UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERTO CARLOS DOMINGUEZ,	)	
Plaintiff,	)	
	)	C. A. No. 1:14-cv-13970-WGY
v.	)	
JOHN KERRY, Secretary, U. S. Department of State**,**	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This case is about honoring the sanctity of birthright citizenship in the United States of America. From the moment of his birth in Lawrence, Massachusetts on November 9, 1979, Plaintiff Roberto Dominguez was entitled to the constitutional privileges and protections of a U.S. citizen and national. Since filing this action under 8 U.S.C. § 1503, Plaintiff has produced a valid U.S. birth certificate and extensive amounts of documentation and testimony that proves he was born in the United States. In response, Defendant has failed to present any plausible theory to explain the documentation in the record. Defendant has instead suggested that Plaintiff's U.S. birth certificate, while valid, actually belongs to a doppelgänger of the same name and age who they cannot locate or produce. No evidence in the record corroborates the existence of this different 36-year-old Roberto Carlos Dominguez. As a result, Defendant's entirely speculative theory fails to create a genuine issue of material fact for trial.

This case has arisen as the result of many years of mistakes, missteps, and family secrets that Plaintiff himself did not fully comprehend and was not able to fully document until bringing this lawsuit. Plaintiff spent his entire childhood believing himself to be, and representing himself as, a native-born U.S. citizen. In 1999, at the age of nineteen, Plaintiff was unexpectedly detained by the former Immigration and Nationality Service ("INS") and told that the INS believed he was born in the Dominican Republic. While detained, unrepresented, and hundreds of miles from his family, Plaintiff was shown a document that he had never seen before and did not know how to explain: a visa issued for him in 1983, when he was three years old, listing his birth place as Santiago, Dominican Republic. Confused and desperate, Plaintiff heeded the only advice he was given by detention center staff: If he wanted to get out of detention, he should stop fighting and agree he was born abroad. Plaintiff did so, while also telling the immigration judge

that until two weeks prior he had always believed himself to be an American citizen. The immigration judge, uninterested in investigating these statements by the confused teenager before him, ordered Plaintiff deported to the Dominican Republic.

Plaintiff lived in exile in the Dominican Republic for ten years, thinking he would one day be allowed to return home. As it became increasingly clear that his deportation was permanent, Plaintiff connected with an American attorney who helped him apply for a U.S. passport, using his own valid U.S. birth certificate. In 2009, Plaintiff was granted a U.S. passport and finally returned home to Lawrence. This did not, however, resolve his troubles. In 2011, the State Department investigated Plaintiff's passport, presuming from the start that no one who had an immigration file and had been previously deported could be a U.S. citizen. After a cursory investigation that did not include speaking to Plaintiff or his family, the State Department concluded Plaintiff had committed passport fraud and revoked his U.S. passport.

Upon this revocation, Plaintiff retained legal counsel to try to understand, and fix, what had gone wrong. Through legal and factual investigation, Plaintiff finally learned the truth about his history: although he was born in the United States and had a valid U.S. birth certificate, Plaintiff's parents later registered his birth a second time in the Dominican Republic to help simplify a 1980 immigration petition filed for his mother and siblings, who were Dominican nationals. As Plaintiff's mother has explained, she believed this was necessary to simplify the family's records, as she had given birth to Plaintiff in the United States under a different name. This second birth registration had never affected Plaintiff until the INS arrested him in 1999.

Throughout seven months of discovery, Plaintiff has established that he is a United States citizen and national by much more than a preponderance of the evidence. Plaintiff has produced a valid U.S. birth certificate and a large body of photographs, documents, and testimony showing

that this certificate describes his own birth. Plaintiff has also produced sworn, uncontroverted testimony explaining that the 1980-83 immigration documents bearing his name were the result of his parents' plan to immigrate their family to the United States, and do not accurately represent his birth or citizenship. Over the same period, Defendant has not proffered any alternate theories to explain Plaintiff's extensive evidence, except to suggest without support that the U.S. birth certificate at issue actually represents the birth of a different Roberto Carlos Dominguez with strangely similar biographical details. Defendant concedes they cannot locate this person, and has produced nothing to explain the incredible asserted coincidence that Plaintiff came into possession of a valid birth certificate that belongs to another person but bears his same name, childhood address, month, and year of birth.

This Court should grant summary judgment because there is no genuine issue of material fact as to Plaintiff's U.S. citizenship and nationality. After Plaintiff's U.S. passport was wrongfully stripped from him, and after discovery has thoroughly documented the unfortunate events of the past fifteen years, including the wrongful detention and deportation of a native-born American, summary judgment would vindicate Plaintiff's fundamental rights under the Citizenship Clause of the Fourteenth Amendment.

UNDISPUTED MATERIAL FACTS

Plaintiff respectfully refers the Court to his Statement of Material Facts, filed contemporaneously with this Memorandum of Law.

LEGAL STANDARDS

Rule 56(a) of the Federal Rules of Civil Procedure provides that summary judgment must be granted if the moving party demonstrates that there is no genuine issue as to any material fact.

When reviewing a motion for summary judgment, the Court must view all evidence in a light most favorable to the non-moving party. *See Shinberg v. Bruk*, 875 F.2d 973, 974 (1st Cir. 1989). The moving party must demonstrate that the non-moving party has an absence of evidence to support their position. *See Rogers v. Fair*, 902 F.2d 140, 143 (1st Cir. 1990) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). To defeat the motion, the non-moving party must present evidence of a contested "material" fact that could potentially alter the outcome of the case if put before a jury. The non-moving party must then further demonstrate that there is a "genuine" issue, such that a reasonable jury could return a verdict in favor of the nonmoving party based on the contested material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

If the evidence presented by the non-moving party is "merely colorable" or "not significantly probative," the Court must grant the moving party's motion for summary judgment. *See United States v. Lileikis*, 929 F. Supp. 31 (D.Mass. 1996) (citing *Anderson*, 477 U.S. at 250). The non-moving party cannot present a mere discrepancy in the proof; "[g]enuine issues of material fact [cannot be] the stuff of an opposing party's dreams." *Mesnick v. General Elec. Co.*, 950 F.2d 816, 822 (1st Cir. 1991) (citing *Anderson*, 477 U.S. at 256-57). Allowing a jury to determine cases where one party presents only "[t]he mere existence of a scintilla of evidence" would undermine the central principle of Rule 56, which is to "isolate and dispose of factually unsupported claims or defenses." *Celotex*, 477 U.S. at 252, 323.

U.S. citizenship is a fundamental right, not a "license that expires upon misbehavior." *Trop v. Dulles*, 356 U.S. 86 (1958); *see also Kungys v. United States*, 485 U.S. 759, 792 (1988) (the deprivation of American citizenship is an "extraordinarily severe penalty" that may result in the loss of "all that makes life worth living") (internal citations omitted). The wrongful denial or revocation of a U.S. national's passport may be challenged in a declaratory action pursuant to 8

U.S.C. § 1503(a). The statute provides that a person within the United States who is denied the rights and privileges of U.S. nationality upon the ground that he is not a U.S. national may bring forth an action under 28 U.S.C. § 2201 against the head of the department or independent agency who denied the right or privilege.

An action under 8 U.S.C. § 1503 is not a review of agency action but a *de novo* review of the status of the plaintiff as U.S. national. *See Hizam v. Kerry*, 747 F.3d 102, 108 (2d Cir. 2014); *Richards v. Sec'y of State*, 752 F.2d 1413, 1417 (9th Cir. 1985). An individual who pursues an action under 8 U.S.C. § 1503 must prove by a simple preponderance of the evidence that he was born in the United States. Preponderance of the evidence applies in § 1503 actions because it is the ordinary burden of proof resting on plaintiffs in civil actions. *See Chin Wing Gwong v. Dulles*, 139 F. Supp. 116 (D.R.I. 1956) (citing *Ly Shew v. Dulles*, 219 F.2d 413 (9th Cir. 1954)).

ARGUMENT

I. Plaintiff Has Met His Burden By Proving By a Preponderance of the Evidence that He is a United States National and Citizen.

Plaintiff has presented an overwhelming amount of material evidence that demonstrates that he is a United States national and citizen, including depositions, affidavits, stipulations, admissions, interrogatory answers, photographs, and other relevant documents. Fed. R. Civ. P. 56. For these reasons, Plaintiff has shown that it is more likely than not that he was born in the United States and is therefore a United States national. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390.

A. Plaintiff Has A Valid U.S. Birth Certificate And Extensive Corroboration of His 1979 Birth in Lawrence, Massachusetts.

At the heart of this case is a single document: a U.S. birth certificate for Roberto Carlos Dominguez, born November 9, 1979 at Lawrence General Hospital in Lawrence, Massachusetts.

Ex. B. Defendant admits that this birth certificate was validly issued by Massachusetts, and thus that it describes the birth of a person who is unquestionably a U.S. citizen. *See* Ex. C # 1-3. The vast weight of the evidence shows that this birth certificate can only belong to the Plaintiff, and that the mother's name on this birth certificate, "Patria Miledis Dominguez," can only refer to Plaintiff's mother Juana, who used that name in connection with the immigration documents under which she was then present in the U.S.

First, Plaintiff has provided both testimonial and photographic evidence that Plaintiff's mother, Juana Dominguez, was present in Lawrence and pregnant with him from February to November 1979. This includes evidence of Plaintiff's mother visibly pregnant with Plaintiff approximately six weeks before his birth, at the hospital bedside of her sister-in-law, Bartola Carrillo, at Bon Secours Hospital in Metheun, Massachusetts. Ex. K. This photograph was taken in the days following September 22, 1979, the date of birth of Bartola's son, Rafael Dominguez, Jr. *See* Ex. A 126:1 – 127:2; Ex. D 22:25 – 23:7, 103:03-17; Ex. S. Plaintiff's mother never traveled outside of the United States during her pregnancy with Plaintiff, and there is certainly no evidence to suggest that Plaintiff's mother traveled internationally while in her third trimester of pregnancy, after this photograph was taken. Ex. A 59:23-25; Ex. D 110:3-17.

Plaintiff has also provided other photographic evidence and uncontroverted witness testimony that places Plaintiff's mother in the United States throughout her pregnancy with Plaintiff. As explained in affidavits and deposition testimony, there was a "baby boom" in the Dominguez family that year, and several women in the family were pregnant in late 1979 and living in Lawrence, Massachusetts, including Bartola Carrillo, Cristina Perez, and Lillian Dominguez. *See* Ex. R; Ex. J; Ex. I; Ex. D 57:7 – 58:5, 63:8-64:16. During 1979, these women spent extensive time together and were invested in each other's pregnancies and births. Ex. D

63:8-16. During this time Lillian, Bartola, and Plaintiff's mother were referred to as "The Three Stooges" because they were always seen together. Ex. I. In fact, Lillian Dominguez and Plaintiff's mother were celebrated – and photographed - at a joint baby shower in Lawrence, Massachusetts in fall 1979. *See* Ex. A 60:22 – 61:10; Ex. R; Ex. J; Ex. L; Ex. Q. There are additional photographs of Plaintiff's mother in Lawrence, Massachusetts while visibly pregnant with Plaintiff in 1979. Ex. M; Ex. N-P. No evidence places her in the Dominican Republic during this time. In fact, Plaintiff's older sister Yanette remembers living with her grandparents in the Dominican Republic during this period and learning via a call from the United States that she would soon be a big sister. Ex. RRR – Y. Dominguez Aff.

Second, Plaintiff's mother has confirmed by deposition testimony that she gave birth to Plaintiff at Lawrence General Hospital in Lawrence, Massachusetts on November 9, 1979, as reflected in the U.S. birth certificate at issue, and that she was using the name on that birth certificate, Patria Miledis Dominguez, as an alias throughout 1978-1980. Ex. A 46:2 -12. Plaintiff's mother recalls her labor and the birth of Plaintiff in detail, including going into labor at home on November 9 at 70 Cross St, traveling in a cab with her husband to Lawrence General Hospital, and giving birth "just almost as I got there." Ex. A 61:18 – 63:25. Plaintiff's mother also remembers in detail the days immediately following Plaintiff's birth: she remembers remaining at the hospital for three to four days, ex. A 72:10-12, numerous members of her husband's family visiting her while in the hospital, and being picked up by her husband's sister when leaving the hospital to go home to her apartment at 70 Cross Street. Ex. A 74:11-21. Plaintiff's mother confirms that she had Plaintiff circumcised, as is still common in the United States, but that his older brother, Juan Carlos, was not circumcised, as circumcision was then

uncommon in the Dominican Republic. Ex. A 73:16-22, 74:5-10. Defendant has admitted that Plaintiff is circumcised and that his older brother is not. *See* Ex. C #5-6; Ex. AA.

Plaintiff's mother provided her name as "Patria Miledis Dominguez" to Lawrence General Hospital staff because she was at the time using a permanent resident card ("green card") under that alias, which Plaintiff's paternal grandparents had helped her obtain. Ex. A, 65:4-8, 48:5-13. For that reason, Lawrence General Hospital staff wrote a hospital crib tag for Plaintiff referring to "Patria," which Plaintiff's mother has kept his entire life as a memento. Ex. A 67:24 – 68:3, 16-21; Ex. T.

Plaintiff's mother personally registered his birth at Lawrence City Hall and was given a copy of his birth certificate on December 7, 1979. Ex. A 66:7-23; Ex. B. Plaintiff's mother recalls providing City Hall with the "Patria" green card she was using at the time as well as proof of Plaintiff's birth she was given at Lawrence General Hospital. Ex. A 67:9 – 69:22. The mother's name on the U.S. birth certificate, Patria, refers to Plaintiff's mother, and the address on the birth certificate, 70 Cross Street, is where Juana and Juan Dominguez were living at the time of Plaintiff's birth, and where Plaintiff lived with his parents as an infant. *Id.*; Ex. B. Following Plaintiff's birth, his mother handed out birth announcement cards to family featuring a small baby photo taken by Lawrence General Hospital staff. Ex. V; Ex. A 72:19 (Errata Sheet 158). This card appears identical to cards given out by Bartola Carrillo and Lillian Dominguez following the birth of their own sons in the Lawrence area in fall 1979. Ex. J; Ex. I; Ex. W; Ex. X. All of the above evidence strongly establishes Plaintiff was born in the United States.

B. Plaintiff Has Provided a Complete and Corroborated Explanation for the 1983 Immigration Documents Obtained By His Parents Without His Knowledge.

In addition, Plaintiff has provided extensive evidence to establish that the immigration documents bearing his name – the basis for the government's deportation of him in 1999, the revocation of his passport in 2011, and now Defendant's central arguments – were the result of his parents' plan to help his mother and siblings gain lawful immigration status in the United States. Included in this documentation are a Dominican registration and an immigrant visa in Plaintiff's name. Ex. MMM; Ex. NNN.

This documentation does not reflect Plaintiff's true birth. As Plaintiff's mother testified, her husband, Juan, a lawful permanent resident at Plaintiff's birth, filed a visa petition for his wife and children that was granted in November 1980. Ex. A 92:6 – 93:21; Ex. PPP. On this petition, Plaintiff's parents listed him as a native of Dominican Republic, even though Plaintiff was born in Lawrence, Massachusetts. Ex. A 81:1-7, 82:2-4, 82:12 – 84:8, 84:19-20; Ex. MMM. Plaintiff's mother Juana also explained that the name "Patria Miledis Dominguez," listed on Plaintiff's U.S. birth certificate, relates to her personal immigration story. Plaintiff's mother came to the United States under this alias to seek economic opportunity for her family. Ex. A 57:10-23. As evidenced by a death certificate, Patria is the deceased sister of Plaintiff's father Juan Dominguez, and had died at the age of nine in the Dominican Republic. Ex. H; Ex. A 47:14-22. Plaintiff's paternal grandparents, Luline and Juan Sr., who lived in the United States, petitioned for Plaintiff's father Juan, as well as for Plaintiff's mother Juana, using their deceased daughter's documentation for the latter petition. Ex. A 47:10 – 48:13, 56:17 – 57:2.

Under the "Patria" alias, Plaintiff's mother received a green card and entered the United States to seek work and support her family. Ex. A 54:10-17, 57:10-23. Shortly after having his

petition approved, Plaintiff's father joined Plaintiff's mother in the United States and they moved in together at 70 Cross St. in Lawrence. Ex. A 57:24 – 58:18. Plaintiff's two older siblings remained in the Dominican Republic with their grandparents, and Plaintiff's father planned to petition for them. Ex. A 58:19 – 59:12; Ex. RRR.

During their time living at 70 Cross St. in Lawrence, Plaintiff's mother became pregnant and gave birth to Plaintiff on November 9, 1979. Ex. A 46:10 – 47:11; Ex. RRR. Plaintiff's mother registered his U.S. birth certificate using her Patria alias, as this was the documentation she then possessed. Ex. A 67:9 – 68:9. Because as Patria she was listed as "single," Plaintiff's mother did not give a father's name for the birth certificate. Ex. A 65:4-15.

Shortly after Plaintiff's birth, Plaintiff's parents were civilly married, and Plaintiff's father initiated the process to bring Plaintiff's siblings to the United States on a family-based petition ("I-130") and to obtain a green card for Plaintiff's mother under her own name. Ex. A 87:19 -20, 92:6 – 94:2; Ex. MMM. In furtherance of this petition, Plaintiff's parents had a friend in the Dominican Republic register Plaintiff's birth a second time in January 1980 as if he had been born on November 4, 1979 in Santiago, Dominican Republic, which they were able to do with no supporting documentation of Plaintiff's birth. Ex. A 81:1-21. Plaintiff's mother was not present for this registration and remained in Lawrence with her newborn baby. Ex. A 81:1-5, 81:24 – 82:1. As Plaintiff's mother explained, she and Juan believed that having a document for Plaintiff that listed his parents as Juan and Juana Dominguez, rather than the "Patria" alias, would make the entire family's immigration process easier, and thus included their U.S.-born son on the family's immigration paperwork as if he were Dominican. Ex. A 81:24 – 82:4.

Once Juana's immigrant visa was approved under her real name, she stopped using the "Patria" identity and left those documents behind in the Dominican Republic. Ex. A 77:9-20.

The visas of her three children were approved later, and Plaintiff's paternal grandmother, Luline, brought the three children through immigration processing in 1983 to reunite with their parents. Ex. A 79:11 – 80:21, 93:23 – 94:2; Ex. RRR; Ex. PPP. Once the family was reunited in the United States, Plaintiff's mother used his immigration documents – including the Dominican birth registration that listed his date of birth as November 4, 1979 – to register him for school and health care, as this documentation contained her real name. Ex. A 103:7-18, 105:19 – 106:7.

Until facing deportation in 1999, Plaintiff did not know any immigration documents in his name existed, and did not know until investigating his case after 2011 that these documents were the result of his family's complex immigration history. Ex. TT 98:11- 24, 127:25 – 128:23. Plaintiff does not recall discussing these personal matters with his parents as a young man: "Like it was just secrets. And I guess my family is the type of family that doesn't tell nobody anything. And if you find out, they still don't tell you. Like if you ask them, they'll be behind the bushes, and you know, and so they don't have to really put it out there. So, you know, they – I don't know, it's crazy; life is crazy." Ex. TT 61:7 – 13.

Plaintiff has far surpassed his burden to prove by a preponderance of the evidence that he is a United States citizen and national by (1) providing a validly issued U.S. birth certificate as well as testimonial, photographic, and other corroborative evidence of his U.S. birth; and by (2) detailing Plaintiff's family's complex immigration history. In light of Plaintiff's comprehensive evidence, Defendant's absence of evidence makes all the more clear that Plaintiff has met his burden under 8 U.S.C. § 1503. *See Herman*, 459 U.S. at 390; *Sanchez v. Kerry*, No. 4:11-CV-02084, 2014 WL 2932275, at *3 (S.D. Tex. June 27, 2014) (in § 1503 claims, "plaintiff has the burden of proving, by a preponderance of the evidence, that he was born in the United States.").

II. The Evidence Demonstrates That There is No Genuine Issue of Material Fact As to Plaintiff's Nationality and Citizenship.

Plaintiff is entitled to summary judgment because Defendant has not presented any factual evidence or even proffered a plausible theory that establishes a genuine issue of material fact as to whether Plaintiff is a United States national and citizen within the meaning of 8 U.S.C. § 1503(a). *Anderson*, 477 U.S. at 248 (1986). Throughout discovery Defendant has relied entirely on a "mere discrepancy in the proof," which is insufficient to overcome a motion for summary judgment. *See Mesnick*, 950 F.2d at 822 ("Not every discrepancy in the proof is enough to forestall a properly supported motion for summary judgment; the disagreement must relate to some genuine issue of fact."). If the non-moving party fails to present evidence of a contested material fact that could potentially alter the outcome of the case if put before a jury, this Court must rule in favor of the moving party. *Anderson*, 477 U.S. at 256.

A. There is No Evidence the Valid U.S. Birth Certificate Belongs to Anyone Other Than Plaintiff.

The only theory Defendant has suggested thus far to explain the evidentiary record is that the Massachusetts birth certificate in this case is valid, but belongs to someone else: "Plaintiff obtained a United States passport through fraud by presenting the United States consulate with a birth certificate that did not belong to him . . . Plaintiff should not be able to further benefit from continued fraudulent use of a birth certificate that does not record his birth." *See* First Affirmative Defense, Defendant's Answer to Pl.'s Second Amended Complaint. Defendant has failed to introduce any evidence to support this theory beyond what the State Department reviewed in its cursory 2011 investigation of Plaintiff's passport. Although claims under 8 U.S.C. § 1503 require a *de novo* review of the status of Plaintiff as a U.S. national rather than any deference to, or direct review of, the agency's decision that prompted the claim, *see Hizam*,

747 F.3d at 104, Defendant's 2011 investigation of Plaintiff's passport is central to understanding Defendant's lack of evidence to support a genuine issue of material fact for trial.

Plaintiff's passport was revoked in 2011 after Special Agent Douglas Baldwin concluded that Plaintiff had violated several federal statutes, including making a false claim to United States citizenship. Ex. JJJ 000014, 000016. Special Agent Baldwin's investigation involved two key documents: Plaintiff's 2009 U.S. passport application and Plaintiff's "A-file," or immigration records. Ex. LLL 23:8-23. In conjunction with Plaintiff's passport application, Special Agent Baldwin also reviewed a copy of Plaintiff's 1979 U.S. birth certificate. Ex. LLL 25:24 – 26:7.

Special Agent Baldwin personally visited Lawrence City Hall in October 2011 and verified the validity of Plaintiff's U.S. birth certificate. Ex. JJJ 000014; Ex. LLL 29:14-23, 32:2-20. However, rather than consider that Plaintiff had presented his own U.S. birth certificate, Special Agent Baldwin saw that Plaintiff had been deported from the United States in 1999 and assumed this was dispositive proof that Plaintiff was lying about his citizenship. Ex. LLL 27:10 – 28:7, 39:6 – 40:22, 56:24 – 57:18. Special Agent Baldwin concluded that if Plaintiff was deported, Plaintiff could not have been a U.S. citizen because, in Special Agent Baldwin's words, the U.S. government "[does not] deport U.S. citizens." Ex. LLL 57:6 – 18, 59:10 – 15. *But see*, discussion *infra* p. 21, n.3 (documenting the wrongful deportation of U.S. citizens on a regular basis). Without interviewing Plaintiff or any of his relatives, Special Agent Baldwin concluded that Plaintiff was not a U.S. citizen and must have been using another person's birth certificate. *See* Ex. JJJ 000014, 000016.

In furtherance of his theory of fraud, Special Agent Baldwin investigated whether there was another person named Roberto Carlos Dominguez who was born on November 9, 1979 in

Lawrence, Massachusetts. Ex. LLL 50:2 – 53:6. After conducting a search in government databases, Special Agent Baldwin found no evidence of any kind of the existence of an "other" Roberto Carlos Dominguez with the information listed on the U.S. birth certificate at issue. Ex. LLL. Despite having no evidence of another Roberto Carlos Dominguez, Special Agent Baldwin concluded that Plaintiff had wrongfully obtained the valid U.S. birth certificate of a non-existent U.S. citizen, and his report was the basis for Defendant's revocation of Plaintiff's passport. Ex. LLL 38:4-24.

Defendant has continued to rely on Special Agent Baldwin's speculation that the U.S. birth certificate at issue belongs to someone other than Plaintiff. *See* Ex. C. However, after the full discovery period, Defendant has no information at all regarding the location of any other Roberto Carlos Dominguez who matches the data listed on the U.S. birth certificate. Ex. E #11-12. Such conclusory allegations by Defendant, unsubstantiated by record evidence, are simply insufficient to defeat summary judgment. *See Medina-Munoz v. R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990) ("[S]ummary judgment may be appropriate if the non-moving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation.").

Defendant's theory requires that this "doppelgänger" Roberto Carlos Dominguez was born in the same town where Plaintiff grew up; was born in the same month and year as Plaintiff, early November 1979; at the time of his birth, had a mother living at 70 Cross Street, the same address where Plaintiff and his parents lived throughout his early years; and that, through some incredible coincidence, Plaintiff was able to obtain this individual's birth certificate.[1] *See* Ex.

[1] The Ninth Circuit recently rejected a petitioner's claim of U.S. citizenship, finding the district court did not err in its skepticism that the petitioner had invented an alias, Salvador Mondaca-Vega,that happened to be the exact same name as an individual of the same age with a valid Mexican birth certificate. *Mondaca-Vega v. Lynch*, --- F. 3d. ---, No. 03-71369, slip. op. at 25 n.12 (9th Cir. Dec. 15, 2015). This case presents the opposite situation: Defendant claims that Plaintiff managed to obtain the valid U.S. birth certificate of a person who happened to have the exact

NNN (1983 visa indicating that Plaintiff intended to live at "70 Across St," Lawrence, MA.). Defendant's theory becomes even more far-fetched where Plaintiff has proven that Patria Miledis Dominguez – the mother listed on the U.S. birth certificate – is the name of Plaintiff's aunt who died as a nine-year-old child, nineteen years before his 1979 birth. Patria's Dominican death certificate clearly lists her parents as Juan Dominguez and Luline Dominguez, who are Plaintiff's paternal grandparents. *See* Ex. H.

Defendant's absence of evidence does not end there. If Plaintiff has been fraudulently misrepresenting himself with a U.S. birth certificate that does not belong to him, Defendant has been unable to suggest when or how Plaintiff first began to do so. To the contrary, discovery has only produced evidence that Plaintiff has believed himself a U.S. citizen his entire life, through childhood, his 1999 immigration hearings, living in the Dominican Republic after deportation, successfully obtaining a U.S. passport, and eventually returning to the United States. Ex. TT, 26:18 – 27:5, 42:19 - 43:6, 13-19, 44:18 – 45:8, 50:15 – 51:8, 55:10-24, 88:3-6, 102:2-6, 108:17 – 109:9, 131:22-23; Ex. AAA 11:2-19; Ex. VV.

In light of the above evidence, it is unsurprising that Defendant has been unable to find Plaintiff's doppelganger: he does not exist. *See Griggs–Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990) ("Neither wishful thinking … nor conclusory responses unsupported by evidence will serve to defeat a properly focused Rule 56 motion."). There are not two Roberto Carlos Dominguezes in this case. There is only one – the Plaintiff. If Defendant's central argument were to proceed to trial, the jury would not adjudicate on substantively different facts, but instead, on mere conjecture. *See Mack v. Great Atlantic and Pacific Tea Co.*, 871 F.2d 179, 181 (1st Cir. 1989) ("The evidence illustrating the factual controversy cannot be conjectural or problematic; it

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same name and age as him and who was born in his hometown. The Court should reject this assertion of incredible coincidence or luck on Plaintiff's part in finding his American double.

must have substance in the sense that it limns differing versions of the truth which a factfinder must resolve."). Allowing Defendant to argue at trial that there is another Roberto Carlos Dominguez whose U.S. birth certificate was fraudulently used by Plaintiff would defeat the central principle of Rule 56 to "isolate and dispose of factually unsupported claims or defenses." *Celotex*, 477 U.S. at 252, 323.

B. Neither the Double Registration of Plaintiff's Birth Nor Plaintiff's 1999 Deportation Create a Genuine Issue of Material Fact In This Case.

The great weight of the evidence shows that only one possibility is true: Plaintiff's parents obtained both American and Dominican birth documents without Plaintiff's knowledge when he was a newborn, but only the document issued first – the U.S. birth certificate – describes his actual birth date and place. *See* Part I.B. and Part II.B. Plaintiff has provided substantial evidence to corroborate his U.S. birth, including his hospital crib tag and a hospital announcement card announcing his birth in Lawrence, Massachusetts. *See* Part.I.A. Defendant has provided no evidence that contradicts the plain photographic evidence of Plaintiff's mother visibly pregnant with Plaintiff in Lawrence, Massachusetts in late 1979, nor the photographic evidence of the Plaintiff as an infant in Lawrence years before he was taken to the Dominican Republic and brought back under an immigrant visa issued for him in 1983. *See* Part I.A. If Plaintiff truly entered the United States for the first time in February 1983, when he was three years and three months old, it would have been impossible for him to be photographed at younger ages celebrating his first birthday in Lawrence with his cousin Tony; walking by a U.S. post-office box with his mother, or outside in Lawrence in an infant snowsuit. Ex. II; Ex. JJ; Ex. MM; Ex. QQ; Ex. SS. This is because Plaintiff did not enter the U.S. for the first time in 1983; he was born in Lawrence and spent his infancy there.

Beyond the Dominican registration itself, there is no corroborating evidence that Plaintiff was actually born in the Dominican Republic. Unlike the U.S. birth certificate, there is no corroborating evidence of a Dominican birth for Plaintiff, such as hospital documents or evidence of Plaintiff's mother pregnant or even present in the Dominican Republic in 1979. Instead, there is explicit testimony from Plaintiff's mother that he was not born in the Dominican Republic and that she facilitated the double registration of his birth. To the extent Defendant relies on the 1983 immigration documents and Plaintiff's 1999 deportation to suggest that this Dominican birth registration represents Plaintiff's true birth, this is conclusory: these documents all relied on the factually incorrect Dominican birth registration, and nothing else.

Moreover, case law makes clear that the first registration of a birth certificate is far more reliable than any subsequently filed birth certificate. The U.S. birth certificate at issue was filed on December 7, 1979, whereas the Dominican birth certificate was filed on January 10, 1980, a month later. Ex. B; Ex. OOO. Courts have routinely held that a birth certificate contemporaneously filed with birth must be weighed more heavily than any subsequently registered certificates. *See Liacakos v. Kennedy*, 195 F. Supp. 630, 631 (D.D.C.1961) (A contemporaneously filed birth certificate is "almost conclusive evidence of birth."); *see also Rivera v. Albright*, 99–C–328, 2000 WL 1514075, at *1 (N.D. Ill. Oct.11, 2000) ("The preferred form [of proof] is a contemporaneous official birth certificate."); *Garcia v. Clinton*, 915 F. Supp. 2d 831 (S.D. Tex. 2012) *aff'd sub nom. Garcia v. Kerry*, 557 F. App'x 304 (5th Cir. 2014); *Pena–Sanchez v. Clinton*, No. 11–cv–00125, Order, ECF No. 34, at 2 (S.D. Texas March 28, 2013) (giving more evidentiary weight to a 1971 Mexican birth certificate over an a 1974 Texas birth certificate).

In addition, the fact of Plaintiff's 1999 deportation does not create a genuine issue of material fact as to his nationality in light of the strong documentation of his U.S. birth. As Plaintiff testified in detail, he did not fully understand his detained removal proceeding and conceded the charges due to his confusion and desperation to get out of detention. This is corroborated by his confused comments at the hearing, asking to clarify why he was being deported, asking the judge to consider not deporting him, and telling the judge that when people asked where he was born, "I would always tell them I was born here in the United States because that's what I thought all my life." Ex. AAA, 10:24-25, 11:14-22. As explained above, Plaintiff had no idea in 1999 that the 1983 immigration documents underlying his removal charges were the result of a complex plan by Plaintiff's parents to immigrate their family to the United States. *See* Part I.B; Ex. TT 98:11-24, 127:25 – 128:23.

It is not at all difficult to understand why Plaintiff, at age nineteen, would concede to his own deportation in light of the growing judicial and academic consensus that young adults are particularly susceptible to making false confessions when they are in inherently coercive custodial settings and isolated from counsel or family.[2] Plaintiff faced highly similar pressures in immigration detention and in the detained court setting, where he was locked up, unrepresented, isolated from his family, and desperate to get out of custody.[3] It is also, unfortunately, not unheard of for the U.S. government to mistakenly deport a U.S. citizen. Though Special Agent

[2] *See, e.g., J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011) (acknowledging the "inherently compelling pressures" of custodial questioning that are more "troubling" and "acute" as applied to young defendants); Steven Drizin & Richard Leo, *The Problem of False Confession in the Post-DNA World*, 82 N.C.L. REV. 891, 945, 969 (2004) (in detailed study of 125 proven false confessions, finding that 63% of false confessors were under the age of 25, and noting that "one of the most common reasons cited by teenage false confessors is the belief that by confession, they would be able to go home.").

[3] *See* Jacqueline Stevens, U.S. Government Unlawfully Detaining and Deporting U.S. Citizens, 18 VA. J. SOC. POL'Y & L. 606, 631 (2011) ("[T]he incentives for U.S. citizens to provide false confessions in deportation proceedings closely resemble those in criminal contexts: a desire to escape confinement by largely destitute young men who distrust the legal system and are recently released from jails or prisons."); *see also Castaneda v. Souza*, 952 F. Supp. 2d 307, 320 (noting that immigration detention may be indistinguishable from prison or jail, and that detention and lack of representation are linked and have a "tremendous impact" on the outcome of a removal case).

Baldwin largely relied on the belief that "we do not deport U.S. citizens" to conclude that Plaintiff's valid U.S. birth certificate must have indicated fraud, the wrongful deportation of U.S. citizens is a well-documented phenomenon.[4] Ex. LLL 57:6-18, 59:10-15.

A genuine issue of material fact "does not spring into being simply because a litigant claims that one exists." *Griggs-Ryan*, 904 F.2d at 115. Defendant must not "rest upon her laurels (or her pleadings) . . . the opposition cannot be 'conjectural or problematic [but] must have substance.'" *Id.* (quoting *Mack*, 871 F.2d at 181). While as the moving party Plaintiff has the burden of proof, Plaintiff has met this burden and more. After seven months of discovery, Defendant has presented no alternative explanation or facts that rebut the facts as Plaintiff has proven them. *Griggs-Ryan*, 904 F.2d at 115 (in noting that the non-movant cannot simply repudiate the presented facts, stating "the opponent must pull the laboring oar and set forth . . . hard evidence of a material factual dispute."). Because Defendant has been unable to do so, Defendant's absence of evidence would render a trial obsolete and onerous because a jury could not reasonably rule in Defendant's favor. *See United States v. One Parcel of Real Property*, 960

[4] *See, e.g.*, Stevens, 18 Va. J. Soc. Pol'y & L. at 652 (documenting the detention and deportation of U.S. citizens, and the contributing factors of detention far from home, pressure by ICE officers to admit foreign birth and waive appeal, and inability to afford counsel); William Finnegan, *The Deportation Machine*, THE NEW YORKER (Apr. 29, 2013) (detailing the deportation of U.S.-born Mark Lyttle, who, like Plaintiff, was transferred to a remote detention facility and ultimately accepted a removal order after a hearing in which he was detained, unrepresented, and in which the judge did not ask him why he had previously claimed U.S. citizenship); Erica Pearson, *Deported U.S. Citizen Finally Gets Passport Back*, N.Y. DAILY NEWS (Dec. 1, 2013) (describing the case of U.S.-born Blanca Alfaro, who was deported, re-issued a U.S. passport, and then had the passport revoked in part based on a false, foreign birth document of which she had no knowledge); Terry McSweeney, *United States Mistakenly Faces Deportation to Mexico, Misses Mother's Funeral*, NBC BAY AREA (Sept. 3, 2015), http://www.nbcbayarea.com/news/local/United-States-Citizen-Faces-Deportation-to-Mexico-Misses-Mothers-Funeral-324036701.html (U.S. citizen Ricardo Salazar was detained and faced deportation for four months, in part because relatives applied "for the entire family as lawful permanent residents" after his birth despite his U.S. citizen ship by birth); Esther Yu-Hsi Lee, *What One Man Did When He Was Accidentally Deported to Mexico*, ThinkProgress (June 4, 2015, 8:00AM), http://thinkprogress.org/immigration/2015/06/04/3665633/us-citizen-mistakenly-deported-mexico-3-years-now-feds-will-give-350k/ (U.S. citizen Andres Robles Gonzalez was detained and deported to Mexico, even though he had repeatedly told immigration officers that he was a U.S. citizen, because an ICE supervisor refused to investigate his claim to U.S. citizenship).

F.2d 200, 204 (1st Cir.1992) ("Genuine" means that "the evidence is such that a reasonable jury could resolve the point in favor of the nonmoving party.").

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiff's motion for summary judgment. Plaintiff has met his burden under 8 U.S.C. § 1503 to prove beyond a preponderance of the evidence that he is a native-born U.S. citizen and national. Defendant has presented only a "mere existence of a scintilla of evidence" that could disprove Plaintiff's U.S. citizenship or nationality, which is unsustainable at summary judgment, and has failed to prove a genuine issue exists for trial. *See Celotex Corp,* 477 U.S. 317 at 106.

Defendant's absence of evidence should not obstruct Plaintiff's constitutional rights and protections as an American citizen. This Court has the opportunity to remedy the "severe and unsettling consequences" of Defendant stripping Plaintiff of the citizenship he thought he had finally proven. *See Fedorenko v. United States.*, 449 U.S. 490, 505 (1981); *see also Kwock Jan Fat v. White,* 253 U.S. 454, 464 (1920) (emphasizing that it is better for immigrants to be improperly admitted "than that one natural born citizen of the United States should be permanent excluded from his country."). As Supreme Court Justice Louis Brandeis stated, "The only title in our democracy superior to that of the President is the title of citizen."[5] This Court must affirm and protect the precious title of U.S. citizen. Plaintiff respectfully asks this court to grant him summary judgment and issue a declaratory judgment that he is a national and citizen of the United States.

[5] KELLY NICKLES, ED., POCKET PATRIOT: QUOTES FROM AMERICAN HEROES 34 (Cincinnati: Writer's Digest Books, 2005).

Dated: December 18, 2015
New York, NY

Respectfully submitted,

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CERTIFICATION UNDER LOCAL RULE 7.1

I, Andrea Saenz, state that I have conferred with counsel for Defendant in an effort to resolve or narrow the issues raised herein.

DATED: December 18, 2015

/s/ Andrea A. Saenz
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CERTIFICATE OF SERVICE

I, Andrea Saenz, hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Andrea A. Saenz
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