

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERTO DOMINGUEZ,)	
)	
<i>Plaintiff,</i>)	
)	Civ. Action No. 14-cv-13970-WGY
v.)	
)	
JOHN KERRY , in his official capacity as)	
Secretary, United States Department of State,)	
)	
<i>Defendant.</i>)	
)	
_____)	

FIRST AMENDED COMPLAINT

Roberto Carlos Dominguez (“Mr. Dominguez”), through undersigned counsel, files the instant complaint for declaratory relief under 8 U.S.C. § 1503 (Denial of Rights and Privileges as United States National) and 28 U.S.C. § 2201 (Declaratory Judgment Act). This complaint is amended pursuant to Federal Rule of Civil Procedure 15(a)(1)(B) (amendment as a matter of course within 21 days of service of a motion under Rule 12(b)).

PRELIMINARY STATEMENT

1. The Citizenship Clause of the Fourteenth Amendment confers U.S. citizenship on persons born within the United States. “[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). As such, “[t]o 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).

2. Plaintiff Roberto Dominguez was born in Lawrence, Massachusetts on November 9, 1979, and grew up in the United States without questioning his identity as a native-born American citizen. In 1999, as explained further below, Mr. Dominguez was wrongfully deported to the Dominican Republic because of the government’s erroneous belief that he was a native of that country. After ten years of unlawful exile, in 2009, Mr. Dominguez was able to prove his identity as a United States citizen to the U.S. consulate in the Dominican Republic, which issued him a valid United States passport, allowing him to return to the United States shortly thereafter.

3. Although Mr. Dominguez hoped to put this traumatic experience behind him, this was not the case, as in 2011, the Department of State wrongfully revoked his U.S. passport, denying him his rights and privileges as a U.S. national upon the ground that he was not a national of the United States.

4. This case is about protecting the sanctity of birthright citizenship. Our Constitution mandates that no person born in the United States should be unlawfully deprived of the benefits and protections of citizenship. As such, this case concerns the lawfulness of Defendant’s actions in revoking Mr. Dominguez’s United States passport, and seeks a declaratory judgment from this court that Mr. Dominguez is a citizen and national of the United States.

PARTIES

5. Plaintiff Roberto Carlos Dominguez is a citizen and national of the United States who was born and raised in Lawrence, Massachusetts. Mr. Dominguez currently resides at 46 Basswood Street, 1st Floor, Lawrence, Massachusetts, 01841.

6. Defendant, John Kerry, named in his official capacity, is the duly appointed and confirmed Secretary of State of the United States. In this capacity, he is responsible for the issuance and revocation of U.S. passports. Defendant's address is 2201 C Street NW, Washington, DC 20520.

JURISDICTION AND VENUE

7. Jurisdiction in the case of Mr. Dominguez is conferred pursuant to 28 U.S.C. § 1331 (Federal Question), as a civil action arising under the Constitution and laws of the United States. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act).

8. Venue is proper in this judicial district of Massachusetts pursuant to 8 U.S.C. § 1503 and 28 U.S.C. §§ 1391(a)(1), (b)(2), (c)(1) because a substantial part of the events or omissions giving rise to the claims occurred in this district, and because the plaintiff resides in this district.

LEGAL BACKGROUND

9. The Secretary of State may revoke a passport in accordance with 8 U.S.C. § 1504 (passport obtained through error or fraud).

10. The wrongful revocation of a U.S. national's passport may be challenged in a declaratory action in 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 agency or department who denied the right or privilege. An action under 8 U.S.C. § 1503 is not a review of an administrative action but a *de novo* review of the status of the plaintiff as a U.S. national. *See Hizam v. Kerry*, 747 F.3d 102 (2d Cir. 2014); *Richards v. Sec'y of State*, 752 F.2d 1413, 1417 (9th Cir. 1985).

11. Section 1503 is intended to protect any person who is denied his rights because the government wrongly determines him not to be a national of the United States. *See Kum Chor Chee v. Clark*, 384 F.2d 918, 919 (9th Cir. 1967) (in rejecting district court's narrow interpretation of predecessor statute to § 1503, noting that "[t]he statute was intended to make judicial review of claims to citizenship more readily available, not to limit or destroy opportunities for such review"). Thus, regardless of the specific cited regulation or wording which may be used to deny the rights of a U.S. national, § 1503 provides a remedy to any person where the government has wrongly determined that he is not a national of the U.S. and has then denied him a right or privilege of U.S. nationality. To interpret the statute more narrowly would allow the government to avoid federal court scrutiny of wrongful denials of the rights of U.S. nationals simply by asserting, for instance, that a passport holder has falsely claimed to be a U.S. national, and then citing to 8 C.F.R. § 51.62(a)(2) (passport fraudulently obtained) rather than 8 C.F.R. § 51.62(b) (applicant is not a U.S. national).

12. As courts have noted, "[t]he Constitution does not permit American citizenship to be [] easily shed" through an erroneous agency determination that an individual is not a United States citizen, as allowing such an error to stand can mean that person will be a "stateless person" even though he did not voluntarily relinquish his citizenship. *See Rivera v. Ashcroft*, 394 F.3d 1129, 1136 (9th Cir. 2005). A citizen "does not give up the full panoply of rights available to him just because the government mistakenly determines that he is an alien." *See Lyttle v. United States*, 867 F. Supp. 2d 1256, 1277 (M.D. Ga 2012). To hold otherwise would be a "startling proposition," and would mean that "a person's constitutional rights depend upon whether a government official identifies the person as a citizen or an alien regardless of whether their designation is accurate." *Id.*

FACTS

13. Roberto Carlos Dominguez is a thirty-five-year-old United States citizen born on November 9, 1979, at Lawrence General Hospital in Lawrence, Massachusetts.

14. Mr. Dominguez has a valid U.S. birth certificate from Lawrence General Hospital, showing his date of birth as November 9, 1979. *See* Exhibit A, U.S. Birth Certificate.

15. Further physical evidence of Mr. Dominguez's U.S. birth includes his bassinet tag from Lawrence General Hospital and a hospital nursery photograph greeting card his mother sent to his aunt, Cristina Perez, at the time of his birth.

16. Further medical evidence of Mr. Dominguez's birth includes the fact he is circumcised. Circumcision is a rare procedure for male babies in the Dominican Republic, and was rare in 1979, but is common in the United States, and was very common in the United States in the 1970s and 1980s. Importantly, Mr. Dominguez's older brother, Juan Carlos Dominguez, who was born in the Dominican Republic, is uncircumcised.

17. Mr. Dominguez's parents are Juana Dominguez, born Juana Ramona Villavizar, and Juan Dominguez Ortiz. For reasons related to her undocumented status at the time, Juana listed her name on Mr. Dominguez's birth certificate as "Patria Miledis Dominguez." *See* Exhibit A. Patria Miledis Dominguez was the name of the deceased sister of Juan Dominguez Ortiz, and Juana used that name for various official purposes while present in the U.S. in 1979.

18. Mr. Dominguez's father, Juan Dominguez, a lawful permanent resident, was not listed on Mr. Dominguez's birth certificate. However, the address listed on the birth certificate, 70 Cross Street, Lawrence, Massachusetts, was the address at which Juan and Juana Dominguez were residing together at the time of Roberto's birth. Friends and family living in Massachusetts in

1979 remember Juana's pregnancy in the United States and Roberto's birth to Juana and Juana in Lawrence.

19. Shortly after Mr. Dominguez's birth, in December 1979, Juan and Juana Dominguez traveled with Mr. Dominguez to the Dominican Republic, where they reunited with their two older children, Juan Carlos and Yanette Dominguez, who had been in the care of family. In late December 1979, Juan and Juana Dominguez were civilly married.

20. In January 1980, two full months after Mr. Dominguez's birth, Juana Dominguez registered Mr. Dominguez's birth in the Dominican Republic as having occurred on November 4, 1979 in Santiago, Dominican Republic. *See* Exhibit B, Dominican Registration of Birth. These steps were taken in order to simplify, in the family's view, future immigration plans for Juana Dominguez and the three children – the birth registration established Juana and Juan Dominguez as the mother and father of Roberto Dominguez under their own names, and the civil marriage formally established Juan and Juana Dominguez's existing relationship.

21. Juan and Juana Dominguez returned to the U.S. with Mr. Dominguez shortly thereafter, leaving their two other children in the Dominican Republic with family. As an infant, Mr. Dominguez traveled back and forth between the Dominican Republic and the U.S. with his parents on several occasions, using his valid U.S. birth certificate as identification on at least some occasions.¹ The Dominguez family has photographic proof of Roberto's presence in Massachusetts between the time of his birth and the age of three. *See* Exhibit C, Photographic Proof of Presence in the U.S. as an Infant. This directly contradicts the theory that Mr. Dominguez was born in the Dominican Republic and entered the U.S. for the first time in 1983 only after an immigrant visa was issued for him.

¹ One indication of these travels is visible on Mr. Dominguez's U.S. birth certificate, which shows an exit stamp ("salida," or "exit" in Spanish) on the second page, indicating that the certificate was used to travel out of the Dominican Republic in July 1980, when Mr. Dominguez was nine months old. *See* Exh. A.

22. In early 1980, Mr. Dominguez's father, Juan, a lawful permanent resident, filed an immigrant visa application for Juana Dominguez and all three children, despite the fact that one child, Roberto, was a U.S. citizen. *See* Exhibit D, 1980 Visa Petition for Roberto Dominguez (Form I-130). Mr. Dominguez's parents represented that he had been born in the Dominican Republic by attaching his Dominican birth registration, *see* Exhibit B, to avoid potential complications surrounding Juana Dominguez's previous time spent in the U.S. without authorization.²

23. The 1980 visa application filed for Mr. Dominguez indicates that upon arrival in the United States, he would live with his father at 70 Cross Street, Lawrence, Massachusetts – the same address that appears on Mr. Dominguez's U.S. birth certificate. *See* Exhibits A, D.

24. On February 8, 1983, Mr. Dominguez's immigrant visa was issued. On February 18, 1983, Juan Carlos Dominguez, Yanette Dominguez, and Roberto Dominguez, traveled from the Dominican Republic to the U.S with their grandparents using immigrant visas. *See* Exhibit E, 1983 Immigrant Visa for Roberto Dominguez. The visa face page again indicates that Mr. Dominguez's address in the United States will be 70 Cross Street, Lawrence, Massachusetts. *Id.* (spelling the address "70 Across St.") Mr. Dominguez, who was three years old at the time, has no memory of these events.

25. Mr. Dominguez was raised in Lawrence correctly believing that he was a native-born United States citizen. It was common knowledge among his family that his older siblings were born in the Dominican Republic and that he was born in Massachusetts.

² Mr. Dominguez is referred to on some immigration documents as Roberto Carlos Dominguez Villavizar, in the Latino tradition of using both parents' last names. For most of his life, including growing up in Lawrence, he has used only the surname Dominguez. The names Roberto Carlos Dominguez and Roberto Carlos Dominguez Villavizar refer to the same person.

26. Growing up, Mr. Dominguez never had any problems with his citizenship status. As a teenager, Mr. Dominguez worked at the Lawrence Boys and Girls Club as a counselor, and attended Central Catholic High School and Bulkeley High School in Lawrence. Although a promising student, Mr. Dominguez fell in with the wrong group of friends, and dropped out of high school at age sixteen.

27. When Mr. Dominguez was seventeen years old, he pleaded guilty to assault charges and was sentenced to two years in prison. After completing his sentence, the former Immigration and Naturalization Service (“INS”) took Mr. Dominguez into custody. Having believed himself to be a U.S. citizen, Mr. Dominguez was understandably shocked and confused by the agency’s action.

28. INS filed a Notice to Appear against Mr. Dominguez, stating that Mr. Dominguez was not a U.S. citizen, but was a native of the Dominican Republic, and that he was deportable based on his criminal record. Mr. Dominguez was then transferred to an immigration detention facility in Batavia, New York, hundreds of miles from his home in Massachusetts. Mr. Dominguez was just nineteen years old and had no legal counsel during his detention and removal proceedings.

29. Initially, Mr. Dominguez told the INS and the staff at his detention center that he had been born in Lawrence, Massachusetts, but no one believed him. Instead, INS agents showed Mr. Dominguez his visa materials and false Dominican birth registration, and told him that he was born in the Dominican Republic. Of course, Mr. Dominguez had no independent recollection of his own birth. He did not know how to explain the documents he was shown.

30. In September 1999, Mr. Dominguez, then nineteen years old and detained, appeared *pro se* before Immigration Judge John B. Reid at the Batavia Immigration Court. Although Mr. Dominguez told Judge Reid that he had grown up believing he was a U.S. citizen and expressed his confusion at having “just found out” that he was apparently a Dominican national, Judge

Reid did not investigate these statements further. Unrepresented, detained and still a child as defined in the Immigration and Nationality Act (“INA”), *see* 8 U.S.C. § 1101(b)(1), Mr. Dominguez mistakenly admitted that he was not a U.S. citizen. Mr. Dominguez did so because he had no idea how to defend himself against the evidence provided by INS, wanted to get out of custody as soon as possible, and did not understand the permanency of deportation. *See* Exhibit F, Transcript of 1999 Removal Proceeding.

31. On October 13, 1999, Mr. Dominguez was deported to the Dominican Republic. Mr. Dominguez lived and worked in the Dominican Republic for several years before he understood the permanency of his situation. Mr. Dominguez then asked his father to find him a lawyer in the U.S. to help him prove his U.S. citizenship and return home.

32. After 10 years of banishment in the Dominican Republic, Mr. Dominguez was able to obtain and present proof of his United States citizenship to the U.S. consulate in the Dominican Republic, including his Massachusetts birth certificate and photographic evidence establishing his presence in the U.S. as an infant. Based on this convincing proof, the United States consulate issued Mr. Dominguez a valid U.S. passport on September 2, 2009. *See* Exhibit G, U.S. Passport.

33. Mr. Dominguez returned to the United States on September 19, 2009, and reunited with his family. Upon his return, however, he struggled to re-adjust to life with his family and had severe anxiety as to whether his difficulties with his citizenship status were truly over. As a result, he had difficulty finding steady employment.

34. In October 5, 2011, Mr. Dominguez was arrested for drug possession in Massachusetts. He pleaded guilty and was sentenced to six months in jail.

35. While Mr. Dominguez was in criminal custody, Jonathan M. Rolbin, Director of the Office of Legal Affairs and Enforcement Liaison, Passport Services, Department of State, sent a

letter to Douglas Baldwin, Special Agent in Charge of the Bureau of Diplomatic Security office in Boston, Massachusetts. This letter asked Mr. Baldwin to deliver a passport revocation letter to Mr. Dominguez at the Plymouth House of Corrections in Plymouth, Massachusetts.

36. In Mr. Rolbin's letter to Mr. Baldwin, Mr. Rolbin stated, "According to an investigation by the [State] Department, Mr. Villavizar is not a U.S. national and is *therefore* not entitled to a U.S. passport." *See* Exhibit H, Passport Revocation Cover Letter (emphasis added). As this letter makes clear, the State Department had determined that Mr. Dominguez was not entitled to a passport because he was not a U.S. national.

37. Due to apparent administrative error, Mr. Dominguez received the passport revocation cover letter addressed to Mr. Baldwin in October 2011, but did not receive the enclosed passport revocation letter addressed to him. The passport revocation cover letter, stating that Mr. Dominguez was not a U.S. national, was the only notice given to Mr. Dominguez about his passport revocation until November 2013. At that time, present counsel filed a records request with the State Department and obtained the underlying 2011 passport revocation letter. *See* Exhibit I, Passport Revocation Letter With Record Request Cover Sheet.

38. In the passport revocation letter, also signed by Director Jonathan Rolbin, the State Department alleged that their investigation had revealed that Mr. Dominguez's true identity was not "Roberto Carlos Dominguez, born on November 9, 1979, in Massachusetts," as he had claimed in his passport application, but rather "Roberto Dominguez Villavizar, born November 4, 1979, in Dominican Republic." The State Department alleged that Mr. Dominguez's representations that he was the former individual were false and that his passport was subject to revocation under 22 C.F.R. § 51.62(a)(1). *Id.*

39. Regardless of the regulatory basis the State Department cited in revoking Mr. Dominguez's passport, the State Department plainly determined that Mr. Dominguez was not a national of the U.S., and revoked his passport upon the ground that he was not a U.S. national.

40. The United States government has never claimed that the Lawrence, Massachusetts birth certificate at issue in this case is invalid or a forgery. The State Department apparently believes that this birth certificate belongs to a separate, yet-to-be-found individual with the same first name, middle name, last name, birth month, and birth year as Mr. Dominguez; whose mother reported living at 70 Cross Street, where Mr. Dominguez's father was living at the time of his birth; and who has never surfaced to claim his identity.

41. On November 6, 2011, while Mr. Dominguez was still in jail in Massachusetts, Immigration and Customs Enforcement ("ICE") placed a detainer or "hold" on him, indicating their intent to take him into custody. However, ICE did not take him into custody when he was released from jail. ICE has never pursued further action against Mr. Dominguez since that time.

42. Mr. Dominguez continues to live in uncertainty and fear that he will one day be detained or deported again. He is unable to work legally, to travel freely, to vote, or to have the security of affirmative proof of his citizenship. He lives in statelessness, and fears that he will be deported again at any time.

CAUSE OF ACTION

Violation of Rights and Privileges as a National, 8 U.S.C. § 1503.

43. The foregoing allegations are re-alleged and incorporated herein.

44. Plaintiff Roberto Dominguez has been wrongfully denied the rights and privileges of a United States national and citizen, within the meaning of 8 U.S.C. §1503(a), by virtue of the

wrongful revocation of his United States passport by the Secretary of State upon the ground that he is not a national of the United States.

PRAAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- (1) Assume jurisdiction over this matter;
- (2) Issue a declaratory judgment declaring Plaintiff Roberto Carlos Dominguez to be a U.S. citizen and national who is entitled to the rights and privileges of citizenship, including a United States passport;
- (3) Award Plaintiff his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
- (4) Grant such further relief as the Court deems just and proper.

Dated: February 16, 2015

Respectfully submitted,

/s/ Andrea A. Saenz
ANDREA A. SAENZ
MICHAEL BERNSTEIN, *Law Student*
GABRIELA GONZALEZ, *Law Student*
Immigration Justice Clinic
Benjamin N. Cardozo School of Law
55 Fifth Avenue
New York, NY 10003
212-790-0870
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I 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.

Dated: February 16, 2015

/s/ Andrea A. Saenz
ANDREA A. SAENZ
Immigration Justice Clinic
Benjamin N. Cardozo School of Law