir, a coser, planchar, etc., siempre que no tengan ningún jugo o sueldo por esos trabajos.

La Columna 19 es para marcar con una cruz cuando la persona empadronada sea un jornalero o peón.

En las Columnas 20 y 21 se indicará el trabajo u ocupación a que está dedicada la persona empadronada, como Agricultor, Ingeniero, Mecanógrafo, Carpintero, Albañil, Chofer, Comerciante, Sastre, Profesor, Médico, Abogado, etc. Si la persona es empleada o obrera, se indicará el nombre de la negociación en que trabaja, y si es empleado del Gobierno Federal, Estatal o Municipal, se indicará el nombre de la oficina o dependencia en que trabaja, por ejemplo: si es la columna 20 se ha escrito ya que la profesión del empadronado es médico, en la 21 deberá especificarse si es homeópata o alópata. Si en la columna 20 se ha anotado que la persona es ingeniero, en la columna 21 se indicará si es civil, agrónomo, electricista, etc. si en la 20 se ha escrito que la persona que se empadrona es un peón, en la columna 21 se dirá si es de albañil, cantinero o de otra clase.

Para los niños menores de 6 años no se anotará ningún dato relativo a ocupación. Para los niños mayores de 6 años se deberá especificar la ocupación, indicando que trabajan en su propia casa, en la finca de sus padres, en la escuela, etc. Cuando los niños no tengan ocupación determinada, se pondrá la cruz en la columna 19.

Columna 22.—LUGAR DE NACIMIENTO.—Si el empadronado nació en la República Mexicana se escribirá en la columna 22 el nombre del Estado o Territorio en donde nació. Si nació fuera de la República se escribirá en la columna 22 el nombre del país en que haya nacido.

Columna 23.—NACIONALIDAD.—Si la nacionalidad del empadronado es mexicana, se hará una cruz en la columna 23. Si es extranjera, en la columna 24 se anotará la nacionalidad que declare el mismo, la que declaren sus padres o la persona de quien dependa. Si antes la nacionalidad actual el empadronado tuvo otra, deberá escribirse en la columna 25 la nacionalidad anterior.

Columnas 26 y 27.—IDIOMA.—Si la persona empadronada habla el español, se escribirá una cruz en la columna 26. Si no la habla, se dejará en blanco y se escribirá en la 27 el idioma que habla. Si además de hablar español habla otro idioma o dialecto, se escribirá la cruz en la columna 26 y en la columna 27 los demás idiomas que habla.

Columnas 28, 29 y 30.—BIENES RAICES.—Si el empadronado es dueño de algunas hacienda, rancho, terreno cultivado o improductivo o cualquiera otra propiedad rústica, escribirá una cruz en la columna 28. Si tuviera una o varias casas, un lote de terreno o alguna propiedad urbana, en este caso hará la cruz en la columna 29. Cuando la familia empadronada viva en casa de su propiedad, hará una cruz en la columna 30 en el renglón correspondiente a quien sea el propietario de dicha casa. Aunque las personas que componga la familia también tengan derecho a la propiedad del referido inmueble, para los efectos del censo sólo una se debe propietario, ya sea el jefe de la familia o alguna de los componentes de ella.

Columnas 31 y 32.—DEFECTOS FISICOS O MENTALES.—Si el empadronado es sordo, ciego, mudo, ciego, cojo, tullido, jorobado, idiota o loco, se anotará lo que sea en la columna 31. Si alguna persona tuviera a la vez dos o más defectos, se anotarán todos ellos en el renglón correspondiente a esa persona. Si el empadronado es sordo, mudo, o el idiota los dedos, o una oreja, o parte de un labio o toda la dentadura.

En el mismo caso, si el empadronador no sabe leer y escribir, no hará cruz en la columna 32.

Columna 33.—RELIGION.—Se escribirá en el renglón que corresponda el nombre de la religión que el empadronado declare tener. Si se trata de niños, se anotará la que indique que profesa a la persona de quien dependan.

Columnas 34 y 35.—SIN TRABAJO.—Esta columna sólo se empleará para los hombres de 16 años en adelante y en ella se pondrá el tiempo que haga que el empadronado esté sin trabajo, si éste lo ha perdido de una manera absoluta. Si aun no lo tenga en el día de los Censos por alguna causa transitoria, como enfermedad u otra causa, pero que es tiene plena cera lograr volver a trabajar, no hará uso de esta columna.

UBICACION			NOMBRE Y APELLIDO	SEXO		EDAD			ESTADO CIVIL					SABE O NO LEER Y ESCRIBIR	PROFESION U OCUPACION				LUGAR DE NACIMIENTO	NACIONALIDAD		IDIOMA		BIENES RAICES			DEFECTOS FISICOS O MENTALES	RELIGION	SIN TRABAJO	
Núm. de orden de la casa habitada	Número exterior de la casa	Número interior de la casa	Anotar los apellidos paterno, materno y nombre(s) de cada persona, empezando por el jefe de la familia	Hombres	Mujeres	Años	Meses	Días	Soltero	Casado por lo civil	Casado por la iglesia	Unido libre	Viudo	Divorciado	Sabe leer y escribir	Jornalero o peón	Obrero	Especificar la clase de profesión, trabajo o industria. Si es empleado, escribir si es federal, municipal o de alguna negociación particular, etc.	Si nació en la República Mexicana, diga en qué Estado o Territorio. Si nació en el extranjero diga en qué país	Si es mexicano, diga cómo se adquirió la nacionalidad actual	Si tuvo antes otra nacionalidad, diga cuál era	Habla el español	Qué otro idioma o dialecto habla	Bienes raíces	Otros bienes	Ninguno	Si el empadronado sufre alguno de los defectos siguientes: sordo-mudo, ciego, mudo, cojo, tullido, jorobado, idiota, loco	¿Sin defectos? ¿Sin especificar? ¿Sin declarar? ¿Sin religión? ¿No tiene ninguna religión?	¿Qué tiempo tiene que está sin trabajo?	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34
51					+	12										+						+			+					Católica	
52					+	10										+						+			+					"	
53				+		8																+			+					"	
54				+			5															+			+					"	
55				+		18			+													+			+					"	
56	1/2	1/2	+	+		68					+						+					+			+		X		+	"	
57					+	66					+						+					+			+					"	
58					+	42							+				+					+			+					"	
59				+		28			+								+					+			+					"	
60					+	19			+								+					+			+					"	
61					+	17			+							+						+			+					Católica	
62					+	16			+							+						+			+					Católica	
63					+	14			+							+						+			+					Católica	
64					+	5				+												+			+					"	
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68				+			3			+												+			+						
69				+		30					+											+			+					Católica	
70					+	20					+											+			+					Católica	
71					+		2															+			+						
72	Adriana		+		+	40					+											+			+					Católica	
73					+	22					+											+			+					Católica	
74					+	31						+										+			+					Católica	
75					+	24				+												+			+					Católica	
76					+	25				+												+			+					Católica	
77					+	34					+											+			+					Católica	
78					+	26				+												+			+					Católica	
79					+	23				+												+			+					Católica	
80					+	28					+											+			+					Católica	
81					+	26				+							+					+			+					Católica	
82					+	20				+							+					+			+					Católica	
83					+	23				+												+			+					Católica	
84					+	42					+											+			+					Católica	
85					+	24				+												+			+					Católica	
86					+	22					+											+			+					Católica	
87					+	22					+						+					+			+					Católica	
88					+	36					+											+			+					Católica	
89					+	25					+						+					+			+					Católica	
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91					+	5																+			+					Católica	
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31-19

31-19 V. 50-

2017-ICLI-00012 - 2447

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane, Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

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(b)(6);(b)(7)(C)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

From: (b)(6);(b)(7)(C)
To:
Subject: Jackson v. AG, No. 17-1318 (3rd Cir.)
Date: Thursday, March 16, 2017 2:23:16 PM

(b)(6);(b)(7)(

(b)(6);(b)(7)(C);(b)(5)

Thanks and best regards,

(b)(6);(b)(7)(C)
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FAX: +1-215-994-2222
JOSEPH.ARCHIE@DECHERT.COM
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USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Sarah L. Hartnett, Chief Counsel
Office of Chief Counsel, Houston

Patrick D. Contreras, Field Office Director
Enforcement and Removal Operations, Field Office Houston

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

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(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

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USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Carla Hengerer, Chief Counsel
Office of Chief Counsel, BUF

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(A) Field Office Director
Enforcement and Removal Operations, Field Office BUF

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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(3) The child is under the age of eighteen years, when such naturalization takes place; and

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C)

January 25, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Melody Brukiewa, Interim Chief Counsel
Office of Chief Counsel, Phoenix

Enrique M. Lucero, Field Office Director
Enforcement and Removal Operations, Field Office, Phoenix

REVIEWED BY: (b)(6);(b)(7)(C) Senior Attorney, Phoenix, Arizona (Original)

AUTHOR: (b)(6);(b)(7)(C) Assistant Chief Counsel, Phoenix, Arizona (Original)
(b)(6);(b)(7)(C) Senior Attorney, Eloy, Arizona (Updated)

SUBJECT: UPDATED Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5);(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

MEMORANDUM FOR: Director, Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Maria Bjornerud
Chief Counsel
Office of Chief Counsel, Orlando

Marc J. Moore
Field Office Director
Enforcement and Removal Operations, Miami

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

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(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane, Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

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(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

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(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

BB

UNITED STATED DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LUMPKIN, GEORGIA

IN THE MATTER OF:	)	**In Removal Proceedings**
(b)(6);(b)(7)(C)	)	**File No.:** (b)(6);(b)(7)(C)
Respondent	)	**DETAINED**

APPLICATION: Respondent's Request for Administrative Closure

APPEARANCES

ON BEHALF OF RESPONDENT:

Pro Se

ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
Department of Homeland Security
146 CCA Road
Lumpkin, Georgia 31815

WRITTEN DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

On January 27, 2016, the Department of Homeland Security ("DHS") initiated removal proceedings against Respondent by filing a Form I-862, Notice to Appear ("NTA"). The Department alleged the following: (1) Respondent is not a citizen of national of the United States; (2) Respondent is a citizen and national of the Bahamas; (3) Respondent entered the United States without inspection prior to 1982 and was granted temporary resident status (TW1) on or about November 5, 1988; (4) Respondent adjusted status to that of a lawfully permanent resident on October 23, 1989; (5) On December 11, 2015 Respondent was convicted in the United States District Court, Southern District of Florida for the offense of Conspiracy to Defraud U.S. Department of Treasury's Internal Revenue Service, in violation of 18 U.S.C. § 371, for which the term of imprisonment was seventeen months.

On March 3, 2016, Respondent appeared, *Pro Se*,[1] for a master calendar hearing. Respondent declined additional time to speak with an attorney. He indicated that he believed he was a United States citizen through his parents, but the government did not believe that he had a viable claim. Respondent asked the Court or government to search for his biological mother, but the Court reminded Respondent that the burden was on him to do so. The Court reset the case so

[1] Respondent represented himself in all subsequent proceedings.

that Respondent could file an N-600. When Respondent appeared before the Court on April 4, 2016 he indicated that he had been unable to file his N-600 because he had been unable to obtain two passport style photos while in detention. The government agreed to speak with the detention center to facilitate Respondent's acquisition of the photos. Respondent admitted to allegations two through five of the NTA, but denied the allegation that he was not a United States citizen. Respondent also asserted that he was eligible for a 212(h) waiver and adjustment of status.

On April 14, 2016, Respondent appeared for a reset master calendar hearing. The Department again argued that Respondent had no probative claim of citizenship based on the evidence presented. Respondent indicated that he still had not been given an opportunity to obtain passport style photos. The Court again asked the Department to speak with the detention center. The parties proceeded with the consideration of Respondent's claim for adjustment of status and a 212(h) waiver.

On May 3, 2016 Respondent appeared for a reset master calendar hearing. The Court determined that Respondent was not a United States citizen based on the evidence presented. Respondent was granted additional time to find an attorney. On May 23, 2016 Respondent appeared for a master reset and indicated that he had been unable to find an attorney. The Court ordered Respondent to submit the paperwork for his 212(h) waiver so that his request for adjustment of status could move forward. The Court confirmed Respondent's admissions, found that he was not a United States citizen, and sustained the charge of removability. Over the next several months the Court attempted to proceed with Respondent's request for a 212(h) waiver and adjustment of status, but there were delays in the adjudication of the I-130 and Respondent failed to pay various filing fees for his applications.

On April 12, 2017 Respondent submitted a motion for administrative closure to appeal the denial of his N-600. *See* Exh. 23. On April 13, 2017 Respondent appeared before the Court for his individual hearing on his 212(h) waiver request. The Court declined to consider his motion for administrative closure based on the repeated denials of his N-600 by USCIS. However, the Court has reconsidered such after reviewing the file.

II. APPLICABLE LAW

Administrative closure is a procedural tool that is used to temporarily remove a case from an Immigration Judge's active calendar or from the Board of Immigration Appeals' ("Board" or "BIA") docket. *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012) (citing *Matter of Gutierrez,* 21 I&N Dec. 479, 480 (BIA 1996)). Administrative closure may be appropriate to await an action or an event that is relevant to immigration proceedings, but is outside the control of the parties or the Court, and may not occur for a significant or uncertain period of time. *Id.* The Board has held that, when evaluating a request for administrative closure, an Immigration Judge should weigh all relevant factors, including, but not limited to: (1) the reason that administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood that the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6)

the ultimate outcome of removal proceedings when the case is recalendared before the Immigration Judge. *See id.* at 696.

III. DISCUSSION

Respondent seeks administrative closure on the basis that he has obtained new evidence that he is a naturalized United States citizen through his father's naturalization and is appealing the denial of his N-600 by United States Citizenship and Immigration Service ("USCIS"). *See* Exhs. 23 & 24.

As Respondent was over eighteen years old when the Child Citizenship Act went into effect on February 27, 2001, the Court must look to the law in effect at the time that Respondent's father naturalized, which was former INA §321. Under §321, Respondent is only eligible for derivative citizenship if, before his eighteen birthday, 1) both of his parents naturalized, 2) one of his parents naturalized while the other was deceased, 3) there was a legal separation of the parents and the parent with legal custody of Respondent naturalized, or 4) Respondent's mother naturalized and Respondent had been born out of wedlock and never legitimized.

When Respondent originally indicated that he believed he was a United States citizen, the government found insufficient evidence demonstrating that a viable claim existed. Respondent had no knowledge of his mother's status, and the Department had no record of her within the United States. As a result, Respondent spent over a year in detention, with possible relief through adjustment of status and a 212(h) waiver. However, on April 12, 2017, Respondent submitted documentation demonstrating that his mother was deceased at the time that his father naturalized. *See* Exh. 24. As Respondent was under eighteen years of age at the time, such evidence is highly probative of a valid claim of United States citizenship.

The Court understands that the Department may wish for this case to proceed due to the cost of detaining Respondent. There may be concerns as to the authenticity of Respondent's documents. Furthermore, Respondent may continue to appeal his claim of citizenship post-removal. However, the evidence untimely presented is highly probative of citizenship, and this Court will not order removal in light of such evidence.

As Respondent is appealing the denial of his N-600 through USCIS on the basis of his newly obtained evidence, the Court will allow him time to proceed with his appeal. It is clear to the Court that Respondent's request for administrative closure is not based on a speculative event that is unlikely to occur; rather, that request is premised on a determination that will undoubtedly be made by USCIS. *See Matter of Avetisyan*, 25 I&N Dec. at 696. If Respondent is a United States citizen, this Court has no jurisdiction over him, and proceedings must terminate. The length of time which may be needed for adjudication of the N-600 is unknown and as such administrative closure is more appropriate than a continuance.

Giving due weight to the foregoing factors, and in light of the Court's interest in efficiently managing its calendar, the Court finds that administrative closure is appropriate in this

matter. Accordingly, Respondent's motion is granted. Once USCIS makes a determination on the N-600 either party may move to reopen the proceedings.

II. CONCLUSION

Accordingly, the Court enters the following Order:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondent's Motion to Administratively Close is **GRANTED**.

4/17/2017
Date

Honorable Saundra Arrington Dempsey
United States Immigration Judge
Lumpkin, Georgia

5/17/17
Appeal Due

(b)(6);(b)(7)(C)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane, Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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(b)(6);(b)(7)(C);(b)(5)

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(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

MEMORANDUM FOR: DIRECTOR, FIELD LEGAL OPERATIONS, OPLA
ASSISTANT DIRECTOR FOR FIELD OPERATIONS, ERO

FROM: Maria Bjornerud, Chief Counsel,
Office of Chief Counsel, Orlando

Marc J. Moore,
Field Office Director
Enforcement and Removal Operations, Miami

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS[2]

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel - Arizona
U.S. Department of Homeland Security
2035 N. Central Avenue
Phoenix, AZ 85004

U.S. Immigration and Customs Enforcement

May 15, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Nicole Guzman, Chief Counsel
Office of the Chief Counsel, Phoenix, Arizona
Danielle Sigmund, Acting Deputy Chief Counsel, Eloy, Arizona
(b)(6);(b)(7)(C) Assistant Chief Counsel, Eloy, Arizona

Enrique. M. Lucero, Field Office Director
Enforcement and Removal Operations, Phoenix, Arizona

RESPONDENT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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(b)(6);(b)(7)(C)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

No. _____

In the Supreme Court of the United States

PIERRE THOMAS,

Petitioner,

v.

JEFFERSON B. SESSIONS, III
U.S. ATTORNEY GENERAL,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

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February 2017

QUESTIONS PRESENTED

Prior to its repeal in 2000, the statute governing the derivation of naturalization to minor children in consequence of their parent(s) naturalization required, as relevant to this case, that the minor child be "residing in the United States pursuant to a lawful admission for permanent residence" at the time of the parent(s)' naturalization, "or thereafter begins to reside permanently in the United States while under the age of eighteen years." 8 U.S.C. § 1432(a)(5) (1999); App. G, *infra*, 28a-29a. This language has led to differences of opinion between the courts of appeals and the Board of Immigration Appeals (BIA) as to the meaning of the second clause, and as to whether the BIA is afforded deference on the subject to begin with.

Of the three tests that have been established, this case was ultimately decided by the BIA's interpretation of the second clause that equates the terms "reside" and "permanently" with the term "lawfully admitted for permanent residence," despite each of the terms having their own specific statutory definitions. The questions presented in this case are:

1. Whether the disjunctive requirements of subsection (a)(5) may permissibly be read superfluously as the BIA has held since 2008?

2. If not, whether the actions of the petitioner's mother—which are part of a common strategy taken in anticipation of the naturalization of a minor child's parent(s)—were sufficient to naturalize him by derivation?

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i
TABLE OF AUTHORITIES iii
OPINIONS BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 1
STATEMENT OF THE CASE 2
REASONS FOR GRANTING THE WRIT 8
A. The courts of appeals and the BIA are irreconcilably fractured over an issue of great importance 8
B. The Second Circuit's interpretation is the correct one 11
C. The facts of this case support a finding of derivative naturalization 16
CONCLUSION 21
Appendix A, Opinion of the U.S. Court of Appeals for the First Circuit (Jul. 5, 2016) 1a
Appendix B, Order of the U.S. Court of Appeals for the First Circuit (Nov. 18, 2016) 16a
Appendix C, Decision of the Board of Immigration Appeals (Jun. 11, 2015) 18a
Appendix D, Decision of the Board of Immigration Appeals (Feb. 25, 2013) 20a
Appendix E, Oral Decision of the Immigration Judge (Oct. 17, 2012) 22a
Appendix F, Court of appeals stay of mandate (Dec. 13, 2016) 27a
Appendix G, Statutory provisions 28a

TABLE OF AUTHORITIES

Page

CASES

Alexander v. INS,
74 F.3d 367 (1st Cir. 1996) 9
Ashton v. Gonzales,
431 F.3d 95 (2d Cir. 2005) 4, 15
Duncan v. Walker,
533 U.S. 167 (2001) 13
Gonzalez v. Holder,
771 F.3d 238 (5th Cir. 2014) 6
Lockhart v. United States,
136 S. Ct. 958 (2016) 14
Lowe v. S.E.C.,
472 U.S. 181, (1985) 11-12
Ng Fung Ho v White,
259 U.S. 276 (1922) 9
Nwozuzu v. Holder,
726 F.3d 323 (2013) ..... *passim*
Matter of Nwozuzu,
24 I&N Dec. 609 (BIA 2008) ..... *passim*
Matter of Rahman,
20 I&N Dec. 480 (BIA 1992) *10*
Randall v. Loftsgaarden,
478 U.S. 647 (1986) 11
Romero-Ruiz v. Mukasey,
538 F.3d 1057 (9th Cir. 2008) 5, 6, 13
Thomas v. Lynch,
828 F.3d 11 (1st Cir. 2016) ..... *passim*
Texas v. United States,
809 F.3d 134 (2015) 9

United States v. Forey-Quintero,
626 F.3d 1323 (11th Cir. 2010) 4-5, 13, 14

CONSTITUTIONAL, STATUTORY , AND REGULATORY PROVISIONS

Art.1, § 8, cl. 1, U.S. Const. 8
Art.1, § 8, cl. 4, U.S. Const. 8-9
8 U.S.C. § 1101(a)(17) 11
8 U.S.C. § 1101(a)(20) 1, 5, 11-13
8 U.S.C. § 1101(a)(31) 1, 12
8 U.S.C. § 1101(a)(33) 1, 12
8 U.S.C. § 1101(a)(27(H)-(K) 18
8 U.S.C. § 1151(a)(1) 16
8 U.S.C. § 1151(a)(2) 17
8 U.S.C. § 1151(b) 17, 19
8 U.S.C. § 1151(b)(2)(A)(i) 19-20
8 U.S.C. § 1151(a)(3) 18
8 U.S.C. § 1151(c)-(e) 17
8 U.S.C. § 1151(f)(1) 20
8 U.S.C. § 1151(f)(2) 7, 20
8 U.S.C. § 1153(a) 17
8 U.S.C. § 1153(a)(2)(A) 17, 20
8 U.S.C. § 1153(h)(3) 7
8 U.S.C. § 1154 20
8 U.S.C. § 1255 16
8 U.S.C. § 1255(a) 16, 18
8 U.S.C. § 1255(a)(3) 17
8 U.S.C. § 1255(c) 18
8 U.S.C. § 1255(c)(2) 19
8 U.S.C. § 1255(k) 18
8 U.S.C. § 1432(a) (1999) ..... *passim*

8 U.S.C. § 1432(a)(5) (1999).....*passim*
8 U.S.C. § 1438(b)(2)..... 13
28 U.S.C. § 1254(1)..... 1
Child Citizenship Act of 2000, Pub. L. No. 106-395, § 103(a), 114 Stat. 1631, *codified at* 8 U.S.C § 1431(a)..... 3
Immigration Act of 1990, Pub. L. No. 101-649, § 301, 104 Stat. 4978 (Nov. 29, 1990)..... 7
8 C.F.R. § 103.2(a)(2)..... 16

MISCELLANEOUS

72 No. 8 Interpreter Releases 283..... 7
Ira J. Kurzban, Immigration Law Sourcebook (14th ed. 2014-15)..... 13
U.S. ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012)..... 10

PETITION FOR A WRIT OF CERTIORARI

Thomas Pierre, by and through undersigned counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-15a) is reported at 828 F.3d 11. The court of appeals order (App. B, *infra*, 16a-17a) that denied Thomas' petition for rehearing is unreported. The order of the BIA (App. C, *infra*, 18a-19a) denying Thomas' motion to reopen a removal order is unreported but available at 2015 WL 4537072. The BIA's order affirming removal (App. D, *infra*, 20a-21a) and the immigration judge's order of removal (App. E, *infra*, 22a-26a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 5, 2016. Thomas' timely petition for rehearing was denied on November 18, 2016. The court of appeals stayed the mandate on December 13, 2016. App. F, *infra*, 27a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are reproduced in the appendix to this petition. App. G, *infra*, 28a-29a (8 U.S.C. § 1432(a) (1999); 8 U.S.C. § 1101(a)(20), (31), (33)).

STATEMENT OF THE CASE

1. The issue that was before the court of appeals was "whether petitioner Pierre Thomas satisfied the applicable statutory criteria for obtaining derivative citizenship in consequence of his mother's naturalization." *Thomas v. Lynch*, 828 F.3d 11, 12 (1st Cir. 2016). This case was before the court for review of a BIA decision denying Thomas' motion to reopen the February 25, 2013, affirmance of the immigration judge's October 17, 2012, order of removal. Thomas filed his motion with the BIA "after he was arrested on a charge of illegal reentry upon his return to the United States in April 2015." *Id.*, at 13. Following the BIA's denial of the motion, Thomas' removal was stayed by the court because he had "consistently claimed that, as a minor, he derived United States citizenship from his naturalized mother, three days before his eighteenth birthday." Ct. App. Order (Aug. 17, 2015).

The BIA's 2013 affirmance had "conclu[ded] that the respondent did not acquire derivative citizenship through his naturalized mother pursuant to former section [1432] . . . inasmuch as the respondent was not lawfully admitted for permanent residence prior to his 18th birthday." App. D, *infra*, 21a (*citing Matter of Nwozuzu*, 24 I&N Dec. 609 (BIA 2008)). Following Thomas' deportation, on August 12, 2013, a petition for review was granted in Mr. Nwozuzu's case holding that he "satisfied the requirements for derivative citizenship under 321(a)." *Nwozuzu v. Holder*, 726 F.3d 323, 334 (2013). However, Thomas' motion to reopen was denied because the BIA "decline[d] to revisit *Matter of Nwozuzu*" despite the Second Circuit's ruling. App. C, *infra*, 19a. The BIA continues to order the removal of claimants to deriv-

ative citizenship based on *Matter of Nwozuzu* even though Mr. Nwozuzu himself is a citizen.

2. The determination of whether Thomas derived citizenship from his mother "hinge[d] on the proper construction of the derivative citizenship law that was in effect before Thomas turned eighteen years old." *Thomas*, 828 F.3d, at 13. That law was former section 321(a) of the Immigration and Nationality Act (INA). *See* 8 U.S.C. § 1432(a) (1999), *repealed by* Child Citizenship Act of 2000, Pub. L. No. 106-395, § 103(a), 114 Stat. 1631, *codified at* 8 U.S.C § 1431(a). The specific question addressed was "whether Thomas, upon his mother's naturalization, 'thereafter beg[an] to reside permanently in the United States while under the age of eighteen years.' " *Thomas*, 828 F.3d, at 14 (alteration in original). Specifically, a child of a single[1] naturalized U.S. citizen becomes a citizen, upon the parent's naturalization, if "[s]uch child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of . . . the [single] parent . . . , *or thereafter begins to reside permanently in the United States while under the age of eighteen years*." 8 U.S.C. § 1432(a)(5) (1999) (emphasis added).

The issue was a matter of first impression in the First Circuit, against a backdrop of conflicts between the BIA and other courts of appeals. The BIA's stance is that " 'the phrase "begins to reside permanently in the United States while under the age of eighteen years," is most reasonably interpreted to mean that an alien must obtain the status of lawful permanent resident while under the age of 18 years.'

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[1] Thomas' father passed away in 1993, when he was approximately twelve years-old. *Thomas*, 828 F.3d, at 12.

" *Thomas*, 828 F.3d, at 14 (*citing Matter of Nwozuzu*, 24 I&N Dec., 612). The court of appeals aptly noted that, "according to the BIA, the latter clause of paragraph (5) in former section 321(a) contains 'a shorthand reference to the requirement of the first clause.' " *Id.* (*citing Matter of Nwozuzu*, 24 I&N Dec., at 614, n.5).

Thomas argued that the court should join the Second Circuit in concluding that the BIA's interpretation in *Matter of Nwozuzu* was not due any deference because "the second clause unambiguously means something broader than 'resid[e] . . . pursuant to a lawful admission for permanent residence' in the first clause." *Id.* (*citing Nwozuzu*, 726 F.3d, at 327) (alteration and ellipsis in original). The Second Circuit's opinion had reaffirmed that "to 'reside permanently' in section 321(a) requires something less than a lawful admission for permanent residency." *Nwozuzu*, 726 F.3d, at 328 (*citing Ashton v. Gonzales*, 431 F.3d 95, 99 (2d Cir. 2005)). Specifically, the Second Circuit explained that "the second clause addresses minors who, at the time the second parent was naturalized [or when the surviving parent naturalized], either lived abroad or lived in the United States but had not been 'lawfully admitted for permanent residence.' " *Id.*, at 329. Therefore, the children addressed in the second clause "derived citizenship automatically, but only after they resided in the United States *and* garnered some 'official objective manifestation' of their intent to reside permanently." *Id.* (internal citation omitted) (emphasis in original).

3. On the other side of the circuit split, the Eleventh Circuit adopted the BIA's approach in an illegal reentry case. *United States v. Forey-Quintero*, 626 F.3d 1323, 1324 (11th Cir. 2010) ("We conclude that

the phrase 'begins to reside permanently in the United States while under the age of eighteen years' contained in 8 U.S.C. § 1432(a)(5) requires the status of a lawful permanent resident."). Although *Forey-Quintero* was a criminal matter, the Eleventh Circuit was persuaded by the BIA's interpretation without being subjected to *Chevron* deference. *Id.*, at 1326, n.3. The Eleventh Circuit was concerned that "any alien could meet the requirements of the second clause of subsection 5 . . . if he or she were to leave the country and come back to the country and begin an unlawful residence." *Id.*, at 1327.[2] The Eleventh Circuit was also partially persuaded by *Romero-Ruiz v. Mukasey*, 538 F.3d 1057 (9th Cir. 2008).

In *Romero-Ruiz*, the Ninth Circuit adopted a test in the middle ground between the Second and Eleventh Circuit tests. 538 F.3d, at 1062 ("We conclude that, in order to obtain the benefits of derivative citizenship, a petitioner must not only establish permanent residence, but also demonstrate that he was residing in *some* lawful status." (emphasis added)). Recognizing that the objective fact of permanent residence is different from the status of having been "admitted for lawful permanent residence" under 8 U.S.C. § 1101(a)(20), the Ninth Circuit went on to require a showing "that the child be residing pursuant to a lawful admission at the time of the parent's naturalization or at some subsequent time while under the age of 18," *id.*, and that the lawful admission be to "some lawful status." *Id.* Mere objective residence is insufficient in the Ninth Circuit; "the re-

[2] As discussed within the reasons for granting the writ, the Second Circuit's later test resolves the concerns of the Eleventh Circuit by requiring an official *and* objective manifestation of intent to reside permanently.

quirement [is] *legal* residence." *Id.* (emphasis in original). Of note, the Ninth Circuit's *Romero-Ruiz* opinion was issued just a little less than a month before the BIA released *Matter of Nwozuzu*.

Additionally, in the Fifth Circuit's most recent decision to address the issue, it "decline[d] to decide whether the Second Circuit or the BIA ha[d] the correct interpretation of § 1432(a)(5) because [the petitioner] d[id] not qualify for derivative citizenship under either interpretation." *Gonzalez v. Holder*, 771 F.3d 238, 246 (5th Cir. 2014).

4. In this case, the court of appeals ultimately denied Thomas' petition for review, concluding that he "cannot satisfy the statutory criteria even under his preferred, broader reading of 'reside permanently.' " *Thomas*, 828 F.3d, at 14-15 (footnote 4 discussed the court's assumption that *Chevron* deference was inapplicable to determinations of nationality claims). The court's conclusion was based on the finding that Thomas "offer[ed] no explanation of how he can be said—in light of the words 'thereafter begins' in the key clause—to have done what he needed to do by the time he needed to do it." *Id.*, at 15. Therefore, the court "need[ed] not decide whether the BIA's construction of former section [1432](a) is entitled to *Chevron* deference." *Id.*, at 15, n.4. The timeline of material facts in this case is as follows:

1986: Mr. Thomas is lawfully admitted as a nonimmigrant visitor at the age of five, and overstays his six-month authorization. *Id.*, at 12.

1993: Thomas' father passes away. *Id.*

1995: Thomas receives authorization to remain in the United States for two years pursu-

ant to the Family Unity Program.[3] *Id.*, at 12-13.

1997: Thomas' mother files a preference-category relative petition on his behalf that is approved the same year. *Id.*, at 13.

1999: Thomas' mother naturalizes three days before Thomas turns eighteen. *Id.*

As explained below, the naturalization of Thomas' mother automatically converted the relative petition that she filed on his behalf from a preference-category petition to an immediate relative petition as a matter of law. 8 U.S.C. §§ 1151(f)(2), 1153(h)(3). The conversion of the petition made Thomas statutorily eligible for adjustment to lawful permanent resident status for the first time in his life. 8 U.S.C. § 1255(c)(2). This all occurred before he turned eighteen.

Thomas is currently detained in Miami, Florida, as his illegal reentry case is set for a calendar call on March 15, 2017. *United States v. Thomas*, No. 15-cr-20317, DE 46 (S.D. Fla. Dec. 7, 2016) (paperless minute order).

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[3] "The Family Unity Program, as authorized by the Immigration Act of 1990, Pub. L. No. 101-649, § 301, 104 Stat. 4978 (Nov. 29, 1990), 'allow[ed] certain spouses and children of [legalized] aliens . . . to work and to remain in the U.S. without fear of deportation.' " *Thomas*, 828 F.3d, at 12, n.1 (*citing* 72 No. 8 Interpreter Releases 283) (alteration and ellipsis in original).

REASONS FOR GRANTING THE WRIT

The Court should grant this petition because this case involves an issue of great importance over which the courts of appeals and the BIA are irreconcilably fractured. Additionally, Thomas urges the Court to adopt the Second Circuit's approach as the law of the land because the Second Circuit partook in the latest attempt to reconcile the law on this issue, and reached the correct conclusion.

Last, Thomas requests that the Court find that he derived citizenship through his mother because the facts establish that there was a timely official and objective manifestation of his intent to permanently reside in the United States. Thomas also submits that a decision in his case is in the interest of justice given that no decision was ever made by the court of appeals as to the validity of the BIA's interpretation of the naturalization statute. A claim of naturalization merits a decision on the merits.

A. The courts of appeals and the BIA are irreconcilably fractured over an issue of great importance.

1. "The Congress shall have Power . . . To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States . . . ." U.S. Const. art. 1, § 8, cl. 1, 4. The general federal interest in uniformity of the law has greater implications in naturalization cases because of the constitutional call for uniformity and the important need for a uniform standard to determine who is and who is not a citizen. The fourth clause of article 1, section 8, has served in other cases to counsel in favor of judicial intervention of a national

scope. *See e.g.*, *Texas v. United States*, 809 F.3d 134, 187-88 (2015), *as revised* (Nov. 25, 2015), *affirmed by an equally divided Court*, __ U.S. __, 136 S.Ct. 2271 (2016) (per curiam) ("[T]he Constitution requires 'an *uniform* Rule of Naturalization'; Congress has instructed that "the immigration laws of the United States should be enforced vigorously and *uniformly*'; and the Supreme Court has described immigration policy as 'a comprehensive and *unified* system.' ") (footnotes omitted) (emphasis in original).

The issue of citizenship is one of the most important amongst the panoply of American rights. "[T]he right in question—American citizenship—is one of the most precious imaginable." *Alexander v. INS*, 74 F.3d 367, 370 (1st Cir. 1996). "To deport one who so claims to be a citizen obviously deprives him of liberty . . . result[ing] also in loss of both property and life, or of all that makes life worth living." *Ng Fung Ho v White*, 259 U.S. 276, 284 (1922). A clearly drawn line between who is and who is not a citizen is essential to the republic's institutional integrity. Not only is this issue of the utmost importance to Thomas, it is also an issue that rears its head enough that there are now three separate tests for determining derivative citizenship under the second clause of § 1432(a)(5). Not only is the issue ripe for review, it is of such importance that Supreme Court intervention is desperately needed.

2. In addition to the importance of the issue is the irreconcilability of the current state of the law. In the Ninth Circuit, a claimant must show an admission to *some* lawful status as a minor child of a naturalized parent. In the Eleventh Circuit, and in every other circuit that the BIA applies its own test in, such claims must be denied absent a showing of

admission to lawful permanent residence as a minor. And even further still, in the circuit in which the BIA's precedent was directly overturned, the Second Circuit has found the other two tests to be excessively narrow.

This split creates an incentive for forum shopping on the part of claimants *and* on the part of the government. A person living in the Second Circuit can be detained and brought before an immigration judge in a different circuit, or even transferred into the different circuit, thereby stripping the person of a claim for citizenship.[4] Given that a motion for a change of venue in removal proceedings is committed to the discretion of the immigration judge as an appointee of the Attorney General, the claimant would have no cognizable right to remain subject to the law of his domicile. *See Matter of Rahman*, 20 I&N Dec. 480 (BIA 1992). On the other hand, a person living outside the Second Circuit can move into and establish a domicile in the Second Circuit, and thereafter successfully apply for a certificate of citizenship by submitting a Form N-600 to U.S. Citizenship and Immigration Services (USCIS). This should not be permitted.

Worst of all, under current agency precedent, the BIA continues to order the removal of claimants to derivative citizenship based on *Matter of Nwozuzu* even though Mr. Nwozuzu himself is a citizen. The

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[4] Transfer determinations are left to the discretion of Immigration and Customs Enforcement (ICE), and are based on factors as trivial as bed space or as vague as "the detainee's circumstances." U.S. ICE Policy No. 11022.1, Detainee Transfers (Jan. 4, 2012), at 2-4, *available at*: http://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf.

Board's refusal to reassess its precedent in light of *Nwozuzu v. Holder* allows for the persistence of a situation where a person's citizenship depends upon which circuit's territory one is found within. This is arbitrary and capricious, and patently absurd.

B. The Second Circuit's interpretation is the correct one.

1. "[T]he starting point in construing a statute is the language of the statute itself." *Randall v. Loftsgaarden*, 478 U.S. 647, 656 (1986) (citation omitted). The Immigration and Nationality Act (Act) has an extensive definitions section that should dictate the outcome of this matter. The term "lawfully admitted for permanent residence" is succinctly defined as a specific "status." 8 U.S.C. § 1101(a)(20); App. G, *infra*, 29a. This status is marked by the alien's receiving of "the privilege of residing permanently . . . as an immigrant." *Id.* This privilege must "hav[e] been lawfully accorded . . . in accordance with the immigration laws." *Id.*[5] This status also requires the characteristic of "not having changed." *Id.*

The fact that the term "lawfully admitted for permanent residence" is defined with use of the phrase "residing permanently" shows that the two sets of words are not synonymous. If they were to be read synonymously, the rest of the words used to define "lawfully admitted for permanent residence" would have no meaning or purpose. Courts and administrative agencies "must give effect to every word that Congress used in the statute." *Lowe v. S.E.C.*,

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[5] Additionally, the term "immigration laws" is defined at 8 U.S.C. § 1101(a)(17).

472 U.S. 181, 207, n.53 (1985). However, the BIA did the exact opposite when it found "the phrase 'begins to reside permanently' in the second clause of section [1432](a)(5) . . . [to be] a shorthand reference to the requirement of the first clause." *Matter of Nwozuzu*, 24 I&N Dec., at 614, n.5. That is, the BIA held that "the similarity in language between the second clause and [1]101(a)(20) strongly indicates that Congress intended to carry the lawful permanent resident requirement into the second clause . . . ." *Id.* This ruling ignores the full definition of the term "lawfully admitted for permanent residence."

This conclusion is further buttressed by the independent definitions of the terms "residence" and "permanent." While the term "lawfully admitted for permanent residence" deals with a status, the term "residence" concerns itself with the objective fact of domicile and the term "permanent" addresses the temporal nature of a relationship. The term "residence" refers to a person's "principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. § 1101(a)(33); App. G, *infra*, 29a. The term "permanent" means "a relationship of continuing or lasting nature . . . even though it is one that may be dissolved eventually . . . ." 8 U.S.C. § 1101(a)(31); App. G, *infra*, 29a.

Summing up the meaning of the terms "permanent" and "residence" does not result in the definition of a status. They merely describe the objective fact of a domicile that is of a nature that is more than merely temporary. They define an objective fact, not an immigration status. To equate the combination of these two words to the term "lawfully admitted for permanent residence" would strip that status of its other requirements, such as the need for the status

to "hav[e] been lawfully accorded . . . in accordance with the immigration laws." 8 U.S.C. § 1101(a)(20). The objective fact of residing permanently has no element of lawful accordance. Additionally, the BIA's equation strips the status of the quality of the alien "residing permanently in the United States *as an immigrant*," *id.* (emphasis added), because there are some nonimmigrants who are permitted to reside permanently under the theory of the dual intent. *See* Ira J. Kurzban, Immigration Law Sourcebook 839-40 (14th ed. 2014-15) ("Nonimmigrants may have both a short-term intent to leave and a long-term intent to remain permanently. This is known as the doctrine of dual intent.").

2. The Second Circuit's test is the correct reading of the statute. To begin with, the Second Circuit had the benefit of the analyses from the BIA, the Ninth Circuit in *Romero-Ruiz*, and of the Eleventh Circuit's *Forey-Quintero* decision. No later court to address the issue has a taken a firm position on the validity of *Matter of Nwozuzu*.

In analyzing the various definitions discussed above in the context of former section 1432(a)(5)'s two clauses, the Second Circuit recognized that "[i]f one could *only* reside permanently in the United States as a lawful permanent resident, then the phrase 'pursuant to a lawful permanent residence' would have been superfluous." *Nwozuzu*, 726 F.3d, at 328 (emphasis in original) (*citing Duncan v. Walker*, 533 U.S. 167 (2001)). In further support of this point, the *Nwozuzu* court drew an analogy from 8 U.S.C. § 1438(b)(2) (2012) which uses the phrases "lawfully admitted . . . for permanent residence" and "reside permanently" as "clearly separate clauses that must carry different meaning." *Id.* "A timeworn

textual canon is confirmed by the structure and internal logic of the statutory scheme." *Lockhart v. United States*, 136 S. Ct. 958, 962 (2016). In this case, the timeworn textual canon of breathing meaning into each and every word of a statute is confirmed by the structure and internal logic of the Act.

The *Nwozuzu* court also spent a significant amount of time analyzing the legislative history of derivative naturalization. *Nwozuzu*, 726 F.3d, at 329-332. Even though the *Nwozuzu* court found the text of section 1432(a)(5) to be unambiguous in that "Congress spoken directly to 'the precise question,' " *id.*, at 327, the court found it wise to consult the legislative history "[t]o the extent there is any ambiguity in the words of the statute," *id.*, at 329, to ultimately "conclude that the BIA's interpretation of section [1432](a) is unreasonable." *Id.*, at 333. In sum, the *Nwozuzu* court held that the BIA's "reasoning is inconsistent with the text of the statute and ignores the fact that there are a number of groups that are permitted to stay in the country permanently without being lawful permanent residents . . . ." *Id.*

3. As for the only Circuit to adopt the BIA's rationale, the Eleventh Circuit voiced a concern with the idea that "any alien could meet the requirements of the second clause of subsection 5 . . . if he or she were to leave the country and come back to the country and begin an unlawful residence." *Forey-Quintero*, 626 F.3d, at 1327. The *Nwozuzu* court's test adequately alleviates this problem.

The *Nwozuzu* court held that the phrase "begins to reside permanently" in section 1432(a)(5) "require[s] . . . 'some objective official manifestation of the child's permanent residence.' " *Nwozuzu*, 726

F.3d, at 333 (internal citation omitted). That is, the minors "derived citizenship automatically, but only after they resided in the United States *and* garnered some "official objective manifestation" of their intent to reside permanently." *Id.*, at 328-29 (emphasis in original) (internal citation omitted). The objective manifestation of the intent to reside permanently can be deduced from the simple fact of the naturalization claimant's domicile-in-fact. It is the official component of the intent's manifestation that prevents the interpretation of "the second prong of § [1432](a) [from] turn[ing] entirely on such purely subjective intent," such as the intent of "no[thing] more than to form an intent to reside in the United States." *Ashton v. Gonzales*, 431 F.3d 95, 99 (2d Cir. 2005). Thus, the concerns of the Eleventh Circuit are assuaged.

C. The facts of this case support a finding of derivative naturalization.

1. In this case, the court of appeals ultimately denied Thomas' petition for review, concluding that he "cannot satisfy the statutory criteria even under his preferred, broader reading of 'reside permanently.' " *Thomas*, 828 F.3d, at 14-15 (footnote omitted). The court's conclusion was based on the finding that Thomas "offer[ed] no explanation of how he can be said—in light of the words 'thereafter begins' in the key clause—to have done what he needed to do by the time he needed to do it." *Id.*, at 15.

Thomas did offer an explanation as to how his mother officially and objectively manifested his intent[6] to reside permanently in the United States—by

[6] To the extent that "some objective official manifestation of the child's permanent residence" involves issues of intent, the

her having filed an alien relative petition (Form I-130) on his behalf in anticipation of her future naturalization. The filing of the relative petition is important because, as a matter of law, the petition converted from a preference-category petition into an immediate relative petition upon his mother's naturalization. Whereas Thomas would have been statutorily ineligible to apply for adjustment of status based upon a preference-category petition, he only became eligible to adjust his status once the petition converted into an immediate relative petition upon his mother's naturalization just three days before his eighteenth birthday.

The general provision governing adjustment of status to lawful permanent resident (LPR) status is 8 U.S.C. § 1255. An alien may be adjusted to LPR status "if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed." 8 U.S.C. § 1255(a). The alien relative petition (Form I-130) is the mechanism for obtaining an immigrant visa.

Immigrant visas are generally divided into three distinct immigrant categories: (1) family-sponsored immigrants as addressed in 8 U.S.C. § 1151(a)(1); (2) employment-based immigrants as addressed in 8 U.S.C. § 1151(a)(2); and (3) diversity immigrants as

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mother's actions and intent should be imputed to the minor child who derives naturalization. This is consistent with the rationale of the DHS policy of requiring parents to sign applications on behalf of their minor children under the age of fourteen. *See* 8 C.F.R. § 103.2(a)(2).

addressed in 8 U.S.C. § 1151(a)(3). These three categories of immigrant visas are subject to annual caps that restrict the amount of immigrant visas that can be issued in any given year. 8 U.S.C. §§ 1151(c)-(e). These three categories are further subdivided into distinct preference allocations for specified subcategories; hence, the term preference-category petition. Because of the backlogs in available visas created by the quota system, the Department of State issues a Visa Bulletin on a monthly basis that identifies the specific wait-times for each preference category before a visa becomes available to a specific beneficiary of an approved immigrant petition. The phrase used to describe an available visa is that the immigrant visa has become "current." One cannot use an immigrant visa to apply for LPR status until the visa becomes current. That is why the law requires that "an immigrant visa [be] immediately available to [an applicant] at the time his application is filed" in order to be eligible for adjustment of status. 8 U.S.C. § 1255(a)(3).

In the case of family-based immigrant petitions, the preference categories are specified in 8 U.S.C. § 1153(a). As the minor child of an LPR, the petition that Thomas' mother filed on his behalf would have been classified as a preference-category petition as specifically defined at 8 U.S.C. § 1153(a)(2)(A). Therefore, the I-130 that Thomas' mother filed on his behalf would have been subject to an annual cap, and would have been useless until the time that an immigrant visa would have become available to Thomas—that is, the point that the petition becomes "current." Regardless of whether the I-130 became current prior to the naturalization of Thomas' mother, Thomas would have remained ineligible for an ad-

justment of status even with the petition being current. That is because he would have been statutorily barred from adjustment of status given that 8 U.S.C. § 1255(a):

> shall not be applicable to . . . (2) subject to subsection (k) of this section, an alien (other than an immediate relative as defined in section [1151](b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status *or who has failed* (other than through no fault of his own or for technical reasons) *to maintain continuously a lawful status since entry into the United States* . . . .

8 U.S.C. 1255(c) (emphasis added).[7] Given that Thomas overstayed the authorized period of stay that was granted to him when he was admitted as a nonimmigrant in 1986, he failed to continuously maintain a lawful status since his entry and was therefore barred from adjustment of status regardless of the availability of an immigrant visa.

In stark contrast to preference-category petitions are the immediate relative petitions. The term "immediate relative" is confined to those aliens who are "the children, spouses, and parents of a citizen of the United States, except that, in the case of parents,

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[7] The referenced provision of 8 U.S.C. § 1255(k) only applies to certain employment-based immigrant petitions. Furthermore, Thomas was never a special immigrant as referenced in the language of 8 U.S.C. § 1255(c).

such citizens shall be at least 21 years of age," in addition to a few other limited classes of aliens. 8 U.S.C. § 1151(b)(2)(A)(i). Immediate relative petitions "are not subject to the worldwide levels or numerical limitations" of the quota system. 8 U.S.C. § 1151(b). Thus, immediate relative petitions are immediately available or "current" upon approval, and there is no need to wait before filing an application for adjustment of status once the petition is approved.[8] More importantly, an alien who has failed to continuously maintain a lawful status since entry is *not* barred from adjustment of status *only* if he is the beneficiary of an approved immediate relative petition. 8 U.S.C. § 1255(c)(2).

Given that the preference system creates backlogs, the statutory scheme recognizes that changes in a petitioner's status, or changes in the relationship between the petitioner and beneficiary, must be accounted for. In the case of family-based petitions, the law permits for the conversion of a petition's category without having to file a new petition (which would cause the petition to return to the back of the line for availability). One provision that Congress enacted to ameliorate the harshness of re-filing new petitions provides:

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[8] Adjustment applications can be filed in a 1-step or 2-step process. The 1-step procedure permits for the filing of an immediate relative petition and an application for adjustment at the same time. Preference-category petitions however must be filed in a 2-step process, where an immigrant petition is first filed alone, and where the adjustment application is filed later once the immigrant visa becomes available. Additionally, immediate relatives can also use the 2-step process if they want to, for various strategic purposes.

> In the case of a petition under section [1154] initially filed for an alien child's classification as a family-sponsored immigrant under section [1153](a)(2)(A), based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) of this section, the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

8 U.S.C. § 1151(f)(2). The language regarding "the determination described in paragraph (1)" refers to the determination of whether a petition beneficiary satisfies the age requirement of the definition of the term "child," for purposes of classification as an "immediate relative" child of a U.S. citizen. 8 U.S.C. § 1151(f)(1). Similar to former section 1432(a), the date of the parent's naturalization is dispositive of whether the petition beneficiary can benefit from other provisions of the statute that are meant to preserve family unity.

Given the comprehensive scheme of the Immigration and Nationality Act, Thomas derived citizenship upon his mother's naturalization under the Second Circuit's test. In anticipation of her future naturalization, Thomas' mother (and possibly many other similarly situated persons), filed a preference-category family-based petition on behalf of her child in order to preserve immigration benefits in the event that she was able to naturalize prior to the end of his minority. Her timely naturalization automatically converted the petition into an immediate relative petition, thereby making Thomas eligible for ad-

justment of status for the first time since entering the United States. Under the Second Circuit's test, the fact of the petition's conversion upon Thomas' mother's naturalization—serving to preserve Thomas' status as an immediate relative child upon said naturalization—satisfies the requirement of needing to have "resided in the United States *and* garnered some 'official objective manifestation' of [an] intent to reside permanently." *Nwozuzu*, 726 F.3d, at 329 (emphasis in original) (internal citation omitted). The government's argument below, that "the approval of Petitioner's I-130 petition did not confer upon him any legal status, but was merely the first step in his obtaining LPR status," is only relevant to the Ninth Circuit's test which requires "some lawful status," and is yet irrelevant to the Second Circuit's broader interpretation of the statute. Resp't's Supp. Br. at 14 (Feb. 29, 2016).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals
For the First Circuit

No. 15-1805

PIERRE THOMAS,
Petitioner,

v.

LORETTA E. LYNCH,
ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

Before
Kayatta, Barron, and Stahl,
Circuit Judges.

Rhonda F. Gelfman, with whom The Law Offices of Rhonda F. Gelfman, P.A., were on brief, for petitioner.

Linda Y. Cheng, Trial Attorney, Office of Immigration Litigation, Civil Division, with whom Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, and Anthony P. Nicastro, Acting Assistant Director, Office of Immigration Litigation, were on brief, for respondent.

July 5, 2016

BARRON, Circuit Judge. We must decide in this case whether petitioner Pierre Thomas satisfied the applicable statutory criteria for obtaining derivative citizenship in consequence of his mother's naturalization. Those criteria were set forth in the derivative citizenship statute that was in effect at the time that Thomas was still a minor. Thomas concedes that he is removable as an alien who has been convicted of an aggravated felony if he did not satisfy those criteria. Because we conclude that he did not satisfy them, we deny his petition.

I.

The following facts are not in dispute. Thomas was born in Haiti and was lawfully admitted to the United States in 1986, at the age of five, as a nonimmigrant visitor. He was authorized to remain in the United States for six months, but he and his parents remained in the country beyond that date. After his father died in 1993, Thomas continued to live in the United States with his mother for the remainder of his childhood.

At some point while Thomas was a child, his mother obtained lawful permanent resident status. On July 31, 1995, when Thomas was fourteen years old, Thomas's mother filed an I-817 Application for Voluntary Departure on Thomas's behalf under the Family Unity Program.[9] That application was ap-

[9] The Family Unity Program, as authorized by the Immigration Act of 1990, Pub. L. No. 101-649, § 301, 104 Stat. 4978 (Nov. 29, 1990), "allow[ed] certain spouses and children of [legalized] aliens . . . to work and to remain in the U.S. without fear of deportation." 72 No. 8 Interpreter Releases 283.

proved on August 25, 1995, giving Thomas authorization to remain in the United States for two years. Then, in 1997, Thomas's mother filed a Form I-130 petition, pursuant to 8 U.S.C. § 1154(a)(1)(B)(i)(I), to classify Thomas as the child of an alien lawfully admitted for permanent residence. That petition was approved on October 7, 1997.

On May 18, 1999, Thomas's mother became a naturalized United States citizen. Three days later, Thomas turned eighteen years old. Thomas did not apply to become a lawful permanent resident during that three-day period that followed his mother's naturalization or at any other point. Instead, he continued living in the United States without a lawful admission for permanent residence.

In 2003, Thomas was convicted in Massachusetts state court for armed robbery. Then, in 2012, the United States initiated removal proceedings against Thomas pursuant to section 237(a)(2)(A)(iii) of the INA (8 U.S.C. § 1227(a)(2)(A)(iii)), which provides that "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable." Thomas contested removal on the ground that he became a United States citizen in 1999, by operation of the derivative citizenship statute then in effect. The Immigration Judge ("IJ") assigned to Thomas's case rejected that contention and, on October 17, 2012, ordered him removed. The Board of Immigration Appeals ("BIA") affirmed that decision on February 25, 2013, and Thomas was removed to Haiti in April of that year.

Thomas's current petition is for review of the denial by the BIA of his motion to reopen the proceedings against him. Thomas made that motion after he was arrested on a charge of illegal reentry upon his

return to the United States in April 2015.

Because the motion was filed more than 90 days after the BIA's 2013 removal order, the BIA denied his motion to reopen on timeliness grounds. See 8 U.S.C. § 1229a(c)(7)(C)(i) (providing that, subject to limited exceptions, a "motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal"). On appeal, however, the government has expressly disavowed reliance on the time bar in this case and has urged us to reach the merits. We thus deem the government to have waived any timeliness argument and will proceed to the merits of Thomas's citizenship claim. See 8 U.S.C. § 1252(b)(5)(A).

II.

Thomas's petition hinges on the proper construction of the derivative citizenship law that was in effect before Thomas turned eighteen years old. That law, former section 321(a) of the INA, provided that:

> A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon . . .
>
> (2) The naturalization of the surviving parent if one of the parents is deceased;
>
> . . . if
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of . . . the parent naturalized under clause (2) . . . of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

8 U.S.C. § 1432(a) (1999), repealed by Child Citizenship Act of 2000, Pub. L. No. 106-395, § 103(a), 114 Stat. 1631, codified at 8 U.S.C. § 1431(a).[10]

Thomas and the government agree that Thomas's mother, as his lone surviving parent, was naturalized while Thomas was under eighteen. The parties further agree that Thomas was not "residing in the United States pursuant to a lawful admission for permanent residence at the time of [his mother's] naturalization." The only question we must address, therefore, is whether Thomas, upon his mother's naturalization, "thereafter beg[an] to reside permanently in the United States while under the age of eighteen years."

Under the BIA's interpretation of former section 321(a), the answer is that Thomas clearly did not. The BIA has concluded that "the phrase 'begins to reside permanently in the United States while under the age of eighteen years,' is most reasonably interpreted to mean that an alien must obtain the status of lawful permanent resident while under the age of 18 years." Matter of Nwozuzu, 24 I. & N. Dec. 609,

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[10] The Child Citizenship Act of 2000 replaced the derivative citizenship statutes then in effect with the following:

> A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

8 U.S.C. § 1431(a).

612 (BIA 2008). In other words, according to the BIA, the latter clause of paragraph (5) in former subsection 321(a) contains "a shorthand reference to the requirement of the first clause." Id. at 614 n.5. Thus, as Thomas concedes, Thomas's citizenship claim would fail under the BIA's interpretation because he "was not lawfully admitted for permanent residence prior to his 18th birthday" and thus never satisfied either clause.

Thomas argues that we should reject the BIA's interpretation of that section. He contends that we should join the Second Circuit in concluding that the BIA's interpretation, under which the second clause of former paragraph 321(a)(5) is merely a shorthand reference to the first clause, is contrary to the plain language of the statute because the phrase "reside permanently" in the second clause unambiguously means something broader than "resid[e] . . . pursuant to a lawful admission for permanent residence" in the first clause. See Nwozuzu v. Holder, 726 F.3d 323, 327 (2d Cir. 2013); but see United States v. Forey-Quintero, 626 F.3d 1323, 1326-27 (11th Cir. 2010) (adopting the BIA's interpretation).[11]

Thomas further contends that he satisfied the requirements of that broader, second clause because he satisfied the criteria for "residing permanently" that the Second Circuit set forth in Nwozuzu. According to Nwozuzu, "'[b]egins to reside permanently' does not require 'lawful permanent resident' status" but

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[11] The Ninth Circuit, construing the language of the clause prior to the BIA's decision in Matter of Nwozuzu, concluded that "in order to obtain the benefits of derivative citizenship, a petitioner must not only establish permanent residence, but also demonstrate that he was residing in some lawful status." Romero-Ruiz v. Mukasey, 538 F.3d 1057, 1062 (9th Cir. 2008).

merely requires "some objective official manifestation of the child's permanent residence." 726 F.3d at 333.

In the end, as we will explain, Thomas cannot satisfy the statutory criteria even under his preferred, broader reading of "reside permanently."[12] And that is because he offers no explanation of how he can be said -- in light of the words "thereafter begins" in the key clause -- to have done what he needed to do by the time he needed to do it. But before explaining our conclusion in that regard, we first pause to explain the difficulty in construing the two words that are the focus of the dispute between Thomas and the BIA.

III.

If one knew nothing else, it would not be altogethersurprising if the phrase "reside permanently" was, as the BIA contends, just a shorthand for "resid[e] . . . pursuant to a lawful admission for permanent residence." Those two words appear right after the longer phrase, in the same section, and one certainly might use those words colloquially as a shorthand description of what came before.

But there are some contrary indications that point towards Thomas's preferred reading. The

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[12] For this reason, we need not decide whether the BIA's construction of former section 321(a) is entitled to Chevron deference. Compare Nwozuzu, 726 F.3d at 326-27 (applying Chevron in assessing the BIA's construction of former section 321(a)), with Minasyan v. Gonzales, 401 F.3d 1069, 1074 (9th Cir. 2005) ("Because the INA explicitly places the determination of nationality claims solely in the hands of the courts . . . , we are not required to give Chevron deference to the agency's interpretation of the citizenship laws." (internal quotation marks omitted)). We will assume, favorably to Thomas, that we owe the BIA no deference.

phrase "reside permanently" is not defined in the INA, but the phrase "lawfully admitted for permanent residence" is. And the definition of that longer phrase includes "residing permanently" as a component part, thus suggesting they are not synonyms.[13]

Similarly, the terms "permanent" and "residence" are separately defined in the INA, each without reference to lawful admission. "Permanent" is defined in the INA as "a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law." 8 U.S.C. § 1101(a)(31). "Residence" is defined in the INA as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Id. § 1101(a)(33). Thus, the INA's separate definitions of "residence" and "permanent" together arguably yield a definition for "reside permanently" -- "to have as a principal, actual dwelling place for a continuing or lasting period" – that makes no reference to lawful admission for permanent residence.

Moreover, if one looks elsewhere in the United States Code, Congress has sometimes distinguished between "an alien lawfully admitted for permanent residence" and one who is "otherwise permanently residing in the United States under color of law." See, e.g., 42 U.S.C. § 1382c(a)(1)(B)(i) (specifying that

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[13] "The term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(a)(20).

benefits under Title XVI of the Social Security Act may only be paid to an "aged, blind, or disabled" individual who "is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law"); id. § 602(a)(33) (replaced in 1997) ("A State plan for aid and services to needy families with children must . . . provide that in order for any individual to be considered a dependent child, . . . such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law"). Thus, for this reason, there are signs that "residing permanently" might not be just a shorthand.

On the other hand, if "reside permanently" is read as something broader than a shorthand reference to "resid[e] . . . pursuant to a lawful admission for permanent residence," the requirements for becoming a citizen at the time of the relevant naturalization would be stricter than the requirements for becoming a citizen after that naturalization. But it is not at all clear why Congress would have intended that result. Indeed, under the parallel section of the predecessor statute, the 1940 Nationality Act ("1940 Act"), the requirements for acquiring derivative citizenship at the time of the relevant naturalization apparently were less strict than were the requirements for becoming a citizen "thereafter."[14]

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[14] Under that statute, an alien would acquire derivative citizenship simply by "residing in the United States" at the time of the relevant naturalization, but, thereafter, needed to "begin[] to reside permanently in the United States" (while under the age of eighteen years). 76 Cong. Ch. 876 § 314(e), 54 Stat. 1137, 1145-46 (repealed 1952).

Similarly, a consideration of the adjacent section of the INA, former section 320, also points against the broader reading of "reside permanently" because of the strange disjuncture that would otherwise arise. Former section 320 addressed how aliens who were born abroad to one alien parent and one citizen parent -- as opposed to aliens born abroad to two alien parents, which former section 321 addressed -- could acquire derivative citizenship.

Under the plain language of former section 320, aliens born abroad to one alien parent and one citizen parent could not acquire derivative citizenship without obtaining a lawful admission for permanent residence.[15] It is therefore hard to see why Congress would have intended for aliens born abroad to two alien parents to be able to acquire derivative citizenship without obtaining such an admission. And yet, under Thomas's reading of "reside permanently" in former section 321, one would have to conclude that Congress did intend for that to be the case.[16]

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[15] Former section 320 provided that an alien child born abroad to one citizen parent and one alien parent

> shall, if such alien parent is naturalized, become a citizen of the United States, when . . .
>
> (1) such naturalization takes place while such child is under the age of eighteen years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

8 U.S.C. § 1431 (1994).

[16] Even if "reside permanently" is not a shorthand, there may be reason to doubt whether an alien can "reside permanently" in the United States if he is here unlawfully (as Thomas was at the relevant time) without at least some authorization from the

Nevertheless, we need not definitively resolve this dispute over the correct construction of "reside permanently" in former section 321(a)(5). No matter how those words are best construed, we still must account for the words "thereafter begins" in that subsection. And, as we next explain, Thomas's contention clearly unravels in consequence of those words.

IV.

Because Thomas concedes that he was not residing in the United States pursuant to a lawful admission for permanent residence at the time of his mother's naturalization, he can only prevail if he "thereafter beg[an] to reside permanently in the United States while under the age of eighteen years." 8

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government to remain (which Thomas did not have). Thomas has provided no authority for the proposition that an alien who is present in the United States unlawfully and without such authorization can nonetheless be "residing permanently" herein, and we have found none. Cf. Holley v. Lavine, 553 F.2d 845, 849 (2d Cir. 1977) (determining that an alien who resided in the United States illegally but possessed an official letter from the INS stating that the agency did not contemplate enforcing her departure at that time, was "permanently residing in the United States under color of law" within the meaning of a regulation implementing the Social Security Act); Sudomir v. McMahon, 767 F.2d 1456, 1462 (9th Cir. 1985) (citation and internal quotation marks omitted) (upholding as "permissible" the following administrative interpretation of a statute referring to aliens "permanently residing under color of law": "A residence may be 'permanent' where the INS has permitted an alien to stay in the United States so long as he is in a particular condition, even though circumstances may change, and the alien may later lose his right to stay."). But given that Congress has written statutes that include a requirement that an alien be "permanently residing in the United States under color of law," see, e.g., 42 U.S.C. § 1382c(a)(1)(B)(i)(II), it is possible that the words "reside permanently" do not themselves impose an "under color of law" requirement.

U.S.C. § 1432(a)(5) (1999). But Thomas cannot show that he did so.

The record reveals that Thomas took no official action with respect to his citizenship status in the three-day window between his mother's naturalization and his eighteenth birthday. Thomas never applied for lawful permanent resident status,[17] and the filings of both the I-130 and the I-817 were made prior to his mother's naturalization. Moreover, the objective factors that might lead one to think he resided permanently in the United States -- such as his years of residence and the presence of family members in the country -- were all present before she was naturalized (and "at the time of the naturalization").

Thus, even if we assume that Thomas "reside[d] permanently" in the United States during the time period to which the statute directs our attention, he "beg[an]" to do so before his mother was naturalized and then never experienced any relevant change in status or took any relevant action between the time of her naturalization and his eighteenth birthday. Accordingly, it is hard to see how, following his mother's naturalization, he can be said to have "thereafter beg[un] to reside permanently."

Nor can we simply read "thereafter begins to reside permanently" to mean "thereafter . . . reside[s] permanently." Doing so would require us not only to ignore the word "begins" but also to drop the word "to" and change "reside" to "resides," and we are not

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[17] We note that the record shows that Thomas's mother had numerous interactions with the immigration authorities and, in fact, became a lawful permanent resident herself. And Thomas has made no argument that he was in any way precluded from applying for lawful permanent resident status or that he did not know how to do so.

in the business of rewriting statutes.

In addition to this obvious textual problem, such a reading runs counter to even the Second Circuit's description of the function of the second clause. The Nwozuzu Court explained that the purpose of that second clause is to "address[] minors who, at the time the [relevant] parent was naturalized, either lived abroad or lived in the United States but had not been 'lawfully admitted for permanent residence'" and who therefore "did not derive citizenship automatically upon the parent's naturalization." Nwozuzu, 726 F.3d at 329. But reading "begins" out of the statute, while construing "reside permanently" as Thomas asks us to, would lead to the conclusion that Thomas became a citizen (essentially) automatically upon the naturalization of his mother rather than upon some triggering event that occurred "[]after" her naturalization.

Relatedly, reading "begins" out of the statute seems to render the first clause of the paragraph superfluous if "reside permanently" is not a shorthand, as it is hard to see how one who is "residing . . . pursuant to a lawful admission for permanent residence" is not also necessarily one who is "resid[ing] permanently." Cf. Romero-Ruiz v. Mukasey, 538 F.3d 1057, 1062 (9th Cir. 2008); Matter of Nwozuzu, 24 I. & N. Dec. at 614.[18]

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[18] To the extent one might think "begins" was simply a meaningless redundancy in former section 321, that notion is belied somewhat by the parallel section of the 1940 Act, which contained the same basic structure as former section 321. As we have set out above, that section, section 314(e) of the 1940 Act, provided that a minor alien whose parent(s) naturalized would acquire derivative citizenship if: "[he] is residing in the United States at the time of the naturalization . . . or thereafter begins

Thomas makes no attempt to address the problems that the words "thereafter begins" pose for his attempt to fit the facts of his case into the statute. It is true that giving force to those words could advantage aliens who start residing permanently in the United States later over those who do so earlier. But that arguably anomalous consequence arises only on a broad construction of "reside permanently." If that phrase is instead construed as a shorthand for "resid[e] . . . pursuant to a lawful admission for permanent residence," then the statute provided no incentive for aliens to delay the onset of their permanent residence.

In light of the problems with reading "begins" out of former section 321(a)(5), and because the only argument we have identified against giving force to "thereafter begins" seems to support the proposition that "reside permanently" was a shorthand, we conclude that Thomas did not satisfy the terms of the statute. Accordingly, his claim to derivative citizenship fails.[19]

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to reside permanently in the United States while under the age of eighteen years." 76 Cong. Ch. 876 § 314(e), 54 Stat. 1137, 1145-46 (repealed 1952). Under that statutory language, no alien would be in a position like Thomas is now, having arguably "beg[un]" to reside permanently prior to the naturalization of his parent(s), and lived in the United States continuously thereafter, but having failed to acquire derivative citizenship under the first clause of the section. Thus, there would have been no reason to read the word "begins" out of section 314(e) of the 1940 Act, because that word would not have barred from citizenship any alien who "reside[d] permanently" "[]after" the relevant naturalization while under the age of eighteen years.

[19] Because we deny Thomas's petition on the merits, we do not address the government's argument that Thomas is collaterally estopped from claiming citizenship as a result of his November

V.

For the reasons set forth above, we **deny** Thomas's petition for review.

2015 guilty plea to a charge of illegal reentry by a removed alien (a plea that Thomas contends has since been withdrawn).

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 15-1805

PIERRE THOMAS

Petitioner

v.

LORETTA LYNCH, Attorney General

Respondent

Before

Howard, Chief Judge
Torruella, Stahl, Lynch, Thompson
Kayatta and Barron,

Circuit Judges.

ORDER OF THE COURT

Entered: November 18, 2016

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to

the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:
Rhonda F. Gelfman
Mark Andrew Prada
LaTia N. Bing
Linda Y. Cheng

APPENDIX C

U.S. Department of Justice
Executive Office for
Immigration Review
Falls Church, Virginia 20530

Decision of the Board of
Immigration Appeals

File: A073 602 357 - Boston, MA Date: [Jun. 11, 2015]

In re: PIERRE THOMAS

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Alicia N. Morgan, Esquire

On Behalf of DHS: Melissa C. Gavegnano
Assistant Chief Counsel

APPLICATION: Reopening

The Board entered the final administrative decision on February 25, 2013, dismissing the respondent's appeal of the Immigration Judge's decision ordering the respondent removed to Haiti in connection with his aggravated felony theft conviction. The respondent has filed a motion to reopen. The Department of Homeland Security opposes the motion, which will be denied as untimely, as the respondent has not established that an exception to the time lim-

itation on motions applies. *See* section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2).

Nor has the respondent demonstrated an exceptional circumstance warranting discretionary sua sponte reopening. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Notwithstanding the respondent's arguments, we decline to revisit *Matter of Nwozuzu*, 24 I&N Dec. 609 (BIA 2008), based on a decision from the United States Court of Appeals for the Second Circuit, where the respondent's case arises in the First Circuit's jurisdiction.[1] Accordingly, the motion will be denied.

ORDER: The motion is denied.

FURTHER ORDER: The request for a stay is denied as moot.

/s/ Neil P. Miller
FOR THE BOARD

[1] While the respondent relies on *Matter of Nwozuzu*, 726 F.3d 323 (2d Cir. 2013) – issued in August 2013 – he does not explain why he waited nearly 2 years after that decision to seek reopening.

APPENDIX D

U.S. Department of Justice
Executive Office for
Immigration Review
Falls Church, Virginia 22041

Decision of the Board of
Immigration Appeals

File: A073 602 357 - Boston, MA Date: [Feb. 25, 2013]

In re: PIERRE THOMAS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew S. Cameron, Esquire[1]

On Behalf of DHS: Gwendylan Tregerman
Senior Attorney

ORDER:

The respondent has appealed from the Immigration Judge's decision dated October 17, 2012. We review questions of law, discretion, and judgment arising in appeals from decisions of Immigration Judges de novo, whereas we review findings of fact in such appeals under a "clearly erroneous" standard. *See* 8

[1] Counsel's February 5, 2013, motion to accept an untimely filed brief is granted.

C.F.R. § 1003.1(d)(3). The appeal will be dismissed.

Applying a de novo standard of review, we affirm the Immigration Judge's conclusion that the respondent did not acquire derivative citizenship through his naturalized mother pursuant to former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed by section 103(a), Title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)), inasmuch as the respondent was not lawfully admitted for permanent residence prior to his 18th birthday. *See Matter of Nwozuzu*, 24 I&N Dec. 609 (BIA 2008). The approval by his 18th birthday of an immigrant visa petition (Form I-130) submitted by the respondent's mother on his behalf is insufficient.

The respondent raises no other claims on appeal.

Accordingly, the appeal is dismissed.

/s/ Sharon Hoffman
FOR THE BOARD

APPENDIX E

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

File: A073-602-357 October 17, 2012

In the Matter of

PIERRE THOMAS	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Immigration and Nationality Act (INA) Section 237(a)(2)(A)(iii) in that after admission the respondent was convicted of an aggravated felony relating to a theft offense for which the term of imprisonment of at least one year was imposed;

INA Section 237(a)(1)(B) in that after admission the respondent remained in the United States for a time longer than permitted

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: MATTHEW S. CAMERON
ON BEHALF OF DHS: MELISSA C GAVENANO

ORAL DECISION OF THE IMMIGRATION JUDGE

Removal proceedings against the respondent,

Pierre Thomas, were initiated on March 15, 2012, with the filing in Immigration Court of a Notice to Appear. The Notice alleged that he was not a citizen of national of the United States, but was a natice and citizen of Haiti; he was admitted to the United States at New York, on or about June 21, 1986, as a nonimmigrant visitor for pleasure, with authorization to remain in the United States for a temporary period not to exceed December 21, 1986; that he remained in the United States beyond December 21, 1986 without authorization from the INS of Department of Homeland Security; that on June 25, 2003, he was convicted in Suffolk Superior Court of Boston, for armed robbery; and for that offense listed in allegation 5, he was sentenced to a minimum of two years imprisonment and a maximum of two years imprisonment. The respondent was charged with removability pursuant to INA Section 237(a)(2)(A)(iii) and Section 237(a)(1)(B). See Exhibit 1.

Written pleadings were filed with the Court on May 25, 2012. In these pleading the respondent, through counsel, admitted to all of the allegations, except for the first allegation in the Notice to Appear, which alleged that the respondent was not a citizen or national of the United States. He conceded removability if the citizen under 237(a)(2)(A)(iii), based on the robbery offense, but the other charge of removability. He indicated that he was seeking termination of proceedings and possible withholding of removal or protection under the Convention against Torture. See Exhibit 2.

At issue is whether or not the respondent derived United States citizenship as a young man. The respondent was born on May 21, 1981, in Haiti, and

is now 31 years of age. He came to the United States with his mother as a visitor for pleasure on June 21, 1986, and has remained in the United States since that date. The respondent's father passed away December of 1993, and thereafter the respondent was raised by his mother. In 1997, the respondent's mother filed an I-130 petition for alien relative, and this petition was approved on October 7, 1997, when the respondent was 16 years of age. The respondent never adjusted his status to that of a lawful permanent resident, however. The respondent's mother became a naturalized U.S. citizen on May 18, 1999, 3 days before the respondent's 18th birthday. The facts as set out above are not in dispute. What is in dispute is whether or not the respondent derived U.S. citizenship under former INA Section 321(a)(5), inasmuch as he contends he began to reside permanently in the United States while under the age of 18 years. See former INA Section 321(a)(5).

It is agreed upon by all the parties that the respondent never formally adjusted his status to that of a lawful permanent resident and never received his green card. He did have an approved I-130, although it is not clear whether a visa petition was readily of immediately available to him when that was approved. At any rate, the respondent never proceeded to the next step by filing his adjustment application and accordingly he never formally adjusted. The respondent relies upon Fifth Circuit precedent for the proposition that he began to permanently reside in the United States as early as the age of 16 when he had the approved I-130, and that in effect this evidenced an intent on his behalf to become a permanent resident of the United States, and at that point, which is well before he turned 18

years of age, he began to reside permanently. It should be noted that this language in former INA Section 321(a)(5), specifically or thereafter begins to reside permanently in the United Staes while under the age of 18 years, was later stricken with passage of the Child Citizenship Act. The respondent, however, because of his date of birth is governed by former INA Section 321(a).

The controlling precedent for this Court is found in Matter of Nwozuzu, 24 I&N Dec. 609. In that decision, the Board found that the phrase "begins to reside permanently in the United States while under the age of 18 years" when considered in light of the definition of permanent and residence and the realities of the Immigration laws of this country is most reasonably interpreted to mean that the alien must acquire lawful permanent resident status while under the age of 18 years. See Matter of Nwozuzu, 24 I&N Dec. 613. In that decision, the Board thereafter concluded that it found that to satisfy former Section 321(a)(5) of the INA and obtain derivative citizenship, the alien must acquire the status of an alien lawfully admitted for permanent resident while he or she is under 18 years of age. See Matter of Nwozuzu, 24 I&N Dec. 616. It is uncontroverted that the respondent never acquired lawful permanent resident status and accordingly did not derive citizenship through the naturalization of his mother.

The respondent, through counsel, and directly to this Court by the respondent, does not seek any other form of relief other than his legal argument that he was derived U.S. citizenship.

For the reasons set forth above, as well as based upon the respondent's written pleadings, this Court finds by clear, convincing and unequivocal evidence

that all six allegations in the Notice to Appear have been established, and the two charges of removability are sustained. Inasmuch the respondent has elected not to proceed with any form of relief from removal this Court will order that the respondent be removed to Haiti.

ORDER

IT IS HEREBY ORDERED that the respondent be removed and deported from the United States to Haiti.

_____

STEVEN F. DAY
Immigration Judge

APPENDIX F

United States Court of Appeals
For the First Circuit

No. 15-1805

PIERRE THOMAS

Petitioner

v.

LORETTA LYNCH, Attorney General

Respondent

ORDER OF THE COURT

Entered: December 18, 2016

Upon consideration of petitioner Pierre Thomas' motion to stay mandate, that motion is allowed. Mandate is stayed, pending the filing of a petition for writ of certiorari.

By the Court:

/s/ Margaret Carter, Clerk

cc:
Rhonda F. Gelfman
Mark Andrew Prada LaTia N. Bing
Linda Y. Cheng

APPENDIX G

1. 8 U.S.C. § 1432 (1999) provided:

Children born outside United States of alien parents; conditions for automatic citizenship

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following
conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born
out of wedlock and the paternity of the child has not been established by legitimation; and if

(4) Such naturalization takes place while such child is unmarried and under the age of eighteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adop-

tive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

(June 27, 1952, ch. 477, title III, ch. 2, § 321, 66 Stat. 245; Pub. L. 95–417, § 5, Oct. 5, 1978, 92 Stat. 918; Pub. L. 97–116, § 18(m), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 99–653, § 15, Nov. 14, 1986, 100 Stat. 3658; Pub. L. 100–525, § 8(l), Oct. 24, 1988, 102 Stat. 2618.)

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2. 8 U.S.C. § 1101(a) provides:

Definitions

(a) As used in this chapter—

. . .

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

. . .

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

. . .

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

. . . .

Office of the Chief Counsel - Arizona
U.S. Department of Homeland Security
2035 N. Central Avenue
Phoenix, AZ 85004

U.S. Immigration and Customs Enforcement

April 3, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Nicole Guzman, Chief Counsel
Office of the Chief Counsel, Phoenix, Arizona

Enrique. M. Lucero, Field Office Director
Enforcement and Removal Operations, Phoenix, Arizona

AUTHOR: (b)(6);(b)(7)(C) Acting Deputy Chief Counsel
Office of the Chief Counsel, Phoenix- Eloy Sub-Office

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

From our 30th reunion memorial service

(b)(6);(b)(7)(C) majored in international affairs and was a cheerleader. She worked for the Ministry of Art and Education in the British West Indies and with the Arthur Hall Dance Ensemble in Philadelphia. She died at her home in 1990.

Appeared in the Charlotte Observer, September 27, 1990

(b)(6);(b)(7)(C) died Sept. 25, 1990, at home. Funeral and burial will be in Atlanta.

(b)(6);(b)(7)(C) was a San Francisco native and had been a dancer and choreographer for 15 years. She earned a B.A. in international affairs in 1979 at Dartmouth College, in Hanover, N.H. and had studied at the University of California at San Diego, UNC Charlotte and Central Piedmont Community College.

In 1981 she founded the Ile Ife Umoja Culture Bearers performers. She had worked with the Afro-American Children's Theater, the Rameses Jubilee Celebration, CPCC, Friendship Baptist Church's child development center, Spelman College, Santa Fe Community College in Gainesville, Fla., and "Africa Alive" festival in Rock Hill. She also had worked with the Ministry of Art and Education in St. Lucia, British West Indies, and Arthur Hall Afro-American Dance Ensemble in Philadelphia.

Survivors are (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

Memorials may be made to (b)(6);(b)(7)(C) care of Afro-American Cultural Center, 401 North Myers Street, Charlotte, NC 28202.

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Appeared in the Charlotte Observer

(b)(6);(b)(7)(C) HER DANCE HAS ENDED,
BUT THE MUSIC OF HER LIFE LINGERS ON
Thursday, September 27, 1990
By Valca Valentine, Staff Writer

(b)(6);(b)(7)(C) was like a princess who stepped down from a magic carpet to share her special gifts.

She was a wife, a mother and a culture bearer who made her contribution by exemplifying what true freedom is: the courage to be yourself.

At 11 this morning, the creative community and all who celebrate freedom of expression will hono(b)(6);(uring a memorial service at the Afro-American Cultural Center, 401 N. Myers St., in Charlotte.

Dance, music, testimonials and prayer are included in the ceremony for those who mourn the loss of our beautiful African sister.

News accounts have highlighted the tragic death (b)(6 suffered in her Charlotte home Wednesday night. Adults and children cry and seek answers, putting their daily lives on hold.

But enough of that.

(b)(6) s way was always to put personal problems aside, because the show must go on.

She had an inner strength that was obviously connected to a higher power. She could separate herself from the

things that could weigh a person down, walk onto a stage and electrify an audience. When she danced, it was if she were dancing on air.

You could feel the universal spirit that touches all people.

And so, let us celebrate her life.

We, her friends, learned from Noni that it's important to be yourself, because that' s all you can be. And there's no better way to celebrate life than to be yourself.

That is what made her unique.

(b)(6);(a graduate of Dartmouth College who traveled and worked across the United States, France, Italy, Holland, Mexico, Thailand, Malaysia, St. Lucia and Kenya, could easily have escaped to the middle class.

But she chose an Afrocentric lifestyle because for her, it seemed to possess more meaning. Her expression didn't solely manifest itself through externals – her waist-length dreadlocks, dashikisor cowrie shell jewelry. It was deeper than that: It was a genuine love of everything African.

As a mother, (b)(6 passed this love of culture on to her four children.

She shared that culture by giving them heavy doses of love and special attention. They danced with her, they performed with her.

They need not be victims. They received more love in their young lives than many people receive in a lifetime.

Other children, especially those she worked with in the Afro-American Children's Theater, Charlotte-Mecklenburg Schools and public libraries feel a loss. They, too, need to remember and draw on the love and culture (b)(6 mparted to them.

(b)(6 gave direction to many of us.

"Hey Bro!" "Hey Sistah!" was her usual salutation.

She'd hug you and the rich smell of sandalwood oil, her favorite, would stay with you for the rest of the day, almost as if she were sending you off with her special protection.

Friends remembered her Wednesday night.

Ruth Sloan, a Charlotte writer and producer who introduced Noni to the cultural community when she came here years ago, said (b)(6 was "one of the most dedicated, beautiful women I have ever known."

T.J. Reddy, a Charlotte artist and poet who, with his wife, Karen, looked out fo(b)(6);((b)(7)(as she began her new life in Charlotte, said, "Culture for Noni meant shared human values."

And Michael Porter, a Charlotte musician who performed with (b)(6) said "Duke Ellington and John Coltrane and all the rest of them are probably playing (b)(6);(ong, letting her dance her little heart out."

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Appeared in the Charlotte Observer

EDITORIAL NOTEBOOK: A UNIQUE AND GENUINE SPIRIT
Thursday, September 27, 1990
By Jane McAlister Pope
Jane McAlister Pope is deputy editor of The Observer`s editorial pages.

When she danced, she seemed only lightly bound to Earth. (b)(6);(b)(7)(C swayed to ancient rhythms with an almost ethereal grace. A light shone through her even when she moved through shadows. Now that light has been extinguished.

On Tuesday (b)(6); estranged husband stabbed her to death, then killed himself. Another sad, senseless slaying in a time when murders are becoming almost routine. But this killing touched me deeply. I join the many who now grieve.

I did not know (b)(6);(b)(7)(C - unfortunately, we never had reason to speak together or become acquainted - but I have seen her essence. Anyone could who saw her dance, and I had that good fortune several times. Each occasion shines brightly in memory, but one persistently sticks out, because of the children.

The time: mid-August 1989. The place: the Dilworth Jubilee, a neighborhood festival. Seven months pregnant, I was more interested in sitting than wandering, so I perched upon a stone wall to see what there was to see. Much to my delight (b)(6);(as dancing, her African robes and longhair flowing as she swayed. She invited children into the dance, encouraging them to let go of self-consciousness and allow the music to take hold of

their bodies.

They looked clumsy, but who wouldn't beside her? Just watching, I felt like a hippopotamus next to a butterfly. Of more importance, they caught her contagious joy in movement, her sense of physical freedom.

I remember thinking: Here is a special woman, a unique and genuine spirit. Here is someone who brings a sparkle to children's eyes.

(b)(6);(b)(7)(possessed rare gifts, which she lovingly shared.

Charlotte was made more beautiful by her presence, and is lessened by her passing.

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In memory o(b)(6);(b)(7)(C) the Class of 1979 has purchased the following book for Baker Library:
Bushman, R. I., *The Refinement of America*

Atlanta Office of Chief Counsel

U.S. Department of Homeland Security
180 Spring Street, SW, (b)(6);(b)(7
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Alfie Owens, Chief Counsel (b)(6);(b)(7)(C) (DCC)
Office of Chief Counsel, Atlanta

Sean Gallagher, Field Office Director for (b)(6);(b)(7)(C)
Enforcement and Removal Operations, Field Office Atlanta

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

DATE: March 1, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel - Arizona
U.S. Department of Homeland Security
2035 N. Central Avenue
Phoenix, AZ 85004

U.S. Immigration and Customs Enforcement

April 4, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Nicole Guzman, Chief Counsel
Office of the Chief Counsel, Phoenix, Arizona
(b)(6);(b)(7)(C) Acting Deputy Chief Counsel, Eloy, Arizona
(b)(6);(b)(7)(C), Assistant Chief Counsel, Eloy, Arizona

Enrique. M. Lucero, Field Office Director
Enforcement and Removal Operations, Phoenix, Arizona

RESPONDENT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

NIKKY FINNEY

For (b)(6);(b)(7)(C)

Her birth name was (b)(6);(and mine was Lynn. Our grandparents and great-grandparents were the by-product of middle passages, migrations, the Jazz era, and probably that bizarre American curio known as miscegenation. Our ever-striving Black parents had great respect for each other and they wanted their children to know each other. (b)(6);(and I were born in the same year, 1957, she in January, me, in August. We knew each other alright.

We met as infants in our mother's arms but I also have real memory of (b)(6);(or "Bunnie," as she was lovingly called by her family, when we were 11, or was it 12? We were just two quiet Black girls at some holiday gathering. I don't remember saying much to her then. We seemed dutiful in that Black southern girl way, reflecting the deep love our parents had for us, and for our futures.

We saw each other many times while growing up in different southern cities. My oldest brother eventually made it through his mad crush on "Bunnie" and we would all go our own way out into the scary world. (b)(6);(would leave Atlanta and head for Dartmouth in 1975. I would leave South Carolina, on my way to Talladega, Alabama, that same year. We kept in touch through the telephone game that mothers often play when it comes to their children, long after they leave home, "Where is (b)(6);(now?" "Where did you say Lynn is in school?"

Somewhere around the age of 15 I embraced a more Afro-centric lifestyle. I had older friends who taught me what the state and republic didn't want me to know, about the beauty and power of 360 degrees of Blackness. Bam! I was hooked. I had two badass, revolutionary, fist-pumping uncles, living out in Los Angeles, who kept me fed on correct Black history, in XL double doses. The day came when I could not resist replacing my white blouses with new wildly colored, dashiki-inspired, culture clothes, all while reading everything from Dr. Frances Cress Welsing, and every chapbook hot off Brother Haki Madhubuti's Third World Press. Black culture and the arts became my intimate.

I had just moved to Atlanta to attend graduate school at Atlanta University. It was Saturday and there was an African arts festival happening in a nearby park. I could hear the dancing drums all the way over on Avon Avenue where I lived in a tiny shotgun apartment. I pulled a tye-dyed dashiki over my ginormous afro and made my way closer to the sounds of Black life filling up the air. When I arrived the brothers were drumming hard and the buba lapas of the sisters were hiked up and flying in the air like African parachutes. The hands and arms of Black women were moving like glistening swans. Tempeh and tofu sandwiches were saran wrapped tight and stacked on tables out of the sun. Popcorn sprinkled with nutritional yeast, sea salt, and cayenne pepper waited for mouths in hand tied bags. Sandalwood and black coconut oil was stacked in tiny bottles on folding tables. Red, green, and black Rasta caps hung on poles like Kwanzaa ornaments. All across the park Black artists twisted and hammered out bronze bracelets and decorated cowrie shells for the hundreds of brown and bare ankles moving across the grass. Curtis Mayfield and Bob Marley and Chaka were out playing each other on boom boxes situated north and west. The heart of my intimacy was all around me.

I turned and moved toward the dancing sisters in the middle of the park, a full circle of women pushing down the ground and pushing back the sky with their bangle and beaded arms. I was shy to dance this African dance that I didn't think I "knew" but the sisters were so encouraging. I danced with the sisters and the children in the middle of the park. Suddenly, out of nowhere, another sister came towards me with her arms open. I couldn't

believe my Black girl eyes. So many years had passed since we had seen each other and she was wearing Afro-centric clothes just like me, with thick lion size dreadlocks like ropes of sunflowers on her head, just like me. We recognized our similar transformations. She took both my hands inside her own and we embraced and danced with all the rest in the middle of the sun-drenched day. Somewhere along the path of our different lives we had both released the safe and predictable clothes and looks of our family-people and stepped fully into our own spirits and selves. She danced over to her two children, scooped them up softly and introduced me to them. One boy and one girl with their own African names and smiles as big and sweet as cherry pie. I was now Lynn was now Nikky. We had both been transforming ourselves into a new age Black woman determined to live in the world on our own new Black womanish terms. I held the children close whispering their names to myself. Their black coconut scented skin glistened in my arms. She wanted to know if I had children of my own at home. I remember telling her, "Not yet."

At the end of the day we exchanged addresses and before the week had passed and the children arrived at my tiny apartment and sat with me at my converted poetry-writing table. Together we destroyed pots of tofu, greens, and brown rice. Laughter and the sound of free children bounced off every wall. We caught up with each others lives, sort of, and found ourselves staring at each other from time to time, marveling at how we had escaped law school, medical school, or some other professional finishing school, and how joyous we were to be on the path of being the Black women we had dreamed of becoming.

and Nikky. These were our new names, names we had embraced along the way, names that felt more kindred to our spirits. We talked about our beautiful parents and what our blood brothers and sisters were doing with their lives. We talked about the state of the race. We talked about giving up the fried chicken and barbecue of our youth and loving Black people and Black culture more than corn candy on Halloween. I was mighty glad to be back in her beautiful sight and she in mine. It was one thing to meet new people along the way of life but being able to reconnect with someone who had been there at the beginning was a precious private thing. We didn't talk about love or our relationships. In hindsight, perhaps we were both saving the tougher, harder to speak on topics for the next visit.

had studied dance with Arthur Hall in Philadelphia and become a culture keeper. In the days ahead of that reconnection lunch she would leave Atlanta and found a children's theatre and African culture center in Charlotte. I was just a journeying baby poet steadily gathering up alphabets in every jacket pocket that I owned. I soon fell in love and moved out to the West Coast in 1985. I thought I would settle there but after my first book of poetry came out I was offered my first teaching job at the University of Kentucky in 1990. and I saw each other only a few more times over the next few years.

In September of 1990, Mama Finney called. I could hear her voice breaking into a waterfall of silver slivers. "Baby, Bunnie's dead." I thought I misheard her so I changed the phone to the other ear and said, "Mama, stop playing." My heart had already begun to seize up. My mother never played about death and I only knew one Bunnie. could not be dead at 33?

As the story unfolded, the story blew every one of us down into the feet and arms of the ground had been home in Charlotte, N.C. when her estranged husband arrived at the house. The children were playing in the yard. 27 minutes later was dead, stabbed with the kitchen knife. Minutes later her estranged husband hanged himself in the basement before the police arrived.

I drove from Lexington to Atlanta to see her for the last time. I do not remember actually driving. I remember pulling over at rest stops to weep and beat the steering wheel with my open fists. As I held on to the wheel, as I got back on the highway, there was alive and well in front of me. Smiling. There was lifting, flying, dancing, her beautiful self, everywhere I looked. There was in the back trunk of the car in front of me with her dangling ankh earrings and clicking tongue, calling her Black people deep into the life circle. There was again rising above the pines on the side of the road, her amber-light silhouette filling the day sky brighter. There was with her arms out and open, like some extra set of Black woman wings, with her legs akimboed and pursed just so, like sweet black lips, her body aimed up and higher than any human body I had ever seen dance before. It had been such a thing of beauty to watch dance and to witness a kind of physical and spiritual perfection. had come to earth to dance and dance she did, every move she made refusing defeat or retreat or invisibility. When danced you saw the human physics of flutter & hum, a new feminine language for living in and above this crazy world.

I arrived at the church early. I was the 2nd car in the parking lot. I sat in the car awhile and prayed to the ancestors to give me the strength that I knew I would need to make it through her Homegoing ceremony. It was a typical September Georgia day. All corners of the earth as far as I could see were bright with fall light and shadow. As I walked into the church I could see the casket open there at the front. I walked up to her whispering her name. As I moved closer I lay both hands on her right arm, which was the closest part of her to me, whispering something that I don't quite remember. In her casket she was Nefertiti, or maybe was she Hatshepsut, in repose, draped in gold kente with a silver African scepter in her left hand. I had brought five cowries for her journey beyond the earth. I emptied them out of the honey jar and placed two inside the cloth near her right arm.

The sisters she had danced with in Atlanta and Charlotte danced with her one last time. The brothers who had drummed for her, drummed for her one last time. I remember the sound of her father who could not stop crying and how his sobbing filled the church. I remember the sight of her beautiful mother who never took off her dark glasses. I can still see her brother trying his best to hold up their father and their unbearable grief. Members of the family were holding the four babies. The preacher called beautiful and driven." I don't know how she did it but sister sang, "You take my breath away." The woman sitting next to me, whom I did not know, held me, and let me weep the first, second, and third layers of my hurt away. The frankincense burned through us and held us close to each other in an old translucence. I got in line to greet the family, lingering the longest with mother, who caught my hand in that way a Black women who knows you and knows your people, catches your hand, she said, "Darling, we have to take care of our girls. Our children are not supposed to die first."

This is my favorite photograph of (b)(6) It was taken in the Charlotte, North Carolina, at one of those African arts festivals, the kind where you could always find (b)(6) gathering the children into a circle of light and life. Every inch of her soul was focused on teaching the next generation their value, worth, and glory. This was a woman devoted to moving and singing and rejoicing in the beauty of who our children were and who they could be.

Twenty-six years have passed since (b)(6) flew on beyond the treetops. I still close my eyes when I need to hear (b)(6); long arm of silver bangles moving like a sweet shimmering shower of light. I still see the fire and sun circling her beautiful face as she moves to the music of the drums or to some other music only (b)(6) girl could hear. I still feel her locks brushing up against my own as we embrace and she takes my hands inside hers just to say, "Sister, sister, come on now, tell me how you really doing?" (b)(6);(b)(7)(C was all Black woman electricity and she walked the face of this earth for a short while with the widest deepest open arms. She loved her African cloth, her head wraps, her dreadlocks, her tofu, her juices, her incense, her cowrie shells, her culture, her drums, her beautiful joyous children, and all things good and ancient and African and true. I send this memory of her out into the world to you today, as a selfish blessing, just so you might miss her too.

—Nikky

Photograph by: Bob Leverone for *The Charlotte Observer*

© 2017 - 2018 Nikky Finney | Site by: Vaughan A. Fielder at The Field Office.
Last Site Update: January 5, 2017 | Photo Credits

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jason B. Aguilar, Chief Counsel
(b)(6);(b)(7)(C) Deputy Chief Counsel
(b)(6);(b)(7)(C) Assistant Chief Counsel
Office of Chief Counsel, San Diego

Greg Archambeault, Field Office Director
Enforcement and Removal Operations, Field Office San Diego

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel - Arizona
U.S. Department of Homeland Security
2035 N. Central Avenue
Phoenix, AZ 85004

U.S. Immigration and Customs Enforcement

January 20, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Interim Chief Counsel
Office of the Chief Counsel, Phoenix, Arizona
(b)(6);(b)(7)(C), Senior Attorney, Eloy, Arizona
(b)(6);(b)(7)(C), Assistant Chief Counsel, Eloy, Arizona

Enrique. M. Lucero, Field Office Director
Enforcement and Removal Operations, Phoenix, Arizona

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
125 E. John Carpenter Fwy.,
(b)(6);(
Irving, Texas 75062

U.S. Immigration and Customs Enforcement

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Law Clerk Trainee
Office of Chief Counsel, Dallas

(b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, Dallas

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) Assistant Field Off
Enforcement and Removal Operations, F

(b)(6);(b)(7)(C)

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Sarah L. Hartnett, Chief Counsel
Office of Chief Counsel, Houston,Texas

Patrick D. Contreras, Field Office Director
Enforcement and Removal Operations, Field Office
Houston,Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

RECORDS RETENTION

CASE CAPTION: _____ AGENCY NO.: _____

The following is provided in response to Counsel memorandum dated_____:
(*Attach additional pages as required.*)

1. PAPER RECORDS

The following relevant paper records have been retained:

_____

_____

_____

2. ELECTRONIC RECORDS: I have spoken with IT regarding the preservation of the following electronic information:

a. EMAIL

The following relevant email has been identified and saved:

_____

_____

b. OTHER ELECTRONIC FILES

(1) The following relevant electronic files have been identified and saved:

_____

_____

_____

3. ADDITIONAL IDENTIFICATION AND PRESERVATION OF RELEVANT INFORMATION

Protected by the attorney-client and deliberative-process privileges and work-product doctrine

a. I have directed the following individuals under my supervision to conduct a thorough search for any relevant records and notified them of the requirement to preserve them until further notice:

NAME	CODE	PHONE
_____	_____	_____
_____	_____	_____

b. The following organization(s), office(s), or personnel may also have potentially relevant records:

_____

_____

c. The following records have been sent to a Federal Records Center. The Federal Records Center has been notified, in writing and by accession number, to exempt these records from the automatic destruction schedule.

_____

_____

4. STATEMENT OF NO RECORDS (*If you have no records relevant to the subject case, provide explanation below.*)

_____

_____

I have read and will comply with Counsel memo dated _____

Signature: _____ Code: _____

Printed name: _____ Phone: _____

Protected by the attorney-client and deliberative-process privileges and work-product doctrine

OMB No. 1615-0052; Expires 11/30/06

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-400, Application for Naturalization

Instructions

What Is the Purpose of This Form?

Form N-400 is an application for U.S. citizenship (naturalization). For more information about the naturalization process and eligibility requirements, please read *A Guide to Naturalization* (M-476). If you do not already have a copy of the *Guide*, you can get a copy from:

- The USCIS website **(www.uscis.gov)**;
- The USCIS toll-free forms line at **I-800-870-3676** or
- The USCIS National Customer Service Center (NCSC) at **1-800-375-5283 (TTY:1-800-767-1833)**.

Who Should Use This Form?

To use this form you must be **ONE** of the following:

(1) A Lawful Permanent Resident for at least five years and at least 18 years old;

(2) A Lawful Permanent Resident for at least three years and at least 18 years old,

AND

- You have been married to and living with the same U.S. citizen for the last three years,

AND

- Your spouse has been a U.S. citizen for the last three years;

(3) A member of one of several other groups eligible to apply for naturalization (for example, persons who are nationals but not citizens of the United States) and at least 18 years old. For more information about these groups, please see the *Guide*.

(4) A person who has served honorably in the U.S. Armed Forces,

AND

- If you are at least 18 years old, a Lawful Permanent Resident with at least one year of U.S. Armed Forces service, and you are filing your application for naturalization while still in the service or within six months after the termination of such service.

OR

- You served honorably as a member of the Selected Reserve of the Ready Reserve or in active-duty status during a designated period of hostilities. You then may apply for naturalization without having been physically present in the United States for any specified period.

For more information, please see "Military Naturalization" under "Hot Topics" at **www.uscis.gov**.

NOTE: If you are married to a U.S. citizen who is employed or deployed abroad, you may in some circumstances be eligible for expedited naturalization under section 319(b) of the Immigration and Nationality Act (INA). For further assistance, please refer to our "Eligibility Worksheet" at **www.uscis.gov/graphics/services/natz/wsinstruct.html**.

Who Should Not Use This Form?

In certain cases, a person who was born outside of the United States to U.S. citizen parents is already a citizen and does not need to apply for naturalization. To find out more information about this type of citizenship and whether you should file a Form N-600, "Application for Certificate of Citizenship," read the *Guide.*

Other permanent residents under 18 years of age may be eligible for U.S. citizenship if their U.S. citizen parent or parents file a Form N-600 application in their behalf. For more information, see "Frequently Asked Questions" in the *Guide*.

2017-ICLI-00012 2651

When Am I Eligible to Apply?

You may apply for naturalization when you meet **all** the requirements to become a U.S. citizen. The section of the *Guide* called "Who is Eligible for Naturalization" and the Eligibility Worksheet found in the back of the *Guide* are tools to help you determine whether you are eligible to apply for naturalization. You should complete the Worksheet before filling out this Form N-400 application.

If you are applying based on five years as a Lawful Permanent Resident or based on three years as a Lawful Permanent Resident married to a U.S. citizen, you may apply for naturalization up to 90 days before you meet the "continuous residence" requirement. You must meet all other requirements at the time that you file your application with us.

Certain applicants have different English and civics testing requirements based on their age and length of lawful permanent residence **at the time of filing**. If you are over 50 years of age and have lived in the United States as a lawful permanent resident for periods totaling at least 20 years, or if you are over 55 years of age and have lived in the United States as a lawful permanent resident for periods totaling at least 15 years, you do not have to take the English test but you have to take the civics test in the language of your choice.

If you are over 65 years of age and have lived in the United States as a lawful permanent resident for periods totaling at least 20 years, you do not have to take the English test but you have to take a simpler version of the civics test in the language of your choice.

What Does It Cost to Apply for Naturalization and How Do I Pay?

The fee for this application is **$330.00**. A **$70.00** biometric services fee for fingerprinting is also required. You should submit both fees with your Form N-400.

For military applicants filing under Section 328 and Section 329 of the INA, no fee is required.

For more information on fees and form of payment, call the NCSC at 1**-800-375-5283 (TTY: 1-800-767-1833)** or visit our website at **www.uscis.gov** and click on "Immigration Forms, Fees and Fingerprints."

Your fee is not refundable, even if you withdraw your application or it is denied. If you are unable to pay the naturalization application fee, you may apply in writing for a fee waiver. For information about the fee waiver process, telephone the NCSC at **1-800-375-5283 (TTY: 1-800-767- 1833)** or visit our website at **www.uscis.gov** and click on "Immigration Forms, Fees and Fingerprints."

What Do I Send With My Application?

All applicants must send certain documents with their application.

For example, if you have been arrested or convicted of a crime, you must send a certified copy of the arrest report, court disposition, sentencing and any other relevant documents, including any countervailing evidence concerning the circumstances of your arrest and/or conviction that you would like USCIS to consider. Note that unless a traffic incident was alcohol or drug related, you do not need to submit documentation for traffic fines and incidents that did not involve an actual arrest if the only penalty was a fine of less than **$500** and/or points on your driver's license.

For more information on the documents you must send with your application, see the Document Checklist in the *Guide.*

Where Do I Send My Application?

You must send your Form N-400 application and supporting documents to a USCIS Service Center.

To find the Service Center address you should use, read the section in the Guide called "Completing Your Application and Getting Photographed" or call the NCSC at **1-800-375-5283 (TTY: 1-800-767-1833)** or visit our website at **www.uscis.gov** and click on "Immigration Forms, Fees and Fingerprints."

All naturalization applicants filing under the military provisions, Section 328 or 329 of the INA, should file their application at the Nebraska Service Center regardless of geographic location or jurisdiction. Please send your application to:

Nebraska Service Center
P.O. Box 87426
Lincoln, NE 68501-7426

2017-ICLI-00012 2652

How Do I Complete This Application?

- Please print clearly or type your answers using CAPITAL letters in each box.
- Use black ink.
- **Write your USCIS (or former INS) "A"- number on the top right hand corner of each page.** Use your "A"- number on your Permanent Resident Card (formerly known as the Alien Registration or "Green" Card). To locate your "A"- number, see the sample Permanent Resident Cards in the *Guide*. The "A" number on your card consists of seven to nine numbers, depending on when your record was created. If the "A"- number on your card has fewer than nine numbers, place enough zeros before the first number to make a *total of nine numbers* on the application. For example, write card number A1234567 as A001234567, but write card number A12345678 as A012345678.
- If a question does not apply to you, write **N/A** (meaning "Not Applicable") in the space provided.
- If you need extra space to answer any item:
  - -- Attach a separate sheet of paper (or more sheets if needed);
  - -- Write your name, your "A"- number, and "N-400" on the top right corner of the sheet; and
  - -- Write the number of each question for which you are providing additional information.

Step-by-Step Instructions.

This form is divided into 14 parts. The information below will help you fill out the form.

Part 1. Your Name *(the Person Applying for Naturalization).*

A. Your current legal name - Your current legal name is the name on your birth certificate, unless it has been changed after birth by a legal action such as a marriage or court order.

B. Your name exactly as it appears on your Permanent Resident Card *(if different from above)*-- Write your name exactly as it appears on your card, even if it is misspelled.

C. Other names you have used - If you have used any other names in your life, write them in this section. If you need more space, use a separate sheet of paper.

If you have **never** used a different name, write "N/A" in the space for "Family Name *(Last Name)."*

D. Name change *(optional)* - A court can allow a change in your name when you are being naturalized. A name change does not become final until a court naturalizes you. For more information regarding a name change, see the *Guide.*

If you want a court to change your name at a naturalization oath ceremony, check "Yes" and complete this section. If you do not want to change your name, check "No" and go to Part 2.

Part 2. Information About Your Eligibility.

Check the box that shows why you are eligible to apply for naturalization. If the basis for your eligibility is not described in one of the first three boxes, check "Other" and briefly write the basis for your application on the lines provided.

Part 3. Information About You.

A. U.S. Social Security number - Print your U.S. Social Security number. If you do not have one, write "N/A" in the space provided.

B. Date of birth - Always use eight numbers to show your date of birth. Write the date in this order: Month, Day, Year. For example, write May 1, 1958 as 05/01/1958.

C. Date you became a Permanent Resident - Write the official date when your lawful permanent residence began, as shown on your Permanent Resident Card. To help locate the date on your card, see the sample Permanent Resident Cards in the *Guide.* Write the date in this order: Month, Day,Year. For example, write August 9, 1988 as 08/09/1988.

2017-ICLI-00012 2653

D. Country of birth - Write the name of the country where you were born. Write the name of the country even if it no longer exists.

E. Country of nationality - Write the name of the country (or countries) where you are currently a citizen or national.

- If you are stateless, write the name of the country where you were last a citizen or national.
- If you are a citizen or national of more than one country, write the name of the foreign country that issued your last passport.

F. Citizenship of parents - Check "Yes" if either of your parents is a U.S. citizen. If you answer "Yes," you may already be a citizen. For more information, see "Frequently Asked Questions" in the *Guide*.

G. Current marital status - Check the marital status you have on the date you are filing this application. If you are currently not married, but had a prior marriage that was annulled, or otherwise legally terminated, check "Other" and explain it.

H. Request for disability waiver - If you have a medical disability or impairment that you believe qualifies you for a waiver of the tests of English and/ or U.S. government and history, check "Yes" and attach a properly completed Form N-648, Medical Certification for Disability Exceptions. If you ask for this waiver it does not guarantee that you will be excused from the testing requirements. For more information about this waiver, see the *Guide*.

I. Request for disability accommodations - We will make every reasonable effort to help applicants with disabilities complete the naturalization process. For example, if you use a wheelchair, we will make sure that you can be fingerprinted and interviewed, and can attend a naturalization ceremony at a location that is wheelchair accessible. If you are deaf or hearing impaired and need a sign language interpreter, we will make arrangements with you to have one at your interview.

If you believe you will need us to modify or change the naturalization process for you, check the box or write in the space the kind of accommodation you need. If you need more space, use a separate sheet of paper. You do not need to send us a Form N-648 to request an accommodation. You only need to send a Form N-648 to request a waiver of the test of English and/or civics.

We consider requests for accommodations on a case-by-case basis. Asking for an accommodation will not affect your eligibility for citizenship.

Part 4. Addresses and Telephone Numbers.

A. Home address - Give the address where you now live. Do **not** put post office (P.O.) box numbers here.

B. Mailing address - If your mailing address is the same as your home address, write "same." If your mailing address is different from your home address, write it in this part.

C. Telephone numbers - By giving us your telephone numbers and e-mail address, we can contact you about your application more quickly. If you are hearing impaired and use a TTY telephone connection, please indicate this by writing "(TTY)" after the telephone number.

Part 5. Information for Criminal Records Search.

The Federal Bureau of Investigation (FBI) will use the information in this section, together with your fingerprints, to search for criminal records. Although the results of this search may affect your eligibility, we do **not** make naturalization decisions based on your gender, race or physical description.

For each item, check the box or boxes that best describes you. The categories are those used by the FBI. You can select one or more.

NOTE: As part of the USCIS biometric services requirement, you must be fingerprinted after you file this application. If necessary, USCIS may also take your photograph and signature. Check our website at **www.uscis.gov** or call our National Customer Service Center at **1-800-375-5253** to determine the fee for the biometric services.

2017-ICLI-00012 2654

Part 6. Information About Your Residence and Employment.

A. Write every address where you have lived during the last five years (including in other countries).

Begin with where you live now. Include the dates you lived in those places. For example, write May 1998 to June 1999 as 05/1998 to 06/1999.

If you need separate sheets of paper to complete section A or B or any other questions on this application, be sure to follow the Instructions in **"How Do I Complete This Application?"** on **Page 2.**

B. List where you have worked (or, if you were a student, the schools you have attended) during the last five years. Include military service. If you worked for yourself, write "self employed." Begin with your most recent job. Also, write the dates when you worked or studied in each place.

Part 7. Time Outside the United States *(Including Trips to Canada, Mexico and the Caribbean).*

A. Write the total number of days you spent outside of the United States (including on military service) during the last five years. Count the days of every trip that lasted 24 hours or longer.

B. Write the number of trips you have taken outside the United States during the last five years. Count every trip that lasted 24 hours or longer.

C. Provide the requested information for every trip that you have taken outside the United States since you became a Lawful Permanent Resident. Begin with your most recent trip.

Part 8. Information About Your Marital History.

A. Write the number of times you have been married. Include any annulled marriages. If you were married to the same spouse more than one time, count each time as a separate marriage.

B. If you are now married, provide information about your current spouse.

C. Check the box to indicate whether your current spouse is a U.S. citizen.

D. If your spouse is a citizen through naturalization, give the date and place of naturalization. If your spouse regained U.S. citizenship, write the date and place the citizenship was regained.

E. If your spouse is not a U.S. citizen, complete this section.

F. If you were married before, give information about your former spouse or spouses. In question F.2, check the box showing the immigration status your former spouse had during your marriage. If the spouse was not a U.S. citizen or a Lawful Permanent Resident at that time check "Other" and explain. For question F.5, if your marriage was annulled, check "Other" and explain. If you were married to the same spouse more than one time, write about each marriage separately.

G. For any prior marriages of your current spouse, follow the instructions in section F above.

NOTE: If you or your present spouse had more than one prior marriage, provide the same information required by section F and section G about every additional marriage on a separate sheet of paper.

Part 9. Information About Your Children.

A. Write the total number of sons and daughters you have had. Count **all** of your children, regardless of whether they are:

- Alive, missing, or dead;
- Born in other countries or in the United States;
- Under 18 years old or adults;
- Married or unmarried;
- Living with you or elsewhere;
- Stepsons or stepdaughters or legally adopted; or
- Born when you were not married.

2017-ICLI-00012 2655

B. Write information about all your sons and daughters. In the last column ("Location"), write:

- "With me" - if the son or daughter is currently living with you;
- The street address and state or country where the son or daughter lives - if the son or daughter is **not** currently living with you; or
- "Missing" or "dead" - if that son or daughter is missing or dead.

If you need space to list information about additional sons and daughters, attach a separate sheet of paper.

Part 10. Additional Questions.

Answer each question by checking "Yes" or "No." If **any** part of a question applies to you, you must answer "Yes." For example, if you were never arrested but *were* once detained by a police officer, check "Yes" to the question "Have you ever been arrested or detained by a law enforcement officer?" and attach a written explanation.

We will use this information to determine your eligibility for citizenship. Answer every question honestly and accurately. If you do not, we may deny your application for lack of good moral character. Answering "Yes" to one of these questions does not always cause an application to be denied. For more information on eligibility, please see the *Guide*.

Part 11. Your Signature.

After reading the statement in Part 11, you must sign and date it. You should sign your full name without abbreviating it or using initials. The signature must be legible. Your application may be returned to you if it is not signed.

If you cannot sign your name in English, sign in your native language. If you are unable to write in any language, sign your name with an "X."

NOTE: A designated representative may sign this section on behalf an applicant who qualifies for a waiver of the Oath of Allegiance because of a development or physical impairment (see the *Guide* for more information). In such a case the designated representative should write the name of the applicant and then sign his or her own name followed by the words "Designated Representative." The information attested to by the Designated Representative is subject to the same penalties discussed on **Page 6** of these Instructions.

Part 12. Signature of Person Who Prepared the Form for You.

If someone filled out this form for you, he or she must complete this section.

Part 13. Signature at Interview.

Do not complete this part. You will be asked to complete this part at your interview.

Part 14. Oath of Allegiance.

Do not complete this part. You will be asked to complete this part at your interview.

If we approve your application, you must take this Oath of Allegiance to become a citizen. In limited cases you can take a modified Oath. The Oath requirement cannot be waived unless you are unable to understand its meaning because of a physical or developmental disability or mental impairment. For more information, see the *Guide*. Your signature on this form only indicates that you have no objections to taking the Oath of Allegiance. **It does not mean that you have taken the Oath or that you are naturalized**. If USCIS approves your application for naturalization, you must attend an oath ceremony and take the Oath of Allegiance to the United States.

2017-ICLI-00012 2656

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny your application for naturalization and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to a removal proceeding or criminal prosecution.

If we grant you citizenship after you falsify or conceal a material fact or submit a false document with this request, your naturalization may be revoked.

Privacy Act Notice.

We ask for the information on this form and for other documents to determine your eligibility for naturalization. Form N-400 processes are generally covered in 8 U.S.C. 1421 through 1430 and 1436 through 1449. We may provide information from your application to other government agencies.

Use InfoPass for Appointments.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our internet-based system, **InfoPass**. To access the system, visit our website at **www.uscis.gov**. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen. Print the notice and take it with you to your appointment. The notice gives the time and date of your appointment, along with the address of USCIS office.

Paperwork Reduction Act Notice.

A person is not required to respond to a collection of information unless it displays a valid OMB control number.

We try to create forms and instructions that are accurate, can be easily understood and that impose the least possible burden on you to provide us with the information. Often this is difficult because some immigration laws are very complex.

The estimated average time to complete and file this form is computed as follows: (1) 2 hours and 8 minutes to learn about and complete the form; (2) 4 hours to assemble and file the information - for a total estimated average of 6 hours and 8 minutes per application.

If you have comments about the accuracy of this estimate or suggestions to make this form simpler, you may write to U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue N.W., Washington, DC 20529; OMB No. 1615-0052. **Do not mail your completed application to this address.**

2017-ICLI-00012 2657

March 24, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Acting Chief Counsel
Office of Chief Counsel, Phoenix

Enrique M. Lucero, Field Office Director
Enforcement and Removal Operations, Field Office Phoenix

Reviewed by: Senior Attorney (b)(6);(b)(7)(C)
Phoenix, Arizona

Author: Assistant Chief Counsel (b)(6);(b)(7)(C)
Phoenix, Arizona

SUBJECT: United States Citizenship Analysis
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
11545 Montana Avenue (b)(6);(
El Paso, Texas 79936

U.S. Immigration and Customs Enforcement

March 16, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
(b)(6);(b)(7)(C) stant Director for Field Operations, ERO

FROM: s Gastelo, Chief Counsel
ce of Chief Counsel, El Pa (b)(6);(b)(7)(C)
ey A. Price, Field Office D
orcement and Removal Operations, Field Office El Paso, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel, Denver

U.S. Department of Homeland Security
12445 East Caley Avenue
Centennial, CO 80111-6432

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Corina E. Almeida, Chief Counsel
Office of Chief Counsel, Denver

(b)(6);(b)(7)(C) Acting Field Office Director
Enforcement and Removal Operations, Denver Field Office

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

DATE: April 14, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0054; Expires 06/30/07

Form N-445, Notice of Naturalization Oath Ceremony

A# (b)(6);(b)(7)(C)

Date July 27, 2007

APPLICANT COPY

(b)(6);(b)(7)(C)
AKRON OH 44312

You are hereby notified to appear for a Naturalization Oath Ceremony on:

Friday, August 3 2007

at:

US DISTRICT COURT OF CLEVELAND
801 WEST SUPERIOR AVENUE
CLEVELAND, OH 44113
LOWER LEVEL ONE, (b)(6);(b)(7)

Please report promptly at 1:00 PM

You must bring the following with you:

- ☐ This letter, WITH ALL THE QUESTIONS ON PAGE 2 ANSWERED. TYPE OR PRINT ANSWERS IN BLACK INK.
- ☒ Permanent Resident Card.
- ☒ Reentry Permit or Refugee Travel Document.
- ☒ Any Immigration documents you may have.
- ☒ If the naturalization application is on behalf of your child (children), bring your child (children).
- ☒ Other.

Proper attire should be worn.

If you cannot come to this ceremony, return this notice immediately and state why you cannot appear. In such case, you will be sent another notice of ceremony at a later date. You must appear at an oath ceremony to complete the naturalization process.

In connection with your application for naturalization, please answer each of the questions by checking "Yes" or "No." You must answer these questions the day you are to appear for your citizenship oath ceremony. These questions refer to actions since the date you were first interviewed on your Application for Naturalization. The questions do not refer to anything that happened before the inteview.

After you have answered every question, sign your name and fill in the date and place of signing, and provide your current address.

You must bring this completed questionnaire with you to the oath ceremony, as well as the documents indicated on the front, and give them to the employee of the U.S. Citizenship and Immigration Services at the oath ceremony. You may be questioned further on your answers at that time.

AFTER the date you were first interviewed on your Application for Naturalization, Form N-400:	**ANSWERS**
1. Have you married, or been widowed, separated or divorced? (If "Yes," please bring documented proof of marriage, death, separation or divorce.)	(b)(6);(b)(7)(C) 1. ☒ Yes ☑ No
2. Have you traveled outside the United States?	2. ☐ Yes ☑ No
3. Have you knowingly committed any crime or offense, for which you have not been arrested?	3. ☐ Yes ☑ No
4. Have you been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, including traffic violations?	4. ☐ Yes ☑ No
5. Have you joined any organization, including the Communist Party, or become associated or connected therewith in any way?	5. ☐ Yes ☑ No
6. Have you claimed exemption from military service?	6. ☐ Yes ☑ No
7. Has there been any change in your willingness to bear arms on behalf of the United States; to perform non-combatant service in the armed forces of the United States; to perform work of national importance under civilian direction, if the law requires it?	7. ☐ Yes ☑ No
8. Have you practiced polygamy, received income from illegal gambling, been a prostitute, procured anyone for prostitution or been involved in any other unlawful commercialized vice, encouraged or helped any alien to enter the United States illegally, illicitly trafficked in drugs or marijuana, given any false testimony to obtain immigration benefits, or been a habitual drunkard?	8. ☐ Yes ☑ No

I certify that each of the answers shown above were made by me or at my direction, and that they are true and correct as of the date of my naturalization oath ceremony.

Signed at Akron M.D. Cleveland OH (City and State), on ~~07-30-07~~ 08-3-07 (Date)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) 44312

(Full Signature) (Full Address and Zip Code)

OUR AUTHORITY for collection of the information requested on Form N-445 is contained in Sections 101(f), 313, 316, 332, 335 and 336 of the Immigration and Nationality Act (8 U.S.C. 1101 (f), 1427, 1443, 1446 and 1447). Submission of the information is voluntary. The principal purposes for requesting the information are to enable Adjudications Officers of the U.S. Citizenship and Immigration Services to determine an applicant's eligibility for naturalization. The information requested may, as a matter of routine use, be disclosed to naturalization courts and to other federal, state, local or foreign law enforcement and regulatory agencies, the Department of Defense, including any component thereof, Selective Service System, Department of State, Department of Treasury, Department of Transportation, Central Intelligence Agency, Interpol and individuals and organizations in the processing of any application for naturalization, or during the course of investigation, to elicit further information required by the U.S. Citizenship and Immigration Services to carry out its functions. Information solicited which indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, may be referred as a routine use to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating, enforcing or prosecuting such violations. Failure to provide all or any of the requested information may result in a denial of the application for naturalization.

THE PUBLIC REPORTING BURDEN for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., Washington, DC 20529.

March 14, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Elias S. Gastelo Jr., Chief Counsel,
Office of the Chief Counsel, Phoenix,

Enrique Lucero, Field Office Director,
Enforcement and Removal Operations, Field Office,
Phoenix

REVIEWED BY: (b)(6);(b)(7)(C) Deputy Chief Counsel,
Florence, Arizona

AUTHOR: (b)(6);(b)(7)(C) Assistant Chief Counsel,
Phoenix, Arizona

SUBJECT: Case Analysis - Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

Page 2686

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2687

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2688

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2689

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2690

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

NAME: (b)(6);(b)(7)(C) MONTH & YEAR: November 2016

ILPD ATTORNEY WORK LOG

I. Advocates for/Represents the Agency

(b)(5)

II. Provides Legal Advice

(b)(6);(b)(7)(C);(b)(5)

(b)(5)		

III. Conducts Legal Research and Writing

(b)(6);(b)(7)(C);(b)(5)		

(b)(6);(b)(7)(C);(b)(5)

NAME: (b)(6);(b)(7)(C) **MONTH & YEAR:** **November 2016**

(b)(6);(b)(7)(C);(b)(5)

IV. Miscellaneous

(b)(5)

E-FILED
Monday, 17 August, 2015 04:12:18 PM
Clerk, U.S. District Court, ILCD

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION

JHON ERIK OCAMPO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 14-3134
	)	
GLEN HARRINGTON, MICHAEL MITCHELL, and the UNITED STATES OF AMERICA,	)	
	)	
Defendants.	)	

OPINION

TOM SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

This matter comes before the Court on Plaintiff Jhon Erik Ocampo's Motion to Compel (d/e 50) (Motion). Ocampo asks the Court to order the Defendants to produce documents withheld by Defendants on claims of privilege. Defendants have submitted the documents under seal for in camera review. Sealed Documents (d/e 54). For the reasons set forth below, the Motion is DENIED.

BACKGROUND

Ocampo alleges that he was born in Columbia on August 25, 1985. He entered the United States as a legal permanent resident in 1995. His mother became a citizen on November 1, 2002. Ocampo alleges he became a citizen at that time because he was under eighteen years of age and was in the legal and

physical custody of his mother. First Amended Complaint (d/e 10) (Complaint), ¶ 14; see 8 U.S.C. § 1431(a).

Defendants Glen Harrington and Michael Mitchell were officers of the Department of Homeland Security Immigration and Custom Enforcement (ICE). Ocampo alleges that on May 4, 2012, Harrington and Mitchell illegally arrested him without probable cause based on an illegal warrant. The warrant asserted that Ocampo was in the country in violation of the immigration laws. Complaint, Exhibit 3, Warrant. Ocampo alleges that he told Harrington and Mitchell that he was a citizen. Complaint, ¶¶ 23, 27. Ocampo alleges that on May 4, 2012, Harrington and Mitchell served Ocampo with a Notice to Appear before an immigration judge. Complaint, ¶ 28, Exhibit 4, Notice to Appear. On May 11, 2012, Ocampo was released from ICE custody. Complaint, ¶ 34.

Based on these allegations, Ocampo alleges claims against Harrington and Mitchell for violation of his constitutional rights under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), and claims against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346. Complaint, Counts I-VII.

During discovery, Ocampo served a request to produce on Defendants. The Defendants withheld certain documents on claims of privilege. Ocampo challenged the claims. The parties have not been able to resolve Defendants'

claims of privilege for one memorandum and two emails. The Defendants produced a redacted version of the memorandum, but Ocampo believes the entire unredacted version should be produced. The Defendants have not produced any versions of the emails. Ocampo moves the Court to deny the claims of privilege and order production of the documents. The Defendants oppose the Motion. The Defendants assert that the three documents at issue are protected by attorney-client privilege and work product privilege.

ANALYSIS

The attorney-client privilege applies to confidential communications made with an attorney in connection with the provision of legal services and in the context of an attorney-client relationship. United States v. BDO Seidman, LLP, 492 F.3d 806, 815 (7th Cir. 2007). Government agencies are entitled to the same attorney-client privilege as private citizens. United States v. Jicarilla Apache Nation, __ U.S.__, 131 S.Ct. 2313, 2321 (2011); United States v. Zingheim, 384 F.3d 867, 871-72 (7th Cir. 2004). The Court has carefully reviewed the three documents at issue. All three are protected by attorney-client privilege.

The first document is a memorandum dated May 10, 2012, from Karen E. Lundgren, Chief Counsel of ICE Office of General Counsel, Chicago, to Director of Field Operations, OPLA and Assistant Director of Field Operations, ERO.

OPLA means Office of Principal Legal Advisor, and ERO means Enforcement and Removal Operations. See Motion, at 5; Government's Response to Plaintiff's Motion to Compel (d/e 52) (Response), at 7. The subject of the memorandum is Ocampo's claim of United States citizenship. The redacted portions of the memorandum contain legal advice about Ocampo's claim. The redacted portions are protected by attorney-client privilege. The redacted portions set forth confidential legal advice from an attorney in the context of an attorney-client relationship. The claim of privilege is sustained.

The second document is an email dated May 10, 2012, from Kim M. Kucik, Acting Deputy Chief Counsel of the Chicago, Illinois, ICE Chief Counsel's Office to OPLA USC Claims: USC Claims DRO. The term "OPLA USC Claims: USC Claims DRO" means Office of Principal Legal Advisor United States Citizenship Claims; United States Citizenship Claims Detention and Removal Operations." See Motion, at 5. The email contains legal advice regarding Ocampo's claim of citizenship. The email is protected by attorney-client privilege. The email contains confidential legal advice from an attorney in the context of an attorney-client relationship. The claim of privilege is sustained.

The third document is an email is from Kucik, Acting Deputy Chief Counsel of the Chicago, Illinois, ICE Chief Counsel's Office to Brian W. LaMar. LaMar was an ICE employee with ERO in Chicago. See Response, at 8. The email is

protected by attorney-client privilege. The email contains confidential legal advice from an attorney in the context of an attorney-client relationship. The claim of privilege is sustained.

Ocampo asks the Court to follow a rationale adopted by the Southern District of New York in National Immigrant Project of National Lawyers Guild v. United States Dept. of Homeland Security, 868 F.Supp.2d 284, 298 (S.D.N.Y. 2012). The National Immigrant Project opinion limited a government agency's attorney-client privilege to communications that contain "confidential information concerning the Agency as opposed to third parties." Id. at 297-98 (citing Schlefer v. United States, 702 F.2d 233, 245 (D.C. Cir. 1983). The Court respectfully declines to follow National Immigrant Project. The Supreme Court clearly stated that the attorney-client privilege is the same for both governmental and non-governmental parties. Jicarilla Apache Nation, 131 S.Ct. at 2321. Thus, the privilege applies to confidential communications made with an attorney in connection with the provision of legal services and in the context of an attorney-client relationship regardless of whether the content of the communication concerns third party claims. See BDO Seidman, LLP, 492 F.3d at 815. See also North Dakota v. United States, 64 F.Supp.2d 1314, 1336 (D. N.D. 2014) (observing that the Supreme Court "would follow the broadest approach to the attorney-client privilege.").

Ocampo also argues that the attorney-client privilege does not apply because attorneys Lundgren and Kucik were performing administrative or regulatory functions rather than acting as attorneys. Motion, at 9-10, citing National Immigrant Project, 868 F. Supp. 2d at 298; see also Texaco Puerto Rico, Inc. v. Dep't of Consumer Affairs, 60 F.3d 867, 884 (1st Cir. 1995); Mobile Oil Corp. v. Dep't of Energy, 102 F.R.D. 1, 9-10 (N.D.N.Y. 1983); Coastal Corp. v. Duncan, 86 F.R.D. 514, 521 (D. Del. 1980). Ocampo notes that ICE policy and procedures require the local Office of Chief Counsel to evaluate claims of citizenship in the context of a claim such as Ocampo's and also require the Detention and Removal Operations and Office of Principal Legal Advisor to prepare a memorandum explaining the claim and recommending a course of action. Motion, at 4-5. Ocampo argues that the documents at issue were produced while performing administrative functions pursuant to these policies.

The Court disagrees with Ocampo's conclusion. The Court agrees that the attorney-client privilege does not apply when attorneys are not acting as attorneys, but rather are performing administrative or regulatory functions. See Texaco Puerto Rico, Inc., 60 F.3d at 884. Attorneys Lundgren and Kucik, however, were acting as attorneys and provided legal advice in these documents. Specifically, the redacted information in the Lundgren memo gives legal conclusions and recommendations to the client from the Office of Chief

Counsel. The two contested Kucik emails do the same. These communications were made for the purpose of providing legal advice. The fact that ICE policies and procedures may have required attorneys to provide legal advice did not transform their communications into something other than legal advice. Lundgren and Kucik were not performing administrative or regulatory functions. They were providing confidential legal advice. The Court sustains the Defendants' claim of attorney-client privilege.

The Court does not need to address the work product privilege since the attorney-client privilege applies.

THEREFORE Plaintiff Jhon Erik Ocampo's Motion to Compel (d/e 50) is DENIED.

ENTER: August 17, 2015

s/ Tom Schanzle-Haskins
UNITED STATES MAGISTRATE JUDGE

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Sarah L. Hartnett, Chief Counsel
Office of Chief Counsel, Houston

Patrick Contreras, Field Office Director
Enforcement and Removal Operations, Field Office Houston

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Office of the Principal Legal Advisor
595 Ala Moana Blvd.
Honolulu, HI 96813-49996

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Patricia A. Beattie, Chief Counsel
Office of Chief Counsel, Honolulu

David Jennings, Field Office Director
Enforcement and Removal Operations, Field Office San Francisco

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

NAME: (b)(6);(b)(7)(C) **MONTH & YEAR:** **December 2016**

ILPD ATTORNEY WORK LOG

I. Advocates for/Represents the Agency

(b)(5)

II. Provides Legal Advice

(b)(5);(b)(6);(b)(7)(C)

NAME: (b)(6);(b)(7)(C) **MONTH & YEAR:** **December 2016**

III. Conducts Legal Research and Writing

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

IV. Miscellaneous

(b)(5)

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

August 5, 2011

MEMORANDUM FOR: All OPLA Employees

FROM: Riah Ramlogan
Deputy Principal Legal Advisor

SUBJECT: Guidance on Employee Testimony

Purpose

This memorandum sets forth guidance[1] related to the disclosure of information and testimony by Office of the Principal Legal Advisor (OPLA) employees or contractors.[2]

Background

Department of Homeland Security (DHS) regulations bar all DHS employees or employees of DHS components, including ICE, from providing documents or oral or written testimony relating to information acquired while such persons were employed by DHS unless authorized to do so by the DHS Office of General Counsel or its designees.[3]

---

[1] This memo is internal guidance for OPLA employees. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

[2] For purposes of this guidance, "the term employee includes all former Secretaries of Homeland Security and all employees of the Department of Homeland Security or other federal agencies who are or were appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Homeland Security, whether residing or working in the United States or abroad, including United States nationals, foreign nationals, and contractors." 6 C.F.R. § 5.41(c).

[3] "No employee, or former employee, of the Department shall, in response to a demand or request, including in connection with any litigation, provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any information acquired while such person is or was an employee of the Department as part of the performance of that person's official duties or by virtue of that person's official status, unless authorized to do so by the Office of the General Counsel or [the delegates thereof]." 6 C.F.R. § 544(a).

In a March 10, 2003 memo entitled "Delegation of Authority Contained in 6 C.F.R. Part 5, Subpart C", Burearu of Immigration and Customs Enforcement and Bureau of Citizenship and Immigration Services General Counsel Mark D. Wallace confirmed the delegation of authority from the [General Counsel of DHS] to the [ICE Principal Legal Advisor] and from the [Principal Legal Advisor] to any attorney of his choosing under his supervision.

Guidance

Pursuant to the regulations, OPLA employees or contractors shall not provide documents or oral or written testimony relating to information acquired while employed by DHS in response to a demand, request or subpoena unless specifically authorized to do so by the Deputy Principal Legal Advisor.[4] In addition to providing information as a fact witness, employees or contractors are similarly prohibited from providing opinion or expert testimony based upon information acquired in the scope and performance of official DHS duties.[5]

Employees are specifically authorized to provide declarations and affidavits regarding the specific questions of whether: 1) an individual or party failed to file an administrative claim under the Federal Tort Claims Act; and 2) an individual or party failed to perfect service of process. In these situations, approval of the Deputy Principal Legal Advisor is not required.

Procedures

The following procedures apply to OPLA employees or contractors who receive a demand or request to provide oral or written testimony based on information acquired in the scope of their official duties:

- The employee or contractor should obtain a written copy of the request and then notify his or her immediate supervisor.

- The immediate supervisor should then elevate the request, through his or her applicable chain of command, to the Deputy Principal Legal Advisor as follows:

    - Offices of the Chief Counsel shall send requests for all field employees or contractors to the Director of Field Legal Operations; and

    - Headquarters divisions shall send requests for any headquarters employees or contractors to the Director of Enforcement and Litigation or the Chief of Staff, as appropriate.

Conclusion

Managing the disclosure of information and testimony by employees and contractors is vital to the efficient operation of OPLA. Adherence to this policy will ensure that senior leadership is actively aware of situations where OPLA's equities are engaged.[6]

---

[4] This guidance is not intended to interfere with the obligation to provide documents in response to requests for records under the Freedom of Information Act, 5 U.S.C. § 552, to cooperate with investigations by the Office of Inspector General or Office of Professional Responsibility, or to provide documents or testimony relating to matters involving employment anti-discrimination statutes or agency personnel actions.

[5] *See* 6 C.F.R. § 5.49.

[6] Please direct any questions about this policy to the Special Counsel to the Deputy Principal Legal Advisor.

2017-ICLI-00012 2720

U.S. Department of Homeland Security
Office of the General Counsel

70110.7

Bureau of Immigration and Customs Enforcement
Bureau of Citizenship and Immigration Services

425 I Street NW
Washington, DC 20536

March 10, 2003

MEMORANDUM FOR ALL REGIONAL COUNSEL

FROM: (b)(6);(b)(7)(C)
General Counsel,
Bureau of Immigration and Customs Enforcement and
Bureau of Citizenship and Immigration Services.

(b)(6);(b)(7)(C)

SUBJECT: Delegation of Authority Contained in 6 C.F.R. Part 5, Subpart C.

The Secretary of the Department of Homeland Security (DHS), Tom Ridge, has designated Lucy Clark to serve as the Chief Legal Counselor for the DHS and he has empowered her with the authority to perform the functions of the General Counsel. The designation of Chief Legal Counsel is to remain in effect, unless modified or withdrawn, until there is a confirmation of a General Counsel for the DHS.

The Chief Legal Counsel for the DHS has delegated to me the authority contained in the attached regulatory provisions of 6 C.F.R. Part 5, Subpart C (pertaining to service of summonses, complaints, subpoenas, court orders and other demands or requests for official information or action and disclosure of records or testimony in litigation). I have been authorized in that delegation to re-delegate this authority in whole or in part, to any attorney under my supervision, provided any such delegation shall be in writing.

Therefore, by this memorandum, I re-delegate this authority as it pertains to 6 C.F.R. Part 5, Subpart C to the Regional Counsel and I authorize the Regional Counsel to re-delegate this authority, on whole or in part, to any attorney under their supervision, provided that such re-delegation shall be in writing and the exercise of my delegated authority shall be governed by regulation and the attached DHS policy directive: "Response to Demands in Connection With Litigation to Which the United States is not a Party" (MD#: 0495.1). Any novel or sensitive issue relating to the discharge of this delegated authority should be brought immediately to the attention of this office. This delegation by me shall remain in effect until such time as it is modified or withdrawn.

2017-ICLI-00012 2721

U.S. Immigration and Customs Enforcement

HQ Field Operations
Field Office Assignments/Contact Info

6-Mar-17

Field Operations Division	Last Name	First Name	Title	Office #	Cell #	Email	PCN Room #
Field Operations	**Asher**	**Nathalie**	**Assistant Director**	**(202) 732-**			
Domestic Ops East	**Wong**	**Ricardo**	**Deputy Assistant Director**	**(202) 732-**			
Domestic Ops West			**Deputy Assistant Director**	**(202) 732-**			
Field Operations	(b)(6);(b)(7)(C)		Special Assistant	(202) 732-	(202) 652-		
Field Operations			Chief of Staff	(202) 732-	(202) 210-		
Domestic Operations			Mission Support Specialist	(202) 732-	(202) 695-		
Domestic Operations	**Vacant**			(202) 732-			
Domestic Operations - East			**Unit Chief**	**(202) 732-**	**(202) 271-**		
AOR - **PHI,** NOL, **ERO 2.-0**			Desk Officer	(202) 732-	(202) 500-		
AOR - **BOS, DET,** ATL, **Medical**			Desk Officer	(202) 732-	(202) 359-		
AOR - **MIA, WAS, BAL,** CHI			Desk Officer	(202) 732-	(202) 607-		
AOR - **ATL, CHI, NOL**			Desk Officer	(202) 732-	(617) 828-		
AOR - **NEW, NYC, BUF**			Desk Officer	(202) 732-	(202) 246-		
Domestic Operations - West	(b)(6);(b)(7)(C)		**Unit Chief (a)DAD**	**(202) 732-**			
AOR - **SFR, SPM, I.T.**			Desk Officer (a) Unit Chief West	(202) 732-	(202) 321-		
AOR - **ELP, PHO,** DEN			Desk Officer	(202) 732-	(202) 500-		
AOR - **LOS, SEA, Reports**			Desk Officer	(202) 732-	(202) 560-		
AOR - **SND, SLC, Reports**			Desk Officer	(202) 732-	(202) 321-		
AOR - **DAL, SNA,** HOU, detail tracker			Desk Officer	(202) 732-	(202) 200-		
AOR - **DEN, HOU**			Desk Officer	(202) 732-	(716) 704-		
TDY - JTF East			Desk Officer	(202) 732-	(786) 447-		

(b)(6);(b)(7)(C) — Office #

(b)(6);(b)(7)(C) — Cell #

(b)(6);(b)(7)(C) — Email

(b)(6);(b)(7)(C) — PCN Room #

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane, Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship
a
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Massachusetts State Police AFIS Results

Commonwealth of Massachusetts

Generated At	Generated By	Agency
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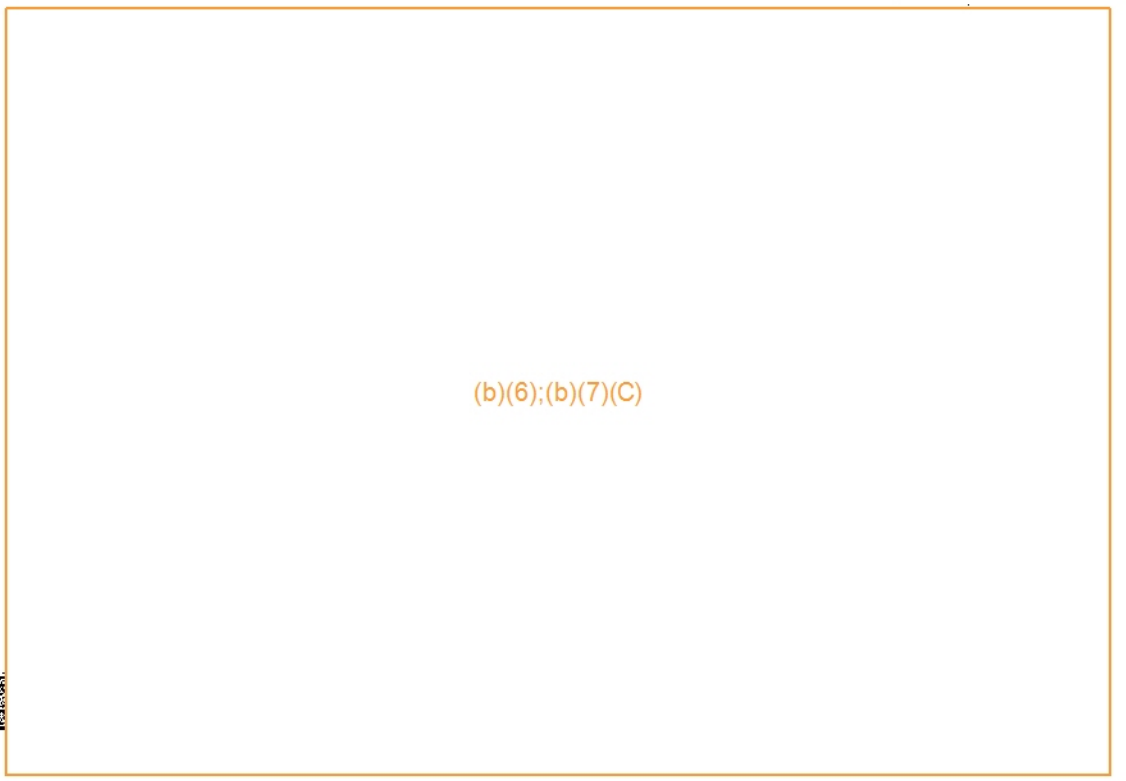
White
Unknown

10/31/2016 (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)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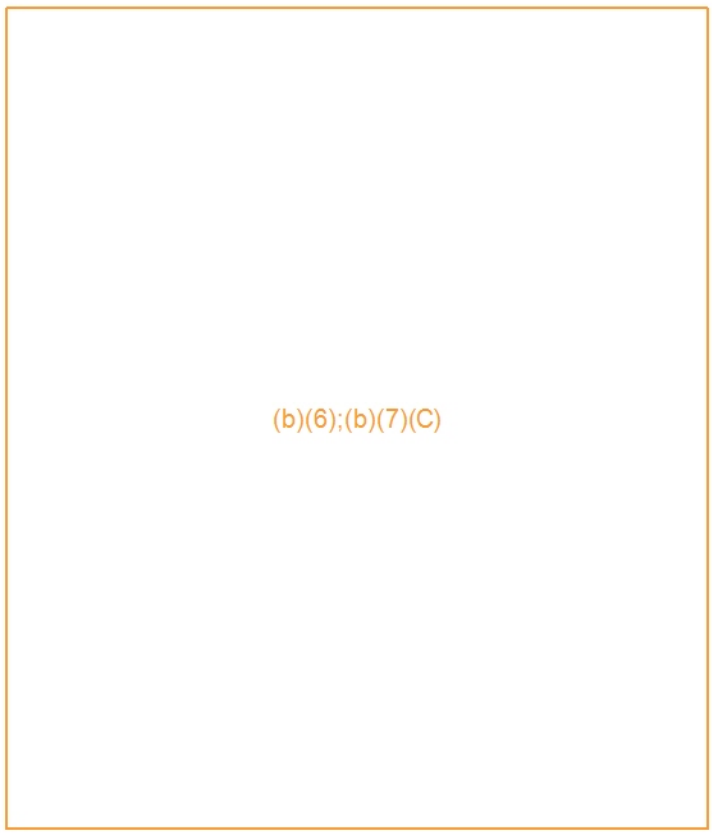
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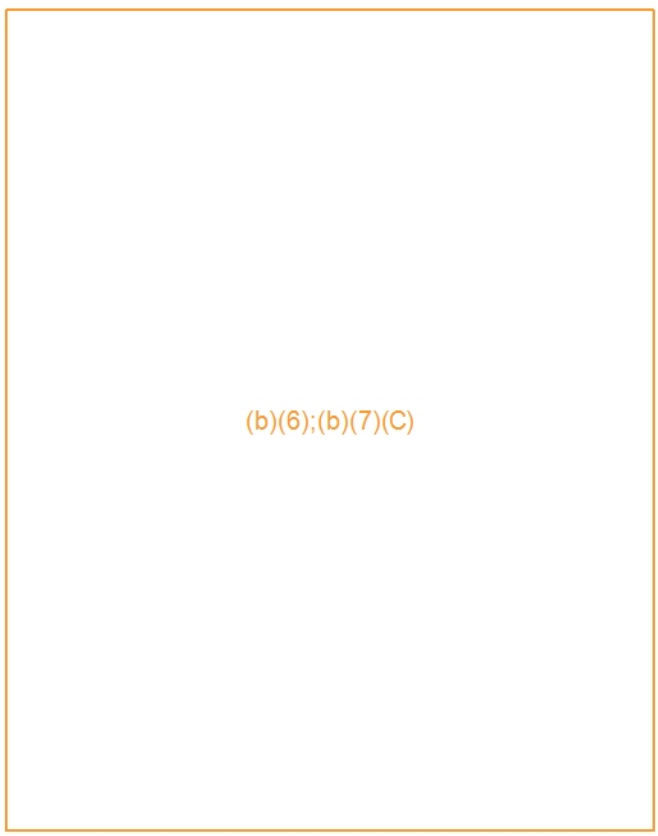
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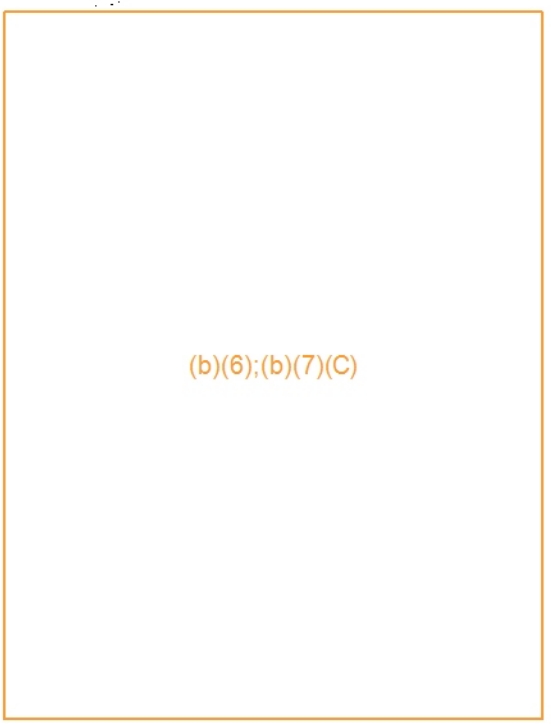
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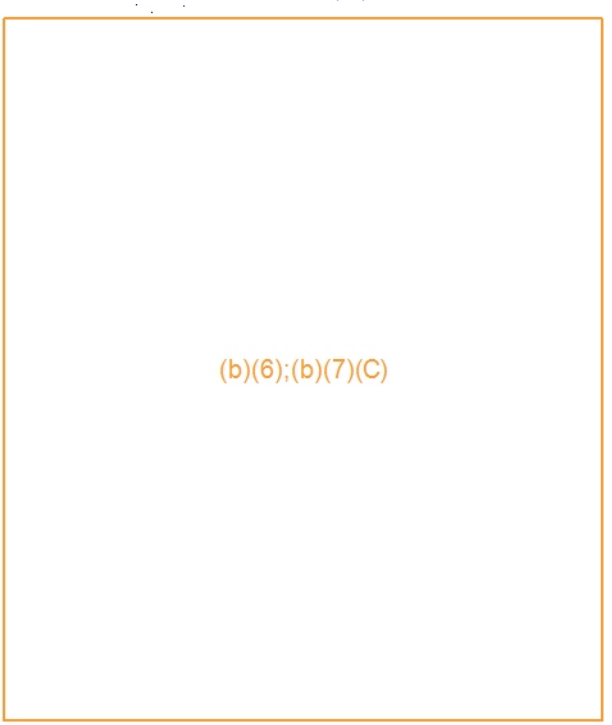
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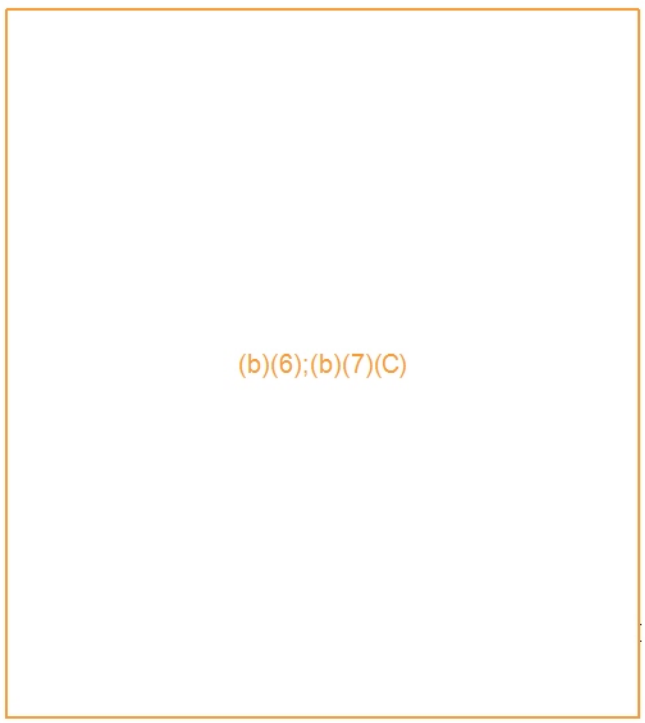
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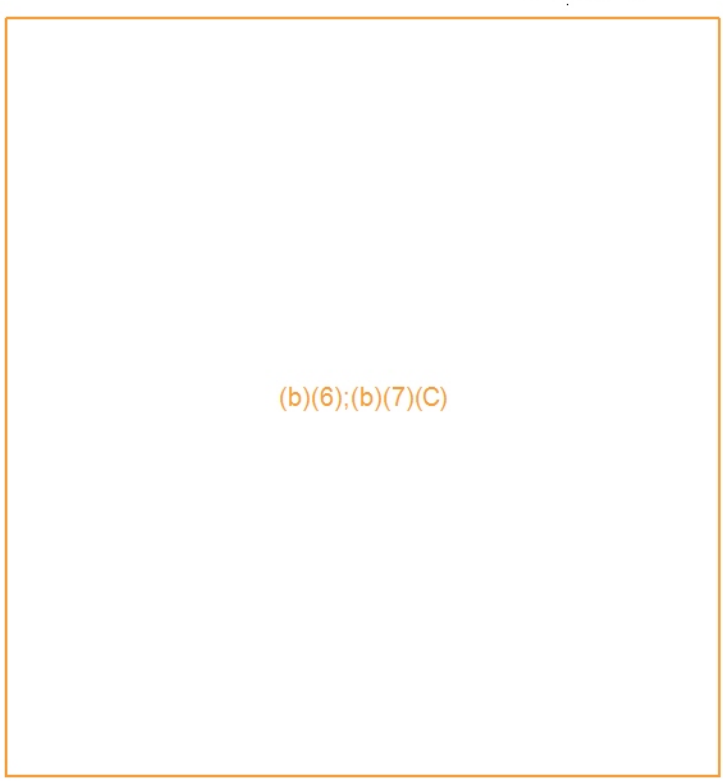
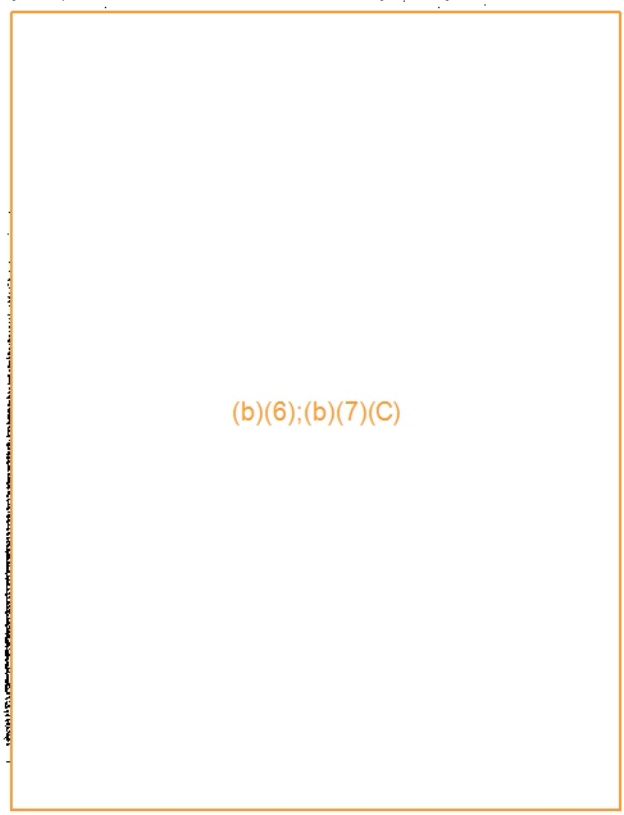
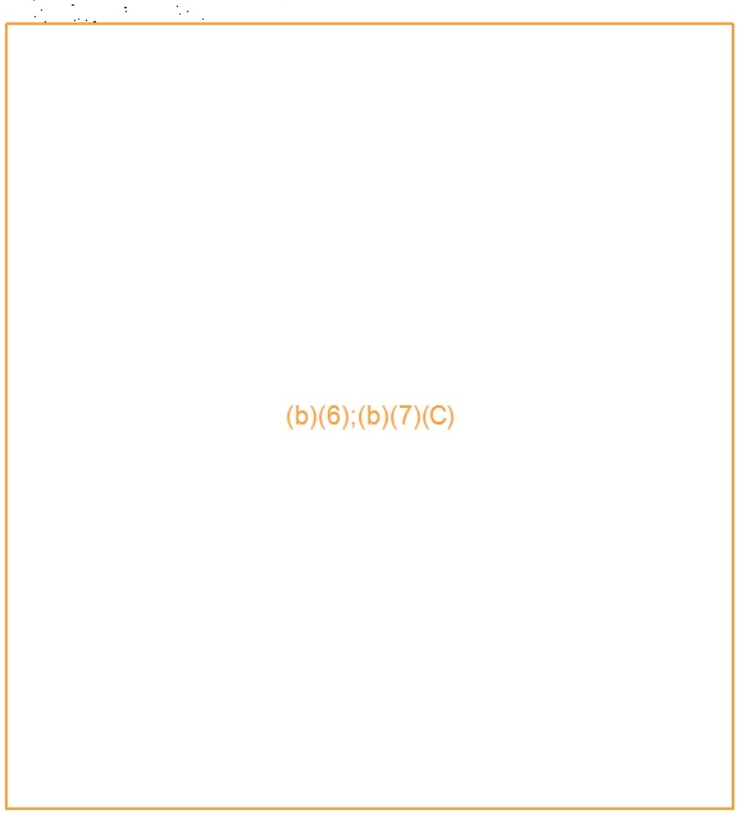
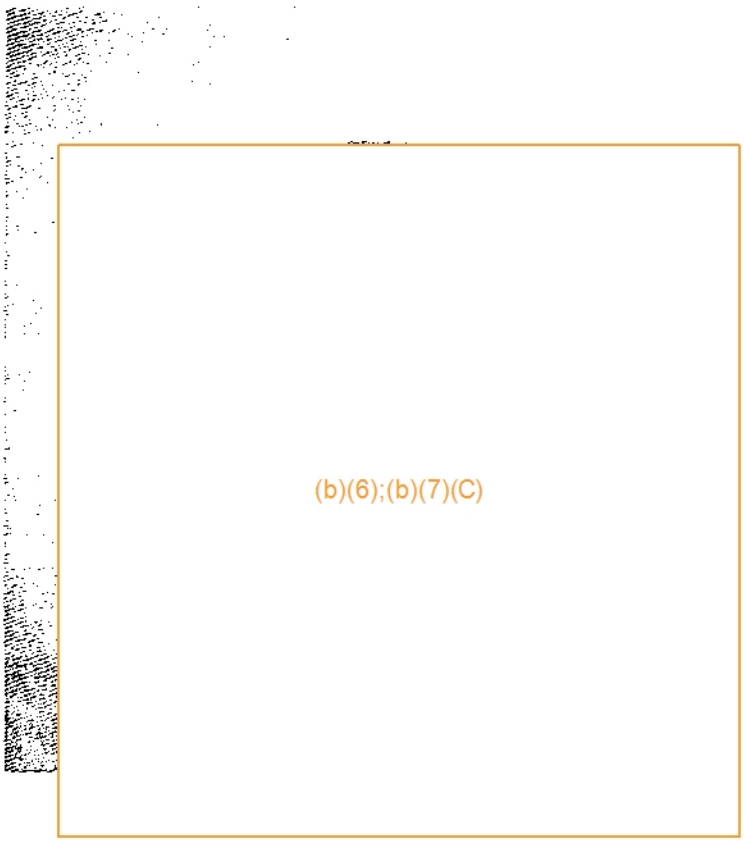

(b)(6);(b)(7)(C)


(b)(6);(b)(7)(C)


(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

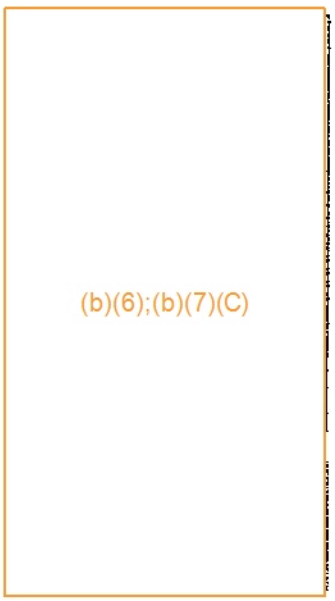


Generated At	Generated By	Agency
11/08/2016 7:26PM	(b)(6);(b)(7)(C)	US CUSTOMS AND BORDER PROTECTION

Massachusetts State Police AFIS Results

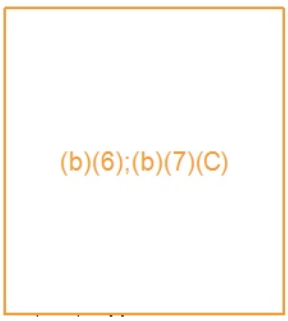
Commonwealth of Massachusetts

DEPARTMENT OF TRANSPORTATION – DL



Name:
Residential Address:

Postal Address:



Date of Birth:
Telephone Number:

Number:
Type:

Number:
Expiration:
Emission:

No Burgens found

04 abr 2016 (b)(6);(b)(7)(C)

UNCLASSIFIED / / LAW ENFORCEMENT SENSITIVE
This document is the property of the National Security State information Center (NSSIC) and may be distributed to state and local law enforcement officials, anti-terrorist officers, intelligence personnel. No portion of this document should be released to the public, the media, or other personnel who do not have a valid need-to-know without prior authorization from the Puerto Rico Fusion Center (NSSIC)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Kent Frederick, Chief Counsel
Office of Chief Counsel, Philadelphia

Thomas Decker, Field Office Director
Enforcement and Removal Operations,
Field Office Philadelphia

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

.

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

Page 2743

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2744

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2745

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Kent Frederick, Chief Counsel
Office of Chief Counsel, Philadelphia

Thomas Decker, Field Office Director
Enforcement and Removal Operations,
Field Office Philadelphia

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

ancestry

(b)(6);(b)(7)(C)

in the Border Crossings: From Mexico to U.S., 1895-1964

Name:	(b)(6);(b)(7)(C)
Gender:	Female
Arrival Age:	11
Birth Date:	(b)(6);(b)(7)(C)
Birth Place:	Phoanix
Arrival Date:	19 Jun 1936
Arrival Place:	Nogales, Arizona, USA
Departure Contact:	Husband (b)(6);(b)(7)(C)
Record has photo?:	No
Record Type:	Card

Source Citation

The National Archives and Records Administration; Washington D.C.; *Index and Manifests of Alien Arrivals at Nogales, Arizona, July 5, 1905 - 1952*; NAI: *2843448*; Record Group Title: *Records of the Immigration and Naturalization Service, 1787-2004.*; Record Group Number: *85*; Microfilm Roll Number: *51*

Source Information

Ancestry.com. *Border Crossings: From Mexico to U.S., 1895-1964* [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2006.

Original data:

View Full Source Citations.

Description

This database contains an index of aliens and some citizens crossing into the U.S. from Mexico via various ports of entry along the U.S.-Mexican border between 1895 and 1964. Information contained in this database includes: name, age, birth date, birthplace, gender, ethnicity, names of individuals accompanied by, port of arrival, and date of arrival. Learn more...

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2017-ICLI-00042 2758

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(7)(B);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIMS MEMORANDUM

(b)(6);(b)(7)(C)

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ellen Ardinger, Chief Counsel
Office of Chief Counsel, Boston

Chris Cronen, Field Office Director
Enforcement and Removal Operations, Field Office Boston

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

ancestry

(b)(6);(b)(7)(C)

in the U.S., Social Security Applications and Claims Index, 1936-2007

Name:	(b)(6);(b)(7)(C)
SSN:	(b)(6);(b)(7)(C)
Gender:	Female
Race:	White
Birth Date:	(b)(6);(b)(7)(C)
Birth Place:	Phoenix Mari, Arizona [Phoenix, Arizona]
Death Date:	4 Aug 1998
Father:	(b)(6);(b)(7)(C)
Mother:	
Type of Claim:	Original SSN.
Signature on SSN Card:	(b)(6);(b)(7)(C)
Relationship of Signature:	Signature name differs from NH's name.
Notes:	Sep 1956: Name listed as (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) 17 Sep 1990: Name listed as (b)(6);(b)(7)(C)

Source Information

Ancestry.com. *U.S., Social Security Applications and Claims Index, 1936-2007* [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2015.

Original data: Social Security Applications and Claims, 1936-2007.

Description

This database picks up where the SSDI leaves off, with details such as birth date and parents' names extracted from information filed with the Social Security Administration through the application or claims process. Learn more...

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2017-ICLI-00012 2/71

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

in the 1930 United States Federal Census

Name:	(b)(6);(b)(7)(C)
Birth Year:	abt 1925
Gender:	Female
Race:	Mexican (Latino)
Birthplace:	Arizona
Marital Status:	Single
Relation to Head of House:	Daughter
Home in 1930:	Wilson, Maricopa, Arizona
Map of Home:	View Map
House Number in Cities or Towns:	1745
Dwelling Number:	60
Family Number:	65
Attended School:	No
Father's Birthplace:	Mexico
Mother's Birthplace:	Mexico

Household Members:

Name	Age
(b)(6);(b)(7)(C)	34
	34
	8
	7
	5
	4
	[4 4/12]

Name	Age
(b)(6);(b)(7)(C)	2
	[2
	10/12]
	0
	[5/12]

Source Citation

Year: *1930*; Census Place: *Wilson, Maricopa, Arizona*; Roll: *60*; Page: *4B*; Enumeration District: *0133*; Image: *543.0*; FHL microfilm: *2339795*

Source Information

Ancestry.com. *1930 United States Federal Census* [database on-line]. Provo, UT, USA: Ancestry.com Operations Inc, 2002.

Original data: United States of America, Bureau of the Census. *Fifteenth Census of the United States, 1930.* Washington, D.C.: National Archives and Records Administration, 1930. T626, 2,667 rolls.

Description

The 1930 Census contains records for approximately 123 million Americans. The census gives us a glimpse into the lives of Americans in 1930, and contains information about a household's family members and occupants including: birthplaces, occupations, immigration, citizenship, and military service. The names of those listed in the census are linked to actual images of the 1930 Census. Learn more...

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2017-ICE-000142-2780

(b)(6);(b)(7)(C)

in the 1930 United States Federal Census

Name:	(b)(6);(b)(7)(C)
Birth Year:	abt 1896
Gender:	Male
Race:	Mexican (Latino)
Birthplace:	Mexico
Marital Status:	Married
Relation to Head of House:	Head
Home in 1930:	Wilson, Maricopa, Arizona
Map of Home:	View Map
House Number in Cities or Towns:	1745
Dwelling Number:	60
Family Number:	65
Home Owned or Rented:	Owned
Home Value:	1000
Radio Set:	No
Lives on Farm:	No
Age at First Marriage:	24
Attended School:	No
Able to Read and Write:	Yes
Father's Birthplace:	Mexico
Mother's Birthplace:	Mexico
Language Spoken:	Spanish
Immigration Year:	1923
Naturalization:	Alien
Able to Speak English:	Yes
Occupation:	Adobe Maker
Industry:	Odd jobs
Class of Worker:	

2017-ICE-00042 2781

Wage or salary worker

Employment: Yes

Household Members:	Name	Age
	(b)(6);(b)(7)(C)	34
		34
		8
		7
		5
		4
		[4 4/12]
		2
		[2 10/12]
		0
		[5/12]

Source Citation

Year: *1930*; Census Place: *Wilson, Maricopa, Arizona*; Roll: *60*; Page: *4B*; Enumeration District: *0133*; Image: *543.0*; FHL microfilm: *2339795*

Source Information

Ancestry.com. *1930 United States Federal Census* [database on-line]. Provo, UT, USA: Ancestry.com Operations Inc, 2002.

Original data: United States of America, Bureau of the Census. *Fifteenth Census of the United States, 1930*. Washington, D.C.: National Archives and Records Administration, 1930. T626, 2,667 rolls.

Description

The 1930 Census contains records for approximately 123 million Americans. The census gives us a glimpse into the lives of Americans in 1930, and contains information about a household's family members and occupants including: birthplaces, occupations, immigration, citizenship, and military service. The names of those listed in the census are linked to actual images of the 1930 Census. Learn more...

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2017-ICLI-00042 2782

FORM. OC - 11

01-5890326-1

REPUBLICA DOMINICANA

JUNTA CENTRAL ELECTORAL

DIRECCION NACIONAL DE REGISTRO DEL ESTADO CIVIL

No. Evento
026-02-2011-01-00003857
Mun. O.C. Año Reg. No.

ACTA INEXTENSA DE NACIMIENTO

(Art. 99 Ley No.659, del 17-7-1944)

CERTIFICAMOS: Que en la Oficialía del Estado Civil de la 2DA. CIRCUNSCRIPCION, LA ROMANA, registrado el día diecisiete del mes de mayo del a(b)(6);(b)(7)(C) a las 11:00 AM, se encuentra inscrito en el Libro No. **00026** de registros de **NACIMIENTO, DECLARACIÓN OPORTUNA**, Folio No. **0146**, Acta No. **00546**, Año **1989**, el registro perteneciente a:

(b)(6);(b)(7)(C)

De sexo MASCULINO, nacido en HOSP.IDSS., LA ROMANA el día(b)(6);(b)(7)(C) o(b)(6);(b)(7)(C) a las 01:00 AM.

DECLARA: (b)(6);(b)(7)(C) quien es el padre, país de nacionalidad República Dominicana, cédula de identidad No. 015099-025

PADRE: (b)(6);(b)(7)(C), país de nacionalidad República Dominicana, nacido el día once del mes de marzo del año mil novecientos treinta y seis ((b)(6);(b)(7)(C) lugar de nacimiento EL SEYBO, casado, de ocupación empleado(a) privado, domiciliado en ens.la hoz # 1ra # 88, cédula de identidad No. 015099-025

MADRE: (b)(6);(b)(7)(C), país de nacionalidad República Dominicana, nacida el día siete del mes de diciembre del año mil novecientos sesenta y cinco (b)(6);(b)(7)(C) lugar de nacimiento LA ROMANA, casada, domiciliada en esta ciudad, cédula de identidad No. 034583-026

ANOTACIONES:

RECTIFICACION: de acuerdo con sentencia # 658-95 de fecha 15-12-95 de la camara civil, comercial y de trabajo de la romana # de oficio 1743 de fecha 09-02-96, de la jce, se rectifica esta acta en el sentido de que figure el apellido de la madre correctamente que lo es Perez y no Sanchez como figura erroneamente..-

No más información debajo de esta línea

El presente documento se expide a petición de la parte interesada en LA ROMANA República Dominicana, hoy día VEINTISEIS (26) del mes de SEPTIEMBRE del año DOS MIL ONCE (2011)

(b)(6);(b)(7)(C)

Oficial del Estado Civil

5696-822010

JUANA VALENTINA DE CASTRO/ ZORRILLA 26/09/2011 2:52PM

DOMINICAN REPUBLIC
ELECTORAL BOARD CENTER
NATIONNAL DIRECTION OF REGISTER OF MARITAL STATUS

INEXTENSIBLE ACT OF BIRTH

We Certified, that in the office of the county clerk of the 2nd Circumscription of La Romana, registered in the day (b)(6);(b)(7)(C) being 11:00 AM, is registered in the book no. 00026 of register of Birth Declaration, Folio no. 0146, Act no. 00546, Year 1989, the register belongs to:

(b)(6);(b)(7)(C)

Of Gender male, born in Hosp. IDSS La Romana in the day (b)(6);(b)(7)(C) of the year (b)(6); being the 1:00 AM.

Declare: (b)(6);(b)(7)(C) who is father, Country of nationality, Dominican Republic, Bearer of the personal I.D no (b)(6);(b)(7)(C)

Father: (b)(6);(b)(7)(C) Country of nationality Dominican Republic, born the day (b)(6);(b)(7)(C) of the year (b)(6);(place of birth El Seybo, Married, private employee, domicile in Ens. La Hoz. #1sra #88, Perosnal ID no. (b)(6);(b)(7)(C)

Mother: (b)(6);(b)(7)(C) country of nationality, Dominican Republic, born in the day (b)(6);(b)(7)(C) of the year (b)(6);(place of birth La Romana, Married, domicile in this city, personal i.D no. (b)(6);(b)(7)(C)

Notes:
Rectification: according with the sentence # 658-95 of date 12/15/95 of the civil and commercial and of work of La Romana #duty 1743 of date 02/09/96, this act in the sense the last name of the mother, correcte that is (b)(6); and no (b)(6);(as appeared with error.

The Present Document is issued upon the request of the interested party in San Francisco De Macoris, Dominican Republic 26th days of the month of September of the year 2011.

I, (b)(6);(b)(7)(C) certify that I am a competent translator of the Spanish and English languages that I translated the above, and that it is a correct translation.

STATE OF NEW YORK
COUNTY OF NEW YORK
SWORN TO BEFORE ME THIS MAY 05, 2012
NOTARY PUBLIC

MARIA BATISTA
Commissioner of Deeds
City of New York No. 3-5171
Certificate filed in New York County
Commission Expires May 1, 20[illegible]

We the People
Of the United States,
SIGNATURE OF BEARER / SIGNATURE DU TITULAIRE / FIRMA DEL TITULAR
PASSPORT
PASSEPORT
PASAPORTE
UNITED STATES OF AMERICA
Type / Type / Tipo
P
Code / Code / Código
USA
Passport No. / No. du Passeport / No. de Pasaporte
(b)(6);(b)(7)(C)
Surname / Nom / Apellidos
(b)(6);(b)(7)(C)
Given Names / Prénoms / Nombres
(b)(6);(b)(7)(C)
Nationality / Nationalité / Nacionalidad
UNITED STATES OF AMERICA
Date of birth / Date de naissance / Fecha de nacimiento
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Place of birth / Lieu de naissance / Lugar de nacimiento
DOMINICAN REPUBLIC
Sex / Sexe / Sexo
F
Date of issue / Date de délivrance / Fecha de expedición
29 Nov 2012
Authority / Autorité / Autoridad
United States
Department of State
Date of expiration / Date d'expiration / Fecha de caducidad
28 Nov 2022
Endorsements / Mentions Spéciales / Anotaciones
SEE PAGE 27
USA
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

FORM. OC - 11

01-5933528-1

REPUBLICA DOMINICANA

JUNTA CENTRAL ELECTORAL

DIRECCION NACIONAL DE REGISTRO DEL ESTADO CIVIL

EXTRACTO DE ACTA DE NACIMIENTO

(Art. 99 Ley No.659, del 17-7-1944)

No. Evento
026-01-2011-01-00009137
Mun. O.C. Año Reg. No.

CERTIFICAMOS: Que en la Oficialía del Estado Civil de la 1RA. CIRCUNSCRIPCION, LA ROMANA, registrado el día tres del mes de septiembre del año (b)(6);(b)(7)(C), se encuentra inscrito en el Libro No. 00197 de registros de **NACIMIENTO, DECLARACIÓN TARDÍA**, Folio No. 0203, Acta No. 00198, Año 1968, el registro perteneciente a:

(b)(6);(b)(7)(C)

De sexo FEMENINO, nacida en ESTA CIUDAD, LA ROMANA el día (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

PADRE: (b)(6);(b)(7)(C), país de nacionalidad República Dominicana, cédula de identidad No. 032862-026

MADRE: (b)(6);(b)(7)(C), país de nacionalidad República Dominicana

ANOTACIONES:

RATIFICACION: RATIFICADA ESTA DECLARACION TARDIA DE NACIMIENTO POR SENT. NO.134 DEL JUZGADO DE PRIMERA INST. DE LA ROMANA (b)(6);(b)(7)(C)

~~~
~~~

Translated Of Birth Certificate
Of (b)(6);(b)(7)(C)

I (b)(6);(b)(7)(C), Journal of the Civil State La Romana City, Dominican Republic. Certify That files in my office, there is a BIRTH CERTIFICATE registered with the number (b)(6);(b) Book (b)(6);(, File (b)(6);(Year 1968, which are extracted the data.

Name of inscribed:*** (b)(6);(b)(7)(C)

In the city of La Romana, Dominican Republic, to (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) official of the Civil State of La Romana, is present (b)(6);(b)(7)(C) Dominican nationality , identification files #(b)(6); series 26, and I have been declared that the day (b)(6);(b)(7)(C) In this city born a creature of sex female to whom he has been given the name of (b)(6);(b)(7)(C) daughter of The declaring Man and the lady (b)(6);(b)(7)(C), (Dominican).

Ratified this declaration late in accordance with judgment of the court of 1st institution to of The La Romana City on Dated (b)(6);(b)(7)(C)

Below these lines there is nothing written.

Annotations:

The present extract is issued at the request of the party in LA ROMANA DOMINICAN REPUBLIC today's date 22 of the month of AUGUST YEAR 2001.

(b)(6);(b)(7)(C)

OFFICIAL OF THE CIVIL STATE

THE UNITED STATES OF AMERICA

CERTIFICATE OF CITIZENSHIP

No. (b)(6);(b)(7)(C)

Application No.: (b)(6);(b)(7)(C)

·ORIGINAL·

Personal description of holder as of date of issuance of this certificate: Sex Male; date of birth (b)(6);(b)(7)(C)
country of birth Dominican Republic; complexion Dark; color of eyes Brown; color of hair Black;
height 5 feet 6 inches; weight 168 pounds; visible distinctive marks Scars on nose & forehead
Marital status Married

I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me.

(b)(6);(b)(7)(C)

(Complete and true signature of holder)

(b)(6);(b)(7)(C)

Be it known that (b)(6);(b)(7)(C)
now residing at (b)(6);(b)(7)(C) Hato Rey, Puerto Rico 00918
having applied to the Commissioner of Immigration and Naturalization for a certificate of citizenship pursuant to Section 341 of the Immigration and Nationality Act, having proved to the satisfaction of the Commissioner that (s)he is now a citizen of the United States of America, became a citizen thereof on September 14, 1937 and is now in the United States.

Now Therefore, in pursuance of the authority contained in Section 341 of the Immigration and Nationality Act, this certificate of citizenship is issued this 24th day of March in the year of our Lord nineteen hundred and seventy-one, and the seal of the Department of Justice affixed pursuant to statute.

Seal

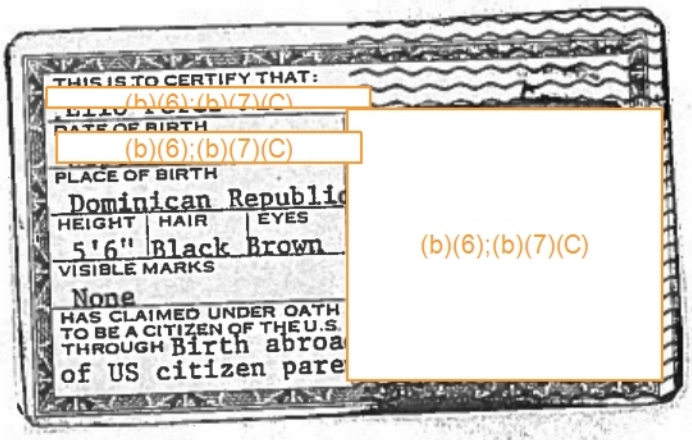
IT IS A VIOLATION OF THE U. S. CODE (AND PUNISHABLE AS SUCH) TO COPY, PRINT, PHOTOGRAPH, OR OTHERWISE ILLEGALLY USE THIS CERTIFICATE.

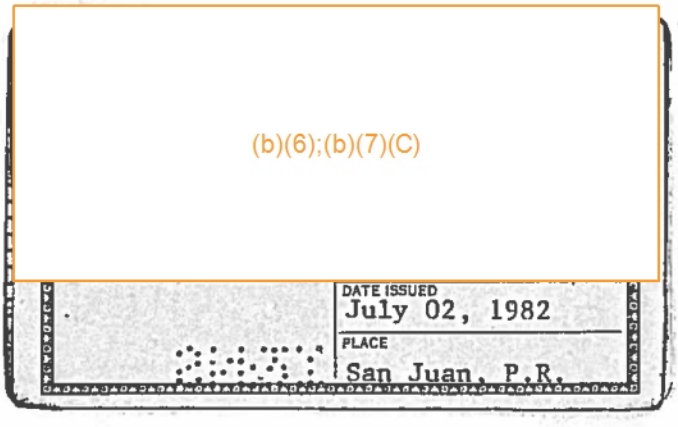
R. F. Farrell

COMMISSIONER OF IMMIGRATION AND NATURALIZATION

DEPARTMENT OF JUSTICE

FORM N-560 (REV 3-1-61)


THIS IS TO CERTIFY THAT:
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
PLACE OF BIRTH
Dominican Republic
HEIGHT
HAIR
EYES
5'6"
Black
Brown
VISIBLE MARKS
None
HAS CLAIMED UNDER OATH
TO BE A CITIZEN OF THE U.S.
THROUGH Birth abroa
of US citizen pare
(b)(6);(b)(7)(C)


(b)(6);(b)(7)(C)
DATE ISSUED
July 02, 1982
PLACE
San Juan, P.R.

The United States Department of State - Bureau of Consular Affairs

NIV Applicant Detail

Report by (b)(6);(b)(7) *on February , 08TH 2017 15:23 ET*

Sensitive But Unclassified (SBU) - Information Protected under INA 222(f) and 9 FAM 40.4: This information "shall be considered confidential" per Section 222(f) of the Immigration and Nationality Act (INA) [8 U.S.C. Section 1202]. Access to and use of such information must be solely for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States under INA 222(f) and 9 FAM 40.4. Do not access this information in anything other than an official capacity, and do not share it without the permission of the Department of State. If this record is for Visa Class LPR, the subject of the record is a lawful permanent resident of the U.S., and the personally identifiable information (PII) contained in the record is subject to the Privacy Act of 1974 and must be protected in accordance with those provisions.

Refer to FPU

(b)(6);(b)(7)(C)

Issuing Post Name
(b)(6);(b)(7)(

Control Number
(b)(6);(b)(7)(C)

Surname
(b)(6);(b)(7)(C)

Given Name
(b)(6);(

Passport Number	Gender	Date of Birth	Nationality
(b)(6);(b) Regular	Male	(b)(6);(b)(7	VENZ

Place of Birth
Venezuela (VENZ)

10 Prints	Fingerprint 1	Fingerprint 2	DHS FIN ID
Yes	Not Available	Not Available	(b)(7)(E)

(b)(7)(E)

Waiver Ground:

Class	Entries	Issue Date	Expiration Date	Foil Number
(b)(7)(	M	30-JUN-2008	26-JUN-2018	(b)(7)(E)

****Watchlist Promotion****

(b)(7)(E)

Case Memo(s)

Date Entered	User ID	Memo
27-JUN-2008	(b)(6);(b)(7	father owns anesthesiology Business, heavy banking, going to Orlando with wife, two sons (univ students), and his mother who is Colombiana resident of VEN, all have prior visas

Adjudication History

Adjud Date	Status
27-JUN-2008	Issued

Foil History

Foil Number	Class	Printed	Foil Status	Date Spoiled
(b)(6);(b)	(b)(7)(E	30-JUN-2008	Printed and passed QA	

Namecheck(s)

Seq #	Status	Source	DNC/Class Hits	DNC/Class Worst Hit	Local Worst Hit	Data Entry Date
1	RECEIVED	CLASS	11	1	NR	27-JUN-2008

Hit Override Description
NAME AND/OR DOB OF APPLICANT DIFFERENT

Application Data

Appointment Date:		**Birth Place City:**	
Passport Number:	(b)(6);(b)(	**Passport Book Number:**	
Passport Issue Date:	01-AUG-2007	**Passport Expires:**	31-JUL-2012
Passport City:	CARACAS	**Passport Country:**	VENZ
Address:	(b)(6);(b)(7)(C)		
City:	VALENCIA	**State:**	CARABOBO
Country:	VENZ	**Postal Code:**	
Barcode Number:		**Visa Type:**	Regular
National ID:	(b)(6);(	**Occupation:**	STUDENT
Employer:	EBP APRENDER Y CREAR		
Petitioner Name:			
STC Name:			
Telephone:	021299(b)((home)		
Contact Name:			
Contact Phone(s):			
Arrival Date:		**Misc Data:**	

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Wen-Ting Cheng, Chief Counsel
(b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5);(b)(6);(b)(7)(C)

FACTS

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. Immigration and Customs Enforcement

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

MEMORANDUM FOR: DIRECTOR OF FIELD LEGAL OPERATIONS, OPLA
ASSISTANT DIRECTOR FOR FIELD OPERATIONS, ERO

FROM: David A. Marin
Field Office Director, Los Angeles, CA

(b)(6);(b)(7)(C)
Deputy Chief Counsel

(b)(6);(b)(7)(C)
Assistant Chief Counsel

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Nombres // Apellidos	(b)(6);(b)(7)(C)		
Lugar de Nacimiento	NIZAO, R.D.		
Nacionalidad	DOMINICANA	Ocupación	ESTUDIANTE
Fecha de Nacimiento	(b)(6);(b)(7)(	Edad	31 3
Cédula Nueva		(b)(6);(b)(7)(C)	
Cédula Anterior	-	(b)(6);(b)(7)	No Especificada
Sexo	Masculino	Tez	INDIO
Categoría	MAYOR DE EDAD	Causa	

Pasaporte

Pasaporte	(b)(6);(b)(7)(	Acta de Nacimiento	(b)(6);(b)(
Nombres // Apellidos		Otro Documento	SC-695435
Residencia		Tipo	-
Padre Extranjero		Menor de Edad	No
Fecha Pasaporte	20-04-2011		
Fecha Vencimiento	20-04-2017		

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Nombres // Apellidos	(b)(6);(b)(7)(C)		
Licencia		(b)(6);(b)(7)(C)	
Expedición Carnet	01-01-1900	Expiración Carnet	01-01-1900
Estado Carnet	Vencida		
Expedición Licencia	20-11-2005	Expiración Licencia	20-11-2009
Estado Licencia	Vencida		

Fichas Fotos Huellas

Ref #	Ficha #	Oficio Número	Número Caso	Fecha Sometimiento
1	[illegible]	0	0	08-04-2013

Page 2805

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of the Freedom of Information and Privacy Act

Page 2806

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(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

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of the Freedom of Information and Privacy Act

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of the Freedom of Information and Privacy Act

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of the Freedom of Information and Privacy Act

Page 2810

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of the Freedom of Information and Privacy Act

Page 2811

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of the Freedom of Information and Privacy Act

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LAW LIBRARY
DIRECTORATE OF LEGAL RESEARCH
WESTERN LAW DIVISION

(202) 707-(b)(6)
(202) 707–1820 (FAX)

April 4, 20 (b)(6);(b)(7)(C)
LL File No. 2008-0007

Dear (b)(6);(b)(7)(C)

In response to your request of March 19, 2008, concerning laws on legitimation in El Salvador, attached please find a report that has been prepared on the subject.

If you have any questions concerning this issue, please call me at (202) 707-(b)(6) or email me at (b)(6);(b)(7)(C). It has been my pleasure to assist you, and I hope that this information will be helpful.

The Law Library of Congress is the legal research arm of the U.S. Congress. We invite you to visit the Law Library Web site at http://www.loc.gov/law, which details all of our services and provides access to the Global Legal Information Network, a cooperative international database of official texts of laws, regulations, and other complementary legal sources of many foreign jurisdictions. Congressional workload permitting, the Law Library also serves the legal research needs of the other branches of the U.S. government and renders reference service to the general public. Should you need further assistance with any other matter pertaining to foreign, comparative, or international law, please contact the Director of Legal Research at law@loc.gov or by fax at 1 (866) 550-0442.

Sincerely,

(b)(6);(b)(7)(C)

Senior Foreign Law Specialist

Attachment

(b)(6);(b)(7)(C)
U.S. Department of Homeland Security
Immigration and Customs Enforcement
630 Sansome St.
San Francisco, CA 94111

(b)(6);(b)(7)(C)

2008-000762

LAW LIBRARY OF CONGRESS

EL SALVADOR

PATERNITY LAW

Executive Summary

This report responds to issues raised by the U.S. Department of Homeland Security concerning a child born out of wedlock in El Salvador and the law on legitimacy in that country in 1978. Under the law of El Salvador at that time, a child conceived or born out of wedlock could be legitimized only by the subsequent marriage of the parents, but he or she had to be previously acknowledged by his parents in a public instrument or during the performance of the marriage. Children born out of wedlock whose paternity had been acknowledged by their father, but who were not legitimized, were known as "natural children," and they had no rights other than those listed in the law. Under newer laws, the issue of categories of children based on filiation is moot, because these have been eliminated. Moreover, all children have equal rights once paternity has been established. Laws on matters of public policy, like filiation, have retroactive effect.

I. Facts Presented

A child was born out of wedlock in El Salvador in 1978. A few days after the child's birth, his biological father appeared before the Office of the Civil Registry, declared the child's birth, and acknowledged paternity of the child. His name was entered in the birth record as the child's father. The child remained living in El Salvador up until January 28, 1986. The requestor presented to the Law Library a photocopy of an authenticated birth certificate of the child and its English translation

II. Issues

1. Whether the child became "legitimate" the day his father registered his birth, in 1978, or on another date.

2. Whether the 1983 amendments to the Constitution and the Family Code of El Salvador promulgated in 1993 are considered retroactive and would make the child legitimate on the day his father registered his birth.

III. Statement of the Law

Paternity of Children Born Out of Wedlock in 1978 in El Salvador

Family law was governed in 1978 by the Civil Code of 1860, as amended.[1] The Code had several categories of children based on their filiation, as follows:

- "Natural children," which was the term applicable to children born out of wedlock whose paternity had been acknowledged by their father. The provisions applicable to them were found in Book I, Title XII of the Code, entitled *[Matters Concerning] Natural Children*.[2]

[1] Código Civil (Ministerio de Justicia, El Salvador, 1981). The Code was amended by Decree No. 490, Feb. 18, 1972, DIARIO OFICIAL (D.O.), Feb. 29, 1972 (official source). The 1981 edition of the Code did not include the 1972 amendment, due to an error.

- "Illegitimate children," who were those born out of wedlock who had not been acknowledged by their father;[3]

- "Legitimate children," who were those born in wedlock;[4]

- "Legitimated children, who were those who were conceived before the marriage but born in wedlock[5] or those born out of wedlock and were legitimized by the subsequent marriage of their parents. If a child had been acknowledged by both parents in a legal instrument, their subsequent marriage legitimated him/her *ipso jure* (by the law itself). An *ipso jure* legitimation also took place when the child was acknowledged by his/her parents in the wedding ceremony, and this recognition was noted in the record of marriage.[6] These children had the same rights as children born in wedlock.[7] Children of such unions were also considered legitimate children.

Under Book I, Title XII of the Code, as amended, the parentage of children born out of wedlock was established with respect to the father by voluntary acknowledgment of the child or by a final court judgment declaring the paternity of the child.[8] In 1978, a father's act of acknowledgment of his children born out of wedlock could be made by means of:

1) a [notarized] public instrument;
2) a will;
3) the marriage certificate [if subsequent to the birth of the child], as stated in article 218;
4) court documents or other court actions;
5) the father, by providing the information on the birth certificate acknowledging paternity, thereby stating and certifying the paternity; The record must show that either the Mayor or Chief of the Civil Registry knew the father or, if the father was not personally known to either of them, the official of the civil registry identified him in a legal manner. The father signed the birth certificate or, if he did not know how to sign [for reasons of illiteracy] or couldn't sign, he left the fingerprint of his right thumb, or in its absence, whichever finger the Mayor or Chief of the Civil Registry specified; or
6) by means of an official document taken before the Attorney General of the Poor, fulfilling equally the formalities specified in section 5.

The acknowledgment was noted on the margin of the birth certificate of the person recognized. For this purpose, the Notary or official before whom the recognition was authorized was required by law to inform the local Mayor immediately after the document was accepted, except in a case which meets the other standards listed in section 5 of the article.

Whenever a certification of the birth certificate is drawn up, the marginal note containing the acknowledgement of paternity shall also be certified.[9]

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[2] *Id.,* Book I, Title XII, arts. 35, 279-286.

[3] *Id.*, arts. 34 & 35.

[4] *Id.,* art. 193.

[5] *Id.,* art. 217. There were two exceptions provided in arts. 215 & 216 that are not relevant to the case at hand.

[6] *Id.*, art. 218. Other instances occurred when the paternity had been declared by a court decision prior to the marriage.

[7] *Id.,* arts. 34, 214, & 218.

[8] *Id.,* art. 279.

[9] *Id.,* art. 280.

Rights of Children Born Out of Wedlock in 1978

A father's formal acknowledgement of his children entitled them to have their rights implemented. Once acknowledged, "natural children," however, did not have any more rights with respect to the father who had acknowledged them than those expressly provided by the laws.[10]

A father had the obligation to contribute to the expenses connected with the raising and education of his natural child. The obligation to educate the child includes, at least, elementary school and the learning of a profession or trade.[11] The Court would, when needed, determine the amount that each parent should contribute for the raising and education of their child, taking into account their means and circumstances.[12] If one of the parents died, the surviving parent would pay the entire cost of raising and educating their children.[13]

In the absence or inability of the mother to care for her children, the father had the obligation to personally care for his natural children in the same way that a father was obliged to care for his legitimate children under Article 233 of the Code. The Court had to apply this same rule when, as a result of the physical or moral inabilities of the mother, it entrusted a father with the personal care of his natural children.[14]

The rules of intestate succession placed natural children in a disadvantageous order of succession from their father with respect to legitimate children.[15]

A New Constitution of 1983

A new Constitution was promulgated in 1983 eliminating discriminatory designations due to matters of filiation and parentage and granting all children equal rights. The pertinent provision may be paraphrased as follows:

> **Article 36**. Children born in or out-of-wedlock and adopted children have equality of rights in regard to their parents. It is the parents' obligation to provide their children with protection, assistance, education, and security.
>
> No mention shall be entered in the records of the Civil Registry of qualifications on the nature of filiation, and birth certificates shall not mention the marital status of the parents.
>
> …
>
> The law shall, likewise, prescribe the manners of investigating and establishing paternity.[16]

Based on the principle of supremacy of the Constitution,[17] article 36 of the Constitution invalidated the existing provisions of the Civil Code described above, which classified children according to the nature of their filiation and granted them unequal rights.

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[10] *Id.,* art. 285.

[11] *Id.,* art. 291.

[12] *Id.*

[13] *Id.*, arts. 291 & 239.

[14] *Id.,* art. 289.

[15] *Id.,* art. 988.

[16] Constitución de la República del Salvador, art. 36, D.O., Dec. 16, 1983.

[17] *Id.*, art. 246.

The Family Code of 1993

The Family Code of 1993, being in harmony with the Constitution, granted equal rights to all children regardless of their filiation,[18] and none of these rights can be renounced.[19] Under the Code, when children are born within a union not bound by marriage, they need to have their filiation established in order to have their rights implemented. Once paternity has been established, the effects thereof concerning parental authority, inheritance, and any other rights are completely equal, regardless of whether a child was born in or out of wedlock. Moreover, the Family Code explicitly repealed many provisions and titles of the Civil Code related to domestic relations, such as: Title VIII, Matters Concerning Children Legitimated by Post-Conception Matrimony; Title XII, On Natural Children; and Title XIII, On Rights and Duties Between Parents and Illegitimate Children.[20]

Non-Retroactivity of the Laws

The 1983 Constitution states that the law may not have retroactive effect, except in matters of public policy (*orden público*) and in criminal matters if the law is favorable to an offender.[21] Although a provision of the Civil Code which dates from 1860 states that the law never has retroactive effect,[22] the provisions of the Constitution prevail over any other law.[23]

Commenting on four groups of laws that belong to the category known as "private law" (*derecho privado*)[24] that are considered matters of public policy (*orden público*), a scholar, who is a professor of law and former Court of Appeals judge from El Salvador, stated that these groups are constituted by those laws which are mandatory and which establish prohibitions, listing among them the laws governing the civil status of people and family laws, such as marriage, parental authority, and filiation. He adds that these private laws of public policy (*orden público*) are referred to in article 12 of the Civil Code.[25] Article 12 of the Civil Code provides that the rights granted by the laws can be waived, provided they only take into account the individual interests of the person who waives the rights and provided such a waiver is not prohibited.[26] As stated above, the current equality of children in El Salvador is a Constitutional mandate, and under the Family Code, their rights cannot be waived.

Taking together the above constitutional and statutory instruments, the new provisions establishing equality of rights to all children are of immediate application to the present and future legal situations. They also govern those legal situations that were established and created before their promulgation and continue in existence after such promulgation. This new legislation produces effects *erga omnes* (in relation to everyone).

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[18] Decreto No. 677 del 22 de Noviembre de 1993, Código de Familia, art. 202, D.O., Dec. 13, 1993.

[19] *Id.*, art. 5. The Code provision includes the phrase "excluding the legal exceptions."

[20] *Id.*, art. 403.

[21] Constitución de la República del Salvador, art. 21, D.O., Dec. 16, 1983.

[22] Código Civil, art. 9 (Ministerio de Justicia, El Salvador, 1981).

[23] Constitución de la República del Salvador, art. 246, D.O., Dec. 16, 1983.

[24] *Derecho privado* (private law) regulates the acts of private parties performed on their own initiative, in their own name, and for their own benefit. GUILLERMO CABANELLAS, II DICCIONARIO ENCICLOPÉDICO DE DERECHO UUSUAL 612 (12th. ed., Editorial Heliasta, S.R.L., Buenos Aires, 1979).

[25] ALEJANDRO ESCALANTE DIMAS, LA TÉCNICA DEL CÓDIGO CIVIL DE 1860, DERECHO Y CRÍTICA 57-58, 63 (Impresiones Kelly, El Diario de Hoy, San Salvador, 1961).

[26] Código Civil, art. 12 (Ministerio de Justicia, El Salvador, 1981).

In similar circumstances, other countries, such as the Dominican Republic, have applied their laws in this way. However, the Dominican *Corte de Casación* (the nation's highest court) has consistently held that the only exception to this principle of applicability of the law is when the application of the new law clashes with vested rights. The new law shall not disturb inheritances already distributed.[27]

IV. Conclusion

In 1978, a child who was conceived or born out of wedlock was legitimized by the subsequent marriage of the parents, provided that the parents had previously acknowledged the child in a public instrument or during the performance of the marriage ceremony and this recognition was noted in the record of the marriage. This was the only way that a child could be legitimized. The facts of this case, as provided by the requester, do not indicate that the child was legitimized by the subsequent marriage of his parents, because there is no indication that his parents were ever married. He was acknowledged by his father, and under the law of 1978 he was within the category of a "natural child." A natural child in 1978 did not have the status of a legitimated child.

The question of the child's lack of legitimacy or categorization as a "natural child" is currently moot, because the constitutional amendments of 1983 eliminated all categories of children based on their filiation and granted them equal rights. These constitutional provisions were reaffirmed by the Family Code of 1993. Under the Constitution, the law may have retroactive effect in matters of public policy (*orden público*). The rights granted by the Family Code are matters of public policy (*orden público*) and may not be waived.

Prepared by Norma C. Gutiérrez
Senior Foreign Law Specialist
April 2008

[27] PLINIO TERRERO PEÑA, COMPENDIO DE DERECHO CIVIL 183-187 (Editora Corripio, Santo Domingo, 1986).

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

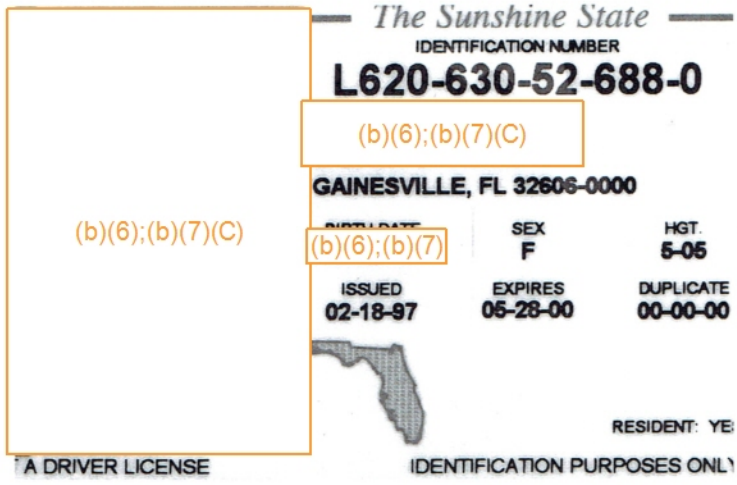
(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)


The Sunshine State
IDENTIFICATION NUMBER
L620-630-52-688-0
(b)(6);(b)(7)(C)
GAINESVILLE, FL 32606-0000
(b)(6);(b)(7)(C)
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IDENTIFICATION PURPOSES ONL

U.S. Immigration and Customs Enforcement

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

April 18, 2017

MEMORANDUM FOR: DIRECTOR OF FIELD LEGAL OPERATIONS, OPLA
ASSISTANT DIRECTOR FOR FIELD OPERATIONS, ERO

FROM: David Marin
Field Office Director, Los Angeles, CA

Sandra Anderson, Chief Counsel
Office of the Chief Counsel, Los Angeles

(b)(6);(b)(7)(C) Acting Deputy Chief Counsel
Office of the Chief Counsel, Los Angeles

(b)(6);(b)(7)(C), Assistant Chief Counsel
Office of the Chief Counsel, Los Angeles

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS[1]

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C)

1 - 1

The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection.

Le Secrétaire d'Etat des Etats-Unis d'Amérique prie par les présentes toutes autorités compétentes de laisser passer le citoyen ou ressortissant des Etats-Unis titulaire du présent passeport, sans délai ni difficulté et, en cas de besoin, de lui accorder toute aide et protection légitimes.

El Secretario de Estado de los Estados Unidos de América por el presente solicita a las autoridades competentes permitir el paso del ciudadano o nacional de los Estados Unidos aquí nombrado, sin demora ni dificultades, y en caso de necesidad, prestarle toda la ayuda y protección lícitas.

(b)(6);(b)(7)(C)

SIGNATURE OF BEARER/SIGNATURE DU TITULAIRE/FIRMA DEL TITULAR

NOT VALID UNTIL SIGNED

PASSPORT
PASSEPORT
PASAPORTE

UNITED STATES OF AMERICA

Type / Type / Tipo: P
Code / Code / Código: USA
Passport No. / No. du Passeport / No. de Pasaporte: (b)(6);(b)(7)(C)

Surname / Nom / Apellidos: (b)(6);(b)(7

(b)(6);(b)(7)(C)

Nationality / Nationalité / Nacionalidad: UNITED STATES OF AMERICA

Date of birth / Date de naissance / Fecha de nacimiento: (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Sex / Sexe / Sexo: F
Place of birth / Lieu de naissance / Lugar de nacimiento: VENEZUELA

Date of issue / Date de délivrance / Fecha de expedición: 29 SEP 2006
Authority / Autorité / Autoridad: United States Department of State

Date of expiration / Date d' expiration / Fecha de caducidad: 28 SEP 2016

Amendments / Modifications / Enmiendas: SEE PAGE 24

(b)(6);(b)(7)(C)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Jo Ann McLane, Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of Chief Counsel

U.S. Department of Homeland Security
880 Front Street (b)(6);(7)
San Diego, CA 92101

U.S. Immigration and Customs Enforcement

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Gregory J. Archambeault, Field Office Director
Enforcement and Removal Operations, Field Office San Diego

(b)(6);(b)(7)(C) Deputy Chief Counsel
Office of Chief Counsel, San Diego

(b)(6);(b)(7)(C) Assistant Chief Counsel
Office of Chief Counsel, San Diego

SUBJECT: Claim to U.S. Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Page 2850

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2851

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2852

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2853

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2854

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2855

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2856

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Esta Edición ha estado al cuidado del
Lic José M. Cajica.

Colección de Leyes Mexicanas

Serie: LEYES DEL ESTADO DE CHIHUAHUA

Código Civil
para el E. L. y S. de Chihuahua

(Edición limitada a 600 Ejemplares)

EDITORIAL CAJICA, S. A.
19 Sur 2501
Puebla, Pue., Méx.
1975

2017-ICSI-00012 2863

Registro. Ningún otro documento ni medio de prueba es admisible para comprobar el estado civil, salvo los casos expresamente exceptuados por la ley.

41.—Cuando no hayan existido registros, se hayan perdido, estuvieren ilegibles, o faltaren las hojas en que se pueda suponer que se encontraba el acta, se podrá recibir prueba del acto por instrumentos o testigos; pero si uno solo de los registros se ha inutilizado y existe el otro ejemplar, de éste deberá tomarse la prueba, sin admitirla de otra clase.

42.—Todos los libros del Registro Civil serán visados en su primera y última hojas por el Gobernador del Estado o por el funcionario que éste designe y autorizados con el sello del mismo en todas las demás. En la última se dejará un espacio suficiente para cerrar el libro con una acta en que se hagan constar el día, mes y año en que así se procede y el número de actas levantadas.

Los libros originales y los documentos correspondientes quedarán en el archivo de la Oficina, remitiéndose los duplicados al Archivo del Poder Ejecutivo, por conducto de la Oficina Central, la cual constituye el órgano de comunicación de los Oficiales del Registro Civil con el Gobierno del Estado.

43.—El Oficial del Registro Civil que no cumpla la prevención de remitir oportunamente a la mencionada oficina, el ejemplar de que habla el artículo anterior, será destituido de su cargo.

44.—No podrá asentarse en las actas, ni por vía de nota o advertencia, sino lo que debe ser

declarado para el acto preciso a que ellas se refieren y lo que esté expresamente prevenido en la ley.

45.—Cuando los interesados no puedan concurrir personalmente, podrán hacerse representar por un mandatario especial para el acto, cuyo nombramiento conste por lo menos en instrumento privado otorgado ante dos testigos. En los casos de matrimonio o de reconocimiento de hijos, se necesita poder otorgado en escritura pública o mandato extendido en escrito privado firmado por el otorgante y dos testigos y ratificadas las firmas ante Notario Público, Juez de Primera Instancia, Menor o de Paz.

46.—Los testigos que intervengan en las actas del Registro Civil, serán mayores de edad, prefiriéndose a los que designen los interesados, aun cuando sean sus parientes.

47.—La falsificación de las actas y la inserción en ellas de circunstancias o declaraciones prohibidas por la ley, causarán la destitución del Oficial del Registro Civil, sin perjuicio de las penas que la ley señale para el delito de falsedad, y de la indemnización de daños y perjuicios.

48.—Los vicios o defectos que haya en las actas, sujetan al Oficial del Registro a las correcciones que señale el Reglamento respectivo; pero cuando no sean substanciales no producirán la nulidad del acto; a menos que judicialmente se pruebe la falsedad de éste.

49.—Toda persona puede pedir testimonio de las actas del Registro Civil, así como de los

2017-ICLI-00012 2864

apuntes y documentos, con ellas relacionados, y los registradores están obligados a darlo.

50.—Los actos y actas del estado civil relativas al Oficial del Registro, a su cónyuge y a los ascendientes o descendientes de cualquiera de ellos, no podrán autorizarse por el mismo Oficial, pero se asentarán en los propios libros y se autorizarán, en la capital del Estado por el Presidente Municipal y en los demás lugares, por los respectivos suplentes o por quienes hagan sus veces.

51.—Las actas del Registro Civil extendidas conforme a las disposiciones que preceden, hacen prueba plena en todo lo que el Oficial del Registro Civil, en el desempeño de sus funciones, da testimonio de haber pasado en su presencia, sin perjuicio de que el acta pueda ser redargüida de falsa.

Las declaraciones de los comparecientes, hechas en cumplimiento de lo mandado por la ley, hacen fe hasta que se pruebe lo contrario. Lo que sea extraño al acta no tiene valor alguno.

52.—Los encargados del Registro Civil serán sustituidos en sus faltas temporales por sus respectivos suplentes en las Presidencias Municipales o de sección Municipal y en la Ciudad de Chihuahua por el Presidente Municipal.

53.—El Ministerio Público cuidará de que los libros del Registro Civil se lleven debidamente, pudiendo inspeccionarlos en cualquiera época. Durante los seis primeros meses de cada año, el Procurador General de Justicia, por medio de los Agentes adscritos a la Oficina

de su cargo o de los Agentes establecidos en la Capital del Estado, revisarán los libros remitidos al archivo durante el año anterior, para el efecto de hacer la consignación correspondiente de los registradores que hubieren incurrido en infracciones antisociales en el ejercicio de su encargo, o de dar aviso a las autoridades administrativas de las faltas en que hubieren incurrido esos empleados.

La infracción de este artículo será causa de responsabilidad para los agentes del Ministerio Público y se castigará en la forma que determine la Ley Orgánica respectiva.

CAPITULO II

DE LAS ACTAS DE NACIMIENTO

54.—Las declaraciones de nacimiento se harán presentando al niño ante el Oficial del Registro Civil, en su oficina o en la casa donde aquél hubiere nacido.

55.—Los padres tienen obligación de declarar el nacimiento dentro de los sesenta días de ocurrido.

Los médicos, matronas o personas que hubieren asistido al parto, tienen obligación de dar aviso del nacimiento al encargado del Registro Civil dentro de los diez días siguientes. La misma obligación tiene el jefe de familia, en cuya casa haya tenido lugar el alumbramiento, si éste ocurrió fuera de la casa paterna.

Recibido el aviso, el Oficial del Registro Civil tomará las medidas legales que sean nece-

2017-ICLI-00012 2865

sarias a fin de que se levante el acta de nacimiento conforme a las disposiciones relativas.

56.—Las personas que estando obligadas a declarar el nacimiento, lo hagan fuera del término fijado, serán castigadas con una multa de cinco a cincuenta pesos, que impondrá la autoridad municipal del lugar donde se haya hecho la declaración extemporánea de nacimiento.

En la misma pena incurrirán las personas que no cumplan la obligación de dar el aviso prevenido en el párrafo segundo del artículo anterior.

57.—En las poblaciones en que no haya Oficial del Registro Civil, el niño deberá ser presentado a la persona que ejerza la autoridad administrativa o sea el representante del Ejecutivo y éste dará la constancia respectiva que los interesados llevarán al Oficial del Registro que corresponda para que asiente el acta.

58.—El acta de nacimiento se extenderá con asistencia de dos testigos que pueden ser designados por las partes interesadas. Contendrá el día, la hora y el lugar del nacimiento, el sexo, el nombre y apellido que se le ponga, sin que por motivo alguno puedan omitirse, y la razón de si se ha presentado vivo o muerto. Al margen se tomará la huella digital del presentado.

Si éste se presenta como hijo de padres desconocidos, el Oficial del Registro le pondrá nombre y apellido, haciéndose constar esta circunstancia en el acta.

59.—Cuando el nacido fuere presentado como hijo de matrimonio, se asentarán los nombres, domicilio y nacionalidad de los padres; los nombres y domicilios de los abuelos y los de la persona que hubiere hecho la presentación. Los testigos de que habla el artículo 58 declararán también acerca de la nacionalidad de los padres del presentado al Registro.

60.—Para que se haga constar en el acta de nacimiento, el nombre del padre de un hijo nacido fuera de matrimonio, es necesario que aquél lo pida por sí o por apoderado especial constituido en la forma establecida en el artículo 45; haciéndose constar en todo caso la petición.

La madre no tiene derecho de dejar de reconocer a su hijo. Tiene obligación de que su nombre figure en el acta de nacimiento de su hijo. Si al hacerse la presentación no se da el nombre de la madre, se pondrá en el acta que el presentado es hijo de madre desconocida; pero la investigación de la maternidad podrá hacerse ante los Tribunales de acuerdo con las disposiciones relativas de este Código.

Además de los nombres de los padres se hará constar en el acta de nacimiento su nacionalidad y domicilio; declarando acerca de la primera circunstancia los testigos que deben intervenir en el acto.

61.—Si el padre o la madre no pudieren concurrir ni tuvieren apoderado, pero solicitaren ambos o alguno de ellos, la presencia del Oficial del Registro, éste pasará al lugar en que se halle el interesado, y allí recibirá de él la petición de que se mencione su nombre; todo lo cual se asentará en el acta.

2017-ICLI-00012 2866

1 - 3

(b)(6),(b)(7)(C)

PASSPORT

PASSPORT NUMBER
NUMERO DU PASSEPORT (b)(6),(b)(7)(C)

PEN AND INK ENTRY OF THE PASSPORT NUMBER BY THE BEARER

FOR YOUR PROTECTION PENCIL IN THE NAMES AND ADDRESSES BELOW.

PLEASE KEEP THESE ENTRIES UP TO DATE.

BEARER'S ADDRESS IN THE UNITED STATES:
ADRESSE DU TITULAIRE AUX ETATS-UNIS:

BEARER'S FOREIGN ADDRESS:
ADRESSE DU TITULAIRE A L'ETRANGER:

IN CASE OF EMERGENCY, NOTIFY THE NEAREST AMERICAN EMBASSY OR CONSULATE OR THE STATE DEPARTMENT, CITIZENS EMERGENCY CENTER, AT (202) 647-5225 AND THE INDIVIDUAL NAMED BELOW:

EN CAS D'URGENCE, PRIERE D'AVISER L'AMBASSADE OU LE CONSULAT DES ETATS-UNIS LE PLUS PROCHE OU LE CENTRE DES URGENCES CONSULAIRES DU DEPARTEMENT D'ETAT AU (202) 647-5225 AINSI QUE LA PERSONNE DONT LE NOM FIGURE CI-DESSOUS.

Name
Nom

Address
Adresse

Telephone
Téléphone

USA

The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection.

Le Secrétaire d'Etat des Etats-Unis d'Amérique prie par les présentes toutes autorités compétentes de laisser passer le citoyen ou ressortissant des Etats-Unis titulaire du présent passeport, sans délai ni difficulté et, en cas de besoin, de lui accorder toute aide et protection légitimes.

2017-ICLI-00012 2867

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
15 Governor Drive
Newburgh, NY 12550

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

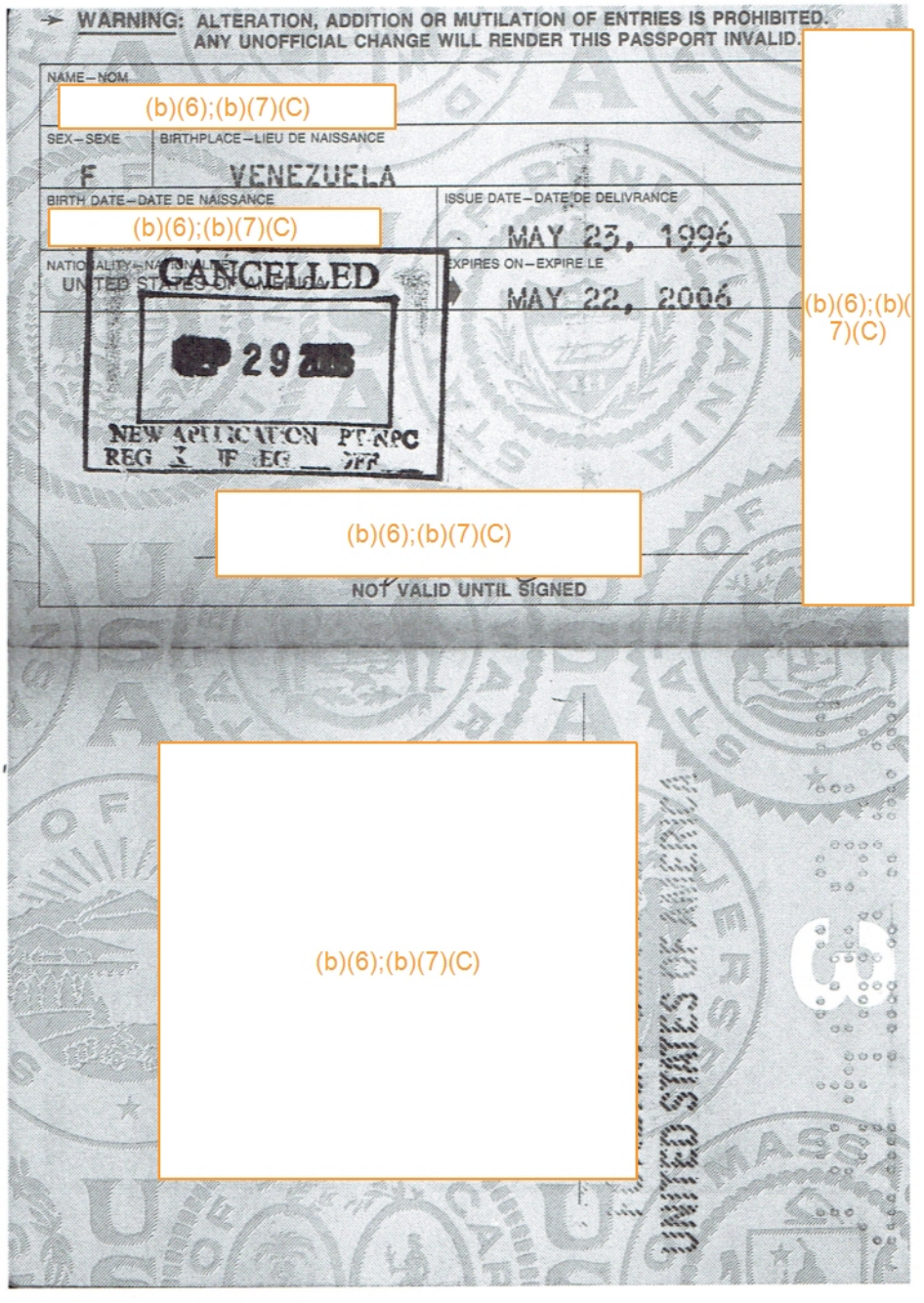
(b)(5);(b)(6);(b)(7)(C)

CONCLUSION AND RECOMMENDATION

(b)(5)

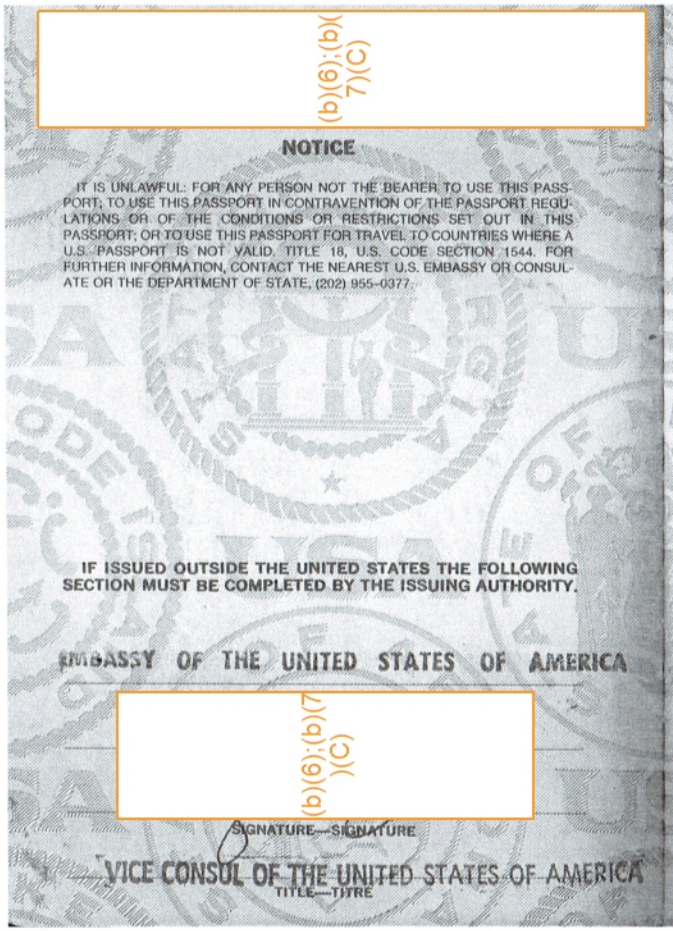
(b)(6);(b)(7)(C)

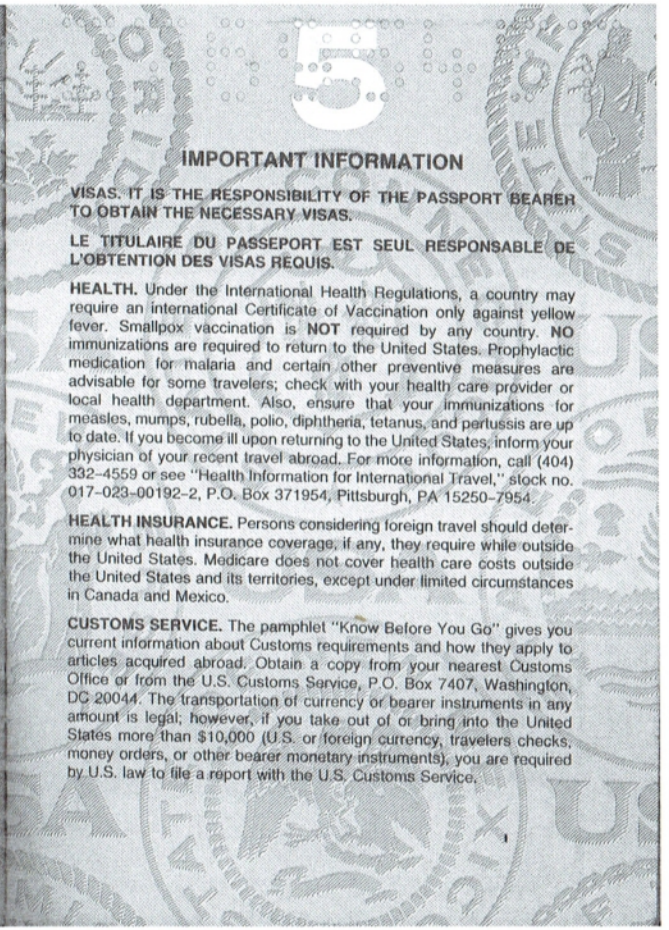
2-3


WARNING: ALTERATION, ADDITION OR MUTILATION OF ENTRIES IS PROHIBITED.
ANY UNOFFICIAL CHANGE WILL RENDER THIS PASSPORT INVALID.
NAME—NOM
(b)(6);(b)(7)(C)
SEX—SEXE
F
BIRTHPLACE—LIEU DE NAISSANCE
VENEZUELA
BIRTH DATE—DATE DE NAISSANCE
(b)(6);(b)(7)(C)
ISSUE DATE—DATE DE DELIVRANCE
MAY 23, 1996
NATIONALITY—NATIONALITÉ
UNITED STATES OF AMERICA
EXPIRES ON—EXPIRE LE
MAY 22, 2006
CANCELLED
29
NEW APPLICATION PT-NPC
REG
(b)(6);(b)(7)(C)
NOT VALID UNTIL SIGNED
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

3-3

(b)(6);(b)(7)(C)





2017-ICLI-00012 2881

Case Search: (b)(6);(b)(7)(C) Search

PLAnet Case Summary | Documents | RAPS | EID | EOIR

Case Properties

A-Number: (b)(6);(b)(7)(C) First Name: (b)(6); Last Name: (b)(6);(b)(7)(C)

EOIR Fullname: (b)(6);(b)(7)(C)

Case Status: Admin Final Order

Aggravated Felon:	No	Juvenile:	No	NS Interest:	No	USCIS Duress Exemption:	
Gang Affiliation:	No	LE Interest:	No	Stay in Effect:	No		
Ineffective Assistance:	No	LPR:	No	U.S. Military:	No		
HR Interest:	No	Operations:	No	Operation:			

Case History

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
5/9/2017 6:16 PM	Case Prep U	(b)(5);(b)(6);(b)(7)(C)	File Review			POCZTER AVIVA	(b)(6);(b)(7)(C)	5/9/2017 10:19:55 PM	installer CRM
5/9/2017 1:00 PM	Master			Dismissed	Waived by Both	POCZTER AVIVA		5/9/2017 6:34:38 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
		(b)(5);(b)(6);(b)(7)(C)							
5/9/2017 0:46 PM	Case Prep IJ		USC Memo Prep			POCZTER AVIVA	(b)(6);(b)(7)(C)	5/9/2017 4:52:31 PM	installer CRM
5/8/2017 8:42 PM	Case Prep IJ		USC Memo Prep			POCZTER AVIVA	(b)(6);(b)(7)(C)	5/9/2017 12:44:37 AM	installer CRM
5/8/2017 1:42 PM	Case Prep IJ		Consult			POCZTER AVIVA		5/8/2017 5:46:57 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
		(b)(5);(b)(6);(b)(7)(C)							

Event

Event Date	5/8/2017	**Case**	206688362
Last Name	(b)(6);(b)(7)(C)	**Modified By**	installer CRM
First Name		**Immigration Judge**	POCZTER AVIVA
Govenment Attorney	(b)(6);(b)(7)(		

Event Details

No File	No	**Alien Due Date**		**Alien Original Due Date**	
No Show	No	**DHS Due Date**		**DHS Original Due Date**	
Pro Se	No	**Apeal Due Date**		**Party**	
EAJA Settled	No	**EOIR Adjournment Party**			
EAJA Award Amount		**EOIR Adjournment Reason**			
Bond Included	No	**Bond Order**		**Initial Bond Amount**	
		New Bond Amount			

Event Information

Event Type	Case Prep II		
Action	Consult	**Order**	
Appeal Reserved		**Event Time (Min.)**	15
Notes	(b)(6);(b)(7)(C);(b)(5)		

5/8/2017 9:04 AM	Case Prep I	Consult	POCZTER AVIVA	(b)(6); (b)(7)(	5/8/2017 5:48:00 PM	installer CRM
	(b)(5);(b)(6);(b)(7)(C)					

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
		WORK PRODUCT** The OCC							

(b)(6);(b)(7)(C);(b)(5)

(b)(7)(E)

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
5/4/2017 1:51 PM	Case Prep	(b)(6)	Consult			POCZTER AVIVA	(b)(6);(b)(7)(C)	5/4/2017 5:53:24 PM	installer CRM
5/4/2017 0:46 PM	Case Prep	(b)(6)	USC Memo Prep			POCZTER AVIVA		5/4/2017 4:47:35 PM	installer CRM
5/4/2017 11:37 AM	Case Prep	(b)(6) (b)(6); (b)(6);(b)(7)(C);(b)(5)	Consult			POCZTER AVIVA		5/4/2017 3:45:41 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Government Attorney	Modified On	Modified By

(b)(6);(b)(7)(C);(b)(5)

(b)(7)(E)

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Government Attorney	Modified On	Modified By
5/4/2017 11:22 AM	Case Prep	(b)(	USC Memo Prep			POCZTER AVIVA		5/4/2017 3:24:23 PM	installer CRM
5/3/2017 6:00 PM	Case Prep	(b)(6);(b)(7)(C);(b)(5)	USC Memo Prep			POCZTER AVIVA		5/4/2017 3:22:31 PM	installer CRM
5/2/2017 6:00 PM	Case Prep		Consult			POCZTER AVIVA	(b)(6);(b)(7)(C)	5/4/2017 3:18:39 PM	installer CRM
4/28/2017 2:37 PM	Case Prep	(b)(6);(	USC Memo Prep			POCZTER AVIVA		5/4/2017 3:21:37 PM	installer CRM
4/27/2017 5:40 PM	Case Prep		Consult			POCZTER AVIVA		4/27/2017 9:51:28 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Government Attorney	Modified On	Modified By
		(b)(6);(b)(7)(C);(b)(5)							
4/26/2017 3:32 PM	Case Prep IJ	(b)(6);(b)(7)(C);(b)(5)	Consult			POCZTER AVIVA	(b)(6);(b)(7)(C)	4/27/2017 9:52:31 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
		(b)(6);(b)(7)(C);(b)(5)							
• 4/26/2017 2:12 PM	Case Prep IJ	(b)(6);(b)(7)(C);(b)(5)	Consult			POCZTER AVIVA	(b)(6);(b)(7)(C	4/26/2017 6:16:20 PM	installer CRM

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Govenment Attorney	Modified On	Modified By
4/10/2017 3:11 PM	Case Prep U							4/12/2017 1:55:37 PM	APSVC CRM
4/3/2017 2:17 PM	Case Prep U					POCZTER AVIVA		4/6/2017 2:22:13 PM	APSVC CRM
3/7/2017 1:00 PM	Master			Cont. - Alien	Waived by Both	POCZTER AVIVA	(b)(6);(b)(7)(C)	3/7/2017 6:47:37 PM	installer CRM
10/19/2016 1:00 PM	Merits	(b)(6);(b)(7)(C);(b)(5)		Cont. - Alien	Waived by Both	POCZTER AVIVA		10/19/2016 6:40:30 PM	installer CRM

Pleadings

Applications

Case Information

A-Number	(b)(6);(b)(7	**Document Site**	
Case Status	Admin Final Order	**Location**	New York
Previous Case Status		**Modified By**	installer CRM
Next Hearing Type	Master	**Immigration Judge**	POCZTER AVIVA
Next Hearing	5/9/2017 1:00 PM	**Base Location**	New York
Received Date		**Custody Status**	No
Bond Appeal Due Date		**Detained Location**	
Case Time	1147		

Case Attributes

Appeal Filed	No	**Convicted**	No	**Reasonable Fear**	Yes	**Stipulated Removal**	No
Asylum Only Case	No	**Deportation**	No	**Removal**	No	**VAWA**	No
Credible Fear Review	No	**Exclusion**	No	**Recission**	No	**Withholding Only**	No
Criminal Charge	No	**Failure to Appear**	No	**Sex Offender**	No		

Alien Details

EID Fullname		**EOIR Fullname**	(b)(6);(b)(7)(C)	**Language**	Spanish
Last Name	(b)(6);(b)(7)(C)	**Alias Last Name**		**Gender**	Female
First Name		**Alias First Name**		**Birth Date**	(b)(6);(b)(7)(
Middle Name		**Alias Middle Name**		**Place of Birth**	Honduras
Maiden Name		**Alias**		**Nationality**	Honduras
FINS Number	1165425556	**Nickname**		**Citizenship**	Honduras
I-94 Control Number		(b)(6);(b)(7)(C);(b)(7)(E)		**Date of Entry**	6/17/2016

Street	(b)(6);(b)(7)(C)	**ZIP/Postal Code**	10456
Street 2		**Country/Region**	USA
City	BRONX	**Phone**	347-432-(b)(6);(
State/Province	NY		

Record Details

Modified On	5/9/2017 6:19 PM	**Record Status**	
Owner	APSVC CRM	**Created On**	9/30/2016 10:11 PM
OCC List	No	**Created By**	APSVC CRM
SharePoint URL			

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

Page 2900

Withheld pursuant to exemption

WIF Draft;(b)(5)

of the Freedom of Information and Privacy Act

Page 2901

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2902

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2903

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 2904

Withheld pursuant to exemption

(b)(5);WIF Draft

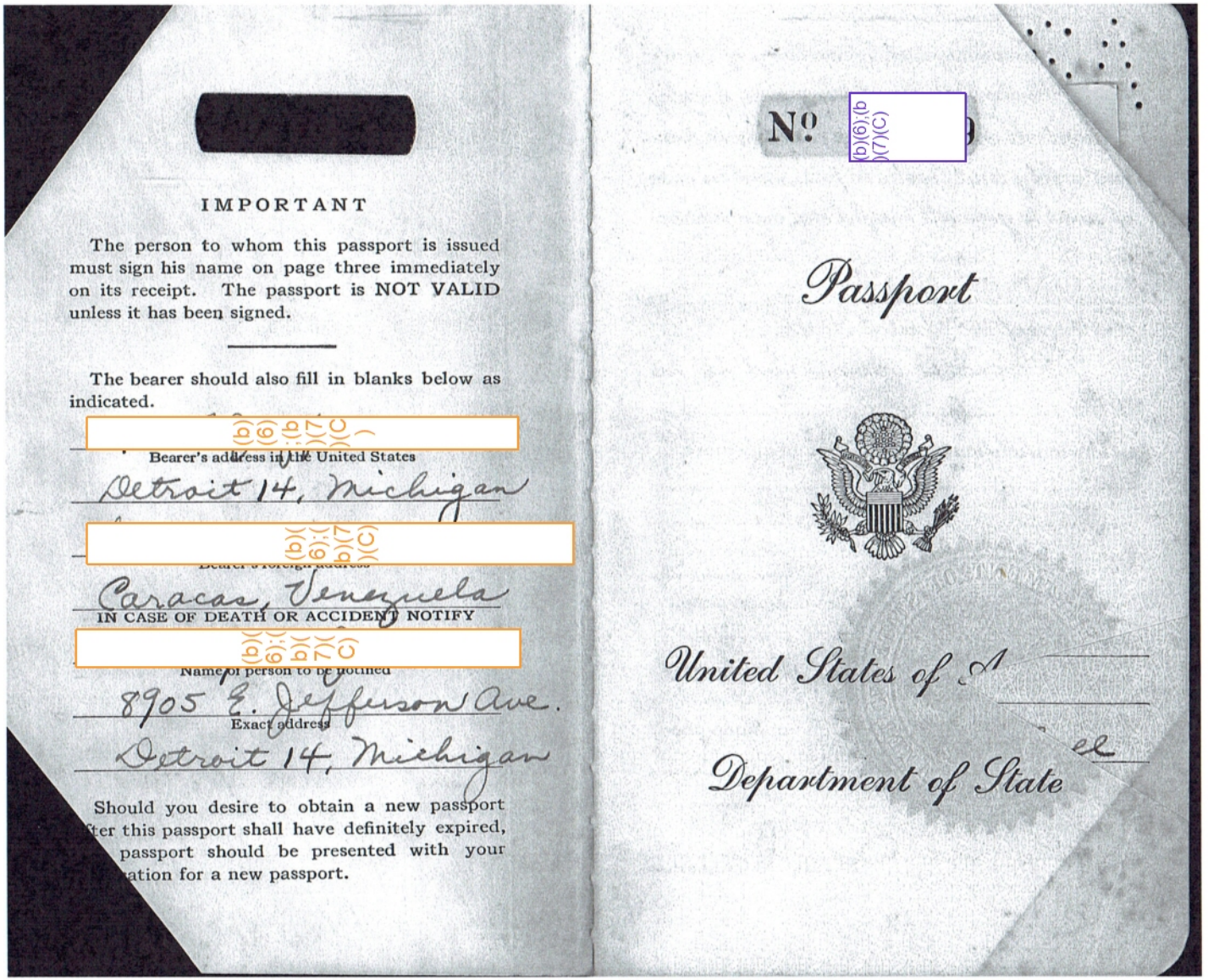
of the Freedom of Information and Privacy Act

Page 2905

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act



IMPORTANT

The person to whom this passport is issued must sign his name on page three immediately on its receipt. The passport is NOT VALID unless it has been signed.

The bearer should also fill in blanks below as indicated.

Bearer's address in the United States

Detroit 14, Michigan

Caracas, Venezuela

IN CASE OF DEATH OR ACCIDENT NOTIFY

Name of person to be notified

8905 E. Jefferson Ave.

Exact address

Detroit 14, Michigan

Should you desire to obtain a new passport after this passport shall have definitely expired, passport should be presented with your application for a new passport.

No.

Passport

United States of A

Department of State

2017-ICLI-00012 2906

Event

(b)(6);(b)(7)(C) - Case Prep IJ

Case
(b)(6);(b)(7)(C

Event

Event Date	3/16/2017 2:53 PM	**Case**	(b)(6);(b)(7)(E)
Last Name	(b)(6);(b)(7)(C)	**Modified By**	APSVC, CRM
First Name		**Immigration Judge**	BUCHANAN, PATRICIA
		Government Attorney	(b)(6);(b)(7)(C)

Event Details

No File	Yes	**Alien Due Date**	**Alien Original Due Date**
No Show	No	**DHS Due Date**	**DHS Original Due Date**
Pro Se	No	**Appeal Due Date**	
Bond Included	No	**EOIR Adjournment Party**	
		EOIR Adjournment Reason	

Event Information

Event Type
Case Prep IJ

Hearing Location
Varick Street (NYC)

Action
Consult

Order

Appeal Reserved

Order Date

Notes

(b)(6);(b)(7)(C);(b)(5)

EAJA Settled	No	**EAJA Award Amount**	**Party**

Event Time

Add Time	0 minutes	**Event Time**	15 minutes

Record Details

Modified On	3/23/2017 6:37 AM	**Created On**	3/16/2017 3:02 PM
Currency	US Dollar	**Created By**	(b)(6);(b)(7)(C)
Last 3	277	**Owner**	Buffalo
EOIR Event ID		**Record Status**	Active
Created From Bulk Event			

Record Status	Active

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS[2]

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

2 - 4

undersigned, Secretary of State
United States of America, hereby
quest all whom it may concern to per-
mit safely and freely to pass, and in case
of need to give all lawful aid and protec-
tion to

(b)(6);(b)(7)(C)

a citizen of the United States.

The bearer is accompanied by his
Wife, X X X
Minor children, X X X
X X X
X X X

Given under my
hand and the
seal of the
Department of
State
at Washington,
OCT. 31ST
1950

(b)(6);(b)(7)(C)

2

Description of bearer

Height 5 feet 7 inches.
Hair BROWN
Eyes BLUE
Distinguishing marks or features:
X X X
X X X
X X X
X X X
Place of birth DETROIT,
MICH.
Date of birth (b)(6);(b)(7)(C)
Occupation STUDENT
X X X
X X X

(b)(6);(b)(7)(C)

Signature of bearer.

This passport is not valid unless signed by the person to whom it has been issued.

3

Event

(b)(6);(b)(7)(C) - Master

Case (b)(6);(b)(7)(C)

Event

Event Date	3/7/2017 1:00 PM	**Case**	(b)(6);(b)(7)(C)
Last Name	(b)(6);(b)(7)(C)	**Modified By**	installer, CRM
First Name		**Immigration Judge**	BUCHANAN, PATRICIA
		Government Attorney	(b)(6);(b)(7)(C)

Event Details

No File	No	**Alien Due Date**	**Alien Original Due Date**
No Show	No	**DHS Due Date**	**DHS Original Due Date**
Pro Se	No	**Appeal Due Date**	
Bond Included	No	**EOIR Adjournment Party**	
		EOIR Adjournment Reason	

Event Information

Event Type
Master

Hearing Location
Varick Street (NYC)

Action

Order
Cont. - Alien

Appeal Reserved
Waived by Both

Order Date
3/7/2017

Notes

(b)(5);(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

EAJA Settled	No	**EAJA Award Amount**	**Party**

Event Time

Add Time	0 minutes	**Event Time**	1 hour

Record Details

Modified On	3/9/2017 11:16 AM	**Created On**	2/11/2017 11:00 AM
Currency	US Dollar	**Created By**	APSVC, CRM
Last 3	277	**Owner**	Buffalo
EOIR Event ID	(b)(7)(E)	**Record Status**	Active
Created From Bulk Event			

Record Status	Active

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Acting Chief Counsel
Office of Chief Counsel, New York City

Thomas Decker, Field Office Director
Enforcement and Removal Operations, Field Office New York

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Danial A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

2017-ICLI-00012 2932

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

3-4

Photograph of bearer

This passport, properly visaed, is valid for travel in all countries unless otherwise restricted.

This passport, unless limited to a shorter period, is valid for two years from its date of issue and may be renewed upon payment of a fee of $5 but the final date of expiration shall not be more than four years from the original date of issue.

American citizens traveling in disturbed areas of the world are requested to keep in touch with the nearest American diplomatic or consular officers.

American citizens making their homes or residing for a prolonged period abroad should register at the nearest American consulate.

SEE PAGES 6, 7, AND 8 FOR RENEWAL, EXTENSIONS, AMENDMENTS, LIMITATIONS, AND RESTRICTIONS.

From: (b)(6);(b)(7)(C)
To:
Subject: NYIFUP asserted possible USC derivation in court at master hearing on (b)(6);(b)(7)(
Date: Thursday, March 09, 2017 11:07:00 AM

Hi (b)(6)

(b)(6);(b)(7)(C);(b)(5);(b)(7)(E)

Thanks!

(b)(6);(b)(7)(C)

U.S. Immigration and Customs Enforcement

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
300 N. Los Angeles Street
Los Angeles, CA 90012

~~**SENSITIVE/PRIVILEGED**PRE-DECISIONAL**ATTORNEY WORK PRODUCT**~~

DATE: May 4, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: David Marin, Field Office Director
Enforcement and Removal Operations, Field Office Los Angeles, CA

(b)(6);(b)(7)(C), Chief Counsel
Office of the Chief Counsel, Los Angeles

(b)(6);(b)(7)(C), Deputy Chief Counsel
Office of the Chief Counsel, Los Angeles, CA

(b)(6);(b)(7)(C) Assistant Chief Counsel
Office of Chief Counsel, Los Angeles, CA

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

~~**SENSITIVE/PRIVILEGED**PRE-DECISIONAL**ATTORNEY WORK PRODUCT**~~

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C)

(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

(b)(6);(b)(7)(C)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

4-4

...val, extensions, amendments, limitations, and restrictions

AMERICAN FOREIGN SERVICE

NO. 221

Renewed SEP 30 1953

Expires Oct. 30 1954

(b)(6);(b)(7)(C)

American Consul

AMERICAN EMBASSY

At CARACAS, VENEZUELA

Service No. 9421

Fee Prescribed $5 = Bs. 17.50

OCT 953

AMERICAN FOREIGN SERVICE $5.00 FEE STAMP

8

Visas

(b)(6);(b)(7)(C)

AMERICAN EMBASSY OCT 1 1953

CARACAS, VENEZUELA

This passport is hereby amended to include (b)(6);(b)(7)(C) two minor daughters (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C), whose photographs are attached above.

(b)(6);(b)(7)(C)

CONSUL OF THE UNITED STATES OF AMERICA

9

Event

(b)(6);(b)(7)(C) - Case Prep...

Case (b)(7)(E)

Event

Event Date	3/16/2017 3:32 PM	**Case**	(b)(6);(b)(
Last Name	(b)(6);(b)(7)(C)	**Modified By**	APSVC, CRM
First Name		**Immigration Judge**	MULLIGAN, THOMAS
		Government Attorney	(b)(6);(b)(7)(C)

Event Details

No File	Yes	**Alien Due Date**	**Alien Original Due Date**
No Show	No	**DHS Due Date**	**DHS Original Due Date**
Pro Se	No	**Appeal Due Date**	
Bond Included	No	**EOIR Adjournment Party**	
		EOIR Adjournment Reason	

Event Information

Event Type
Case Prep BIA

Hearing Location
Varick Street (NYC)

Action
Consult

Order

Appeal Reserved

Order Date

Notes
(b)(5);(b)(6);(b)(7)(C)

EAJA Settled	No	**EAJA Award Amount**	**Party**

Event Time

Add Time	0 minutes	**Event Time**	15 minutes

Record Details

Modified On	5/3/2017 10:51 AM	**Created On**	3/16/2017 3:35 PM
Currency	US Dollar	**Created By**	(b)(6);(b)(7)(C)
Last 3	995	**Owner**	(b)(6);(b)(7)(C)
EOIR Event ID		**Record Status**	Active
Created From Bulk Event			

Record Status Active

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

CLAIMANT: Derivation to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

From: (b)(6);(b)(7)(C)
To: #NYCOPLA
Subject: (b)(5)
Date: Tuesday, March 21, 2017 12:02:43 PM

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

Please click here for the decision.

Thanks.

(b)(6);(b)(7)(C)

Senior Attorney
Office of the Chief Counsel
Immigration and Customs Enforcement
US Department of Homeland Security
26 Federal Plaza, Room (b)(6);(b)
New York, NY 10278

***** Warning *** Attorney/Client Privilege *** Attorney Work Product *****
This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 USC §§ 552(b)(5), (b)(7).

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

2017-ICLI-00012 2970

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

1-4

IMPORTANT

The person to whom this passport is issued must sign his name on page three immediately on its receipt. The passport is **NOT VALID** unless it has been signed.

The bearer should also fill in blanks below as indicated.

Bearer's address in the United States

Bearer's foreign address

IN CASE OF DEATH OR ACCIDENT NOTIFY

Name of person to be notified

Exact address

Should you desire to obtain a new passport after this passport shall have definitely expired, this passport should be presented with your application for a new passport.

No. (b)(6);(b)(7)(C)

Passport

United States of America

Department of State

Office of Chief Counsel

U.S. Department of Homeland Security
880 Front Street Ste. (b)(6);(
San Diego, CA 92101

U.S. Immigration and Customs Enforcement

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: Gregory J. Archambeault, Field Office Director
Enforcement and Removal Operations, Field Office San Diego

(b)(6);(b)(7)(C) Deputy Chief Counsel
Office of Chief Counsel, San Diego

(b)(6);(b)(7)(C) Assistant Chief Counsel
Office of Chief Counsel, San Diego

SUBJECT: Indicia of U.S. Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(6);(b)(7)(C)

2-4

I, the undersigned, Secretary of State of the United States of America, hereby request all whom it may concern to permit safely and freely to pass, and in case of need to give all lawful aid and protecti

(b)(6);(b)(7)(C)

a citizen of the United States.

The bearer is accompanied by his

Wife, X X X

Minor children, (b)(6);(b)(7)(C)

X X X

CANCELLED

Given under my hand and the seal of the Department of State at Washington, DEC. 22ND 19 25

(b)(6);(b)(7)(C)

Renewal on Page 7

2

Description of bearer

Height 5 feet 7 inches.

Hair BROWN

Eyes BLUE

Distinguishing marks or features:

X X X

X X X

X X X

Place of birth DETROIT, MICH.

CANCELLED

Date of birth (b)(6);(b)(7)(C)

Occupation HOUSEWIFE

X X X

X X X

(b)(6);(b)(7)(C)

Signature of bearer.

This passport is not valid unless signed by the person to whom it has been issued.

3

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations,
Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

2017-ICLI-00012 2990

(b)(6);(b)(7)(C)

3-4

Photograph of bearer

(b)(6);(b)(7)(C)

THIS PASSPORT, UNLESS LIMITED TO A SHORTER PERIOD, EXPIRES TWO YEARS FROM THE DATE OF ISSUE APPEARING ON PAGE TWO. UPON PAYMENT OF A FIVE DOLLAR FEE IT IS SUBJECT TO RENEWAL FOR A MAXIMUM PERIOD OF TWO ADDITIONAL YEARS IMMEDIATELY FOLLOWING THE ORIGINAL TERM OF VALIDITY. WHEN RENEWED, A RENEWAL STAMP WILL BE PLACED IN THIS PASSPORT.

American citizens traveling in disturbed areas of the world are requested to keep in touch with the nearest American diplomatic or consular officers.

American citizens making their homes or residing for a prolonged period abroad should register at the nearest American consulate.

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Senior Attorney
Office of Chief Counsel, New York City

(b)(6);(b)(7)(C) Assistant Field Office Director
Enforcement and Removal Operations, New York City

SUBJECT: Claim to United States Citizenship
[Claimant's Name]
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5)

(b)(5)

FACTS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

2017-ICLI-00012 3008

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

2017-ICLI-00012 3009

FY 95

U.S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Memorandum of Creation of Record of Lawful Permanent Residence

Place: NYC
File No.: (b)(6);(b)(7)(C)

Status as a lawful permanent resident of the United States is accorded:

Name In Care Of Street Address Apt. No. City, State, Zip	(b)(6);(b)(7)(C) Brooklyn, N.Y. 11212
Sex	1 ☐ Male 2 ☒ Female
Date of Birth (Month/Day/Year)	(b)(6);(b)(7)(C)
City of Birth	Scarborough
Country of Birth	Tobago
Country of Nationality	Trinidad
Country of Last Residence	Trinidad
Marital Status	1 ☐ Single 2 ☒ Married 3 ☐ Widowed 4 ☐ Divorced 5 ☐ Separated
Occupation	HOU
N/I Class at time of Adj.	B-2
Year Adm. to U.S. or Year of Change to Present NI Class (whichever most recent)	91
Priority Date (Month/Day/Year)	10/7/91
Preference (If any)	FAM-3
Country to Which Chargeable (If any)	Tobago
Section 212 (a) (14) Labor Certification	1 ☐ Applicable-Submitted 3 ☒ Not Applicable
Mother's First Name	Elsa
Father's First Name	Israel
Last NIV Issued at (U.S. Consulate Post)	Port-of-Spain, Trinidad
Date of Issuance of Last NIV	7/16/84
Number of Last NIV	(b)(6);(b)(7)
Classification of Last NIV	B-2

Under the following provision of law

- ☐ Public Law 95-412
- ☐ Public Law 96-212
- ☐ Private Law No. _____ of the ___ Congress ___ Session
- ☐ Sec. 209 (a) of the I & N Act
- ☐ Sec. 209 (b) of the I & N Act
- ☐ Sec. 244 ( ) ( ) of the I & N Act
- ☐ Sec. 245 of the I & N Act
- ☐ Sec. 249 of the I & N Act
- ☐ Sec. 1 of the Act of 11/2/66
- ☐ Sec. 13 of the Act of 9/11/57
- ☐ Sec. 214 (d) of the I & N Act
- ☐ Other law (Specify) _____

As of 9 (Month) 14 (Day) 95 (Year) XX at NYC (PORT OF ENTRY FOR PERMANENT RESIDENCE)

Class of admission (Insert Symbol): F3-7

REMARKS

RECOMMENDED BY (b)(6);(b)(7)(C) (Date) 9/14/95

APPROVED
THE DISTRICT DIRECTOR
DATE OF ACTION S
Recomm
DD
NYC
DISTRICT
(b)(6);(b)(7)(C)

FOR USE BY VISA CONTROL OFFICE

Date _____

Foreign State _____

Preference Category _____

Number _____

Month of Issuance _____

Signed _____
(Visa Office, Dept. of State)

CC: Page 2 Master Index copy sent on 8/28/95 DL
CC: Page 3 ADIT and Statistical report copy sent on 10/18/95
(b)(6);(b)(7)(C)

Form I-181 (Rev.3-1-83) N

1. FILE COPY

2017-ICLI-00012 3010

(b)(6);(b)(7)(C)

4-4

Renewal, extensions, amendments, limitations, and restrictions

This passport, properly visaed, is valid for travel in all countries unless **OTHERWISE RESTRICTED.** It is not valid for travel to or in any foreign state for the purpose of entering or serving in the armed forces of such a state.

THIS PASSPORT IS NOT VALID FOR TRAVEL TO ALBANIA, BULGARIA, CHINA, CZECHOSLOVAKIA, HUNGARY, POLAND, RUMANIA OR THE UNION OF SOVIET SOCIALIST REPUBLICS UNLESS SPECIFICALLY ENDORSED UNDER AUTHORITY OF THE DEPARTMENT OF STATE AS BEING VALID FOR SUCH TRAVEL.

VOID

THIS PASSPORT IS NOT VALID FOR TRAVEL TO THE FOLLOWING AREAS UNDER CONTROL OF AUTHORITIES WITH WHICH THE UNITED STATES DOES NOT HAVE DIPLOMATIC RELATIONS: ALBANIA, BULGARIA, AND THOSE PORTIONS OF CHINA, KOREA, AND VIET-NAM UNDER COMMUNIST CONTROL.

Renewal, extensions, amendments, limitations, and restrictions

AMERICAN FOREIGN SERVICE

NO. (b)(6);(b)(7)(C)

Renewed APR 28 1958

December 21 1959

(b)(6);(b)(7)(C)

AMERICAN CONSULATE
UNITED STATES OF AMERICA

At: AMERICAN CONSULATE
CARACAS, VENEZUELA

Service No. (b)(6);(b)(7)(C)

Tariff Item No. 4

Fee Paid: U. S. $ 5.00

Local Cy. equiv. (b)(6) 17.50

USC CLAIMS MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(7)(C);(b)(5);(b)(6)

FACTS

(b)(7)(C);(b)(5);(b)(6)

(b)(7)(C);(b)(5);(b)(6)

(b)(7)(C);(b)(5);(b)(6)

(b)(7)(C);(b)(5);(b)(6)

LEGAL ANALYSIS

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
11541 Montana Avenue, (b)(6)
El Paso, Texas 79925

U.S. Immigration and Customs Enforcement

May 12, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, El Paso, Texas

Corey A. Price, Field Office Director
Enforcement and Removal Operations, Field Office El Paso, Texas

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

(b)(6);(b)(7)(C)

DHS CUSTODY
SAN DIEGO, CA 92154

Date: Apr 21, 2017

File (b)(6);(b)(7)(C)

In the Matter of:

(b)(6);(b)(7)(C)

✓ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before 5-21-17. The appeal must be accompanied by proof of paid fee ($110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

(b)(6);(b)(7)(C)
Immigration Court Clerk

cc: (b)(6);(b)(7)(C) ASSISTANT CHIEF COUNSEL
880 FRONT ST., (b)(6);(b)(7)(C)
SAN DIEGO, CA 92101

UL

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
7488 Calzada de la Fuente
San Diego, California 92154

File No.: (b)(6);(b)(7)(C)

Date: April 21, 2017

In the Matter of

(b)(6);(b)(7)(C)

Respondent

IN REMOVAL PROCEEDINGS

ON BEHALF OF THE THE RESPONDENT:

Pro se

ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:

(b)(6);(b)(7)(C) Esquire
(b)(6);(b)(7)(C)
San Diego, California 92101

CHARGE: Section 237(a)(2)(A)(ii) of the Immigration and Nationality Act (Two Crimes Involving Moral Turpitude);

Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act (Alien in Violation of Protection Order).

MOTION: Respondent's Motion to Terminate

DECISION AND ORDER OF THE IMMIGRATION JUDGE

On February 6, 2017, Respondent, *pro se*, filed a Motion to Terminate Proceedings, in which Respondent claimed he was not removable as charged. Respondent renewed his request to terminate in-court on March 30, 2017. After careful consideration of the parties' evidence and arguments, the Court will grant Respondent's motion.

I. PROCEDURAL HISTORY

On December 27, 2016, the Department of Homeland Security ("DHS") served Respondent with a Notice to Appear ("NTA"). (Exh. 1.) In the NTA, the DHS alleged that Respondent is a not a citizen or national of the United States; is a citizen and national of Syria; and was admitted to the United States at New York, New York, on or about February 19, 1993, as a Legal Permanent Resident. (*Id.*) The DHS alleged that on April 17, 2013, Respondent was convicted in the Superior Court of California, San Diego for the offense of "Use of Personal Identifying Information of Another," in violation of § 530.5(a) of the California Penal Code

("CPC"), and for this offense, Respondent was sentenced to two years confinement.[1] The DHS further alleged that on June 28, 2016, Respondent was again convicted of a violation of CPC § 530.5(a), and for this offense, he was sentenced to sixteen months confinement. The NTA also contains an allegation that on June 28, 2016, Respondent was convicted of another violation of CPC § 530.5(a), for which he received a sentence of two years confinement. The DHS charged Respondent as being removable under section 237(a)(2)(A)(ii) of the Immigration and Nationality Act ("Act"), for being an alien who, at any time after admission, was convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct. (*Id.*) The DHS filed the NTA with the Immigration Court in Otay Mesa, California on December 30, 2016, thereby vesting the Court with jurisdiction over these proceedings. *See* 8 C.F.R. § 1003.14(a) (2016).

On January 17, 2017, Respondent appeared *pro se* for his initial master calendar hearing. The Court indicated that the conviction documents submitted by the DHS along with the NTA did not support the Respondent's removability charge. The DHS requested a continuance to submit the relevant and necessary conviction documents, and the Court continued to hearing to January 25, 2017, for that purpose.

On January 19, 2017, the DHS filed a Notice of Franco-Gonzalez Class Membership and Request for Competency Inquiry. On January 25, 2017, the Court parties reconvened at the continued master calendar hearing, with Respondent again appearing *pro se*. At the hearing, the Court conducted a competency inquiry. After conducting its inquiry, the Court made a tentative finding that Respondent was competent. However, because the DHS had failed to submit a copy of Form 883, Respondent's Mental Health Review in advance of the competency inquiry, as a safeguard, the Court continued the hearing to February 6, 2017, to allow the DHS to submit the form so that the Court could make a compete determination. On January 27, 2017, the DHS filed Form 833 with the Court.

The parties reconvened on February 6, 2017, for the continued master calendar hearing, at which Respondent again appeared *pro se*. After examining Respondent's medical records and again addressing Respondent, the Court found that Respondent's schizophrenic disorder was controlled with medication such that he was able to meaningfully participate in the proceedings. The Court informed Respondent of his rights in immigration proceedings, and Respondent indicated that he understood. The Court read to Respondent the allegations against him. Respondent admitted to the allegations in the NTA, but denied the charge of removability. Respondent then filed a Motion to Terminate. In the motion, Respondent argues that his two convictions for "Use of Personal Identifying Information of Another," in violation of CPC § 530.5(a), did not constitute crimes of moral turpitude. As such, Respondent contends that there is no basis to sustain the charges of removability contained in the NTA and that proceedings should be terminated.

[1] The record of convictions the DHS submitted in support of this allegation indicate that Respondent was convicted not on April 17, 2013, as alleged, but on March 3, 2011. It appears that the April 17, 2013 date to which the DHS refers, relates not to Respondent's date of conviction, but rather the date a sentencing hearing that was held, when Respondent's probation for this conviction was revoked. *See* Conviction Documents for Case Number CS245849. It appears that the DHS recognized this oversight, as the conviction date for this charge was amended in the second Form I-261. *See* Allegation 7.a.

The DHS requested a continuance to allow time to review and respond to Respondent's motion. The Court granted the request, ordered the DHS to file its response on or before February 27, 2017, and continued the hearing to March 9, 2017. It was not until this hearing did the DHS file the remainder of Respondent's conviction documents required to support its proposed charge.[2]

The DHS filed its Opposition to Motion to Terminate on February 27, 2017. In its opposition, the DHS asks the Court to disregard on-point, controlling Ninth Circuit precedent, and to "issue its own published decision," finding that a violation of CPC § 530.5(a), is in fact a categorical crime involving moral turpitude ("CIMT"). In the alternative, the DHS asks the Court employ a modified categorical approach to find that Respondent's convictions under CPC § 530.5(a) constitute CIMTs.

On March 9, 2017, the parties reconvened at the continued master calendar hearing. At the initiation of the hearing, the DHS filed a Form I-261, Additional Charges of Inadmissibility/Deportability, and personally served the form on Respondent.[3] Through this, the DHS lodged an additional charge against Respondent, claiming Respondent was now also removable under § 237(a)(2)(E)(ii) of the Act, as an alien who has violated a protection order. The DHS also included two factual allegations, in addition to those set forth in the original charging document. The DHS alleged that on or about March 3, 2011, Respondent was convicted in the Superior Court of California, San Diego, of "False Personation" in violation of CPC § 529(3).[4] Additionally, the DHS alleged that on or about May 8, 2012, Respondent was convicted in the Superior Court of California, San Diego, of "Willfully Disobeyed Court Order" in violation of CPC § 166(a)(4).

Upon the filing of the Form I-261, the Court explained to Respondent the significance of the DHS's filing and read the additional allegation and allegations to Respondent. The Court held its decision on Respondent's motion in abeyance, and continued the hearing to March 30, 2017, to allow Respondent time to review and respond to the additional charge and allegations.

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[2] The Court notes that the DHS did not submit the conviction documents required to support its proposed charge against Respondent until almost two full months after the filing of the NTA with the Court. While this delay is of no legal consequence at this point in the proceedings, the Court discourages such lengthy postponements as it impedes the Court's from resolving cases in a fair and timely manner.

[3] The Court acknowledges that Respondent has made significant efforts in representing himself throughout the course of these proceedings; not an easy feat given the complexity of U.S. immigration law. *See Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987). The Court also could not help but notice Respondent's chagrin when the DHS filed its additional charge against him during the hearing at which Respondent' motion was to be adjudicated. The Regulations dictate that if the DHS wishes to amend the notice to appear, it may do so "[a]t any time during the proceeding." 8 C.F.R. § 1240.10(e). The Court is nevertheless perplexed as to why the DHS waited more than two months after filing the NTA to bring this additional charge and allegations, being that the charge is based on a conviction Respondent incurred nearly five years prior to the filing of the NTA. The Court cautions the DHS against use of this litigation strategy, as the fundamental fairness of such a tactic is questionable at best. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620 (9th Cir. 2006).

[4] This conviction appears to be from the same scheme of criminal misconduct as Respondent's CPC § 530.5(a) conviction from 2011. *See* Exh. 1, Allegation 4; *see also* Criminal Complaint for Case Number (b)(6);(b)(; *see also supra* note 1.

The parties appeared for the continued master calendar hearing on March 30, 2017. At the hearing, Respondent admitted to allegations 8 and 9 as articulated on the first Form I-261, and contested the additional charge of removability under § 237(a)(2)(E)(ii) of the Act. The Court reset the case to April 20, 2017, for the issuance of a decision on Respondent's motion, and ordered the DHS to file a brief addressing Respondent's removability under the added charge on or before April 14, 2017. The Court informed Respondent that if he wished to file a response, he could do so on or before the date of the next hearing.

On April 14, 2017, the date of the DHS's deadline to brief the issue of Respondent's removability, the DHS filed yet another Form I-261, Additional Charges of Inadmissibility/Deportability.[5] Through this form, the DHS incorporated the allegations alleged in the previously filed Form I-261, and in the NTA.[6] Additionally, the Form I-261 included an additional allegation, Allegation 10, which states that on April 15, 2013, Respondent was convicted in the Superior Court of California, San Diego, of "Disobey Court Order, contrary to California Penal Code 273.65(a)." Along with the form, and in support of this additional allegation, the DHS filed conviction records for Respondent's conviction, with case number (b)(6);(b)(7)(C) The DHS also filed a brief, in which it argues that Respondent's conviction for False Personation, in violation of CPC § 529(3) constitutes a CIMT, and Respondent's convictions for "Willfully Disobeyed Court Order" in violation of CPC § 166(a)(4), and for "Disobey Court Order," in violation of CPC § 273.65(a), constitute violations of a domestic violence protective order.

On April 20, 2017, the parties reconvened. The Court confirmed that Respondent had received the DHS filing of April 14, 2017, which included a new Form I-261. Respondent indicated that he had not yet received the documents and the DHS provided a second copy of the filing for Respondent. The Court provided Respondent some time to review the filing and then explained to Respondent that he had the right to further time to review the filing if he so desired. The Court then inquired from Respondent whether he desired a further continuance to review the DHS filing. Respondent declined further time to review the filing and said that he was prepared to enter pleadings to the April 14, 2017 Form I-261. Respondent admitted allegations 1-10 and contested the charges of removability pursuant to INA §§237(a)(2)(E)(ii) and 237(a)(2)(A)(ii). The Court then inquired whether Respondent wished to designate a country for removal, in the event of his removal from the United States. Respondent declined to designate a country. At the recommendation of the DHS, Syria was directed. The Court reset the case for the filing of relief and indicated to the parties that a decision on removability would be issued in written form prior to the next hearing scheduled for May 10, 2017 at 1:00 p.m. The following is the Court's decision on the issue of removability as charged.

II. LEGAL STANDARD

After commencement of the hearing, only an Immigration Judge may terminate proceedings upon request or motion by either party. *Matter of G-N-C-*, 22 I&N Dec. 281 (BIA 1998). In removal proceedings, the government has the burden of establishing that an alien

[5] See Note 3, *supra.*

[6] The Court notes that the Form I-261, in error, contains two allegations number 7. For reference, the Court will refer to the first allegation 7, as "Allegation 7.a," and the second allegation 7, as "Allegation 7.b.)

admitted to the United States is removable by clear and convincing evidence. INA§ 240(c)(3)(A); *Woodby v. INS*, 385 U.S. 276, 285 (1966). The Immigration Judge may terminate proceedings if the DHS fails to meet this burden. *Id.*

III. FINDINGS OF FACT AND LAW

Because the respondent has been admitted to the United States, the DHS has the burden to demonstrate by clear and convincing evidence that Respondent is removable as charged. *See* INA § 240(c)(3)(A). The DHS has failed to meet this burden and termination of proceedings is therefore appropriate.

A. Respondent is not removable as charged under INA § 237(a)(2)(A)(ii) as an alien convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct.

The DHS has charged Respondent with removability under INA § 237(a)(2)(A)(ii), as an alien convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct. In support of that charge, the DHS presented evidence indicating that Respondent has suffered three convictions for "Use of Personal Identifying Information of Another," in violation of CPC § 530.5(a). The then-applicable CPC § 530.5(a) provided in relevant part:

> Every person who willfully obtains personal identifying information . . . of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment [.]

There is no dispute that Respondent sustained these three convictions. However, Respondent argues that his convictions under California's identity theft statue, CPC § 530.5(a), do not constitute CIMTs.

A crime involving moral turpitude is "generally a crime that (1) is vile, base, or depraved and (2) violates accepted moral standards." *Duran Escobar v. Lynch*, --- F.3d ---, No. 12-70930 at *7 (9th Cir. Jan. 20, 2017) (citing *Latter-Singh v. Holder*, 668 F.3d 1156, 1161 (9th Cir. 2012)); *see also Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849 (BIA 2016). The Ninth Circuit has articulated two categories of CIMTs: "those involving fraud and those involving grave acts of baseness or depravity.'" *Id.* (citing *Rivera v. Lynch*, 816 F.3d 1064, 1074 (9th Cir. 2016)). "[F]raud crimes are categorically crimes involving moral turpitude, simply by virtue of their fraudulent nature." *Id.* (citing *Linares-Gonzalez v. Lynch*, 823 F.3d 508, 514 (9th Cir. 2016)). "Non-fraudulent CIMTs will almost always involve an intent to injure someone, an actual injury, or a protected class of victims." *Id.* (citing *Turijan v. Holder*, 744 F.3d 617, 621 (9th Cir. 2014)). "The categorical and modified categorical approaches provide the proper

framework for determining whether a conviction is for a crime involving moral turpitude." *Matter of Silva Trevino*, 26 I&N Dec. 826, 827 (BIA 2016).

i. The Categorical Approach

The categorical approach "requires us to focus on the elements of the crime, rather than the conduct of the respondent." *Matter of Diaz-Lizarraga*, 26 I&N Dec. at 849 (citing *Almanza-Arenas v. Lynch*, 815 F.3d 469, 475 (9th Cir. 2016). "When determining whether a conviction for a State or Federal offense is [categorically] a crime involving moral turpitude, Immigration Judges and the Board will examine the State or Federal statute defining the crime of conviction to see if it fits within the generic definition of a crime involving moral turpitude." *Id.* (citations omitted). Additionally, in evaluating the criminal statute under the categorical approach, "we apply the realistic probability test . . . which requires us to focus on the minimum conduct that has a realistic probability of being prosecuted under the statute of conviction[.]" *Silva Trevino*, 26 I&N Dec. at 831 (citing *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013)); *see also Leal v. Holder*, 771 F.3d 1140, 1145 (9th Cir. 2014). If the statute of conviction has the same elements as, or if the minimum conduct that has a realistic probably of prosecution under the statute fits within the generic offense, the prior conviction is a categorical match for immigration purposes. *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013). If, on the other hand, the statute of conviction "sweeps more broadly than the generic crime," and there is a "realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime," the respondent's conviction may not categorically serve as a predicate offense. *Descamps*, 134 S. Ct. at 2283.

Applying the categorical approach as articulated above, in *Linares-Gonzalez v. Lynch*, 823 F.3d 508 (9th Cir. 2016), the Ninth Circuit explicitly held that a conviction under CPC § 530.5(a) is not categorically a CIMT. In its opposition to Respondent's motion, the DHS argues that *Linares-Gonzalez* was decided incorrectly, and requests that the Court "issue its own published decision on whether CPC § 530.5(a) is a CIMT." (DHS Opp'n, at 2.) Immigration courts are trial-level courts that are bound by precedent set by the Board of Immigration Appeals and the circuit court in which the court sits. The DHS does not cite to, nor is the Court aware of any authority that permits the Immigration Judge to publish a decision on behalf of the Executive Office for Immigration Review -- let alone authority to publish a decision overruling on-point, controlling, circuit court law. The Court therefore finds, in accordance with *Linares*, that a conviction under CPC § 530.5(a) is not a categorical CIMT.

ii. Divisibility

In a "narrow range of cases," the court may proceed to the modified categorical approach if a statute that is not a categorical match to the relevant crime is nevertheless divisible. *Descamps*, 134 S. Ct. at 2283 (citing *Taylor v. United States*, 495 U.S. 575, 602 (1990)); *see also Nijhawan v. Holder*, 557 U.S. 29, 35 (2009) (stating that the modified categorical approach applies to a statute that contains "different crimes, each described separately"). While the Ninth Circuit held in *Linares* that conviction under CPC § 530.5(a) is not a categorical CIMT, the panel declined to reach the issue of whether the statute is divisible. Therefore, the Court must now determine whether CPC § 530.5(a) is divisible and thus susceptible to a modified categorical analysis.

A statute is divisible if it "sets out one or more elements of the offense in the alternative" and at least one of those alternatives is a match to the generic offense. *Descamps*, 133 S. Ct. at 2281. The Supreme Court explained that an "element" is a substantive component of the statute on which the jury must unanimously agree, whereas "facts" are the means or method of committing an offense on which a jury need not agree yet still convict. *See* 136 S. Ct. 2243, 2248 (2016) (discussing the difference between elements and "facts" (means)); *see also Almanza-Arenas v. Lynch*, 815 F.3d at 477 (explaining that "a single element must be part of a charged offense with which a jury necessarily found the defendant guilty"). In order to determine whether a statute is made up of alternative elements or alternative means, the court reviews (1) the statutory language itself, (2) authoritative state court interpretations of the statute, and (3) the respondent's conviction records "if state law fails to provide clear answers." *Mathis v. United States*, 136 S. Ct. 2243, 2256-57 (2016).

Upon examination of the statutory language of § 530.5(a), it remains unclear as to whether a jury would have to unanimously agree for what particular "unlawful purpose" the identifying information was being used. Because the statute's text does not provide a clear answer to which parts of the statute were means versus elements, we therefore look to state law to determine whether the statute is divisible. *Almanza-Arenas v. Lynch*, 815 F.3d at 480. The parties did not cite to, nor was the Court able to locate any California state court cases interpreting the elements of § 530.5(a). Furthermore, a review of the California model jury instructions for § 530.5(a) does not clarify whether a prosecutor would be required to articulate a particular unlawful purpose and prove that purpose beyond a reasonable doubt in order to secure a conviction under the statute.[7] Left without a "clear answer," as to the statute's divisibility from these sources, the Court is permitted to '"peek at the [Respondent's conviction record] documents" 'for "the sole and limited purpose of determining whether [the listed items are] element[s] of the offense."' *Mathis v. United States*, 136 S. Ct. at 2256 (citing *Rendon v. Holder*, 782 F.3d 466, 473–474 (9th Cir 2015)).

The conviction documents in the Record indicate that § 530.5(a) is a divisible statute. In the Complaint filed for Case Number (b)(6);(b)(7)(Respondent was charged with the following:

> On or about August 28, 2015, (b)(6);(b)(7)(C) did willfully and unlawfully obtain personal identifying information of another person, and use that information for an unlawful purpose, *to wit: to delay an officer and falsely identify himself to an officer and make someone liable for prosecution*, in violation of PENAL CODE SECTION 530.5(a).

(emphasis added). Respondent was similarly charged in his other § 530.5(a) criminal prosecutions, for which the DHS has submitted evidence. *See* Complaint, Case Number (b)(6);(b)(7)(C *see also* Complaint, Case Number CD255315. Such reference in a charging

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[7] The California model jury instructions for § 530.5(a) contain the following definition for "unlawful purpose": "An unlawful purpose includes unlawfully (obtaining/[or] attempting to obtain) (credit[,]/[or] goods[,]/[or] services[,]/[or] real property[,]/[or] medical information[,]/[or] _____ <*insert other unlawful purpose*> without the consent of the other person." CALCRIM 2040.

document to a particular unlawful purpose "to the exclusion of all others" indicates that § 530.5(a) "contains a list of elements, each one of which goes toward a separate crime[,]" as opposed to alternative means of committing the crime. *Mathis v. United States*, 136 S. Ct. at 2257. Consequently, this Court finds that § 530.5(a), is divisible and subject to the modified categorical approach.

iii. Modified Categorical Approach

Having found § 530.5(a) to be a divisible statute, the Court must now engage in a modified categorical inquiry, and consider whether the facts of Respondent's prior convictions in fact involved moral turpitude. *Mathis*, 136 S. Ct. at 2249; *see also Silva Trevino*, 26 I&N Dec. at 828. In conducting this inquiry, the Court may consider only certain reliable documents in the Record, which include the "statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. United States*, 544 U.S. 13, 16 (2005). Upon examination of the *Shepard* documents presented by the DHS, more specifically, the written plea agreements for each of Respondent's identity theft convictions, it is evident that each conviction involved a similar pattern of conduct on Respondent's part -- giving police officers his brother's name when Respondent was encountered for engaging in unlawful behavior. The Court finds that the facts reflected in the *Shepard* documents do not reflect that Respondent's convictions involved moral turpitude.

First, the Record does not demonstrate that Respondent's convictions necessarily involved fraud. *Rivera v. Lynch*, 816 F.3d at 1074. A crime is fraudulent if it involves the intent to defraud. *Id.* at 1075. Intent to defraud can be explicit in the statute or inherent in the nature of the crime *Id.* As an initial matter, a conviction under § 530.5(a) requires "willfulness," but does not explicitly require fraudulent intent. *Linares-Gonzalez*, 823 F.3d at 515; *see also* CALCRIM 2040. The *Shepard* documents in the Record reflect that Respondent "willfully" used his brother's name when he was encountered by the police; however, there is no indication that Respondent possessed an actual "intent to defraud" law enforcement in doing so.

Additionally, there is no evidence that intent to defraud was implicit in Respondent's conduct. "[I]ntent to defraud is implicit in the nature of the crime when the individual makes false statements in order to procure something of value either monetary or nonmonetary." *Id.* (citing *Blanco v. Mukasey*, 518 F.3d 714, 719 (9th Cir. 2008). The Ninth Circuit has consistently recognized that when the only "benefit" the individual obtains is to impede the enforcement of the law, the crime does not involve moral turpitude. *Id.*; *see also Blanco v. Mukasey*, 518 F.3d at 720 (citing *Navarro–Lopez v. Gonzales*, 503 F.3d 1063, 1068 (9th Cir.2007) (en banc)) ("Although giving a false name or date of birth to a police officer clearly 'violates a duty owed to society to obey the law and not to impede the investigation of crimes,' this alone does not make the crime one that involves moral turpitude, because '[i]f this were the sole benchmark for a crime involving moral turpitude, every crime would involve moral turpitude.'") The *Shepard* documents in the Record do not describe Respondent's purpose for giving law enforcement his brother's name, in place of his own, and it is impermissible for the Court to hypothesize as to Respondent's intentions beyond the documents submitted by the DHS. The Court therefore finds the DHS failed to meet its burden in establishing that Respondent's convictions under § 530.5(a) involved fraud.

The Court also finds that the *Shepard* documents fail to demonstrate that Respondent's convictions under § 530.5(a) involved "an intent to injure someone, an actual injury, or a protected class of victims." Based on the evidence submitted, there is no indication that Respondent intended to harm his brother. Furthermore, there is no indication that Respondent's crime involved an actual injury. There is no doubt Respondent's conduct had the *potential* to expose his brother to criminal prosecution, and *potential* to delay a criminal investigation. However, no evidence was presented that Respondent's brother was subjected to wrongful prosecution as a result of Respondent's conduct, nor was evidence presented that Respondent interfered with law enforcement's investigation and criminal prosecution, as it appears Respondent, in his own name, was ultimately charged for his offenses. Lastly, no evidence indicates that Respondent's brother belongs to a protected class of persons. While Respondent's conduct is certainly undesirable, giving someone else's name to a police officer is not so offensive as to be considered "base, vile, or depraved" so as to constitute a crime of moral turpitude. *Latter-Singh v. Holder*, 668 F.3d at 1161.

In sum, Respondent's CPC § 530.5(a) is categorically overbroad and divisible, but Respondent's conviction is not a match to the generic definition of a CIMT under the modified categorical approach. The DHS has therefore failed to show by clear and convincing evidence that Respondent was convicted of two CIMTs, not arising out of a single scheme of criminal misconduct, and Respondent is therefore not removable as charged under INA § 237(a)(2)(A)(ii).[8]

B. Respondent is not removable as charged under INA § 237(a)(2)(E)(ii) as an alien who has violated a domestic violence protective order.

The DHS also charged Respondent with removability under INA § 237(a)(2)(E)(ii), as an alien convicted of violating a domestic violence protective order. (Form I-261). To sustain a removal charge under INA § 237(a)(2)(E)(ii), the DHS must show evidence that Respondent was, in relevant part, convicted of an offense that involved "conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued[.]" INA § 237(a)(2)(E)(ii). INA § 237(a)(2)(E)(ii) defines "protection order" as "any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions)[.]"

In support of that charge, the DHS presented evidence of two convictions. First, the DHS filed conviction records indicating that Respondent on or about May 8, 2012, was convicted in the Superior Court of California, San Diego, of "Willfully Disobeyed Court Order" in violation of CPC § 166(a)(4). (*Id.*) Second, the DHS filed conviction records indicating that Respondent, on or about April 15, 2013, was convicted of two counts of "Disobey Court Order," in violation

[8] The DHS also argues that Respondent's conviction for False Personation in violation of CPC § 529(3) constitutes a CIMT. Having decided that Respondent's convictions under CPC § 530.5(a) do not constitute CIMTs, the Court need not reach the issue as to whether § 529(3) is a CIMT, as removability under INA § § 237(a)(2)(A)(ii) requires Respondent to have been convicted of *at least* two CIMTs. The DHS therefore has failed to present sufficient evidence to sustain its charge under this section.

of CPC § 273.65(a). To determine whether these convictions fits within the statutory definition of this removable offense, the Court must employ the "categorical approach" and "modified categorical approach" articulated above. *Alanis-Alvarado v. Holder*, 558 F.3d 833, 836 (9th Cir. 2009).

i. Respondent's conviction under CPC § 166(a)(4) is not a removable offense under INA § 237(a)(2)(E)(ii).

The DHS asserts that Respondent's conviction under CPC § 166(a)(4) constitutes removable offense. The Court does not agree.

Examining the full range of conduct proscribed by CPC § 166(a)(4), Respondent's conviction does *not* suffice under the categorical approach. CPC § 166(a)(4) reads in relevant part: "[A] person guilty of any of the following contempts of court is guilty of a misdemeanor: Willful disobedience of the terms as written of *any* process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial." (emphasis added). The range of orders that may be issued under the statute is broad, and the statute plainly encompasses orders outside the scope of the INA provision. Furthermore, upon consulting California case law, it is evident that California has successfully prosecuted individuals under CPC § 166(a)(4) for violations of court orders that are not related to domestic violence. *See e.g. People v. Helming*, No. A122843, 2009 WL 2612439, at *2 (Cal. Ct. App. Aug. 26, 2009) (charged with violating CPC § 166(a)(4) for violating "stay-away order" in a place where she was ordered not to go because that's where she was arrested previously on a narcotics charge); *see also People v. Gonzalez*, 12 Cal. 4th 804, 809 (1996) (charged violating of CPC § 166(a)(4) for possessing a pager in violation of a gang injunction). Accordingly, the Court concludes that CPC § 166(a)(4) is categorically overbroad.

Having found the statute overbroad, we proceed to determining whether CPC § 166(a)(4) is divisible. On its face, the statute does not clearly indicate whether a jury would have to unanimously agree on what particular court order had been violated. The parties did not cite to, nor was the Court able to locate any California state court cases interpreting the elements of CPC § 166(a)(4). However, an examination of the California model jury instructions for CPC § 166(a)(4) reveals that a prosecutor must prove, as an element of the crime, that a particular court order was indeed the particular court order violated and insert it in the jury instructions to be proven to the jury beyond a reasonable doubt. *See* CALCCRIM 2700. Such particularity is in accord with the Supreme Court's rationale that divisible statutes "enable a sentencing court to conclude that a jury (or judge at a plea hearing) has convicted the defendant of every element of the generic crime." *Descamps*, 133 S.Ct. at 2283. Consequently, this Court finds that CPC § 166(a)(4) is divisible and subject to the modified categorical approach.

As described above, when the Court engages in a modified categorical analysis, the Court may review a limited set of documents in the record of conviction, including "the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented." *Shepard v. United States*, 544 U.S. at 16. In this case, the DHS asks the Court to look to the complaint for case numbe(b)(6);(b)(7)(The DHS argues that because the language in Count 1 listed in the complaint

"includes that the victim is the parent of his child[,]" this indicates that "this is a domestic issue," and presumably, is proof that the court order Respondent violated was a domestic violence protective order. The Court is not so convinced.

"When a court using the modified categorical approach to determine whether an underlying conviction is a predicate offense relies solely on the link between the charging papers and the abstract of judgment, that link must be clear and convincing." *Medina-Lara v. Holder*, 771 F.3d 1106, 1113 (9th Cir. 2014). In other words, the government bears the burden of proof to show that the guilty plea clearly and convincingly indicates that Respondent pleaded guilty to the allegations *as listed in the charging document*; in this case, the complaint. *Id.* In Count 2 of the complaint, labeled "Disobeying Court Order," it is alleged that "On or about August 24, 2011, (b)(6);(b)(7)(C) did willfully and knowingly violate of court order obtained to prevent domestic violence and disturbance of the peace, in violation of PENAL CODE SECTION 273.6(a)." However, the conviction documents submitted by DHS indicate that Respondent did not plead guilty to Count 2, but instead plead guilty to "Count 3, Amended," for violating CPC § 166(a)(4) – an entirely different count, and code section. There exists a disconnect between the complaint and the plea because the counts do not correspond. Because Respondent's guilty plea does not indicate that Respondent pleaded guilty to Count 2, as charged in the complaint, the Court finds that the DHS has failed to carry its burden of showing a clear and convincing link between the complaint and Respondent's plea. The Court therefore may not use the complaint to establish Respondent's removability. *See id.* at 1113. On the evidence remaining, it is not "clear and convincing" that Respondent pleaded guilty to a domestic violence protective order, and therefore, the DHS has not met its burden in establishing that Respondent is removable under § 237(a)(2)(E)(ii) of the Act on the basis of his § 166(a)(4) conviction.

ii. Respondent's conviction for under CPC § 273.65(a) is not a removable offense under INA § 237(a)(2)(E)(ii).

The DHS also asserts that Respondent's conviction CPC § 273.65(a) constitutes removable offense. The Court is not so persuaded.

Respondent's conviction is not a categorical match to the requirements of INA § 237(a)(2)(E)(ii). CPC § 273.65(a) reads in relevant part: "Any intentional and knowing violation of a protective order issued pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code is a misdemeanor[.]" The DHS asserts that "all of the sections referenced by the statute involve domestic *issues*." (DHS, Department Second Brief, at 3.) (emphasis added). While it may be the case that the sections referenced involve domestic *issues*, this is not what is required to establish removability INA § 237(a)(2)(E)(ii) – which demands that Respondent violate a protective order issued for the "purpose of preventing violent or threatening acts of domestic violence." The reality is that some orders issued under sections 213.5, 304, or 362.4 of the Welfare and Institutions Code have nothing to do with domestic *violence*. *See* e.g. Cal. Welf. & Inst. Code § 213.5 (permitting the court to issue an order to "stay away" from an animal owned by the person protected by a restraining order); *In re Victoria H.*, No. E033661, 2004 WL 2341884, at *9 (Cal. Ct. App. Oct. 19, 2004) (protective order issued under section 213.5 against child's biological grandmother for acts disrupting adoptive placement.); *see also* Cal. Welf. & Inst. Code § 362.4 (permitting court to issue orders determining child custody and/or visitation). Accordingly, the Court concludes that CPC § 273.65(a) is categorically overbroad.

Turning to the divisibility of the statute, the statute is not a clearly elemental statute, and it cannot be determined to be divisible from the plain language of the statute alone. Furthermore, the DHS did not cite to, nor was the Court able to locate any California state court cases interpreting the elements of § 273.65(a). Additionally, there appear to be no model jury instructions for § 273.65(a) for the Court to consult. *See* CALCRIM 2016. Left without a "clear answer" as to the statute's divisibility from these sources, the Court therefore turns to Respondent's own conviction records.

The complaint for case number (b)(6);(b)(7)(C) indicates Respondent was charged with three counts of "Violation of a Protective Order – Dependent Minors." The charges listed in the complaint appear as follows:

> Count 1 - Violation of a Protective Order – Dependent Minors
>
> On or about March 15, 2013, (b)(6);(b)(7)(C) did intentionally and knowingly violate a protective order issued pursuant to Section 213.5, 304, *and* 362.4 of the Welfare and Institutions Code, in violation of PENAL CODE SECTION 273.65(a), to wit: follow. (emphasis added).
>
> Count 2 - Violation of a Protective Order – Dependent Minors
>
> On or about March 15, 2013, (b)(6);(b)(7)(C) did intentionally and knowingly violate a protective order issued pursuant to Section 213.5, 304, *and* 362.4 of the Welfare and Institutions Code, in violation of PENAL CODE SECTION 273.65(a), to wit: call." (emphasis added).
>
> Count 3 - Violation of a Protective Order – Dependent Minors
>
> On or about March 16, 2013, (b)(6);(b)(7)(C) did intentionally and knowingly violate a protective order issued pursuant to Section 213.5, 304, *and* 362.4 of the Welfare and Institutions Code, in violation of PENAL CODE SECTION 273.65(a), to wit: follow. (emphasis added).

Here, because complaint indicates that Respondent was charged for violating a protective order issued pursuant to all three articulated sections of the Welfare and Institutions Code, this suggests that the statute is indivisible because a jury would not have to unanimously agree on the particular nature of the protective order that was violated. This conclusion is further supported upon examination of other conviction documents in the Record, which include pre-disposition minutes and the court's judgement, that indicate that a jury ultimately found Respondent guilty of "Ct. 2 PC 273.65(a)" and "Ct. 3 PC 273.65(a)." CPC § 273.65(a) is both overbroad and indivisible. As such, the Court may not apply the modified categorical approach. *Mathis v. United States*, 136 S. Ct. at 2249. The DHS has therefore not met its burden in establishing that this conviction supports a charge of removability under INA § 237(a)(2)(E)(ii).

2017-ICLI-00012 3037

Because the Record does not establish that Respondent was convicted of violating a domestic violence protective order, the Court finds that the DHS has not shown by clear and convincing evidence that Respondent is removable as charged under defined in INA § 237(a)(2)(E)(ii). *See Woodby*, 385 U.S. at 286.

IV. CONCLUSION

The DHS has not met its burden to show by clear and convincing evidence that Respondent is removable as charged. Accordingly, the following order will be entered:

ORDERS

IT IS ORDERED that the charge of removability under section 237(a)(2)(A)(ii) of the Act is **not sustained**.

IT IS FURTHER ORDERED that the charge of removability under section 237(a)(2)(E)(ii) of the Act is **not sustained**.

IT IS FURTHER ORDERED that Respondent's motion to terminate proceedings is hereby granted and these proceedings are hereby **terminated** without prejudice.

Date: April 21, 2017

ANA PARTIDA
Immigration Judge

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations, Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
District 5 – Philadelphia Field Office
30 N. 41st Street
Philadelphia, PA 19104

U.S. Citizenship and Immigration Services

(b)(6);(b)(7)(C)
c/o (b)(6);(b)(7)(C) Esq.
PO Box 22360
Philadelphia, PA 19110

January 28, 2015
(b)(6);(b)(7)(C)

Re: Rejection of I-290B filing

File Number: (b)(6);(b)(7)(C)

Applicant:

In Behalf Petitioner: (b)(6);(b)(7)(C) Esq.

Discussion: On or about September 24, 2014, you attempted to file a *Notice of Appeal or Motion (Form I-290B)*. In connection with the motion, you indicated that there was no fee required. The record demonstrates that your I-290B cannot be accepted for processing and must be rejected. Please follow the instructions at the end of this notice for information concerning how you can file a motion to reopen.

On April 6, 2012, you filed a second *Application for Naturalization (Form N-600)*. However, the application was rejected as improperly filed because you were not entitled to file a second application following the denial of the first N-600 on January 13, 2009. In the notice rejecting the filing of the second N-600, USCIS cited the regulation at 8 CFR § 341.6, which states:

> § Sec. 341.6 Denial of application.
>
> If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

In attempting to file the instant motion on Form I-290B, you indicated that no fee was required. However, the regulation indicates that the fee for the motion will be reduced by the amount of the fee paid

2017-ICLI-00012 3046

with the rejected application. The record reveals that you previously paid the $600 filing fee for the rejected N-600. However, the filing fee for Form I-290B is $630. When the filing fee paid for the rejected application is reduced, the outstanding balance required for the filing of a motion to reopen would be $30. As this filing fee did not accompany your submission, the *Notice of Appeal or Motion (Form I-290B)* submitted on September 24, 2014 must be rejected as improperly filed.

Order: The *Notice of Appeal or Motion (Form I-290B)* is hereby rejected as improperly filed. If you wish to seek reconsideration of the denial of Form N-600, you must properly file a motion to reopen with THIS OFFICE along with the required $30 filing fee (which would include the $600 credit for your rejected N-600). USCIS is returning your original submission.

Evangelia A. Klapakis
Field Office Director

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
District 5 – Philadelphia Field Office
30 N. 41st Street
Philadelphia, PA 19104

U.S. Citizenship and Immigration Services

(b)(6);(b)(7)(C)
West Lawn, PA 19609

OCT 30 2013

(b)(6);(b)(7)(C)

Re: Filing of Second N-600

File Number: (b)(6);(b)(7)(C)

Applicant:

In Behalf Petitioner: (b)(6);(b)(7)(C) ittman

Discussion: On or about April 6, 2012, you attempted to file an *Application for Certificate of Citizenship (Form N-600)*. The record demonstrates that your N-600 should not have been accepted for processing and must be rejected. Please follow the instructions at the end of this notice for information concerning how you can file a motion to reopen.

On or about June 16, 2008, you filed your first *Application for Certificate of Citizenship (Form N-600)*. On January 13, 2009, USCIS denied that application and informed you of the appeal rights (enclosed). February 13, 2009, you filed a Notice of Appeal or Motion (Form I-290B) seeking to appeal the decision to the Administrative Appeals Office (AAO). On May 7, 2009, the AAO summarily dismissed the appeal, finding that you failed to demonstrate that the initial decision was incorrect as a matter of law. Approximately three years later, you sought to file the instant application.

An individual is not entitled to file a second application after his or her N-600 has been denied. 8 CFR § 341.6 states:

> § Sec. 341.6 Denial of application.
>
> If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

2017-ICLI-00012 3048

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ARNALDO GIAMMARCO,	:	
Plaintiff,	:	
	:	**CIVIL ACTION NO.**
v.	:	**3:13-cv-01670 (VLB)**
	:	
	:	**March 17, 2016**
RAND BEERS,	:	
ALEJANDRO MAYORKAS, AND	:	
JAMES COMEY,	:	
Defendants.	:	

MEMORANDUM OF DECISION GRANTING PLAINTIFF'S [Dkt. #23] CROSS-MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION TO DISMISS, OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT [Dkt. #18]

Plaintiff Arnaldo Giammarco ("Giammarco") and Defendants Rand Beers, on behalf of the Department of Homeland Security ("DHS"), and Alexander Majorkas, on behalf of the U.S. Citizenship and Immigration Services ("USCIS"), have moved for summary judgment.[1] For the reasons that follow, Defendants' motion is DENIED and Plaintiff's cross-motion is GRANTED.

I. Factual Background

Plaintiff entered the United States in 1960, as a lawful permanent resident. [Dkt. #50-2, Pl.'s Local Rule 56(a)(1) Statement at ¶ 1; Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 1]. In 1976, he enlisted in the U.S. Army, was stationed abroad, and in 1979, Plaintiff was honorably discharged. [Dkt. #50-3, A. Giammarco Decl. at ¶¶ 5-6; Dkt. #50-6, Ex. B. to Pl.'s Cross-Mot. at 1]. On February 3, 1982, Plaintiff submitted an application for naturalization to the

[1] The Complaint also named as a defendant, FBI Director James Comey. [Dkt. #1]. However, Plaintiff has requested and the Court grants the dismissal of all claims against this Defendant. [Dkt. #50-1, Pl.'s Memo. at 10 n. 4].

Immigration and Naturalization Service ("INS"), which, at that time, was the agency responsible for processing, advising applicants, and filing petitions for naturalization. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 4; Dkt. #51-4, Pl.'s Local Rule 56(a)(2) Statement at ¶ 4].[2] Plaintiff's application disclosed a January 1981 arrest for sexual assault in the first degree, and stated that the charge was "still pending." [Dkt. #49-3, Ex. 1 to Defs.' Mot. at 2].

On April 8, 1982, Plaintiff met with an INS agent, who reviewed his application. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 6; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 6]. During the meeting, Plaintiff and the agent discussed the sexual assault charge, and the INS agent told Plaintiff that he should inform the agency when the disposition of this criminal charge became available. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶¶ 7, 9; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶¶ 7, 9]. Later that day, the INS agent drafted a memo to Plaintiff's file, which stated that the charge against Plaintiff was "still pending because [Plaintiff] requested a jury trial" and as a result, the

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[2] Until the Immigration Act of 1990 ("IMMACT"), federal and certain state courts had the authority to grant or deny naturalization petitions. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶ 3]. Accordingly, individuals seeking naturalization were required to file two documents, an application to file a petition for naturalization, which was reviewed by the INS, and a separate petition for naturalization, which was adjudicated by a court. *See Azize v. Bureau of Citizenship & Immigration Servs.*, 594 F.3d 86, 90 (2d Cir. 2010); *U.S. v. Sokolov*, 814 F.2d 864, 869 (2d Cir. 1987). The application was a necessary precursor to filing a petition. 8 U.S.C. § 1445(b)(2) (1982). In addition to receiving and processing applications to file petitions for naturalization, the INS screened applicants to ascertain if they were likely to be eligible for naturalization. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶¶ 2-3]. In this role, the INS would conduct an interview of the applicant, review his or her application, and, upon determining that the applicant was qualified, facilitate the applicant's filing an actual petition for naturalization. [*Id.* at ¶ 3]. Applicants whom the INS deemed unlikely to qualify for naturalization could contest this determination and move forward with a petition, but such cases were "very rare." [*Id.* at ¶ 4].

officer would "defer filing [Plaintiff's naturalization petition] until disposition of case." [Dkt. #49-3, Ex. 2 to Defs.' Mot. at 1]. Also after this meeting, Plaintiff's naturalization application was marked "[n]onfiled." [Dkt. #49-3, Ex. 1 to Defs.' Mot. at 4]. In the space provided for "Date, Reasons," the reviewing officer wrote "[s]ee memo to file of 4-8-82." [*Id.*]. According to a sworn declaration submitted by the Defendants, at and around the time Plaintiff submitted his naturalization application, when an INS examiner designated an applicant's file as "nonfiled" they were not obligated or expected to issue a written notification to the applicant disclosing this fact. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶ 5]. Moreover, applications that received a "nonfiled" designation could be revived, if the applicant provided the INS with the information it requested, or otherwise contacted the INS. [*Id.* at ¶ 8].

On September 27, 1982, Plaintiff sent a letter to the INS informing them that the sexual assault charge had been "nolle[]d" and requesting "an appointment for a[c]quiring [his] U.S. [c]itizenship." [Dkt. #49-3, Ex. 5 to Defs.' Mot. at 1].[3] The letter further explained that Plaintiff "was told to make another appointment when the case had reached a decision." [*Id.*]. According to a document from the Hartford Superior Court, the charge was nolled on or around August 23, 1982.

[3] "The effect of a nolle is to terminate the particular prosecution of the defendant without an acquittal and without placing him in jeopardy." *State v. Richardson*, 291 Conn. 426, 430, 969 A.2d 166 (Conn. 2009). However, a nolle does not protect the defendant from further prosecution in connection with the same underlying conduct. *See Hing Wan Wong v. Liquor Control Commission*, 160 Conn. 1, 5, 273 A.2d 709, 711 (Conn. 1970) ("The nolle . . . was not a bar to a subsequent trial of the plaintiff for the same offense."). Nor does a nolle constitute a dismissal—at least not until thirteen months has passed, such that the charge is automatically erased under Conn. Gen. Stat. § 15-142a(c). *See Cislo v. City of Shelton*, 240 Conn. 590, 607, 692 A.2d 1255, 1264-65 (Conn. 1997).

See [Dkt. #50-6, Ex. K at 2]. However, Plaintiff did not present this or any other documentary evidence regarding the nolle to the INS or the Defendants in this case until January 2014, long after a final order of removal was issued against him. [*Id.* at 1].

The INS received Plaintiff's letter on October 4, 1982. [Dkt. #49-3, Ex. 5 to Defs.' Mot. at 1]. A handwritten note in Plaintiff's INS file indicates that on the same day the INS received his letter, "10/4/82," it decided to "[r]eopen" his file. [Dkt. #50-6, Ex. L to Pl.'s Cross-Mot. at 1].[4] On October 12, 1982, the INS sent the Hartford Police Department a records request, seeking the disposition of the January 1981 charge. [Dkt. #50-6, Ex. G to Pl.'s Cross-Mot. at 1]. On October 26, 1982, the INS received a response, in the form of a table depicting the date and nature of the offense and the case number, with no disposition provided. [*Id.* at 2]. The following day, October 27, 1982, the INS prepared a letter to Plaintiff which instructed him to provide the INS with a certified copy of the disposition of

[4] Defendants contend that it "is not discernable from the record" whether or not the INS reopened Plaintiff's application. [Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 11]. However, they offer no alternative explanation for the seemingly straightforward statement appearing in the file: "Reopen 10/4/82." [Dkt. #50-6, Ex. L to Pl.'s Cross-Mot. at 1]. Nor do they directly dispute that the INS reopened Plaintiff's file. They merely question, without support, whether this statement is sufficient to indicate that the file was reopened. The Court finds, in the absence of any evidence to the contrary, that it is. Indeed, the remainder of the Defendants' response *supports* this conclusion. Defendants state that the handwritten note was "the next to last page in [Plaintiff's] file" and "[t]he last page" was a "file copy of the October 27, 1982" letter the INS allegedly sent to Plaintiff requesting additional information regarding the disposition of the sexual assault charge. [Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 11]. The presence of this letter (whether in draft or final form) in Plaintiff's file would appear to support the conclusion that the file was reopened, because if it were not, there would be no reason for the INS to have made a second, written request for this information, especially since it was apparently under no obligation and typically did not inform applicants when their applications were designated "nonfiled." *See* [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶ 5].

the charge. [Dkt. #49-3, Ex. 6 to Defs.' Mot. at 1]. Plaintiff contends that neither he nor any of his family members ever received this letter. [Dkt. #50-2, Pl.'s Local Rule 56(a)(1) Statement at ¶ 16; Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 16]. No further communication ever occurred between Plaintiff and the INS in connection with this application. [*Id.* at ¶¶ 16-17].

Nearly six years later, on September 21, 1988, the FBI prepared a report concerning the January 1981 charge against Plaintiff. [Dkt. #50-6, Ex. H to Pl.'s Cross-Mot. at 1]. The report was prepared from information provided by the Hartford Police Department, and it referenced the sexual assault charge and Plaintiff's January 1981 arrest. [*Id.*]. However, it did not include a disposition. [*Id.*]. Although this report was placed in Plaintiff's INS file, there is no indication which entity requested the report and when it did so. [*Id.*; *see also* Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 14]. Following the INS's receipt of this report, there is no indication that any action was taken, that the INS contacted Plaintiff, or that the INS closed Plaintiff's file.[5]

Defendants contend that where a naturalization application was submitted to the INS but contained deficiencies which prevented it from filing a petition with the court, the policy of the INS prior to the passage of IMMACT was to retain the application for a limited period of time, and, if the applicant did not provide the missing information the INS requested and it otherwise appeared that the application had been abandoned, the INS would archive it in the ordinary course

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[5] Defendants have submitted a sworn declaration stating that "there is no indication in [Plaintiff's] record that the pendency of any inquiry made to the FBI played any part in the status or handling of the Plaintiff's application." [Dkt. #49-4, Ex. 200, Keck Decl. at ¶ 5]. That the FBI inquiry may not have affected the status or handling of Plaintiff's application does not mean that it is not evidence of that status.

of business. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶¶ 10-11]. Nowhere do Defendants contend that the INS rendered an ultimate determination on or otherwise terminated applications that it deemed abandoned, nor do they maintain that the INS closed files containing abandoned applications within any period of time. Accordingly, there is no indication in the record if and when the INS deemed Plaintiff's application abandoned, and that, at any time after October 4, 1982, the agency closed or otherwise reached a decision on his application. [*Id.* at 1-2; Dkt. #49-4, Ex. 200, Keck Decl. at ¶ 5].

On January 21, 1997, and while his application was in this dormant state, Plaintiff was convicted of the offense of larceny in the fifth degree. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 16; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 16]. Shortly thereafter, on March 3, 1997, Plaintiff was convicted of larceny in the sixth degree. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 17; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 17]. On November 5, 2004, Plaintiff was arrested again, for possession of narcotics. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 18; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 18]. These three offenses served as the basis for the INS's decision to seek Plaintiff's removal. [Dkt. #49-3, Ex. 8 to Defs.' Mot. at 4].

On January 23, 2007, Plaintiff was convicted of larceny in the fourth degree and was sentenced to one year of imprisonment, execution suspended after 30 days. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 19; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 19]. The INS determined that this last offense, larceny in the fourth degree, constituted an aggravated felony. [Dkt. #49-3, Ex. 9 to Defs.' Mot. at 3]. This determination is significant because one who has

committed an "aggravated felony," as defined by the immigration statutes, is generally precluded from cancelling a removal proceeding. [*Id.*]. Commission of an aggravated felony also generally prevents an applicant from satisfying the statutory good moral character requirement for naturalization. *See* 8 U.S.C. § 1101(f)(8) ("No person shall be regarded as . . . a person of good moral character who . . . at any time has been convicted of an aggravated felony . . . .").[6]

On May 14, 2011, Plaintiff was arrested by officers of Immigration and Customs Enforcement ("ICE") and placed in removal proceedings. [Dkt. #50-2, Pl.'s Local Rule 56(a)(1) Statement at ¶ 27; Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 27]. Sometime in 2011, Plaintiff's counsel made a FOIA request of Defendant DHS. [Dkt. #50-3, A. Giammarco Decl. at ¶ 14]. It was through the documents obtained from this request that Plaintiff claims he first learned of the October 27, 1982 letter prepared by the INS and that his application had been designated as "non-filed." [*Id.*].

On May 15, 2012, an immigration judge ("IJ") entered an order of removal and denied Plaintiff's request for a cancellation of removal. [Dkt. #50-2, Pl.'s Local Rule 56(a)(1) Statement at ¶ 29; Dkt. #52-1, Defs.' Local Rule 56(a)(2) Statement at ¶ 29]. In reaching his decision, the IJ found that Plaintiff had "conceded the allegations and the two charges of removability," and that there was "clear, convincing and unequivocal evidence that the allegations . . . [we]re true." [Dkt. #49-3, Ex. 9 to Defs.' Mot. at 2-3]. He denied Plaintiff's application for cancellation of removal upon concluding that Plaintiff was "ineligible for that

[6] Among the offenses which constitute aggravated felonies for immigration and naturalization purposes are theft offenses for which the term of imprisonment is at least one year. *See* 8 U.S.C. § 1101(a)(43)(G).

form of relief because he has been convicted of an aggravated felony" based on his January 5, 2007 conviction for fourth-degree larceny. [*Id.* at 3]. Finally, the IJ considered Plaintiff's assertion that he was "pursuing an old application" for naturalization, an independent basis for avoiding removal. [*Id.*]. However, the IJ concluded that this application "was never acted upon," after the USCIS took the position that the application "was never properly filed because [Plaintiff] never went through the proper process." [*Id.* at 4]. The IJ opinion cites to an exhibit, but does not indicate that the USCIS formally considered and reached a final decision regarding the naturalization application, nor does it identify when the USCIS took this position, in what form, and whether Plaintiff was ever given notice or an opportunity to appeal it. [*Id.*].

On October 1, 2012, the Board of Immigration Appeals ("BIA") issued its decision affirming the removal order. [Dkt. #50-6, Ex. I to Pl.'s Cross-Mot. at 1]. In dismissing Plaintiff's appeal, the BIA discussed Plaintiff's earlier naturalization application and the USCIS's stated "position . . . that the application was never completed at the time it was filed," and that as a result, there was "no application currently pending before the USCIS." [*Id.*]. The BIA further noted that "the DHS has exclusive jurisdiction over naturalization determinations," and thus, the BIA was bound to accept the DHS's determination. [*Id.*]. However, like the IJ opinion, the BIA opinion does not set forth facts demonstrating that the "position" taken by the USCIS constituted a final agency decision which was communicated to Plaintiff and to which Plaintiff received an opportunity to appeal.

On November 26, 2012, Plaintiff was deported to Italy, where he presently resides. [Dkt. #50-6, Ex. J to Pl.'s Cross-Mot. at 2].

II. Legal Standards

A. Summary Judgment

Defendants moved to dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), or in the alternative for summary judgment pursuant to Fed. R. Civ. P. 56. [Dkt. #49]. Plaintiff cross-moves for summary judgment. [Dkt. #50]. In deciding whether to treat a motion as one for summary judgment, "[t]he essential inquiry is whether the . . . [parties] . . . should reasonably have recognized the possibility that the motion might be converted into one for summary judgment or [were] taken by surprise and deprived of a reasonable opportunity to meet facts outside the pleadings." *In re G&A Books, Inc.*, 770 F.2d 288, 295 (2d Cir. 1985). Here, in addition to cross-moving for summary judgment, Plaintiff relies on documents outside of the pleadings and submits a Local Rule 56(a)(2) statement in opposition to the Defendants' motion. *See* [Dkt. ##51-1-5]. Accordingly, the Court evaluates each of the parties' motions under the Rule 56 standard. *See Eidshahen v. Pizza Hut of Am., Inc.*, 973 F. Supp. 113, 114 (D. Conn. 1997) (treating defendant's motion to dismiss pursuant to Rule 12, or, in alternative, motion for summary judgment as motion for summary judgment where "[p]laintiff submitted materials outside the pleadings, including an affidavit" and "briefed for a motion for summary judgment"); *Mendoza v. City of Rome*, 70 F. Supp. 2d 137, 141 (N.D.N.Y. 1999) (treating defendant's motion as one for summary judgment where both parties "referred to documents outside of the pleadings").

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment

as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of proving that no factual issues exist. *Vivenzio v. City of Syracuse,* 611 F.3d 98, 106 (2d Cir. 2010). "In determining whether that burden has been met, the court is required to resolve all ambiguities and credit all factual inferences that could be drawn in favor of the party against whom summary judgment is sought." *Id.* (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986)). "If there is any evidence in the record that could reasonably support a jury's verdict for the nonmoving party, summary judgment must be denied." *Am. Home Assurance Co. v. Hapag Lloyd Container Linie, GmbH,* 446 F.3d 313, 315–16 (2d Cir. 2006) (internal quotation marks and citation omitted). In addition, determinations of the weight to accord evidence or assessments of the credibility of witnesses are improper on a motion for summary judgment, as such are within the sole province of the jury. *Hayes v. New York City Dep't of Corr.*, 84 F. 3d 614, 619 (2d Cir. 1996).

"A party opposing summary judgment cannot defeat the motion by relying on the allegations in his pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible. At the summary judgment stage of the proceeding, Plaintiffs are required to present admissible evidence in support of their allegations; allegations alone, without evidence to back them up, are not sufficient." *Welch–Rubin v. Sandals Corp.,* No. 3:03-cv-481 (MRK), 2004 WL 2472280, at *1 (D. Conn. Oct. 20, 2004) (citing and quoting *Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 518 (2d Cir. 1996)); *Martinez v. State of Connecticut*, No. 3:09cv1341 (VLB), 2011 WL 4396704 at *6 (D. Conn. Sept. 21,

2011). Where there is no evidence upon which a jury could properly proceed to find a verdict for the party producing it and upon whom the onus of proof is imposed, such as where the evidence offered consists of conclusory assertions without further support in the record, summary judgment may lie. *Fincher v. Depository Trust and Clearance Co.*, 604 F.3d 712 (2d Cir. 2010).

B. Administrative Procedure Act

To bring a claim under the APA, a plaintiff must show "(1) a clear duty owed to [him] under by the agency, (2) a duty which is mandatory and not discretionary, and (3) a clear right to relief." *Nigmadzhanov v. Mueller*, 550 F. Supp. 2d 540, 548 (S.D.N.Y. 2008) (citation omitted). The APA imposes a number of requirements on federal agencies. One requirement is, "within a reasonable time . . . to conclude a matter presented to it." 5 U.S.C. § 555(b). Thus, a court may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). However, it may do so only when "an agency failed to take a *discrete* agency action that it is *required to take*." *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 64, 124 S. Ct. 2373, 2379 (2004) (emphasis in original). A court may not review "agency action [that] is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). Accordingly, "when an agency is compelled by law to act within a certain time period, but the manner of its action is left to the agency's discretion, a court can compel the agency to act, but has no power to specify what the action must be." *Norton*, 542 U.S. at 65, 124 S. Ct. at 2380.

Where an APA claim is based on unreasonable delay, courts consider six factors:

> **(1) the time agencies take to make decisions must be governed by a 'rule of reason;' (2) where Congress has provided a timetable or**

> other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed.'

Yakubova v. Chertoff, No. 06 CV 4203 (ERK) (RLM), 2006 WL 6589892, at **3-4 (E.D.N.Y. Nov. 2, 2006) (quoting *Tummino v. Von Eschenbach*, 427 F. Supp. 2d. 212, 231 (E.D.N.Y. 2006) (applying factors to complaint alleging delays in adjudication of naturalization applications by USCIS)).

The duty to resolve applications within a reasonable time applies to DHS and USCIS adjudications of immigration applications, and serves as a proper basis for a claim under the APA. *See, e.g., Eid v. Chertoff*, No. 07-cv-201 (JBA), 2008 WL 905927, at *4 (D. Conn. Mar. 31, 2008) (denying motion to dismiss APA claim against Secretary of DHS for failure to resolve plaintiff's adjustment of status application for more than four years and stating that "[n]othing in the INA relieves the Secretary of his obligation to dispose of pending adjustment of status applications in a reasonable time frame to give applicants prompt notice of those decisions"); *Nigmadzhanov*, 550 F. Supp. 2d at 547 (finding that defendant "CIS had a non-discretionary duty to adjudicate [plaintiff's] application for adjustment within a reasonable amount of time" and that having alleged that CIS breached its duty, plaintiff "stated a clear claim for relief" under APA).[7]

[7] There is case law holding that the DHS and USCIS' duty to timely adjudicate naturalization applications is not triggered until the completion of the FBI's criminal background check. *See Kakushadze v. Chertoff*, No. 07 Civ. 8338 (DF), 2008 WL 2885292, at *7 (S.D.N.Y. Jul. 25, 2008) ("[US]CIS does not have a

Similarly, when an agency issues a denial, "in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding," it is required to give "[p]rompt notice . . . of the denial." 5 U.S.C. § 555(e) (1982). While the Second Circuit has not reached the issue, courts elsewhere have found that the DHS and USCIS must comply with this statute in the course of their review of applications. *See, e.g., Beshir v. Holder*, 853 F. Supp. 2d 1, 6 n. 4, 10-11 (D.D.C. 2011) (citing § 555(e) and holding that court had jurisdiction under the APA to hear complaint challenging agency inaction with respect to plaintiff's application to adjust her immigration status); *Fraga ex rel. Fraga v. Smith*, 607 F. Supp. 517, 522 (D. Or. 1985) (citing § 555(e) in holding that the APA "requires INS to issue a final written decision" in connection with applications for certificates of citizenship). As is the case with a failure to render a decision, "the usual remedy" for an agency's failure to satisfy the notice requirement in the event of a denial is a "'remand to the agency for additional investigation or explanation.'" *Tourus Records, Inc. v. Drug Enforcement Admin.*,

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mandatory duty to take action on an application for naturalization until the FBI has completed its background checks.") (quoting *Abdul Qadir v. Gonzalez*, No. 07-3741 (FLW), 2008 WL 2625314, at *4 (D. N.J. Jun. 26, 2008) (dismissing APA claim based on DHS delay in adjudicating naturalization application). However, Defendants do not raise this argument. In addition, as Defendants acknowledge, 8 U.S.C. § 1447(b) permits a naturalization applicant to request a hearing before a district court in the event of undue delay on the part of the agency, but they claim that this statute does not apply in this case because it was not enacted until 1990. [Dkt. #49-1, Defs.' Memo. at 13]. Defendants' argument assumes that Plaintiff's application was disposed of prior to 1990, but, as discussed below, *see infra* at 17-18, the record plainly indicates that Plaintiff's naturalization application was pending in 1990 and remains so today. Furthermore, Plaintiff relies on this statute in bringing his Complaint. *See* [Dkt. #1, Compl. at ¶¶ 74, 77]. Accordingly, to the extent the APA does not provide for a cause of action to redress the 30-year delay in adjudicating Plaintiff's application, 8 U.S.C. § 1447(b) certainly does.

259 F.3d 731, 737 (D.C. Cir. 2001) (quoting *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744, 105 S. Ct. 1598, 1607 (1985)).

III. Analysis

A. The INS Breached its Duty to Timely Adjudicate Plaintiff's Naturalization Application

At the time Plaintiff submitted his application, February 3, 1982, the INS, a federal agency, was under the general obligation to render a conclusion on the application within a "reasonable time." 5 U.S.C. § 555(b) (1982). Applying the six-factor test, Plaintiff's application was not resolved within a reasonable time. A three-decade long delay exceeds any rule of reason, particularly given that an application for citizenship touches upon the "health and welfare" of the applicant. *Yakubova*, 2006 WL 6589892, at *3.

In response, Defendants dispute the applicability of this provision of the APA by claiming that it applies only to actions that are "legally *required*." [Dkt. #49-1, Defs.' Memo. at 12 (quoting *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63-64, 124 S. Ct. 2373, 2379 (2004) (emphasis in original))]. According to Defendants, no action was or is required with respect to Plaintiff's naturalization application because (i) at the time Plaintiff submitted it, the INS did not adjudicate applications for naturalization, it only made non-binding recommendations to a district court as to whether citizenship should be granted; and (ii) there is no pending application, because the Plaintiff abandoned it, resulting in its administrative closure and archival within a reasonable time. *See* [Dkt. #49-1, Defs.' Memo. at 14-15; Dkt. #53, Defs.' Reply at 2-5]. Defendants are incorrect.

First, Defendants' argument that the INS did not adjudicate naturalization applications is neither accurate nor apposite. As Defendants note, applicants

seeking naturalization were required to file two documents, an application to file a petition for naturalization, which was reviewed by the INS, and a separate petition for naturalization, which was adjudicated by a court. *See Azize v. Bureau of Citizenship & Immigration Servs.*, 594 F.3d 86, 90 (2d Cir. 2010); *U.S. v. Sokolov*, 814 F.2d 864, 869 (2d Cir. 1987). The application was a necessary precursor to filing a petition. 8 U.S.C. § 1445(b)(2) (1982). In addition to receiving and processing applications to file petitions for naturalization, the INS screened applicants to ascertain if they were likely to be eligible for naturalization, by among other things, conducting a paper review and interview of the applicant. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶¶ 2-3]. Upon determining that the applicant was qualified, the INS signed off on the application and assisted the applicant with the filing of a petition for naturalization with the court. [*Id.* at ¶ 3]. In addition, the court most often adopted the agency's recommendation, and it was "very rare" for an applicant to obtain a petition without the endorsement of the INS. [*Id.* at ¶ 4]. Considering that submission of an application to the INS was a prerequisite to filing a naturalization petition with a court, the INS conducted a paper and in-person review of each application and applicant, and it determined whether it would support and assist the applicant with the filing of a naturalization petition, it is clear that the INS performed an adjudication over the naturalization applications it received. Indeed, while not conclusive, the INS's determinations on whether an application should be developed into a petition were rarely contradicted by courts reviewing associated petitions. Thus, even if the Defendants are correct, that a "nonfiled" designation did not equate to the denial of an application, this does not mean that the INS did not perform *any*

adjudication, as an outright denial of an application is only one type of adjudication. *See Brue v. Gonzales*, 464 F.3d 1227, 1233 n. 3 (10th Cir. 2006) (a nonfiled designation on a naturalization application "indicates that a [naturalization] *petition* was not filed, not that the INS considered the Application to be 'nonfiled' or that the INS denied the Application or a petition") (emphasis in original).

Moreover, even if a "nonfiled" designation does not constitute an INS adjudication, the timing requirements in 5 U.S.C. § 555(b) are not limited to agency adjudications. § 555(b) commands that, "within a reasonable time," an agency "*conclude a matter* presented to it." *Id.* (emphasis added). Plaintiff submitted an application to the agency, as he was required, and sought a determination from the agency of whether or not he met the requirements for naturalization and whether the agency would support and assist him in the filing of a naturalization petition. Plaintiff was entitled to a final determination of both of these questions, which collectively comprised the "matter" Plaintiff placed before the agency.

Finally, and relatedly, for the reasons explained below, *see infra* at 17-18, Plaintiff did not, nor has he yet received a final disposition from the agency. Plaintiff's application has been pending from 1982 to the present day. Thus, even if the INS was not under a clear non-discretionary duty to adjudicate Plaintiff's application back in 1982, there is no question that the Defendants presently owe such a duty and have owed it for many years. *See* 8 U.S.C. § 1447(b) (1994) ("If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is

conducted under such section, the applicant may apply to the United States district court . . . for a hearing on the matter").

The Defendants' second contention—that the agency did make a determination on Plaintiff's application, when it closed and archived it after concluding Plaintiff had abandoned it—is simply not supported by the record. While the application was marked "non-filed" and, at some point, was archived, there is simply no evidence that the INS ever (i) reached a final decision or (ii) finally closed Plaintiff's application file—administratively or otherwise. To the contrary, the undisputed record indicates that his file was reopened on or around October 4, 1982, the same day the INS appears to have received the letter from Plaintiff notifying it that his case had been nolled and requesting a second interview to move forward with his application, and remains open to the present day. *See* [Dkt. #49-3, Ex. 5 to Defs.' Mot. at 1; Dkt. #50-6, Ex. L to Pl.'s Cross-Mot. at 1]. There is no indication that a decision was ever made on the application, or that Plaintiff's file was ever closed or archived for any particular reason thereafter. Indeed, the October 27, 1982 letter from the INS requesting additional records from the Plaintiff appears to confirm that the file was reopened and a decision had not yet been made, and the FBI report, which was placed in Plaintiff's file years later, strongly suggests that the file remained open long after the agency sent out its final communication to Plaintiff requesting the disposition of the assault charge. *See* [Dkt. #49-3, Ex. 6 to Defs.' Mot. at 1; Dkt. #50-6, Ex. H to Pl.'s Cross-Mot. at 1].

Defendants do not identify any evidence indicating a subsequent determination or that the file was later closed. At most, they submit an affidavit

which states that naturalization applications, *in general*, were "archived in the ordinary course of business" once it appeared they had been abandoned. [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶ 11]. The Defendants have not presented, and the Court has not found, authority indicating that archiving a file constitutes an official disposition or an otherwise recognized file status. That Plaintiff's application was archived says nothing of its status or disposition, it merely indicates where the file was physically located. Moreover, the Defendants offer no evidence as to when Plaintiff's file was archived or when and if it was deemed abandoned. With the undisputed record demonstrating that Plaintiff's application was never finally adjudicated or closed for over 30 years, Plaintiff has established a violation of 5 U.S.C. § 555(b).

B. <u>The INS Failed to Comply with its Statutory Duty to Notify Plaintiff of its Denial of His Request for a Second Interview</u>

Plaintiff next contends that Defendants violated 5 U.S.C. § 555(e), by failing to inform him of the agency's denials of his requests. At the time Plaintiff submitted his application, Defendants were obligated to provide "[p]rompt notice" of "the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings." 5 U.S.C. § 555(e) (1982). Defendants contend that they did not violate their duty to notify because (i) a designation of "nonfiled" did not constitute a denial; and (ii) the closure and archiving of the file did not constitute a denial, but was instead a determination that the file did not contain the requisite proof for a petition to be filed. *See* [Dkt. #49-1, Defs.' Memo. at 14-15; Dkt. #53, Defs.' Reply at 4-5]. Neither of these arguments succeeds.

First, the Defendants' argument overlooks the Plaintiff's request for a

second "appointment for acquiring [his] U.S. citizenship," contained in his September 27, 1982 letter to the INS. [Dkt. #49-3, Ex. 5 to Defs.' Mot. at 1]. The Defendants acknowledge that the Plaintiff "never received one," and there is no evidence in the record that a written denial of this request was ever sent to the Plaintiff. [Dkt. #53, Defs.' Reply at 15]. Indeed, the October 27, 1982 letter the Defendants claim was the final piece of correspondence the INS sent to Plaintiff does not mention or otherwise refer to this request. *See* [Dkt. #49-3, Ex. 6 to Defs.' Mot. at 1]. The failure to provide Plaintiff with a written denial of his request is alone sufficient to violate the APA. *See* 5 U.S.C. § 555(e) (1982) ("Prompt notice shall be given of the denial in whole or in part of a . . . *request of an interested person* made in connection with any agency proceeding.") (emphasis added).

Second, Defendants' contention that Plaintiff's file was ultimately disposed of and closed absent a denial simply does not comport with their descriptions of agency policy and procedure, nor does it make sense. Both 5 U.S.C. § 555(e) and 8 C.F.R. § 103.3(a) imposed a duty on the INS to notify applicants whenever their applications were denied. *See* 5 U.S.C. § 555(e) (1982) ("Prompt notice shall be given of the denial . . . of a written application . . . ."); 8 C.F.R. § 103.3(a) (1982) ("Whenever a formal application . . . is denied, the applicant shall be given written notice setting forth the specific reasons for such denial.").[8] However, neither the statute nor the regulation defined the terms "denial" or "denied." The Defendants have taken the position that neither a "nonfiled" designation nor the administrative closure of an applicant's file constituted a "denial." [Dkt. #49-1,

[8] **8 C.F.R. § 103.3(a) specifically governed INS officers' review of applications for naturalization. *See* 8 C.F.R. § 103.**

Defs.' Memo. at 13; Dkt. #53, Defs.' Reply at 2-5]. The Defendants' construction is untenable, because if this were the case, under the protocol described in the declaration submitted by the Defendants, the INS would not have issued a single denial, and was *never* under any duty to notify any applicant as to the status of their naturalization application. This is because, according to the Defendants, the INS either determined an application was meritorious and assisted in preparing a petition, or it designated applications "nonfiled" and after a period of time, it administratively closed them. *See* [Dkt. #49-4, Ex. 201, Dorfman Decl. at ¶¶ 3-4, 10-11]. Nowhere does the INS review procedure outlined in the Defendants' declaration provide for a separate "denied" status, nor does any other document in the record.

On the other hand, the record indicates, and the Defendants appear to assert, that once an application was administratively closed, it was no longer under review. *See* [*id.* at ¶¶ 8, 10-11 (explaining that applicants with an outstanding request for information could "revive" their applications by providing the information, if they failed to do so, the case would "remain 'nonfiled' and retained in the field office for a limited period of time," and thereafter, the application was "archived in the ordinary course of business"); Dkt. #53, Defs.' Reply at 5 (stating that the INS closed Plaintiff's file because it "did not contain the requisite proof for a petition to be filed," that "[t]he obligation to act pursuant to the APA is only an obligation to 'conclude' the matter within a reasonable time," and contending that "[i]t is undisputed that the administrative closure took place within a reasonable period")]. Defendants cannot have it both ways. Either the application was reopened and never concluded, as the undisputed record

indicates and the Court so finds, or, as the Defendants maintain, Plaintiff's file was ultimately closed, at which the point, the agency's "nonfiled" designation and determination that Plaintiff had abandoned his application ripened into a final denial, but no denial notice was ever sent to the Plaintiff. In either case, the Defendants have violated the APA, be it by failing to render a disposition, in violation of 5 U.S.C. § 555(b), or by failing to inform the Plaintiff of its ultimate denial of his application, in violation of 5 U.S.C. § 555(e).

C. Plaintiff Has Standing And His Requested Relief is Not Clearly Futile

Defendants next contend that the Court is unable to grant the relief Plaintiff seeks for three reasons: (i) Plaintiff is subject to a final order of removal and is therefore barred from seeking naturalization by 8 U.S.C. § 1429; (ii) Plaintiff's 2007 conviction for larceny in the fourth degree, an aggravated felony, renders him unable to demonstrate good character, a pre-requisite for naturalization; and (iii) Plaintiff is no longer a lawful permanent resident. *See* [Dkt. #49-1, Defs.' Memo. at 16-24]. None of these arguments succeed.

As for the final removal order itself barring consideration of Plaintiff's naturalization application, his honorable service in the U.S. military during the years 1976-1979 places him outside the categorical bar on naturalization imposed by 8 U.S.C. § 1429. *See* 8 U.S.C. § 1440(a)-(b)(1) (permitting any person who, "while an alien or a noncitizen national of the United States, has served honorably . . . during . . . the Vietnam hostilities . . . [to] be naturalized . . . notwithstanding the provisions of section 1429 . . . as they relate to deportability"); *Boatswain v. Ashcroft*, 267 F. Supp. 2d 377, 378 (E.D.N.Y. 2003) (citing 8 U.S.C. § 1429 and noting that it "permit[s] veterans to naturalize

notwithstanding any final order of removal"), *aff'd sub nom Boatswain v. Gonzalez*, 414 F.3d 413 (2d Cir. 2005).[9]

Defendants' other two arguments fare no better. While consideration of Plaintiff's 2007 fourth-degree larceny conviction and the loss of his lawful permanent resident status due to the final removal order may well result in the denial of his naturalization application, it is not clear to the Court that the agency must, or even should, consider either of these facts. Plaintiff originally submitted his application in February 1982, it was never disposed of and remains open, the fourth degree larceny conviction occurred *25 years* later, and his removal took place another five years after that. [Dkt. #49-2, Defs.' Local Rule 56(a)(1) Statement at ¶ 19; Dkt. #51-1, Pl.'s Local Rule 56(a)(2) Statement at ¶ 19; Dkt. #50-6, Ex. J to Pl.'s Cross-Mot. at 2].

Defendants first point to 8 U.S.C. §§ 1427(a)(3), 1101(f)(8), and 8 C.F.R. § 103.2(b)(1) in support of their claim that Plaintiff's fourth-degree larceny conviction precludes consideration of his naturalization application. 8 U.S.C. § 1427(a)(3) states that "[n]o person . . . shall be naturalized unless such applicant . . . during all periods referred to in this subsection has been and still is a person of good moral character . . . ." "The statutory period during which good moral character is to be assessed is 'five years immediately preceding the date of filing his application . . . up to the time of admission to citizenship.'" *Rico v. INS*, 262 F. Supp. 2d 6, 9 (E.D.N.Y. 2003) (quoting 8 U.S.C. §§ 1427(a)(1)-(2)). 8 U.S.C. §1101(f)(8) provides that "[n]o person shall be regarded as . . . a person of good

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[9] **Defendants' reliance on *Ajlani v. Chertoff*, 545 F.3d 299 (2d Cir. 2008) is misplaced, as the plaintiff in that case was not an honorably discharged military veteran who fell within the exception provided by 8 U.S.C. § 1440. *See* [Dkt. #49-1, Defs.' Memo. at 17; Dkt. #53, Defs.' Reply at 8].**

moral character who, during the period for which good moral character is required to be established, is or was . . . convicted of an aggravated felony . . . ." Finally, 8 C.F.R. § 103.2(b)(1) requires an applicant to show that he "is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication."

Neither the statutes nor the regulation preclude the relief sought by the Plaintiff. While they make clear that an applicant must demonstrate good moral character up to the time of admission to citizenship, the very unique set of facts presented in this case renders the application of these requirements to the Plaintiff's naturalization application far from certain. Specifically, the two-and-a-half decade gap in between Plaintiff's filing of his application and his commission of the aggravated felony raises the significant question of whether Plaintiff must demonstrate eligibility through the time the agency performs a long-belated court-ordered adjudication, or if instead, the Plaintiff need only show that he met all of the statutory requirements through the time in which he reasonably should have been granted citizenship, but was not. Indeed, at least one court in this Circuit ordered USCIS to adjudicate a naturalization application despite the applicant's commission of an aggravated felony a decade after he submitted it. *See Rivera v. U.S. Citizenship & Immigration Servs.*, 5 F. Supp. 3d 439, 440-41 (S.D.N.Y. 2014) (stating that in 1995, plaintiff filed an application for naturalization, in 2005, he pled guilty to conspiracy to distribute cocaine,[10] in 2011, he filed a suit

[10] **Conspiracy to distribute cocaine is an "aggravated felony" under Title 8. *See* 8 U.S.C. §§ 1101(a)(43)(B), (U) (listing "[i]llicit trafficking in a controlled substance" as an aggravated felony offense and further stating that "an attempt or conspiracy to commit an offense described in this paragraph" is independently an aggravated felony).**

to compel the USCIS to issue a decision on his still-pending naturalization application, and the court ordered the agency to issue a decision).

In urging the Court to take a different position, the Defendants cite three cases, *Nguyen v. USCIS*, No. 1:09-cv-2211, 2010 WL 3521911 (M.D. Pa. 2010), *Vernon v. Attorney General of the United States*, 181 F. App'x 201 (3d Cir. 2006); *Marquez-Almanazar v. INS*, 418 F.3d 210 (2d Cir. 2005). *See* [Dkt. #49-1, Defs.' Memo. at 21-22; Dkt. #53, Defs.' Reply at 10-11]. None of them compel a different result.

In *Nguyen*, the petitioner sought *nunc pro tunc* relief to file, *for the first time*, a naturalization application following a series of arrests which led to a final order of removal. *Nguyen*, 2010 WL 3521911 at **1, 4. While the petitioner's father did file a certificate of citizenship for his children, including the petitioner, the certificate predated the petitioner's arrests and removal order, and it was never adjudicated, the petitioner conceded that he did not meet the requirements for derivative citizenship at the time his father filed the application. *Id.* at *6. Indeed, at no point was the petitioner eligible for derivative citizenship because he was already eighteen years old by the time his mother naturalized. *Id.* at *1. Nothing on the record before this Court suggests that the Plaintiff was ineligible for citizenship within a reasonable time after his citizenship application was filed. On the contrary, the record establishes that he was eligible for years after he filed his application, arguably more than a reasonable time after it was filed, and for many years before he sustained the convictions which led to his deportation.

***Vernon* likewise does not support the Defendants' position. There, the plaintiff, after being honorably discharged, filed a naturalization application on**

August 5, 1986. *Vernon*, 181 F. App'x, at 202. The agency scheduled an examination date for January 8, 1987, but the plaintiff did not appear, as he claimed that he was never notified of the date. *Id.* Twelve days later, on January 20, 1987, the INS closed his naturalization proceedings. *Id.* Many years later, after a series of minor offenses, the plaintiff was convicted under the felon-in-possession statute, an aggravated felony. *Id.* While the court declined to order the INS to complete its naturalization adjudication *nunc pro tunc*, it did not do so on the basis of the plaintiff's aggravated felony. *Id.* at 203. Instead, in this unreported decision, the Third Circuit declined to order a *nunc pro tunc* review because the plaintiff "offer[ed] no excuse or explanation as to why he never sought clarification or reconsideration of his application for naturalization from the time he filed it in 1986 until he raised it as an issue . . . seventeen years later." *Id.* While the Court recognizes that the Plaintiff bears some of the responsibility for the decades-long delay in resolving his naturalization application, it declines to adopt the position taken in *Vernon*, a non-binding decision, given the INS's multiple violations of the APA in the course of its review of Plaintiff's application.

Further, the Plaintiff's last communication with INS indicated that he thought his application was still under consideration and that he had satisfied all of the application requirements by presenting evidence that his prosecution had been suspended. The legal significance of a *nolle prosequi* is often misconstrued by lay persons and misperceived to be a final resolution of their case. Thus, the Plaintiff's impression, albeit wrong, was not unreasonable, and unlike in *Vernon,* there is no clear evidence that the Plaintiff abandoned his application for citizenship.

Finally, in *Marquez-Almanazar*, the plaintiff, an honorably-discharged veteran, filed a naturalization application *after* removal proceedings had already begun. *Marquez-Almanazar*, 418 F.3d at 213. The removal action was predicated on the plaintiff's prior conviction for possession and attempting to sell cocaine, an aggravated felony under the immigration statutes. *Id.* at 212. Thus, the aggravated felony predated his naturalization application, and the Second Circuit simply held that the relaxed requirements for certain military personnel prescribed in 8 U.S.C. § 1440 did not extend to the standards governing the good moral character requirement. *See id.* at 219. The present case is clearly distinguishable, as the Plaintiff here did not seek citizenship to avert deportation, but rather, he sought citizenship many years before he could have had any inkling that he would be deported.

In a case such as this one, construing the applicable statutes and regulations as requiring an applicant to demonstrate naturalization eligibility for decades beyond when their application should have been adjudicated and they should have attained citizenship could be highly prejudicial, particularly where the agency engaged in significant undue delay. However, the Court finds that the questions of how to interpret these statutes and regulations in the context of this case and what information the agency can and should consider in adjudicating the Plaintiff's naturalization application should be resolved by the agency on remand.

C. <u>Neither of the Defendants' Affirmative Defenses Succeed</u>

Defendants raise the statute of limitations and the doctrine of laches, each of which they claim bars the relief Plaintiff seeks. However, under the law of this

Circuit, neither of these doctrines is applicable.

Absent a defined statute of limitations period, a civil action against an agency of the United States must be filed within six years "after the right of action first accrues." 28 U.S.C. § 2401(a). With regard to procedural violations brought under the APA, the statute of limitations for such claims does not begin to run until the agency action becomes final. 5 U.S.C. § 704; *see also Sai Kwan Wong v. Doar*, 571 F.3d 247, 263 (2d Cir. 2009). In determining whether an agency action is sufficiently final to trigger the running of the statute of limitations, the "core question" is "whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." *Dalton v. Spector*, 511 U.S. 462, 470, 114 S. Ct. 1719, 1725 (1994) (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 797 112 S. Ct. 2767, 2773 (1992)). As explained above, Plaintiff's naturalization application is still pending and has not been adjudicated. No decision, final or otherwise, has been made on it. Plaintiff's application was designated "nonfiled," reopened, and at some point years later, his file was "archived" without ever being denied and without ever notifying Plaintiff. Accordingly, the statute of limitations has not yet commenced, let alone run on Plaintiff's claim. The Plaintiff cannot equitably be expected to challenge agency action of which he was never made aware, especially in a circumstance like this in which there was no specified deadline by which the agency was required to act. To hold otherwise would create a statute of limitations trap.

Defendants' laches defense similarly fails. First, there is some authority in this Circuit holding that because the statute of limitations in this action has not run, a laches defense is unavailable. *See U.S. v. RePass*, 688 F.2d 154, 158 (2d

Cir. 1982) ("Laches is not a defense to an action filed within the applicable statute of limitations."); *Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co.*, No. 83 Civ. 5401 (DC), 1997 WL 278116, at *3 (S.D.N.Y. May 23, 1997) (Chin, J.) ("[I]t is the law of this Circuit that laches may not be asserted as a defense if the applicable statute of limitations has not run."). At the very least, the fact that the statute of limitations has not yet even begun to run is "an important determinant in the application of a laches defense." *Conopco, Inc. v. Campbell Soup Co.*, 95 F.3d 187, 191 (2d Cir. 1996). Indeed, the Second Circuit has expressly rejected efforts by the government to assert the defense in connection with claims subject to the general six-year statute of limitations for suits against the United States when the limitations period had not yet run. *See Ikelionwu v. United States*, 150 F.3d 233, 237-38 (2d Cir. 1998) (reversing district court's dismissal of suit challenging government seizure of personal property on laches grounds and stating that "[i]t is also not without significance that [plaintiff's] claim is timely under the applicable statute of limitations").

Second, even if the fact that the limitations period has not yet run does not alone preclude a laches defense, the Defendants remain unable to avail themselves of it. "Laches is based on the maxim, '*vigilantibus non dormientibus aequitas subvenit*,' meaning 'equity aids the vigilant, not those who sleep on their rights.'" *Ikelionwu*, 150 F.3d at 237 (citation and quotations omitted). "A party asserting the defense of laches must establish that: (1) the plaintiff knew of the defendant's misconduct; (2) the plaintiff inexcusably delayed in taking action; and (3) the defendant was prejudiced by the delay." *Id.* (citing *Tri-Star Pictures, Inc. v. Leisure Time Prod., B.V.*, 17 F.3d 38, 44 (2d Cir. 1994)). However, laches is

an equitable defense that is "committed to the sound discretion of the trial judge." *Whitserve LLC v. GoDaddy.com, Inc.,* No. 3:11-cv-00948 (WGY), 2015 WL 4464476, at *4 (D. Conn. Jul. 21, 2015). Accordingly, courts have declined to apply the defense when the party seeking to invoke it has contributed to the inexcusable delay. *See Clarke v. Commc'ns Workers of Am.*, 318 F. Supp. 2d 48, 57-58 (E.D.N.Y. 2004) (citing *King v. Innovation Books*, 976 F.2d 824, 833 (2d Cir. 1992)). Here, the failure of the agency to notify Plaintiff, at any point, that his application had been designated non-filed, deemed abandoned, or archived, materially contributed to the extensive delay in Plaintiff's bringing this case. This appears to be a case in which both parties have acted in a dilatory manner, and thus, neither should be able to seek refuge in a doctrine that "aids the vigilant." *Ikelionwu*, 150 F.3d at 237 (citation and quotations omitted).

Finally, the INS inquiry into the status of the Plaintiff's criminal prosecution and eligibility for citizenship was wanting. Under Connecticut law, a *nolle prosequi* ripens into a dismissal and an erasure thirteen months after it is entered, provided that the individual charged does not violate the law. *See Cislo v. City of Shelton*, 240 Conn. 590, 607, 692 A.2d 1255, 1264-65 (Conn. 1997) ("[T]he legislature in 1973 and 1974 . . . perceived that . . . some additional procedural protection for a defendant whose case had been nolled was necessary, namely, the automatic erasure of records of nolled cases . . . following the requisite thirteen month period," which has "the same practical effect as would the immediate erasure of records in dismissed cases . . . ."); *see also* Conn. Gen. Stat. § 54-142a(c)(1). Thus, INS could have determined the Plaintiff's eligibility for citizenship by commissioning a criminal records check. If such a check revealed

that the Plaintiff had not been charged with a criminal offense subsequent to the entry of the *nolle*, the INS would have known that the charges had been dismissed and the Plaintiff was eligible for citizenship. Here, the INS's inquiry into the status of the Plaintiff's criminal offense was lacking, depriving the INS of the equitable defense of laches.

IV. Conclusion

For the foregoing reasons, the Court assumes jurisdiction over this matter, GRANTS Plaintiff's Cross-Motion for Summary Judgment, DENIES the Defendants' Motion to Dismiss or in the Alternative for Summary Judgment, REMANDS this matter back to Defendant USCIS, and ORDERS the agency to perform all acts necessary to enable review of Plaintiff's application and to render a timely decision on Plaintiff's naturalization application.

IT IS SO ORDERED, ADJUDGED AND DECREED, this 17th day of March 2016, Hartford, Connecticut

/s/
Vanessa L. Bryant,
United States District Judge

Office of the Chief Counsel
U.S. Department of Homeland Security
125 E. John Carpenter Fwy., Ste. (b)(6
Irving, Texas 75062

U.S. Immigration and Customs Enforcement

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Senior Attorney
Office of Chief Counsel, Dallas, TX

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) Acting Assistant Field Office Director
Enforcement and Removal Operations, Field Office, Dallas

(b)(6);(b)(7)(C)

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

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was Veronica Churon, as evidenced by the I-213. The Department of State provided a copy of

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LEGAL ANALYSIS

(b)(5);(b)(6);(b)(7)(C)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. Immigration and Customs Enforcement

May 4, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, El Paso, Texas

(b)(6);(b)(7)(C)
Corey A. Price, Field Office Direc
Enforcement and Removal Operations, El Paso Field Office

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5);(b)(6);(b)(7)(C)

FACTS

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

LEGAL ANALYSIS

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

(b)(5);(b)(6);(b)(7)(C)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
11545 Montana Avenue (b)(6);(b)(
El Paso, Texas 79936

U.S. Immigration and Customs Enforcement

March 9, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, El Paso, Texas

Corey A. Price, Field Office Director
Enforcement and Removal Operations, Field Office El Paso, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(5);(b)(6);(b)(7)(C)

FACTS

(b)(5);(b)(6);(b)(7)(C)

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LEGAL ANALYSIS

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Analysis

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CONCLUSION AND RECOMMENDATION

(b)(5)

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
11545 Montana Avenue, (b)(6);
El Paso, Texas 79936

U.S. Immigration and Customs Enforcement

March 9, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, El Paso, Texas

Corey A. Price, Field Office Director
Enforcement and Removal Operations, Field Office El Paso, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

USC CLAIM MEMORANDUM TO THE FILE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

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LEGAL ANALYSIS

(b)(5)

(b)(5);(b)(6);(b)(7)(C)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel

U.S. Department of Homeland Security
31 Hopkins Plaza, Room (b)(6)
Baltimore, MD 21201

U.S. Immigration and Customs Enforcement

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Deputy Principal Legal Advisor for Field Legal Operations, OPLA

Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel (b)(6);(b)(7)(C)
Office of the Chief Counsel, Baltimo (b)(6);(b)(7)(C)

FOIL Dorothy E. Herrera-Niles, Field Office Director
Enforcement and Removal Operations, Field Off
Baltimore

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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CONCLUSION AND RECOMMENDATION

(b)(5)

2017-ICLI-00012 3123

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

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LEGAL ANALYSIS

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
100 Montgomery St., (b)(6);(b)(7)
San Francisco, CA 94104

U.S. Immigration and Customs Enforcement

April 10, 2017

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Francisco

(b)(6);(b)(7)(C)

David Jennings, Field Office Director
Enforcement and Removal Operations, San Francisco, CA

(b)(6);(b)(7)(C)

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

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2017-ICLI-00012 3132

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

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LEGAL ANALYSIS

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CONCLUSION AND RECOMMENDATION

(b)(5)

2017-ICLI-00012 3140

Enforcement and Removal Operations

U.S. Department of Homeland Security
130 Delaware Avenue
Buffalo, New York 14202

U.S. Immigration and Customs Enforcement

~~SENSITIVE/PRIVILEGED**PRE-DECISIONAL**ATTORNEY WORK PRODUCT**~~**

DATE: March 30, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Buffalo
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
For (b)(6);(b)(7)(C) Acting Field Office Director
Enforcement and Removal Operations, Field Office
Buffalo

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

~~SENSITIVE/PRIVILEGED**PRE-DECISIONAL**ATTORNEY WORK PRODUCT**~~**

FACTS

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LEGAL ANALYSIS

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

REPUBLIC OF HONDURAS
NATIONAL REGISTRY OF PERSONS **No.** (b)(6);(b)(7)(C)
MUNICIPAL CIVIL REGISTRY

BIRTH CERTIFICATE RECORD

The undersigned Municipal Civil Registrar CERTIFIES that in the Record of births that is kept in this office; certificate number (b)(6);(b)(7)(C) is found on page (b)(6 volume (b)(6);(b)(7
Identity Number
of the year 1995 and which belongs to:

a) (b)(6);(b)(7)(C) **b)** (b)(6);(b)(7
First Last Name *Second Last Name*

c) (b)(6);(b)(7)(C) SEX F |X | M | |
Name

and whose information is the following:

1) Place, date, and order of birth
   a) ***SANTA ROSA DE AGUAN*** **b)** ***COLON*** **c)** ***HONDURAS***
   Municipality *Department* *Country*
   d) ***ELEVENTH*** **e)** (b)(6);(b)(7)(C)
   Day *Month* *Year*
2) Last names, names, and nationality of the father:
   a) (b)(6);(b)(7)(**b)** --------
   First Last Name *Second Last Name*
   b) (b)(6);(b)(7)(C) **d)** ***HONDURAN***
   Name *Nationality*
3) Last names, names, and nationality of the mother:
   a) (b)(6);(b)(7)(**b)** ----------
   First Last Name *Second Last Name*
   c) (b)(6);(b)(7)(C) **d)** ***HONDURAN***
   Name *Nationality*
4) Separate authorized notes:
(12/18/1994) Judicial Reposition

Issued in ***SANTA ROSA DE AGUAN*** ***COLON***
Municipality Department
on the: ***TWENTY-FIFTH*** day of the month of ***JULY***
two thousand and ***SIXTEEN***

/s
Signature and Stamp of the Municipal Civil Registrar

Atlanta Office of Chief Counsel

U.S. Department of Homeland Security
180 Ted Turner Drive, SW, Suite (b)(
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlanta

(b)(6);(b)(7)(C) (DCC)

Sean Gallagher, Field Office Director
Enforcement and Removal Operations, Field Office Atlanta

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

DATE: March 22, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio, Texas

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
Field Office, San Antonio, Texas

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

REPÚBLICA DE HONDURAS
REGISTRO NACIONAL DE LAS PERSONAS
REGISTRO CIVIL MUNICIPAL

Nº (b)(6);(b)(7)(C)

CERTIFICACION DE ACTA DE NACIMIENTO

El infrascrito Registrador Civil Municipal CERTIFICA que en el Archivo de nacimientos que se tiene en esta oficina; se encuentra el acta de nacimiento número: (b)(6);(b)(7)(C) *Número de Identidad* ubicada en el folio (b)(6) del tomo (b)(6);(b) del Año 1995 y que pertenece a:

a) (b)(6);(b)(7)(C) *Primer Apellido*

b) (b)(6);(b)(7)(C) *Segundo Apellido*

c) (b)(6);(b)(7)(C) *Nombre*

SEXO F [X] M [ ]

y cuya información es la siguiente:

1.) Lugar, fecha y orden de nacimiento

a) *SANTA ROSA DE AGUÁN* Municipio

b) *COLÓN* Departamento

c) *HONDURAS* País

d) (b)(6);(b)(7)(C) Día

e) (b)(6);(b)(7)(C) Mes Año

2.) Apellidos, nombre y nacionalidad del padre:

a) (b)(6);(b)(7)(C) *Primer Apellido*

b) - - - - - - - *Segundo Apellido*

c) (b)(6);(b)(7)(C) *Nombre*

d) *HONDUREÑA* Nacionalidad

3.) Apellidos, nombre y nacionalidad de la madre:

a) (b)(6);(b)(7)(C) *Primer Apellido*

b) - - - - - - - *Segundo Apellido*

c) (b)(6);(b)(7)(C) *Nombre*

d) *HONDUREÑA* Nacionalidad

4.) Notas marginales autorizadas:

(18/12/1994) Reposición judicial

Extendida en *SANTA ROSA DE AGUÁN* Municipio *COLÓN* Departamento

a los: *VEINTICINCO* *JULIO*

del DOS MIL *DIECISEIS*

(b)(6);(b)(7)(C)

2017-ICLI-00012 3172
Firma y Sello del Registrador Civil Municipal

Case Search (b)(7)(E) Search

PLAnet Case Summary | Documents | RAPS | EID | EOIR

Case Properties

A-Number: (b)(6);(b)(First Name: (b)(6);(b)(7)(C) Last Name: (b)(6);(b)(

EOIR Fullname: (b)(6);(b)(7)(C)

Case Status: Pending IJ

Aggravated Felon:	No	Juvenile:	No	NS Interest:	No	USCIS Duress Exemption:	
Gang Affiliation:	No	LE Interest:	No	Stay in Effect:	No		
Ineffective Assistance:	No	LPR:	No	U.S. Military:	No		
HR Interest:	No	Operations:	No	Operation:			

Case History

Event Date	Type	Event Notes	Action	Order	Appeal Reserved	Immigration Judge	Government Attorney	Modified On	Modified By
11/29/2019 9:00 AM	Master			Data Entry Error		SICHEL HELEN		9/29/2016 11:10:11 PM	installer CRM
3/22/2017 8:30 AM	Master	(b)(5)				SICHEL HELEN	(b)(6);(b)(7)(C)	4/10/2017 4:15:47 PM	installer CRM
1/25/2017 9:30 AM	Master			Cont. - Alien	Waived by Both	SICHEL HELEN		1/25/2017 5:46:03 PM	installer CRM
12/22/2016 2:34 PM	Case Prep IJ							12/29/2016 2:06:37 AM	APSVC CRM
10/26/2016 8:30 AM	Master			Cont. - Alien	Waived by Both	Sichel Helen		10/26/2016 3:07:31 PM	installer CRM

Pleadings

Name	Received Date	NTA Served On	Charge Code	Decision
040087905 - Pleading - 237a02Bi-Controlled		2/26/2015 5:00:00 PM	237a02Bi-Controlled	
040087905 - Pleading - 237a02C-Convicted		2/26/2015 5:00:00 PM	237a02C-Convicted	

Applications

Case Information

A-Number: (b)(6);(b)(Document Site:

Case Status: Pending IJ Location: New York

Previous Case Status: Modified By: installer CRM

Next Hearing Type: Master Immigration Judge: SICHEL HELEN

Next Hearing: 11/29/2019 9:00 AM Base Location: New York

Received Date: Custody Status: No

Bond Appeal Due Date:
Detained Location:
Case Time: 143

Case Attributes

Appeal Filed:	No	**Convicted:**	Yes	**Reasonable Fear:**	No	**Stipulated Removal:**	No
Asylum Only Case:	No	**Deportation:**	No	**Removal:**	Yes	**VAWA:**	No
Credible Fear Review:	No	**Exclusion:**	No	**Recission:**	No	**Withholding Only:**	No
Criminal Charge:	Yes	**Failure to Appear:**	No	**Sex Offender:**	No		

Alien Details

EID Fullname:
EOIR Fullname: (b)(6);(b)(7)(C)
Language: Unknown language
Last Name: (b)(6);(b)(7)(C)
Alias Last Name: (b)(6);(b)(7)(C)
Gender: Male
First Name:
Alias First Name:
Birth Date: (b)(6);(b)(7)(C)
Middle Name:
Alias Middle Name: C
Place of Birth: Jamaica
Maiden Name:
Alias:
Nationality:
FINS Number:
Nickname:
Citizenship: Jamaica
I-94 Control Number:
(b)(7)(E)
Date of Entry: 6/1/1986

Street (b)(6);(b)(7)(C)
ZIP/Postal Code: 11236
Street 2:
Country/Region: USA
City: Brooklyn
Phone:
State/Province: NY

Record Details

Modified On: 4/10/2017 0:15 PM
Record Status:
Owner: APSVC CRM
Created On: 9/29/2016 7:09 PM
OCC List: No
Created By: APSVC CRM
SharePoint URL:

(b)(6);(b)(7), Esq.
The Legal Aid Society
199 Water Street FL 3
New York, NY 10038

NON- DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
NEW YORK IMMIGRATION COURT
NEW YORK, NY

In the Matter of:	)	
(b)(6);(b)(7)(C)	)	**A#** (b)(6);(b)(7)(C)
In removal proceedings.	)	

Immigration Judge Aviva Poczter

Next Hearing: May 9, 2017

RESPONDENT'S MOTION TO TERMINATE

EXHIBIT LIST

Exhibit A	Respondent's Birth Certificate and English Translation
Exhibit B	Respondent's Father's Certificate of Naturalization
Exhibit C	Respondent's Father's Affidavit of Support and English Translation
Exhibit D	Notice of Referral to Immigration Judge

PROCEDURAL HISTORY

Respondent, Ms. (b)(6);(b)(7)(C) fled Honduras with her two minor daughters, (b)(6);(and (b)(6);(b)(7)(C), and was apprehended at the border between Mexico and the United States on June 17, 2016. Ms. (b)(6);(b)(7)(C) was placed in Withholding Only Proceedings after passing a Reasonable Fear Interview. See **Exhibit D**: Referral to Immigration Judge. Ms. (b)(6);(b)(7)(C) appeared for a Master Calendar hearing, on March 7, 2017 at the New York Immigration Court with Undersigned Counsel. At Respondent's March 7, 2017 Master Calendar hearing, Undersigned Counsel indicated that Undersigned Counsel would work with the Department of Homeland Security (hereinafter "DHS") prior to the next Master Calendar hearing date in order to seek termination of Respondent's deportation proceedings as Respondent is a United States citizen. This Court adjourned proceedings so that the DHS and Undersigned Counsel could work together to terminate Respondent's removal proceedings. Undersigned Counsel now respectfully requests that this Court terminate proceedings without prejudice based on the evidence that demonstrates that Respondent is a United States citizen.

STATEMENT OF FACTS

Respondent, (b)(6);(b)(7)(C) was born on (b)(6);(b)(7)(C) to (b)(6);(b)(7)(C) (b)(6);(b (hereinafter "(b)(6);(b)(7)(C)") and (b)(6);(b)(7)(C) See **Exhibit A**: Birth Certificate of (b)(6);(b)(7)(C) and English translation (hereinafter "Respondent's Birth Certificate"). Upon information and belief, Mr. (b)(6);(b Ms. (b)(6);(b)(7)(C) father, entered the United States

in 1975.[1] Ms. (b)(6);(b)(7)(C) father, Mr. (b)(6);(became a naturalized United States citizen on October 12, 1988, approximately three and a half years prior to Ms. (b)(6);(b)(7)(C) birth. See **Exhibit B**: Certificate of Naturalization of (b)(6);(b)(7)(C) (hereinafter "Certificate of Naturalization"). On August 29, 1995, prior to Ms. (b)(6);(b)(7)(C) 18th birthday, Mr. (b)(6);(b)(7 signed an affidavit of support stating that he will accept and carry through his obligation to financially support his daughters (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) See **Exhibit C**: Affidavit of Support and English Translation (hereinafter "Affidavit of Support").

ARGUMENT

The Court Should Terminate Removal Proceedings Because Respondent is a United States Citizen as She Meets All of the Requirements Under INA§ 301 and INA§ 309 for Acquisition of Citizenship at Birth.

Under the Immigration and Nationality Act (INA), Ms. (b)(6);(b)(7)(C) acquired U.S. citizenship at birth because she meets the requirements for acquisition of citizenship under the INA§ 301(g) and INA §309 provisions in effect at the time of her birth.

Ms. (b)(6);(b)(7)(C) acquired citizenship at birth through her father under INA §301(g). Pursuant to INA §301(g), **"**a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years." First, Ms (b)(6);(b)(7)(C) was born out of wedlock to a United States citizen father (b)(6);(b)(7)(C) and a non-citizen mother ((b)(6);(b)(7)(C) (b)(6);(. Second, Ms. (b)(6);(b)(7)(C) father was a United States citizen at Ms. (b)(6);(b)(7)(C)

[1] The DHS had indicated that they have reviewed (b)(6);(b)(7)(A-file and have the exact date of (b)(6);(b)(7) entry in to the United States.

birth. See **Exhibit B**: Certificate of Naturalization. Third, Ms. (b)(6);(b)(7)(C) father completed five years of physical presence in the United States, two of which after the age of 14, prior to Ms (b)(6);(b)(7)(C) birth. Upon information and belief, Ms. (b)(6);(b)(7)(C) father came to the United States in 1975 (at the age of 12 or 13) and was naturalized in 1988 at the age of 25 (see attachment). Ms. (b)(6);(b)(7)(C) was born in 1992. Therefore, Mr. (b)(6);(b)(7)(C) A-file and Certificate of Naturalization demonstrate that Mr. (b)(6);(b was physically present in the United States for a period of five years, two of which were after the age of 14, prior to Ms. (b)(6);(b)((b)(6);(b) birth on (b)(6);(b)(7)(C)

Ms. (b)(6);(b)(7)(C) also meets the requirements for INA§ 309 in order to acquire citizenship at birth. INA §309 requires the following:

> INA §309. Children born out of wedlock
> **(a)** The provisions of paragraphs (c), (d), (e), and (g) of section 301 of this title, and of paragraph (2) of section 308 of this title, shall apply as of the date of birth to a person born out of wedlock if--
> **(1)** a blood relationship between the person and the father is established by clear and convincing evidence,
> **(2)** the father had the nationality of the United States at the time of the person's birth,
> **(3)** the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
> **(4)** while the person is under the age of 18 years--
> **(A)** the person is legitimated under the law of the person's residence or domicile,
> **(B)** the father acknowledges paternity of the person in writing under oath, or
> **(C)** the paternity of the person is established by adjudication of a competent court.

Ms. (b)(6);(b)(7)(C) meets all of the aforementioned requirements under INA §309. First, a blood relationship has been established by clear and convincing evidence as Ms. (b)(6);(b)(7)(C) father is listed on her birth certificate, and her father signed an affidavit of support asserting that he is Ms. (b)(6);(b)(7)(C) legitimate father. See **Exhibits** A and C. Second, Ms. (b)(6);(b)(7)(C) father was a United States citizen since 1988, therefore he was a US citizen at the time of her birth in 1992. Third, Ms. (b)(6);(b)(7)(C) father agreed in writing to provide financial support to

Ms. (b)(6);(b)(7)(C) until she reaches 18 years of age. See **Exhibit C**: Affidavit of Support.

Fourth, Mr (b)(6);(b) legitimated Ms. (b)(6);(b)(7)(C) as he is listed on her birth certificate as her legal father and acknowledged paternity under oath in the aforementioned Affidavit of Support. See **Exhibits A** and **C**.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court terminate proceedings with prejudice. As is set forth above, Respondent acquired United States citizenship at birth and therefore this Court does not have jurisdiction to continue with Respondent.

Respectfully submitted this 4th day of May, 2017.

(b)(6);(b)(7)(Esq.
Staff Attorney
The Legal Aid Society
199 Water Street, (b)(6);(b)(7)(C
New York, New York 10038
(212) 577-(b)(6);(b

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
NEW YORK IMMIGRATION COURT
NEW YORK, NY

In the Matter of:	
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C)
In removal proceedings.	

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Terminate, having been read and considered together with any response filed by the Department of Homeland Security, it is,

HEREBY ORDERED that the Respondent's Motion be GRANTED DENIED.

_____
Date

_____
Honorable Aviva Poctzer
Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS
Date: _____ By: Court Staff _____

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Spring Street, SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlant (b)(6);(b)(7)(C)

Sean Gallagher, Field Office Di
Enforcement and Removal Operations, Field Office Atlanta

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIMS MEMORANDUM

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of the Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship;
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C)

LEGAL ANALYSIS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

U. S. Department of Homeland Security

Notice of Referral to Immigration Judge

In ICE Custody: South Texas Family Residential Center 300 El Rancho Way Dilley, TX 78017	Date
	A-File (b)(6);(b)(7)(C)
Name (b)(6);(b)(7)(C)	Country of Citizenship Honduras
Place and Manner of Arrival AT OR NEAR EAGLE PASS, TEXAS ; EWI	Date of Arrival 06/17/16

To immigration judge:

☐ 1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).

☐ 2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

☐ 3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR 208.2(c). Arrival category (check one):

☐ Crewmember/applicant ☐ Crewmember/refused ☐ Crewmember/landed
☐ Crewmember/violator ☐ VWP/applicant ☐ VWP/violator
☐ 235(c) order ☐ S-visa nonimmigrant ☐ Stowaway: credible fear determination attached

☐ 4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):

☐ a United States citizen ☐ a lawful permanent resident alien
☐ an alien granted refugee status under section 207 of the Act ☐ an alien granted asylum under section 208 of the Act.

☐ 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Department of Homeland Security (DHS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **does not** have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).

☒ 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the DHS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter has been referred for a determination in accordance with 8 CFR § 208.31(e).

☐ 7. The Secretary of Homeland Security has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The DHS has therefore invoked procedures to continue the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR § 241.14(g).

U. S. Department of Homeland Security

Notice of Referral to Immigration Judge

NOTICE TO APPLICANT

You are ordered to report for a hearing before an immigration judge for the reasons stated above. Your hearing is scheduled on

To Be Determined (Date) at **To Be Determined** (Time)

You are to appear at: MIAMI EOIR, 333 South Miami Avenue, Suite (b)(6); Miami, Florida 33130
(complete office address)

☒ You may be represented in this proceeding, at no expense to the government, by an attorney or other individual authorized and qualified to represent persons before an Immigration Court. If you wish to be so represented, your attorney or representative should appear with you at this hearing. In the event of your release from custody, you must immediately report any change of your address to the Immigration Court on Form EOIR-33, which is provided with this notice. If you fail to appear for a scheduled hearing, a decision may be rendered in your absence.

☒ You may consult with a person or persons of your own choosing prior to your appearance in Immigration Court. Such consultation is at no expense to the government and may not unreasonably delay the process.

☐ Attached is a list of recognized organizations and attor

(b)(6);(b)(7)(C)

(Signature and title of immigration officer)

CERTIFICATE OF SERVICE

☒ The contents of this notice were read and explained to the applicant in the Spanish language.

☒ The original of this notice was delivered to the above-named applicant by the undersigned on 7/21/16 and the alien has been advised of communication privileges pursuant to 8 CFR 236.1(e). Delivery was made:

☒ in person ☐ by certified mail, return receipt # _____ requested ☐ by regular mail

(b)(6);(b)(7)(C) DO

(Signature and title of immigration officer)

Attachments to copy presented to immigration judge:

☐ Passport
☐ Visa
☐ Form I-94
☐ Forensic document analysis
☐ Fingerprints and photographs
☐ EOIR-33
☐ Form I-860
☐ Form I-869
☐ Form I-898
☐ Asylum officer's reasonable fear determination worksheet (I-899)
☐ Asylum officer's credible fear determination worksheet (I-870)

☐ FOR 8 CFR 241.14(f) CASES ONLY: Written statement including summary of the basis for the Commissioner's determination to continue the alien in detention, and description of the evidence relied on in finding the alien specially dangerous (with supporting documents attached).

☐ EOR 8 CFR 241.14(f) CASES ONLY: Written notice advising the alien of initiation of proceedings and informing alien of procedures governing the Reasonable Cause Hearing at 8 CFR 241.14(h).

☐ Other (specify): _____

2017-ICLI-00012 3205

D2016/35827

[HAITIAN COAT OF ARMS]

REPUBLIC OF HAITI

LIBERTY EQUALITY FRATERNITY

[NATIONAL EMBOSED SEAL]

NATIONAL ARCHIVES

[BARCODE]

(b)(6);(b)(7)(C)

Extract from the Records of **Death** Certificates filed with the office of the National Archives of the Republic.

Commune: PORT-DE-PAIX - WEST
Certificate No.: 82 –Year: 1990 – Register: ALZZ– Page- 41
DEATH CERTIFICATE OF Solange JOSEPH deceased on July 14th 1990

In nineteen ninety, the 187th Year of the Independence and on Monday August twenty ninth at 10:00 a.m. Before us, (b)(6);(b)(7)(C), Registrar of Port-de-Paix, Undersigned;

Appeared Ms. (b)(6);(b)(7)(C), proprietor living and residing in Port-de-Paix. Who declared to us in the presence of (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) both of legal age living and residing in Port-de-Paix, witnesses chosen and brought by the petitioner that Solange JOSEPH born in Port-de-Paix on February twenty six nineteen fifty nineteen forty two when alive, a property owner living and residing in Port-de-Paix, biological daughter of Mr. Alexis JOSEPH deceased and of Sonia JEAN deceased, has died on July fourteenth nineteen ninety at six p.m. in Port-de-Paix at the age of forty eight years old.

In witness whereof this certificate checked by the Public Health Service.

Having read this certificate, we have signed it with the petitioner and the witnesses.

SIGNED: REGISTRAR
THEORIC CETOUTE

Drafted in Port-au-Prince, May 30, 2016

FOR TRUE COPY

[Illegible Signature]

(b)(6);(b)(7)(C)

GENERAL DIRECTOR

RÉPUBLIQUE D'HAITI

RÉPUBLIQUE D'HAITI
LIBERTÉ - ÉGALITÉ - FRATERNITÉ

ARCHIVES NATIONALES

Registre des Actes de Decès déposés au bureau des Archives Nationales de la République

Commune : PORT-DE-PAIX : NORD
n° : 82 - Année : 1990 - Registre : ALZZ- Page - 41
ACTE DE DECES DE : Solange JOSEPH décédée le 14 Juillet 1990

L'An mil neuf cent quatre vingt dix, An 187ème de l'Indépendance et le lundi vingt neuf Août à d heures du matin. Par devant Nous, Théoric CETOUTE, Officier de l'Etat Civil de Port-au-Paix, Soussign

A comparu, la dame (b)(6);(b)(7)(C) Propriétaire demeurant et domicilié à Port-de-Paix. Lequ nous a déclaré en présence de (b)(6);(b)(7)(C) bus deux majeu demeurant et domiciliés à Port-de-Paix, témoins choisis et amenés par la comparante que (b)(6);(b)(7)(C) née à Port-de-Paix, le vingt six Février mil neuf cent quarante deux de son vivant propriétaire, demeura et domiciliée à Port-de-Paix, fille naturelle de Monsieur Alexis JOSEPH décédé et de (b)(6);(b)(7)(C) décéd est décédée (e) le quatorze Juillet mil neuf cent quatre vingt dix à six heures du soir à Port-de-Paix à l'â de quarante huit ans.

En foi de quoi, vu un certificat service d'Hygiène et assistance publique.

Après lecture faites par nous dudit Acte, l'avons signé avec la comparante et les témoins.

SIGNE : OFFICIER D'ETAT CIVIL
THEORIC CETOUTE

Fait à Port-au-Prince, le 30 Mai 2016
POUR COPIE CONFORME

(b)(6);(b)(7)(C)
DIRECTEUR GENERAL

091 447 045

1/1

1.00 Gde. 1.00 Gde.

PAPIER TIMBRE

Une gourde

Nº 7812 N

ACTE DE DECES

LIBERTE EGALITE FRATERNITE

RÉPUBLIQUE D'HAITI

Année 1990
Page 41
No 82
Acte de décès de

L'an mil neuf cent quatre-vingt dix An 187e de l'Indépendance et le lundi vingt neuf Avril à deux heures de l'après midi

Par-devant Nous Henric Jatoute

Officier de l'Etat Civil de Port de Paix

soussigné;

A comparu la dame Jazzapette (b)(6);(b)(7)(C) Propriétaire

Demeurant et domicilié à Port de Paix

(b)(6);(b)(7)(C)

Lequel nous a déclaré en présence de (b)(6);(b)(7)(C)

et de (b)(6);(b)(7)(C) tous deux majeurs, demeurant et domiciliés à Port de Paix témoins choisis et amenés par la Comparante

que Solange Coupet

né à Port de Paix le 26 Février 1942 de son vivant

propriétaire, demeurant et domicilié à Port-de Paix

(b)(6);(b)(7)(C)

de M.

propriétaire, demeurant et domicilié à décédé

(b)(6);(b)(7)(C)

et de propriétaire, demeurant et domicilié à décédée

, est décédé le Quatorze juillet mil neuf cent quatre-vingt dix à

sept heures du soir à Port de Paix, à l'âge de 48 ans

et que le décédé était l'époux

En foi de quoi, vu un Certificat du Service National d'Hygiène et d'Assistance Publique au

No , avons dressé le présent acte de décès

Après lecture faite par nous dudit acte l'avons signé avec la Comparante elle

Récépissé de la Direction Générale des Impôts No Série

Signé :

P. N. H. (953511)

D.G.I.-369

No. 7812 N

DEATH CERTIFICATE

LIBERTY EQUALITY FRATERNITY
REPUBLIC OF HAITI

Year 1990
Page 41
No: 82

Death Certificate Of
(b)(6);(b)(7)(C)
deceased
On
July 14th , 1990

In nineteen eighty *six* ……, the 187th…year….
of the independence and on Monday *August 29th at ten a.m.*
Before us,…*Theoric Cetoute* ……
Registrar of *Port-au-Prince*……
undersigned;
Before us appeared ……*Ms* (b)(6);(b)(7)(C) ..Property owner living and residing in *Port-de-Paix* ……
…… a commune of ……..
He declared in the presence of (b)(6);(b)(7)(C) ……
and .. (b)(6);(b)(7)(C) …. both of legal age and both living and residing *Port-de-Paix* …… witnesses chosen and brought by *the appearing party*, ……that (b)(6);(b)(7)(C) is deceased …… *born in Port-de-Paix on February 26 1942 , ….when alive* ….
a property owner, living and residing in Port-de-Paix…*daughter* of…… (b)(6);(b)(7)(C) property owner living and residing *deceased*
…and of (b)(6);(b)(7)(C) a property owner, living and residing *deceased*……
….., died on *July fourteenth nineteen ninety* ……
At 6:00 p.m. *in Port-de-Paix* at the age of 48 ……..and that….deceased ……..was the spouse……
In witness whereof this certificate checked by the Service of Public Health, No. ……, prepared this current death certificate.
Having read this certificate, we have signed it along with the petitioner and the witnesses.
Receipt from the General Tax Office No……. Series…….

Signed (Illegible Signature)
[Stamp]

P.N.H (9535D)

JUZGADO DE PAZ

REPUBLICA DE HONDURAS

CONSTANCIA

El infrascrito JUEZ DE PAZ , actuando en su condición de NOTARIO PUBLICO POR LEY, por medio de la presente,hace constar que el señor : (b)(6);(b)(7)(C) quien es mayor de edad, hondureño, soltero de oficio Tecnico en diseñador grafico con domicilio en LOS ESTADOS UNIDOS DE NORTE AMERICA y de transito por este municipio de Santa Rosa de Aguan departamento de Colon, con identidad N° 0207- 1963- 00076, libre y de manera espontanea sin coaccion alguna, manifiesta que como PADRE ha sido responsable en su obligación del pago mensual de $ 200.00 mensual para la MANUTENCION a favor de sus hijas legitimas (b)(6);(b)(7)(C) LOPEZ de la forma CONGRUOS , ambas menores de edad, siendo su MADRE legitima la señora : (b)(6);(b)(7)(C) quien es mayor de edad, soltera, hondureña de oficios domestico con domicilio en LOS ESTADOS UNIDOS DE NORTE AMERICA también de transito por este municipio con identidad. N° 0207-1984-01954, quien también manifiesta aceptar la propuesta presentado por el primero (Padre) dicha obligación es para el pago de la ALIMENTACION de las dos hijas menores de edad de ambos, y de la forma CONGRUOS según lo dicta el Código Civil vigente en la CONSTITUCION DE LA REPUBLICA DE HONDURAS pagina 73, Titulo: XVII. Art: 388, Incisos 2 y 3, reglas de PRESTACION DE ALIMENTOS. Art: 389, Forma de Congruos, numeral 2 y 3 respectivamente.

Y para constancia, firman ambos la presente en el municipio de Santa Rosa de Aguan, Colon a los veintinueve días del mes de Agosto del año mil novecientos noventa y cinco.

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Compareciente Padre

Compareciente Madre.

DIOGENES ARRIOLA ARA

Ministro de la fe.

2017-ICLI-00012 3210

THE UNITED STATES OF AMERICA

No. (b)(6);(b)(7)(C)

CERTIFICATE OF NATURALIZATION

Petition No. (b)(6);(b)(7)

·ORIGINAL·

I. N. S. Registration No. (b)(6);(b)(7)(C)

Personal description of holder as of date of naturalization: Date of birth (b)(6);(b)(7)(C) sex Male; complexion Dark; color of eyes Brown; color of hair Black; height 5 feet 8 inches; weight 145 pounds; visible distinctive marks None; Marital status Not Married; Country of former nationality Honduras

I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me.

(b)(6);(b)(7)(C)

(Complete and true signature of holder)

(b)(6);(b)(7)(C)

Seal

UNITED STATES OF AMERICA
SOUTHERN DIST. OF NEW YORK } ss.

Be it known that at a term of the District Court of The United States held pursuant to law at New York City on October 12, 1988 the Court having found that (b)(6);(b)(7)(C) then residing at 1700 Longfellow Avenue, Bronx, NY intends to reside permanently in the United States (when so required by the Naturalization Laws of the United States), had in all other respects complied with the applicable provisions of such naturalization laws, and was entitled to be admitted to citizenship, thereupon ordered that such person be and (s)he was admitted as a citizen of the United States of America.

In testimony whereof the seal of the court is hereunto affixed this 12th day of October nineteen hundred and 88

(b)(6);(b)(7)(C)

Clerk of the U.S. District Court.

By (b)(6);(b)(7)(C) Deputy Clerk.

IT IS PUNISHABLE BY U. S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.

DEPARTMENT OF JUSTICE

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Ted Turner Dr., SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlanta, Georgia

(b)(6);(b)(7)(C)

C.M. Cronen, Acting Field Office Director
Enforcement and Removal Operations, Field Office Atlanta, Georgia

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

DATE: March 4, 2016

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

JUSTICE OF THE PEACE

REPUBLIC OF HONDURAS

RECORD

The Undersigned JUDGE OF PEACE, acting in his capacity as NOTARY PUBLIC BY LAW, hereby declares that the man (b)(6);(b)(7)(C), who is of legal age, Honduran, single, a graphic design Technician with domicile in THE UNITED STATES OF NORTH AMERICA and passing through this municipality of Santa Rosa de Aguán, department of Colón, with identity No. (b)(6);(b)(7)(C), states free and spontaneously without any coercion, that as a FATHER he has been responsible in his obligation of the monthly payment of $ 200,00 monthly for the SUPPORT of his legitimate daughters: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) in a SUITABLE way, both minors, being their legitimate MOTHER the woman: (b)(6);(b)(7)(C) who is of legal age, single, Honduran, domestic worker with domicile in THE UNITED STATES OF NORTH AMERICA, also passing through this municipality with Identity No. (b)(6);(b)(7)(C), who also states to accept the proposal by the first (Father) said obligation is for the payment of MAINTENANCE of the two underage daughters in a SUITABLE way, according to the Civil Code in force of the CONSTITUTION OF THE REPUBLIC OF HONDURAS, page 73, Title: XVII. Art. 388, Sections 2 and 3, rules of PROVISION OF MAINTENANCE, Art: (b)(6);(b)(7)(C) respectively.

And for record, both sign this in the municipality of Santa Rosa de Aguán, Colón on the twenty-ninth of the month August of nineteen hundred ninety-five.

[Signature]
(b)(6);(b)(7)(C)
Appearing Father

[Signature]
(b)(6);(b)(7)(C)
Appearing Mother

(b)(6);(b)(7)(C) [ILLEGIBLE]
[Signature]
[Illegible]

I (b)(6);(b)(7)(C)

Form I-215B (Subs)

Department of Homeland Security
U.S. Immigration and Customs Enforcement

Record of Sworn Statement in Affidavit Form
AFFIDAVIT

File No. (b)(6);(b)(7)(C) Date: 04/18/2017

Name: (b)(6);(b)(7)(C) Executed at: Lumpkin, GA

Before the following officer of the U.S. Department of Homeland Security: _____

In the English language. Name of interpreter used, if any: N/A

I, (b)(6);(b)(7)(C), acknowledge that the above-named officer, in a language that I understand and speak, has identified himself or herself to me as an officer of the United States Immigration and Customs Enforcement, authorized by law to administer oaths and take testimony in connection with the enforcement of the immigration and nationality laws of the United States. He or she has informed me that he or she desires to take my sworn statement regarding my entry into the United States. He or she has told me that my statement must be freely and voluntarily given and has advised me that any statement I make may be used against me in any administrative proceeding.

I am willing to make a statement without anyone else being present. I swear or affirm that all of the statements I am about to make are true and complete.

Q. What is your true and correct name?

A. (b)(6);(b)(7)(C)

Q. Have you used any other names?

A. NO

Q. Of what country are you a citizen?

A. Born in the Bahamas

Q. What is your date and place of birth?

A. (b)(6);(b)(7)(C) Nassau, Bahamas

Q. What is your mother's name?

A. (b)(6);(b)(7)(C)

Q. When was your mother born?

6/B/208/A (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

A.

Q. Where was your mother born?

A. Port de paix, Haiti

Q. Has she ever been a Lawful Permanent Resident of the United States?

A. Don't know

Q. If so, when did she come to the United States?

A. N/A

Q. Did you come with her?

A. NO

Q. What is your mother's A number?

A. Don't know

Q. Is your mother still alive?

A. NO

Q. Where does she live?

A. Don't know / deceased

Q. Is your mother a citizen of the United States?

A. Don't know

Q. If so, when did your mother become a citizen of the United States?

A. N/A

Q. What is your father's name?

A. (b)(6);(b)(7)(C)

Q. When was your father born?

A. (b)(6);(b)(7)(C)

Q. Where was your father born?

6/B/208/A Port de Paix, Haiti

(b)(6);(b)(7)(C)

A.

Q. Has he ever been a Lawful Permanent Resident of the United States?

A. Yes

Q. If so, when did he come to the United States?

A. 1980

Q. Did you come with him?

A. I've arrived with my Father on 08/02/1981

Q. What is your father's A number?

A. (b)(6);(b)(7)(C)

Q. Is your father still alive?

A. NO * Father passed on 09/26/1994 *

Q. Where does he live?

A. He'd lived in Miami, FL

Q. Is your father a citizen of the United States?

A. Yes

Q. If yes, when did your father become a citizen of the United States?

A. 05/05/1992

Q. Are your parents married?

A. NO / Never married to each other

Q. If yes, when did they get married?

A. N/A

Q. Where did they get married?

A. N/A

Q. Were they married when you were born?

6/B/208/A NO

(b)(6);(b)(7)(C)

A.

Q. If divorced, when did they get divorced?

A. Never Married

Q. If divorced, who took legal custody of you?

A. N/A My father had full custody of me.

Q. Did you ever have a step-parent?

A. Yes

Q. If so, was your step-parent a United States Citizen?

A. Yes

Q. If your step-parent was a citizen of the United States, did that person ever legally adopt you?

A. No

Q. Have you ever been legally adopted by anyone? If so, when and where were you legally adopted?

A. NO

Q. If you were adopted, what are the names of your adoptive parent(s)?

A. N/A

Q. If you were adopted, where were your adoptive parents born and of what country are they citizens?

A. N/A

Q. When did you come to the United States?

A. 08/01/1981

Q. Who accompanied you to the United States?

A. My father (b)(6);(b)(7)(C)

Q. What kind of documentation did you use to enter the United States?

A. I've entered without documents

Q. Approximately how old were you when you came to the United States?

6/B/208/A I've was 3 years old and 11 months old

(b)(6);(b)(7)(C)

A.

Q. Where did you live when you came to the United States?

A. Miami, FL with my father

Q. Who did you live with when you came to the United States?

A. with my father and Step Mother

Q. If you know, who had custody of you when you came to the United States?

A. My father

Q. Do you have any brothers or sisters?

A. from my father side sister (b)(6);(b)(7)(C)

Q. If so, are any of them United States Citizens?

A. Yes

Q. Do you have a family member we can contact to verify this information? (**obtain contact info**)

A. My Wife Phone number (b)(6);(b)(7)(C) Tel: 954-536-(b)(6);(b)(7)(C)

I have read (or have had read to me) the foregoing statement, consisting of 5 pages. I affirm that the answers attributed to me herein are true and correct to the best of my knowledge and belief and that this statement is a full, true and correct record of my questioning by the above-named officer of the Immigration and ~~Naturalization Service~~ Customs Enforcement. I have initialed each page of this statement (and the corrections noted on page(s) _____).

Signature of alien: (b)(6);(b)(7)(C)

Subscribed and sworn to me at: (b)(6);(b)(7)(C) Georgia 31815 on 04/18/2017

ROBERT SCOLNICK
DEPORTATION OFFICER (b)(6);(b)(7)(C)

(Signature of Immigration Officer) (Signature of Witness)

6/B/208/A

(b)(6);(b)(7)(C)

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Spring Street, SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operation

(b)(6);(b)(7)(C)

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlanta, Geo

(b)(6);(b)(7)(C)

Sean Gallagher, Field Office Directo
Enforcement and Removal Operations, Field Office Atlanta, Georgia

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

DATE: April 27, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

2017-ICLI-00012 3231

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

2017-ICLI-00012 3233

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

2017-ICLI-00012 3235

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations, Field Office San Antonio

SUBJECT: Claim to United States Citizenship;
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

Department of Homeland Security

FOR OFFICIAL USE ONLY

THE ATTACHED MATERIALS CONTAIN DEPARTMENT OF HOMELAND SECURITY INFORMATION THAT IS "FOR OFFICIAL USE ONLY," OR OTHER TYPES OF SENSITIVE BUT UNCLASSIFIED INFORMATION REQUIRING PROTECTION AGAINST UNAUTHORIZED DISCLOSURE. THE ATTACHED MATERIALS WILL BE HANDLED AND SAFEGUARDED IN ACCORDANCE WITH DHS MANAGEMENT DIRECTIVES GOVERNING PROTECTION AND DISSEMINATION OF SUCH INFORMATION.

AT A MINIMUM, THE ATTACHED MATERIALS WILL BE DISSEMINATED ONLY ON A "NEED-TO-KNOW" BASIS AND WHEN UNATTENDED, WILL BE STORED IN A LOCKED CONTAINER OR AREA OFFERING SUFFICIENT PROTECTION AGAINST THEFT, COMPROMISE, INADVERTENT ACCESS AND UNAUTHORIZED DISCLOSURE.

2017-ICLI-00012 3243

U.S. DEPARTMENT OF HOMELAND SECURITY

NOTICE TO ALIEN ORDERED REMOVED/DEPARTURE VERIFICATION

A-File No: (b)(6);(b)(7)(C)

Date 04/06/2014

Alien's name: (b)(6);(b)(7)(C)

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States

☒ For a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.

☐ For a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of being ordered excluded under section 236 of the Act in proceedings commenced prior to April 1, 1997.

☐ For a period of 20 years from the date of your departure from the United States as a consequence of being found inadmissible and being previously excluded, deported, or removed from the United States.

☐ At any time because in addition to being found inadmissible, you have been convicted of a crime designated as an aggravated felony.

After your removal has been effected, you must request and obtain permission from the Secretary of Homeland Security to reapply for admission to the United States during the period indicated. You must obtain such permission before commencing your travel to the United States. Application forms for requesting permission to reapply for admission may be obtained by contacting any United States Consulate or U.S. Department of Homeland Security office. Refer to the above file number when requesting forms or information.

WARNING FOR ALL REMOVED ALIENS: It is a crime under Title 8 United States Code, Section 1326, for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Secretary of Homeland Security's express consent. Depending on the circumstances of the removal, conviction for this crime can result in imprisonment of a period of from 2 to 20 years and/or a fine up to $250,000.

SPECIAL NOTICE TO SEX OFFENDERS: Federal Law requires a convicted sex offender, including an alien who has been removed from or otherwise departed the United States and subsequently returns, to register in each jurisdiction in the United States in which he or she resides, is employed, or is a student. Violation of this requirement can result in prosecution and imprisonment for up to 10 years under Title 18 United States Code, Section 2250.

(b)(6);(b)(7)(C)	BORDER PATROL AGENT	MCALLEN, TEXAS
(Signature of officer serving warning)	(Title of officer)	(Location of DHS Office)

Verification of Removal

(Complete this section for file copy only)

Departure Date	Port of Departure	Manner of Departure
4/9/14	Brownsville, TX Airport via AIR OPS	
(b)(6);(b)(7)(C)		Title of Officer

(b)(6);(b)(7)(C)

Immigration Enforcement Agent
Port Isabel Detention Center

(b)(6);(b)(7)(C)

Photograph of Alien

(b)(6);(b)(7)(C)

Right Index Finger

(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C)
(Signature of alien whose fingerprint and photograph appear above)	(Signature of official taking fingerprint)

DHS Form I-296 (1/12)

2017-ICLI-00012 3244

U.S. Department of Homeland Security

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event No: (b)(7)(E)

File No: (b)(6);(b)(7)(C)

Date: April 06, 2014

In the Matter of: (b)(6);(b)(7)(C)

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☒ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

1. You are not a citizen or national of the United States;
2. You are a native of HONDURAS and a citizen of HONDURAS ;
3. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

(b)(6);(b)(7)(C)

BORDER PATROL AGENT
Name and title of immigration officer (Print)

(b)(6);(b)(7)(C)
Signature of immigration officer

ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

(b)(6);(b)(7)(C)

BORDER PATROL AGENT
Name and title of immigration officer (Print)

Signatur (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

ACTING PATROL AGENT IN CHARGE
Name and title of supervisor (Print)

(b)(6);(b)(7)(C)
Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on 4/6/14
(Date)

(b)(6);(b)(7)(C)
Signature of immigration officer

Form I-860 (Rev. 08/01/07)

Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act

U.S. Department of Homeland Security

Office: MCALLEN, TX, BORDER PATROL STATION File No: (b)(6);(b)(7)(C);(b)(7)(E) Event

Statement by: (b)(6);(b)(7)(C)

In the case of:

Date of Birth: Gender (circle one): Male (Female)

At: MCALLEN, TX, BORDER PATROL STATION Date: April 06, 2014

Before: (b)(6);(b)(7)(C) BORDER PATROL AGENT
(Name and Title)

In the SPANISH language. Interpreter NONE USED Employed by DHS/USBP

I am an officer of the United States Department of Homeland Security. I am authorized to administer the immigration laws and to take sworn statements. I want to take your sworn statement regarding your application for admission to the United States. Before I take your statement, I also want to explain your rights, and the purpose and consequences of this interview.

You do not appear to be admissible or to have the required legal papers authorizing your admission to the United States. This may result in your being denied admission and immediately returned to your home country without a hearing. If a decision is made to refuse your admission into the United States, you may be immediately removed from this country, and if so, you may be barred from reentry for a period of 5 years or longer.

This may be your only opportunity to present information to me and the Department of Homeland Security to make a decision. It is very important that you tell me the truth. If you lie or give misinformation, you may be subject to criminal or civil penalties, or barred from receiving immigration benefits or relief now or in the future.

Except as I will explain to you, you are not entitled to a hearing or review.

U.S. law provides protection to certain persons who face persecution, harm or torture upon return to their home country. If you fear or have a concern about being removed from the United States or about being sent home, you should tell me so during this interview because you may not have another chance. You will have the opportunity to speak privately and confidentially to another officer about your fear or concern. That officer will determine if you should remain in the United States and not be removed because of that fear.

Until a decision is reached in your case, you will remain in the custody of the Department of Homeland Security.

Any statement you make may be used against you in this or any subsequent administrative proceeding.

Q. Do you understand what I've said to you?
A. Yes.
Q. Do you have any questions?
A. No.
Q. Are you willing to answer my questions at this time?
A. Yes.
Q. Do you swear or affirm that all statements you are about to make are true and complete?
A. Yes.

IDENTITY:
Q. What is your complete and correct name?
A. (b)(6);(b)(7)(C)
Q. Have you used any other names?
...(CONTINUED ON I-831)

(b)(6);(b)(7)(C)

2017-ICLI-00012 3246

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	April 06, 2014

A. No.
Q. Do you have any form of identification with you?
A. Yes, I have my Honduran Identification Card (b)(6);(b)(7)(C)

ALIENAGE:
Q. What is your date and place of birth?
A. The (b)(6);(b)(7)(C), and I was born in Santa Rosa de Aguan, Colon, Honduras.
Q. Of what country are you a citizen?
A. From Honduras.
Q. Where were your parents born?
A. In Honduras.
Q. Of what country are your parents citizens?
A. Honduras.
Q. Where do you reside now?
A. In Colonia Nueva Barra de Aguan, Santa Rosa de Aguan, Colon, Honduras.
Q. Have you or your parent ever lived in the United States under legal status?
A. Yes.
Q. Do you or your parent have any claims to being a citizen of the United States?
A. No.
Q. Do you or your parents have any documents that would allow you or them, to enter, live, or work in the United States?
A. Yes, both my parents reside in the United States.
Q. Do you or your parents have any United States Immigration petitions pending on your behalf?
A. No.

INADMISSABILITY:
Q. When did you last enter into the United States?
A. The 4th of April, 2014 at approximately at 6:00 p.m.
Q. How did you enter into the United States?
A. I crossed the river by swimming.
Q. Did you know it was illegal to enter into the United States in this Manner?
A. Yes.
Q. Were you inspected by a United States Immigration Officer at time of entry?
A. No.
Q. What was the purpose for your entry into the United States?
A. To reside and seek employment in New Orleans, Louisiana.
Q. How long did you intend on staying there?
A. I'm not sure.

FEAR OF PERSECUTION OR TORTURE:
Q. If you are sent back to your country, do you fear that you will be persecuted or tortured?
A. No.

(b)(6);(b)(7)(C)

CONSULATE RIGHTS:

Signature	Title
(b)(6);(b)(7)(C) (b)(6);(b)(7)(C)	BORDER PATROL AGENT

U.S. Department of Homeland Security

Continuation Page for Form I867A

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	April 06, 2014

Q. Were you advised of your rights to speak to a consular officer?
A. Yes.
Q. Do you wish to speak to a consular officer?
A. No.

(b)(6);(b)(7)(C)

Signature	Title
(b)(6);(b)(7)(C)	BORDER PATROL AGENT

U.S. Department of Homeland Security

Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act

Q: Why did you leave your home country or country of last residence?

A. TO RESIDE AND SEEK EMPLOYMENT IN NEW ORLEANS, LOUISIANA.

Q. Do you have any fear or concern about being returned to your home country or being removed from the United States?

A. NO.

Q. Would you be harmed if you are returned to your home country or country of last residence?

A. NO.

Q. Do you have any question or is there anything else you would like to add?

A. NO.

I have read (or have had read to me) this statement, consisting of 1 pages (including this page). I state that my answers are true and correct to the best of my knowledge and that this statement is a full, true and correct record of my interrogation on the date indicated by the above named officer of the Department of Homeland Security. I have initialed each page of this statement (and the corrections noted on page(s)_____).

(b)(6);(b)(7)(C)

Signature: (b)(6);(b)(7)(C)

Sworn and subscribed to before me at MCALLEN, TX, BORDER PATROL STATION on April 06, 2014.

(b)(6);(b)(7)(C)

BORDER PATROL AGENT (b)(6);(b)(7)(C)

Immigration Officer

Witnessed by: (b)(6);(b)(7)(C)

U.S. Department of Homeland Security

Subject ID (b)(6);(b)(7)(C

Record of Deportable/Inadmissible Alien

Family Name (CAPS)	First	Middle
(b)(6);(b)(7)(C)		

Sex	Hair	Eyes	Cmplxn
F	BRO	BRO	DBR

Country of Citizenship	Passport Number and Country of Issue	File Number
HONDURAS		(b)(7)(C);(b)(6);(b)(7)(

Height	Weight	Occupation
64	160	LABORER

U.S. Address

Scars and Marks: NONE INDICATED

Date, Place, Time, and Manner of Last Entry	Passenger Boarded at
06/17/2016, 0110, 1 mile(s) NW of EGP, PWAM	

(b)(7)(E)

☒ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence: See Narrative

Method of Location/Apprehension: PB

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
(b)(6);(b)(7)(Age:24	06/17/2016	DRT/EGT	Eagle Pass, TX	06/17/2016 0125

City, Province (State) and Country of Birth	AR	Form : (Type and No.) Lifted ☐ Not Lifted ☐	By
See Narrative	☒		(b)(6);(b)(7)(C)

NIV Issuing Post and NIV Number	Social Security Account Name	Status at Entry	Status When Found
		PWA Mexico	TRAVEL/SEEKING

Date Visa Issued	Social Security Number	Length of Time Illegally in U.S.
		AT ENTRY

Immigration Record	Criminal Record
NEGATIVE	None Known

Name , Address, and Nationality of Spouse (Maiden Name, if Appropriate)	Number and Nationality of Minor Children
	2, HONDURAN.

Father's Name, Nationality, and Address, if Known	Mother's Present and Maiden Names, Nationality, and Address, if Known
See Narrative	See Narrative

Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? ☒ Yes ☐ No	Systems Checks	Charge Code Words(s)
None Claimed		See Narrative	I9A2

Name and Address of (Last)(Current) U.S. Employer	Type of Employment	Salary	Employed from/to
		Hr	

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

FINS #:1165425556

I77 #: (b)(6);(b

Family Unit/Group #: (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

Left Index Print

(b)(6);(b)(7)(C)

Right Index Print

ARREST COORDINATES:

Latitude: 28.50771
Longitude: -100.8195

CONSEQUENCE DELIVERY SYSTEM:

Classification: FMUA

CREDIBLE FEAR

Alien has been advised of communication privileges (b)(6);(b)(7 6/17/16 (Date/Initials)

(b)(6);(b)(7)(C)
Border Patrol Ag (Signature

(b)(6);(b)(7)(C)

Distribution:

Received: (Subject and Documents) (Report of Interview)

Officer: (b)(6);(b)(7)(C)

on: June 17, 2016 at 1512 (time)

Disposition: Reinstatement of Deportation Reasonable

Examining Officer: (b)(6);(b)(7)(C)

Form I-213 (Rev. 08/01/07) Y

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	06/17/2016

ENFORCEMENT PRIORITY:

EP_1b

FOREIGN ADDRESS:

SANTA ROSA DE AGUAN, COLON (HONDURAS), HONDURAS
SANTA ROSA DE AGUAN, COLON (HONDURAS), HONDURAS

BIRTH PLACE:

SANTA ROSA DE AGUAN, COLON (HONDURAS), HONDURAS

FATHER NAME AND ADDRESS:

Nationality:HONDURAS JUSTO

SANTA ROSA DE AGUAN, COLON (HONDURAS), HONDURAS

MOTHER NAME AND ADDRESS:

Nationality:HONDURAS ANA

SANTA ROSA DE AGUAN, COLON (HONDURAS), HONDURAS

ASSISTING ASSETS:

None

FUNDS IN POSSESSION:

.00 (b)(6);(b)(7)(C)

RECORDS CHECKED:

(b)(7)(E)

NARRATIVE:

Signature	Title
(b)(6);(b)(7)(C)	Border Patrol Agent

U.S. Department of Homeland Security | Continuation Page for Form I213

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	06/17/2016

ENCOUNTER:
On June 6, 2016, (b)(6);(b)(7)(C) accompanied by her daughters, (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) illegally entered the United States approximately 1 miles Northwest of Eagle Pass, Texas on June 17, 2016 at approximately 0110 hours. Border Patrol Agent (BPA) (b)(6);(b)(7)(C) was patrolling his assigned area and observed the subjects walking away from the Rio Grande River and crossing thru the Eagle Pass Municipal Golf Course. BPA (b)(6);(b)(7)(identified himself as a United States Border Patrol Agent and questioned the subjects as to their citizenship. BPA (b)(6);(b)(7)(questioned (b)(6);(b)(7)(C) as to her citizenship in the Spanish language and she stated that she and her children were from Honduras. Subject also stated that she did not have any immigration documents to be in or remain in the United States legally. (b)(6);(b)(7)(C) freely admitted to having crossed the Rio Grande River with her children illegally. (b)(6);(b)(7)(C) and her child were arrested and transported to the Eagle Pass South Border Patrol Station for processing.

ADVISAL OF RIGHTS:
At the station, (b)(6);(b)(7)(C) was advised of her rights via Service Form I-214 in the Spanish language by BPA (b)(6);(b)(7)(C) and witnessed by BPA (b)(6);(b)(7)(C) Subject signed the form stating she understood her rights and stated she was willing to answer questions without a lawyer present.

ALIENAGE/TRAVEL DATA:
(b)(6);(b)(7)(C) admitted that she and her children illegally entered the United States by wading across the Rio Grande River as set forth above. Subject is a citizen and national of Honduras and is inadmissible as per Section 212(a)(9)(A)(ii)(I) of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. (b)(6);(b)(7)(C) will be processed as a Reinstate for her prior illegal entry and her child will be processed for an Expedited Removal under the provisions of Section 235(b)(1) of the Immigration and Nationality Act; forms 296 and 860 were served on subjects.

Subject is going to live with her mother in New York. The address is (b)(6);(b)(7)(C) Bronx, NY, 10456. 1 (347)432-(b)(6);(b

Immigration History:
IDENT returned the following: (b)(6);(b)(7)(C) has been arrested by Border Patrol on one prior occasion. Subject was encountered and arrested in McAllen, Texas for illegal entry into the United States on 04/06/2014. Subject was deported through Harlingen, Texas on 04/09/2014. Subject is traveling with her children and although she is being processed for a Reinstatement of a Prior Order of Removal she will not be removed.

Criminal History:
Subject has no criminal history.
Wants and warrants were negative (b)(6);(b)(7)(C)

Signature	Title
(b)(6);(b)(7)(C)	Border Patrol Agent

U.S. Department of Homeland Security | Continuation Page for Form I213

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(7)(C);(b)(6);(b)(7)(E)	06/17/2016

CONSULAR NOTIFICATION:
(b)(6);(b)(7)(C) was notified of her right to contact a representative of their country's consulate, which she declined.

CREDIBLE FEAR/HEALTH:
(b)(6);(b)(7)(C) stated that she has fear of returning to her home country. (b)(6);(b)(7)(C), claims not to be pregnant and her and her minor daughters appear to be in good health.

PROPERTY/MONEY:
At the time of their apprehension, (b)(6);(b)(7)(C) had no money in her possession. All personal property was inventoried by BPA(b)(6);(b)(7)(and placed in property bag with receipt (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C) is not amenable to prosecution for illegal Entry into the United States due to the fact that she is traveling with her minor children, (b)(6);(b)(7)(C) (b)(6);(b) and (b)(6);(b)(7)(C) was processed as a Reinstate and her children were processed for Expedited Removal and advised that they may not enter the United States for a period of 20 years for (b)(6);(b)(7)(C) and 5 years for her children and if they do, their prior order of removal will be reinstated. Mother and child will be transferred to ICE/ERO for placement in a Family Residential Facility.

All forms and questions pertaining to (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) were answered and signed by her adult mother (b)(6);(b)(7)(C)

Signature	Title
(b)(6);(b)(7)(C)	Border Patrol Agent

4 of 4 Pages

Form I-831 Continuation Page (Rev. 08/01/07)

U.S. Department of Homeland Security | Subject ID: (b)(6);(b)(7)(| **Record of Deportable/Inadmissible Alien**

Family Name (CAPS)	First	Middle	Sex	Hair	Eyes	Cmplxn
(b)(6);(b)(7)(C)			F	BLK	BRO	MED

Country of Citizenship	Passport Number and Country of Issue	File Number	Height	Weight	Occupation
HONDURAS		(b)(6);(b)(7)(C);(b)(7)	61	160	LABORER

U.S. Address: See Narrative

Scars and Marks: NONE INDICATED

Date, Place, Time, and Manner of Last Entry: 04/04/2014, 1800, 4 mile(s) E of VIB, PWAM (BY RAFT)

Passenger Boarded at:

(b)(6);(b)(7)(C);(b)(7)(E)

☒ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence: See Narrative

Method of Location Apprehension: PB

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
(b)(6);(b)(7)(C) Age: 22	04/06/2014	RGV/FTB	Brownsville, TX	04/04/2014 1815

City, Province (State) and Country of Birth: SANTA ROSA DE AGUAN, COLON, HONDURAS

AR ☒ | Form: (Type and No.) Lifted ☐ Not Lifted ☐

By: (b)(6);(b)(7)(C)

NIV Issuing Post and NIV Number | Social Security Account Name

Date Visa Issued | Social Security Number

Status at Entry	Status When Found
PWA Mexico	TRAVEL/ SEEKING

Length of Time Illegally in U.S: AT ENTRY

Immigration Record: NEGATIVE

Criminal Record: None Known

Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)

Number and Nationality of Minor Children: NONE

Father's Name, Nationality, and Address, if Known: See Narrative

Mother's Present and Maiden Names, Nationality, and Address, if Known: See Narrative

Monies Due/Property in U.S. Not in Immediate Possession: None Claimed

Fingerprinted? ☒ Yes ☐ No

Systems Checks: See Narrative

Charge Code Word(s): I7A1

Name and Address of (Last)(Current) U.S. Employer

Type of Employment

Salary / Hr

Employed from/to

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

FINS #:1165425556

(b)(6);(b)(7)(C)

Left Index Print | Right Index Print

ARREST COORDINATES:

Latitude: 25.8561
Longitude: -97.4445

CONSEQUENCE DELIVERY SYSTEM:

Classification: FIRA

Alien has been advised of communication privileges: 4/6/14 (b)(6); (Date/Initials)

(b)(6);(b)(7)(C) BORDER PATROL AGENT (b)(6); (Signature and Title of Immigration Officer)

Distribution:

Orig: HLG
CC: FTB

Received (Subject and Documents) (Report of Interview)

Officer: (b)(6);(b)(7)(C)

on: April 06, 2014 at 1305 (time)

Disposition: Expedited Removal

Examining Officer: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)

Form I-213 (Rev. 08/01/07) N

U.S. Department of Homeland Security | Continuation Page for Form I213

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	04/06/2014

US ADDRESS:

T. DON HUTTO RESIDENTIAL CENTER 1001 WELCH STREET
TAYLOR, TEXAS, 76574

FOREIGN ADDRESS:

(b)(6);(b)(7)(C) COLON, HONDURAS
COLON, HONDURAS

FATHER NAME AND ADDRESS:

Nationality:HONDURAS (b)(6);(b)(7)(C)

SANTA ROSA DE AGUAN, COLON, HONDURAS

MOTHER NAME AND ADDRESS:

Nationality:HONDURAS (b)(6);(b)(7)(C)

SANTA ROSA DE AGUAN, COLON, HONDURAS

ASSISTING ASSETS:

ATVs
Canines

FUNDS IN POSSESSION:

United States Dollar .00

RECORDS CHECKED: (b)(6);(b)(7)(C)

(b)(7)(E)

NARRATIVE:

Signature	Title
(b)(6);(b)(7)(C)	BORDER PATROL AGENT

U.S. Department of Homeland Security | Continuation Page for Form I213

Alien's Name	File Number	Date
(b)(6);(b)(7)(C)	(b)(6);(b)(7)(C);(b)(7)(E)	04/06/2014

IMMIGRATION HISTORY: No prior immigration history.

CRIMINAL HISTORY: No prior criminal history.

ENCOUNTER:
A Border Patrol Agent encountered subject in the Rio Grande Valley, Texas Border Patrol Sector. A Border Patrol Agent determined this subject had unlawfully entered the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States. After determining that this subject was an alien whom illegally entered the United States, the subject was arrested and transported to the McAllen Station for further processing.

IMMIGRATION/CRIMINAL VIOLATION:
At the McAllen Station, the subject was asked to make a Sworn Statement as part of the Expedited Removal Proceedings. Service Form I-867 A/B was read and explained to the subject. The subject understood and was willing to answer questions and give a statement. The subject again admitted to being a citizen and national of Honduras without the necessary legal documents to enter, pass through, or remain in the United States. The subject also admitted to illegally crossing the international boundary without being inspected by an Immigration Officer at a designated Port of Entry.

CONSULAR NOTIFICATION:
The subject was notified of the right to communicate with a consular officer from Honduras as per Article 36(a)(b) of the Vienna Convention of Consular Relations. The subject acknowledged understanding the right but declined to speak with someone at this time. Furthermore, the subject does not claim fear of persecution or torture if returned to the subject's country of citizenship.

DISPOSITION: The subject is being processed for Expedited Removal. The subject was apprehended within fourteen days of the subject's last entry into the United States and within 100 air miles from the United States/Mexico international boundary.

The processing of this Expedited Removal was conducted via video conference by Border Patrol Agent David Alvarado at the El Paso Sector Headquarters. The subject and witness Border Patrol Agent Reynaldo Ramirez were present at the McAllen Station.

The subject claims to be in good health.

Signature	Title
(b)(6);(b)(7)(C)	BORDER PATROL AGENT

Office of Enforcement and Removal Operations
U.S. Department of Homeland Security
11541 Montana Avenue, Ste. (b)(
El Paso, Texas 79936

U.S. Immigration and Customs Enforcement

March 21, 2017

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, EP (b)(6);(b)(7)(C)

Corey A. Price, Field Office Director
Enforcement and Removal Operations, El Paso Field Office

SUBJECT: Claim to United States Citizenship *UPDATED MEMORANDUM*
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

2017-ICLI-00012 3266

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

USC CLAIM MEMORANDUM

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel Bible, Field Office Director
Enforcement and Removal Operations,
Field Office San Antonio

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

~~**SENSITIVE/PRIVILEGED**PRE-DECISIONAL**ATTORNEY WORK PRODUCT**~~

LEGAL ANALYSIS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

2017-ICLI-00012 3279

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U. S. Department of Homeland Security

Notice of Referral to Immigration Judge

In ICE Custody: South Texas Family Residential Center 300 El Rancho Way Dilley, TX 78017	Date: 7/1/16 A-File: (b)(6);(b)(7)(C)
Name: (b)(6);(b)(7)(C)	Country of Citizenship: Honduras
Place and Manner of Arrival: AT OR NEAR EAGLE PASS, TEXAS ; EWI	Date of Arrival: 06/17/16

To immigration judge:

☐ 1. The above-named alien has been found inadmissible to the United States and ordered removed pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act). A copy of the removal order is attached. The alien has requested asylum and/or protection under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act and 8 CFR § 208.30(g).

☐ 2. The above-named alien arrived in the United States as a stowaway and has been ordered removed pursuant to section 235(a)(2) of the Act. The alien has requested asylum and/or withholding of removal under the Convention against Torture and the matter has been reviewed by an asylum officer who has concluded the alien does not have a credible fear of persecution or torture. The alien has requested a review of that determination in accordance with section 235(b)(1)(B)(iii)(III) of the Act.

☐ 3. The above-named alien arrived in the United States in the manner described below and has requested asylum and/or withholding of removal under the Convention against Torture. The matter is referred for a determination in accordance with 8 CFR 208.2(c). Arrival category (check one):

☐ Crewmember/applicant ☐ Crewmember/refused ☐ Crewmember/landed
☐ Crewmember/violator ☐ VWP/applicant ☐ VWP/violator
☐ 235(c) order ☐ S-visa nonimmigrant ☐ Stowaway: credible fear determination attached

RECEIVED
SEP 30 2016

☐ 4. The above-named alien has been ordered removed by an immigration officer pursuant to section 235(b)(1) of the Act. A copy of the removal order is attached. In accordance with section 235(b)(1)(C) of the Act, the matter is referred for review of that order. The above-named alien claims to be (check one):

N.Y.C. Immigration Court

☐ a United States citizen ☐ a lawful permanent resident alien
☐ an alien granted refugee status under section 207 of the Act ☐ an alien granted asylum under section 208 of the Act.

☐ 5. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the Department of Homeland Security (DHS) has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **does not** have a reasonable fear of persecution or torture. The alien has requested a review of that determination in accordance with 8 CFR §§ 208.31(f) and (g).

☒ 6. The above-named alien has been ordered removed pursuant to section 238(b) of the Act, or the DHS has reinstated a prior exclusion, deportation, or removal order of the above-named alien pursuant to section 241(a)(5) of the Act. A copy of the removal order and, if applicable, the notice of reinstatement, are attached. The alien has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien **has** a reasonable fear of persecution or torture. The matter has been referred for a determination in accordance with 8 CFR § 208.31(e).

☐ 7. The Secretary of Homeland Security has determined that the release from custody of the above-named alien who is under a final order of removal would pose a special danger to the public according to the standards set in 8 CFR § 241.14(f)(1). The DHS has therefore invoked procedures to continue the alien's detention even though there is no significant likelihood that the alien will be removed from the United States in the reasonably foreseeable future. The matter is referred to the immigration judge for a review of this determination in accordance with 8 CFR § 241.14(g).

of Homeland Security

Notice of Referral to Immigration Judge

NOTICE TO APPLICANT

You are ordered to report for a hearing before an immigration judge for the reasons stated above. Your hearing is scheduled on

To Be Determined (Date) at **To Be Determined** (Time)

You are to appear at: **MIAMI EOIR, 333 South Miami Avenue, Suite 700, Miami, Florida 33130**
(complete office address)

☒ You may be represented in this proceeding, at no expense to the government, by an attorney or other individual authorized and qualified to represent persons before an Immigration Court. If you wish to be so represented, your attorney or representative should appear with you at this hearing. In the event of your release from custody, you must immediately report any change of your address to the Immigration Court on Form EOIR-33, which is provided with this notice. If you fail to appear for a scheduled hearing, a decision may be rendered in your absence.

☒ You may consult with a person or persons of your own choosing prior to your appearance in Immigration Court. Such consultation is at no expense to the government and may not unreasonably delay the process.

☐ Attached is a list of recognized organizations and attorneys that provide free legal

(b)(6);(b)(7)(C)

CERTIFICATE OF SERVICE

☒ The contents of this notice were read and explained to the applicant in the Spanish language.

☒ The original of this notice was delivered to the above-named applicant by the undersigned on 7/2/16 and the alien has been advised of communication privileges pursuant to 8 CFR 236.1(e). Delivery was made:

☒ in person ☐ by certified mail, return receipt # _____ requested ☐ by regular mail

(b)(6);(b)(7)(C)

_____
(Signature and title of immigration officer)

Attachments to copy presented to immigration judge:

- ☐ **Passport**
- ☐ **Visa**
- ☐ **Form I-94**
- ☐ **Forensic document analysis**
- ☐ **Fingerprints and photographs**
- ☐ **EOIR-33**
- ☐ **Form I-860**
- ☐ **Form I-869**
- ☐ **Form I-898**
- ☐ **Asylum officer's reasonable fear determination worksheet (I-899)**
- ☐ **Asylum officer's credible fear determination worksheet (I-870)**

☐ **FOR 8 CFR 241.14(f) CASES ONLY:** Written statement including summary of the basis for the Commissioner's determination to continue the alien in detention, and description of the evidence relied on in finding the alien specially dangerous (with supporting documents attached).

☐ **EOR 8 CFR 241.14(f) CASES ONLY:** Written notice advising the alien of initiation of proceedings and informing alien of procedures governing the Reasonable Cause Hearing at 8 CFR 241.14(h).

☐ **Other (specify):** _____

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, DRO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Boston, MA

Chris Cronen, Field Office Director
Enforcement and Removal Operations, Field Office Boston

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

DATE: January 12, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

VR 116 (Rev. 3/92) 250m

(b)(6);(b)(7)(C)

THE CITY OF NEW YORK

DEPARTMENT OF HEALTH

VITAL RECORDS

CERTIFICATION OF BIRTH

This is a certification of name and birth facts on file in the Bureau of Vital Records, Department of Health, City of New York.

DATE OF BIRTH (b)(6);(b)(7)(C)

CERTIFICATE NO. (b)(6);(b)(7)(C)

BOROUGH (b)(6);(b)(7)(C)

DATE FILED 03-30-90

DATE ISSUED 09-09-92

NAME (b)(6);(b)(7)(C)

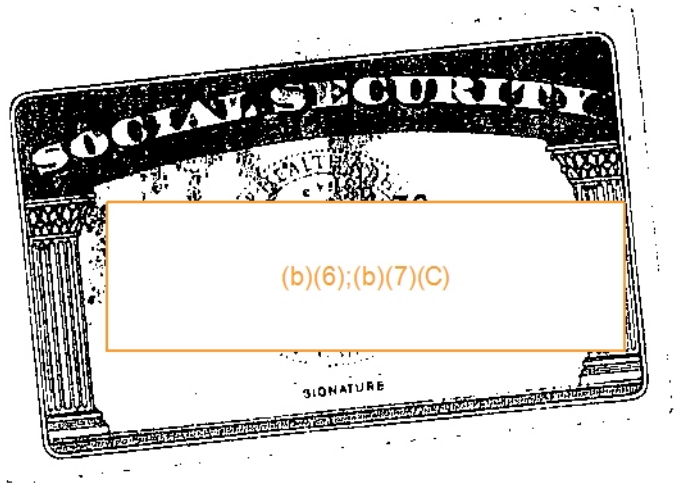
SEX FEMALE

MOTHER'S MAIDEN NAME (b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

CITY REGISTRAR

Do not accept this transcript unless it bears the raised seal of the Department of Health. The reproduction or alteration of this certification is prohibited by Section 3.21 of the New York City Health Code.


SOCIAL SECURITY
(b)(6);(b)(7)(C)
SIGNATURE

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Spring Street, SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C), Chief Counsel
Office of Chief Counsel, Atlanta

(b)(6);(b)(7)(C)

Sean Gallagher, Field Office Director
Enforcement and Removal Operations, Field Office Atlanta

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

DATE: May 11, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

2017-ICLI-00012 3293

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(6);(b)(7)(C);(b)(5)

JUSTICE OF THE PEACE

REPUBLIC OF HONDURAS

RECORD

The Undersigned JUDGE OF PEACE, acting in his capacity as NOTARY PUBLIC BY LAW, hereby declares that the man (b)(6);(b)(7)(C) who is of legal age, Honduran, single, a graphic design Technician with domicile in THE UNITED STATES OF NORTH AMERICA and passing through this municipality of Santa Rosa de Aguán, department of Colón, with identity No. (b)(6);(b)(7)(C), states free and spontaneously without any coercion, that as a FATHER he has been responsible in his obligation of the monthly payment of $ 200,00 monthly for the SUPPORT of his legitimate daughters: (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) in a SUITABLE way, both minors, being their legitimate MOTHER the woman: (b)(6);(b)(7)(C), who is of legal age, single, Honduran, domestic worker with domicile in THE UNITED STATES OF NORTH AMERICA, also passing through this municipality with Identity No. (b)(6);(b)(7)(C) who also states to accept the proposal by the first (Father) said obligation is for the payment of MAINTENANCE of the two underage daughters in a SUITABLE way, according to the Civil Code in force of the CONSTITUTION OF THE REPUBLIC OF HONDURAS, page 73, Title: XVII. Art. 388, Sections 2 and 3, rules of PROVISION OF MAINTENANCE, Art (b)(6);(b)(7)(C)

And for record, both sign this in the municipality of Santa Rosa de Aguán, Colón on the twenty-ninth of the month August of nineteen hundred ninety-five.

[Signature]

(b)(6);(b)(7)(C)

Appearing Father

[Signature]

(b)(6);(b)(7)(C)

Appearing Mother

(b)(6);(b)(7)(C) [ILLEGIBLE]

[Signature]

[Illegible]

JUZGADO DE PAZ
REPUBLICA DE HONDURAS

CONSTANCIA

El infrascrito JUEZ DE PAZ, actuando en su condición de NOTARIO PUBLICO POR LEY, por medio de la presente,hace constar que el señor *JUSTO WILFREDO BLANCO CLOTTER*, quien es mayor de edad, hondureño, soltero de oficio Tecnico en diseñador grafico con domicilio en LOS ESTADOS UNIDOS DE NORTE AMERICA y de transito por este municipio de Santa Rosa de Aguan departamento de Colon, con identidad Nº 0207- 1963- 00076, libre y de manera espontanea sin coaccion alguna, manifiesta que como PADRE ha sido responsable en su obligación del pago mensual de $ 200.00 mensual para la MANUTENCION a favor de sus hijas legitimas: (b)(7)(q):(9)(q) de la forma *CONGRUOS*, ambas menores de edad, siendo su MADRE legitima la señora (b)(7)(q):(9)(q), quien es mayor de edad, soltera, hondureña de oficios domestico con domicilio en LOS ESTADOS UNIDOS DE NORTE AMERICA también de transito por este municipio con Identidad. Nº (b)(7)(q):(9)(q) quien también manifiesta aceptar la propuesta presentado por el primero (Padre) dicha obligación es para el pago de la ALIMENTACION de las dos hijas menores de edad de ambos, y de la forma CONGRUOS según lo dicta el Código Civil vigente en la CONSTITUCION DE LA REPUBLICA DE HONDURAS pagina 73, Titulo: XVII. Art: 388, Incisos 2 y 3, reglas de *PRESTACION DE ALIMENTOS*, Art: 389, Forma de Congruos, numeral 2 y 3 respectivamente.

Y para constancia, firman ambos la presente en el municipio de Santa Rosa de Aguan, Colon a los veintinueve días del mes de Agosto del año mil novecientos noventa y cinco.

(b)(6):(b)(7)(c)

(b)(6):(b)(7)(c)

Compareciente Padre

Compareciente Madre

DIOGENES ARRIOLA ARA

Ministro de la fe.

(b)(7)(E)

Page 3300

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3301

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3302

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3303

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3304

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3305

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

Page 3306

Withheld pursuant to exemption

(b)(5);WIF Draft

of the Freedom of Information and Privacy Act

LEYES Y CODIGOS DE MEXICO

Chihuahua, Mexico (state). Laws, statutes, etc.

CODIGO CIVIL DEL ESTADO DE CHIHUAHUA

2017-ICLI-00012 3307

EDITORIAL PORRÚA, S. A.
AV. REPÚBLICA ARGENTINA, 15
MÉXICO, 1978

ART. 44.—No podrá asentarse en las actas, ni por vía de nota o advertencia, sino lo que debe ser declarado para el acto preciso a que ellas se refieren y lo que esté expresamente prevenido en la ley.

ART. 45.—Cuando los interesados no puedan concurrir personalmente, podrán hacerse representar por un mandatario especial para el acto, cuyo nombramiento conste por lo menos en instrumento privado otorgado ante dos testigos. En los casos de matrimonio o de reconocimiento de hijos, se necesita poder otorgado en escritura pública o mandato extendido en escrito privado firmado por el otorgante y dos testigos y ratificadas las firmas ante notario público, juez de primera instancia, menor o de paz.

ART. 46.—Los testigos que intervengan en las actas del Registro Civil, serán mayores de edad, prefiriéndose a los que designen los interesados, aun cuando sean sus parientes.

ART. 47.—La falsificación de las actas y la inserción en ellas de circunstancias o declaraciones prohibidas por la ley, causarán la destitución del Oficial del Registro Civil, sin perjuicio de las penas que la ley señale para el delito de falsedad, y de la indemnización de daños y perjuicios.

ART. 48.—Los vicios o defectos que haya en las actas, sujetan al Oficial del Registro a las correcciones que señale el reglamento respectivo; pero cuando no sean substanciales no producirán la nulidad del acto; a menos que judicialmente se pruebe la falsedad de éste.

ART. 49.—Toda persona puede pedir testimonio de las actas del Registro Civil, así como de los apuntes y documentos, con ellas relacionados, y los registradores están obligados a darlo.

ART. 50.—Los actos y actas del estado civil relativas al Oficial del Registro, a su cónyuge y a los ascendientes o descendientes de cualquiera de ellos, no podrán autorizarse por el mismo oficial, pero se asentarán en los propios libros y se autorizarán, en la capital del Estado por el presidente municipal y en los demás lugares, por los respectivos suplentes o por quienes hagan sus veces.

ART. 51.—Las actas del Registro Civil extendidas conforme a las disposiciones que preceden, hacen prueba plena en todo lo que el Oficial del Registro Civil, en el desempeño de sus funciones, da testimonio de haber pasado en su presencia, sin perjuicio de que el acta pueda ser redargüida de falsa.

Las declaraciones de los comparecientes, hechas en cumplimiento de lo mandado por la ley, hacen fe hasta que se pruebe lo contrario. Lo que sea extraño al acta no tiene valor alguno.

ART. 52.—Los encargados del Registro Civil serán sustituidos en sus faltas temporales por sus respectivos suplentes en las presidencias municipales o de sección municipal y en la ciudad de Chihuahua por el presidente municipal.

ART. 53.—El Ministerio Público cuidará de que los libros del Registro Civil se lleven debidamente, pudiendo inspeccionarlos en cualquiera época. Durante los seis primeros meses de cada año, el Procurador General de Justicia, por medio de los agentes adscritos a la oficina de su cargo o de los agentes establecidos en la capital del Estado, revisarán los libros remitidos al archivo durante el año anterior, para el efecto de hacer la consignación correspondiente de los registradores que hubieren incurrido en infracciones antisociales en el ejercicio de su encargo, o de dar aviso a las autoridades administrativas de las faltas en que hubieren incurrido esos empleados.

2017-ICLI-00012 3308

La infracción de este artículo será causa de responsabilidad para los agentes del Ministerio Público y se castigará en la forma que determine la Ley Orgánica respectiva.

Capítulo II

De las actas de nacimiento

Art. 54.—Las declaraciones de nacimiento se harán presentando al niño ante el Oficial del Registro Civil, en su oficina o en la casa donde aquél hubiere nacido.

Art. 55.—Los padres tienen obligación de declarar el nacimiento dentro de los sesenta días de ocurrido.

Los médicos, matronas o personas que hubieren asistido al parto, tienen obligación de dar aviso del nacimiento al encargado del Registro Civil dentro de los diez días siguientes. La misma obligación tiene el jefe de familia, en cuya casa haya tenido lugar el alumbramiento, si éste ocurrió fuera de la casa paterna.

Recibido el aviso, el Oficial del Registro Civil tomará las medidas legales que sean necesarias a fin de que se levante el acta de nacimiento conforme a las disposiciones relativas.

Art. 56.—Las personas que estando obligadas a declarar el nacimiento, lo hagan fuera del término fijado, serán castigadas con una multa de cinco a cincuenta pesos, que impondrá la autoridad municipal del lugar donde se haya hecho la declaración extemporánea de nacimiento.

En la misma pena incurrirán las personas que no cumplan la obligación de dar el aviso prevenido en el párrafo segundo del artículo anterior.

Art. 57.—En las poblaciones en que no haya Oficial del Registro Civil, el niño deberá ser presentado a la

persona que ejerza la autoridad administrativa o sea el representante del Ejecutivo y éste dará la constancia respectiva que los interesados llevarán al Oficial del Registro que corresponda para que asiente el acta.

Art. 58.—El acta de nacimiento se extenderá con asistencia de dos testigos que pueden ser designados por las partes interesadas. Contendrá el día, la hora y el lugar del nacimiento, el sexo, el nombre y apellido que se le ponga, sin que por motivo alguno puedan omitirse, y la razón de si se ha presentado vivo o muerto. Al margen se tomará la huella digital del presentado.

Si éste se presenta como hijo de padres desconocidos, el Oficial del Registro le pondrá nombre y apellido, haciéndose constar esta circunstancia en el acta.

Art. 59.—Cuando el nacido fuere presentado como hijo de matrimonio, se asentarán los nombres, domicilio y nacionalidad de los padres; los nombres y domicilios de los abuelos y los de la persona que hubiere hecho la presentación. Los testigos de que habla el artículo 58 declararán también acerca de la nacionalidad de los padres del presentado al Registro.

Art. 60.—Para que se haga constar en el acta de nacimiento, el nombre del padre de un hijo nacido fuera de matrimonio, es necesario que aquél lo pida por sí o por apoderado especial constituido en la forma establecida en el artículo 45; haciéndose constar en todo caso la petición.

La madre no tiene derecho de dejar de reconocer a su hijo. Tiene obligación de que su nombre figure en el acta de nacimiento de su hijo. Si al hacerse la presentación no se da el nombre de la madre, se pondrá en el acta que el presentado es hijo de madre desconocida; pero la investigación de la maternidad podrá hacerse ante los tribunales de acuerdo con las disposiciones relativas de este código.

2017-ICLI-00012 3309

U.S. Department of Homeland Security | Subject ID: (b)(6);(b)(7) | **Record of Deportable/Inadmissible Alien**

Family Name (CAPS)	First	Middle
(b)(6);(b)(7)(C)		

Sex	Hair	Eyes	Complexion
F	BLK	BRO	MED

Country of Citizenship	Passport Number and Country of Issue
EL SALVADOR	(b)(6);(b)(7)(C);(b)(7)(E)

Height	Weight	Occupation
58	120	LABORER

U.S. Address: See Narrative

Scars and Marks: NONE INDICATED

Date, Place, Time, and Manner of Last Entry	Passenger Boarded at
10/28/2016, 2200, 8.96 mile(s) W of HID, PWAM (RAFT)	(b)(7)(E)

☒ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence: See Narrative

Method of Location Apprehension: PB

Date of Birth	Age	Date of Action	Location Code	At/Near	Date/Hour
(b)(6);(b)(7)(C)	26	10/29/2016	RGV/MCS		10/28/2016 2210

City, Province (State) and Country of Birth	AR ☒	Form (Type and No.) Lifted ☐ Not Lifted ☐	By
SANTA MARIA, USULUTAN, EL SALVADOR			(b)(6);(b)(7)(C)

NIV Issuing Post and NIV Number	Social Security Account Name	Status at Entry	Status When Found
		PWA Mexico	TRAVEL/SEEKING

Date Visa Issued	Social Security Number	Length of Time Illegally in U.S.
		AT ENTRY

Immigration Record	Criminal Record
NEGATIVE	None Known

Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)	Number and Nationality of Minor Children
	2 - EL SALVADOR

Father's Name, Nationality, and Address, if Known	Mother's Present and Maiden Names, Nationality, and Address, if Known
See Narrative	See Narrative

Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? ☒ Yes ☐ No	Systems Checks	Charge Code Words(s)
None Claimed		See Narrative	I6A

Name and Address of (Last/Current) U.S. Employer	Type of Employment	Salary	Employed from/to
		Hr	

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

FINS #:1215408654 I77 #: (b)(6);(b)(

Family Unit/Group #:FMU1710006308

(b)(6);(b)(7)(C)

Left Index Print Right Index Print

ARREST COORDINATES:

Latitude: 26.11989
Longitude: -98.30958

CONSEQUENCE DELIVERY SYSTEM:

Classification: FMUA

CREDIBLE FEAR

(b)(6);(b)(7)(C)
Border Patrol Agent
(Signature and Title of Immigration Officer)

Alien has been advised of communication privileges 10/30/16 (b)(6) (Date Initials)

Distribution:
To File
MCA/MCS
Stats

Received (Subject and Documents) (Report of Interview)
Officer (b)(6);(b)(7)(C)
on October 29, 2016 at 1616 (time)
Disposition Warrant of Arrest/Notice to Appear
Examining Officer (b)(6);(b)(7)(C)

Form I-213 (Rev. [illegible])

Transaction No. **Afis No.**

LEAVE BLANK	CRIMINAL	(STAPLE HERE)				LEAVE BLANK
		STATE USAGE NFF SECOND SUBMISSION	☐ APPROXIMATE CLASS	☐ AMPUTATION	☐ SCAR	

STATE USAGE	(b)(6);(b)(7)(C) LE NAME SUFFIX
SIGNATU (b)(6);(b)(7)(C)	SOCIAL SECURITY NO. / LEAVE BLANK
ALIASES LAST NAME FIRST NAME MIDDLE NAME SUFFIX	

(b)(7)(E)	STATE IDENTIFICATION NO	DATE OF BIRTH MM DD YY	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
		(b)(6);(b)(7)(C)	F	W	410	120	BRO	BLK

(b)(6);(b)(7)(C)

THE IMAGES AND/OR DATA CONTAINED HEREIN WERE OBTAINED FROM THE LOS ANGELES COUNTY REGIONAL IDENTIFICATION SYSTEM ARCHIVE AND ARE RESTRICTED FOR OFFICIAL LAW ENFORCEMENT USE ONLY.

****NOTE****THESE IMAGES AND DATA ARE PART OF THE ORIGINAL NIST FILE IN THE LIVESCAN IDENTIFICATION REQUEST RECEIVED BY LACRIS. ****NOTE****

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Spring Street, SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlanta

(b)(6);(b)(7)(C)

Sean Gallagher, Field Office Direc
Enforcement and Removal Operations, Field Office Atlanta

(b)(6);(b)(7)(C)

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

DATE: May 15, 2017

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

2017-ICLI-00012 3312

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
1010 East Whatley Road
Oakdale, LA 71463

U.S. Immigration and Customs Enforcement

April 20, 2017

MEMORANDUM FOR: Deputy Principal Legal Advisor of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(Chief Counsel
New Orleans Field Office, OPLA (b)(6);(b)(7)(C)

David D. Rivera, Field Office Director
New Orleans Field Office, ERO

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

MEMORANDUM FOR: DIRECTOR, FIELD LEGAL OPERATIONS, OPLA;
ASSISTANT DIRECTOR FOR FIELD OPERATIONS, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Orlando

Marc J. Moore, Field Office Director
Enforcement and Removal Operations, Miami

SUBJECT: Claim to United States Citizenship
(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

LEGAL ANALYSIS

(b)(6);(b)(7)(C)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
26 FEDERAL PLZ, (b)(6);(b)(7)(C)
NEW YORK, NY 10278

In the Matter of:
(b)(6);(b)(7)(C)

Case No: (b)(6);(b)(7)(C)

IN REASONABLE FEAR PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

After considering the facts and circumstances of this case and as there is no opposition from the parties, it is HEREBY ORDERED that these proceedings be terminated with / without prejudice.

NTA dated: Jul 1, 2016.

Reason for Termination: Respondent withdrew DHS

AVIVA L. POCZTER
Immigration Judge
Date: May 9, 2017

Appeal Waived/Reserved by A/I: NO APPEAL
Appeal Due Date: _

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer (b)(6);(b)(7)(C) [ ] ATT/REP [✓] DHS
DATE: 5-9-17 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [✓] Legal Services List [ ] Other

Form EOIR 35 - 6T (Termination)

Office of the Chief Counsel
U.S. Department of Homeland Security
180 Spring Street, SW
Atlanta, Georgia 30303

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Legal Operations, OPLA
Assistant Director for Field Operations, ERO

(b)(6);(b)(7)(C)

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, Atlanta

(b)(6);(b)(7)(C)

Sean Gallagher, Field Office Director
Enforcement and Removal Operations, Field Office Stewart

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

U.S. Department of Homeland Security
1 Federal Drive, (b)(6);(b)(
Fort Snelling, MN 55111

U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Director of Field Legal Operations, OPLA
Assistant Director for Domestic Operations, ERO

FROM: (b)(6);(b)(7)(C) Assistant Chief Counsel
Office of Chief Counsel, St. Paul, Minnesota

Scott R. Baniecke, Field Office Director
Enforcement and Removal Operations
St. Paul Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

(b)(5)

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- This watermark in the paper, which will be visible when held to the light:

VR-140 320M (8/05) P.O. No. M510193

NYC Health

OFFICIAL VITAL RECORD

THE CITY OF NEW YORK
VITAL RECORDS CERTIFICATE

DEATH TRANSCRIPT

DATE FILED THE CITY OF NEW YORK – DEPARTMENT OF HEALTH AND MENTAL HYGIENE

NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE AUG-18-2006 10:41 PM

CERTIFICATE OF DEATH Certificate No. (b)(6);(b)(7)(C)

1. DECEDENT'S LEGAL NAME (b)(6);(b)(7)(C) (First Name) (Middle Name) (Last Name)

(To be filled in by the Physician)

Place Of Death: 2a. New York City; 2b. Borough: Brooklyn
2c. Type of Place: 1 ☐ Hospital Inpatient; 2 ☐ Emergency Dept./Outpatient; 3 ☐ Dead on Arrival; 4 ☒ Nursing Home/Long Term Care Facility; 5 ☐ Hospice Facility; 6 ☐ Decedent's Residence; 7 ☐ Other Specify
2d. Name of hospital or other facility (if not facility, street address): Metropolitan Jewish Geriatric Center

Date and Time of Death: 3a. (Month) August (Day) 18 (Year-yyyy) 2006
3b. Time 7:20 ☐ AM ☐ PM
4. Sex: female
5. Date last attended by a Physician: mm 08 dd 17 yyyy 2006

6. Certifier: I certify that death occurred at the time, date and place indicated and that to the best of my knowledge traumatic injury or poisoning DID NOT play any part in causing death, and that death did not occur in any unusual manner and was due entirely to NATURAL CAUSES. See instructions on reverse of certificate.

Name of Physician (b)(6);(b)(7)(C) (Type or Print) Signature (b)(6);(b)(7)(C) M.D. D.O.
Address 4915-10th AVE BROOKLYN NY 11219 License No. Date 08.18.2006

7a. Usual Residence State: New York 7b. County: KINGS 7c. City or Town: BROOKLYN (b)(6);(b)(7)(C) 7e. Inside City Limits? 1 ☒ Yes 2 ☐ No

8. (b)(6);(b)(7)(C) 9. Age at last birthday (years) 55 Under 1 Year: Months 2, Days 3 Under 1 Day: Hours 4, Minutes 5 10. Social Security No.

11a. Usual Occupation (Type of work done during most of working life. Do not use "retired"): Exective ASSistant 11b. Kind of business or industry: BUSINESS 12. Aliases or AKAs

13. Birthplace (City & State or Foreign Country): TRINIDAD + TOBAGO

14. Education (Check the box that best describes the highest degree or level of school completed at the time of death)
1 ☐ 8th grade or less; none 2 ☐ 9th – 12th grade; no diploma 3 ☒ High school graduate or GED 4 ☐ Some college credit, but no degree 5 ☐ Associate degree (e.g., AA, AS) 6 ☐ Bachelor's degree (e.g., BA, AB, BS) 7 ☐ Master's degree (e.g., MA, MS, MEng, MEd, MSW, MBA) 8 ☐ Doctorate (e.g., PhD, EdD) or Professional degree (e.g., MD, DDS, DVM, LLB, JD)

15. Ever in U.S. Armed Forces? 1 ☐ Yes 2 ☒ No

16. Marital Status at Time of Death: 1 ☐ Married 2 ☐ Divorced 3 ☒ Married, but separated 4 ☐ Never married 5 ☐ Widowed 6 ☐ Unknown

17. Surviving Spouse's Name (If wife, name prior to first marriage) (First, Middle, Last): (b)(6);(b)(7)(C)

18. Father's Name (First, Middle, Last): (b)(6);(b)(7)(C)

19. Mother's Maiden Name (Prior to first marriage) (First, Middle, Last): (b)(6);(b)(7)(C)

(To be filled in by Funeral Director or, in case of City Burial, by Physician) PERSONAL PARTICULARS

20a. (b)(6);(b)(7)(C) 20b. Relationship to Decedent: niece 20c. Address (Street and Number Apt. No. City & State ZIP Code): (b)(6);(b)(7)(C)

21a. Method of Disposition: 1 ☐ Burial 2 ☒ Cremation 3 ☐ Entombment 4 ☐ City Cemetery 5 ☐ Other Specify
21b. Place of Disposition (Name of cemetery, crematory, other place): Greenwood Crematory.
21c. Location of Disposition (City & State or Foreign Country): Brooklyn New York.
21d. Date of Disposition mm 08 dd 23 yyyy 2006

22a. Funeral Establishment: Guarino F.H of Canarsie Inc.
22b. Address (Street and Number City & State ZIP Code): 9222-Flatlands Ave B'klyn NY 11236

VR 15 (Rev. 11/04)

This is to certify that the foregoing is a true copy of a record on file in the Department of Health and Mental Hygiene. The Department of Health and Mental Hygiene does not certify to the truth of the statements made thereon, as no inquiry as to the facts has been provided by law.

Steven P. Schwartz, Ph.D., City Registrar

The City of New York

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DATE ISSUED AUG 19, 2006 DOCUMENT No. V294399

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Field Office Director
Enforcement and Removal Operations, Field Office,
Los Angeles, CA

(b)(6);(b)(7)(C), Deputy Chief Counsel
Office of the Chief Counsel, Los Angeles

(b)(6);(b)(7)(C) Assistant Chief Counsel
Office of the Chief Counsel, Los Angeles

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

(b)(6);(b)(7)(C);(b)(5)

SENSITIVE/PRIVILEGEDPRE-DECISIONAL**ATTORNEY WORK PRODUCT**

(b)(6);(b)(7)(C);(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)

MEMORANDUM FOR: Director of Field Operations, OPLA
Assistant Director for Field Operations, ERO

FROM: (b)(6);(b)(7)(C) Chief Counsel
Office of Chief Counsel, San Antonio

Daniel A. Bible, Field Office Director
Enforcement and Removal Operations,
San Antonio Field Office

SUBJECT: Claim to United States Citizenship

(b)(6);(b)(7)(C)

STATEMENT OF THE CASE

(b)(6);(b)(7)(C);(b)(5)

FACTS

(b)(6);(b)(7)(C);(b)(5)

(b)(6);(b)(7)(C);(b)(5)

(b)(5)

LEGAL ANALYSIS

(b)(5)

(b)(5)

(b)(5)

(b)(5)

CONCLUSION AND RECOMMENDATION

(b)(5)