

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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

**DEFENDANT’S ANSWER TO PLAINTIFF’S AMENDED COMPLAINT**

Defendant, by and through undersigned counsel, hereby answers Plaintiff’s First Amended Complaint (ECF No. 18, Feb. 16, 2015), on information and belief as follows:

**INTRODUCTION**

This introductory paragraph is a statement of the case to which no response is required.

**PRELIMINARY STATEMENT**

1. This paragraph sets forth legal conclusions and questions of law to which no response is required.
2. Defendant admits that Plaintiff was removed from the United States, but denies that this action was wrongful. Defendant admits that the United States consulate in the Dominican Republic issued Plaintiff a United States passport in 2009. Defendant denies the remaining allegations in paragraph 2.
3. Defendant admits that it revoked Plaintiff’s passport, but denies that this action was wrongful. Defendant denies the remaining allegations in paragraph 3.

4. This paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required.

**PARTIES**

5. Defendant denies that Plaintiff is a citizen and national of the United States who was born and raised in Lawrence, Massachusetts. Defendant lacks knowledge or information sufficient to admit or deny Plaintiff's current residence and, therefore, denies all allegations in paragraph 5.

6. Admit.

**JURISDICTION AND VENUE**

7. This paragraph sets forth Plaintiff's jurisdictional allegations that present legal conclusions and questions of law to be determined solely by the Court, to which no answer is required. To the extent that a response is required, Defendant avers that the Court has jurisdiction under 28 U.S.C. § 1331 to provide relief under 28 U.S.C. § 2201 for a cause of action under 8 U.S.C. § 1503.
8. This paragraph sets forth Plaintiff's venue allegations that present legal conclusions and questions of law to be determined solely by the Court, to which no answer is required. To the extent that a response is required, Defendant denies that the proper venue for Plaintiff's claim is determined under 28 U.S.C. § 1391, but admits that proper venue is determined under 8 U.S.C. § 1503.

**LEGAL BACKGROUND**

9. Admit.

10. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant admits that 8 U.S.C. § 1503 creates a cause of action for any person who is within the United States who has been denied a right or privilege upon the ground that he is not a national of the United States.
11. This paragraph contains legal conclusions to which no response is required. To the extent a response is required, Defendant admits that 8 U.S.C. § 1503 creates a cause of action for any person who is within the United States who has been denied a right or privilege upon the ground that he is not a national of the United States. Defendant denies that § 1503 provides a remedy for a person whose passport has been revoked based on a finding of fraud under 22 C.F.R. § 51.62(a)(2).
12. This paragraph contains legal conclusions to which no response is required.
13. Deny. Plaintiff's Exhibit A shows that a Roberto Carlos Dominguez was born on November 9, 1979, at Lawrence General Hospital in Lawrence, Massachusetts, but Defendant denies that this birth certificate records Plaintiff's birth and denies that Plaintiff is a United States Citizen.
14. Deny. Defendant denies that this birth certificate records Plaintiff's birth.
15. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 15, and therefore denies all allegations in paragraph 15.
16. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 16, and therefore denies all allegations in paragraph 16.

17. Defendant admits that Plaintiff's birth certificate from the Dominican Republic at Exhibit B lists his parents as Juana Romona Villavizar and Juan Dominguez Ortiz, and that the Massachusetts birth certificate at Exhibit A lists Patria Miledis Dominguez as the mother. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 17, and therefore denies all remaining allegations in paragraph 17.
18. Defendant admits that Juan Dominguez is not listed on the birth certificate Plaintiff has submitted as Exhibit A. Defendant admits that the birth certificate lists an address at 70 Cross Street, Lawrence, Massachusetts. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 18, and therefore denies the remaining allegations in paragraph 18.
19. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 19, and therefore denies all allegations in paragraph 19.
20. Defendant admits that Plaintiff's Exhibit B shows that Plaintiff was born on November 4, 1979, in Santiago, Dominican Republic. Defendant denies the remaining allegations in paragraph 20.
21. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 21, and therefore denies all allegations in paragraph 21, including allegations of fact in the footnote.
22. Defendant admits that Plaintiff's Exhibit D shows that Plaintiff's father filed a visa petition on his behalf and represented that Plaintiff was born in the Dominican Republic. Defendant denies the remaining allegations in paragraph 22, including allegations of fact in the footnote.

23. Defendant admits that the visa petition lists an address in Lawrence, Massachusetts.

Defendant denies the remaining allegations in paragraph 23.

24. Defendant admits that Plaintiff was issued an immigrant visa on February 8, 1983, listing an address of "70 Across St." Defendant admits that Plaintiff entered the United States on February 18, 1983. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 24, and therefore denies the remaining allegations in paragraph 24.

25. Defendant denies that Plaintiff is a native-born United States citizen. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 25, and therefore denies all allegations in paragraph 25.

26. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 26, and therefore denies all allegations in paragraph 26.

27. Defendant admits that when Plaintiff was 17 years old, he was convicted of, among other things, an assault charge. As evidenced by Exhibit F, Plaintiff was sentenced to two and a half years' imprisonment. Defendant admits that the former Immigration and Naturalization Service took custody of Plaintiff at the conclusion of his prison sentence. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 27, and therefore denies the remaining allegations in paragraph 27.

28. Defendant admits that INS issued a Notice to Appear alleging that Plaintiff is not a citizen or national of the United States, that he is a native and citizen of the Dominican Republic, and that he was removable based on his criminal record. Defendant lacks knowledge or information sufficient to admit or deny that Plaintiff's home was in

Massachusetts at this time, and therefore denies this allegation. Defendant admits that Plaintiff was in prison in Massachusetts prior to the removal proceedings, and that he was detained in Batavia, New York, during those proceedings. Defendant admits that Plaintiff was 19 years old at the time and that after he was given a list of free legal service providers and time to find a lawyer, Plaintiff asked to proceed pro se.

29. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 29, and therefore denies all allegations in paragraph 29.

30. Defendant admits that Plaintiff appeared before Judge John B. Reid at the Batavia Immigration Court in September 1999, that Plaintiff was 19 years old at that time, and that he appeared pro se. Exhibit F shows that Plaintiff was given a list of free legal service providers, that the immigration judge continued the proceedings to give Plaintiff some time to find a lawyer, and that the Plaintiff returned without a lawyer and asked to proceed pro se. Whether Plaintiff fit the definition at 8 U.S.C. § 1101(b)(1), is a legal conclusion to which no response is required. Defendant admits that Plaintiff told the immigration judge that he had grown up believing he was a United States citizen and that he had just found out that he was born in the Dominican Republic. Defendant denies that the immigration judge did not investigate these statements. Exhibit F shows that the immigration judge required the government to submit proof of Plaintiff's alienage even after Plaintiff admitted that he was a native and citizen of the Dominican Republic and that he was not a native or citizen of the United States. Defendant denies that this admission was mistaken, and denies the remaining allegations in paragraph 30.

31. Defendant admits that Plaintiff was removed to the Dominican Republic on October 13, 1999. Defendant lacks knowledge or information sufficient to admit or deny the

remaining allegations in paragraph 31, and therefore denies all remaining allegations in paragraph 31.

32. Defendant admits that Plaintiff was issued a United States passport on September 2, 2009. Defendant denies the remaining allegations in paragraph 32.

33. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 33, and therefore denies all allegations in paragraph 33.

34. Admit.

35. Admit.

36. Defendant denies that the State Department made a determination about Plaintiff's nationality. Defendant admits the remaining allegations in paragraph 36.

37. Defendant admits that Exhibit I shows that Plaintiff's counsel obtained a copy of Plaintiff's passport revocation letter. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 37, and therefore denies all remaining allegations in paragraph 37.

38. Admit.

39. Deny.

40. Defendant denies that the Lawrence, Massachusetts birth certificate records Plaintiff's birth. Defendant lacks knowledge or information sufficient to admit or deny the remaining allegations in paragraph 40, and therefore denies all remaining allegations in paragraph 40.

41. Admit.

42. Defendant lacks knowledge or information sufficient to admit or deny the allegations in paragraph 42, and therefore denies all allegations in paragraph 42.

**CAUSE OF ACTION**

43. This is a statement reincorporating Plaintiff's allegations in Paragraphs 1 through 42, to which no response is required. To the extent a response is required, Defendant reincorporates his responses to Paragraphs 1 through 42.
44. This paragraph contains Plaintiff's statement of the case and legal arguments to which no response is required. To the extent a response is required, Defendant denies every allegation and legal conclusion in Paragraph 44.

**PRAYER FOR RELIEF**

The remainder of the Amended Complaint constitutes Plaintiff's request for relief to which no responsive pleading is necessary. To the extent a responsive pleading is required, Defendant denies that Plaintiff is entitled to the relief sought.

All allegations that have not been specifically admitted are hereby denied.

\* \* \* \* \*

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff obtained a United States passport through fraud by presenting the United States consulate with a birth certificate that did not belong to him. *See* Ex. I. Plaintiff should not be able to further benefit from continued fraudulent use of a birth certificate that does not record his birth.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff has not alleged facts that show, by a preponderance of the evidence, that he was born in the United States. The Court, therefore, should not declare that Plaintiff is a United States citizen by birth.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to relief, attorney's fees, or costs.



WHEREFORE, Defendant asks that Plaintiff's Amended Complaint be dismissed with prejudice, that judgment be entered for Defendant, and that the Court grant such further relief to Defendant as it deems proper.

Dated: March 23, 2015

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Respectfully submitted,

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*/s/ Brian C. Ward*

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**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: March 23, 2015

/s/ Brian C. Ward  
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