

PARTIES AND SERVICE

1. Plaintiff, Maria Celia Lopez was born in Watts, California, U.S.A. on December 26, 1929. The 210th Judicial District Court of Texas ordered a Delayed Registration of Birth for Plaintiff on or about November 29, 1991. Plaintiff lives with her son in Midland, Texas. Plaintiff is a 80 year old widow who is trapped in Mexico and unable to return to the United States.

2. The Defendant Hilary Clinton is the Secretary of State of the United States, and as such she is the head of the Department of State and is responsible for setting and overseeing implementation of the policies and procedures employed by the Department of State and all its various subdivisions, including the Bureau of Consular Affairs and Passport Services Directorate. She is sued in her official capacity only.

3. The Defendant Patrick F. Kennedy is the Department of State's Under Secretary for Management. Under Secretary Kennedy leads a number of bureaus within the Department of State, including the Bureau of Consular Affairs, and is responsible for setting and overseeing implementation of the policies and procedures employed by the bureaus under his leadership. He is sued in his official capacity only.

4. The Defendant Janice L. Jacobs is the Assistant Secretary of State for Consular Affairs. The Bureau of Consular Affairs is responsible for providing the passports that enable U.S. Citizens to travel internationally. Assistant Secretary Jacobs is responsible for setting and overseeing implementation of the policies and procedures employed by the Bureau of Consular Affairs. She is sued in her official capacity only.

5. The Defendant Florence Fultz is the Managing Director of the Passport Services Directorate, within the Bureau of Consular Affairs. The Passport Services Directorate adjudicates

passport applications and issues passports to U.S. Citizens. Passport Services includes 13 Regional Passport Agencies, one Gateway City Passport Agency, one Special Issuance Agency, three National Processing Facilities, the National Passport Information Center, a network of more than nine thousand public government offices across the United States designated by Passport Services to accept applications, and Headquarters offices in Washington, D.C. Director Fultz is responsible for setting and overseeing implementation of the policies and procedures employed by the Passport Services Directorate. She is sued in her official capacity only.

6. The Defendant Raymond McGrath is the Consul General of the Consulate General of the United States in Ciudad Juarez, located in the State of Chihuahua and the country of Mexico. He is the official representatives of the United States in his area of responsibility in Mexico, normally acting to assist and protect the citizens of the United State in Mexico, which includes providing passport services to stranded Americans. He is sued in his official capacity only.

7. The United States of America is also a named as a Defendant.

JURISDICTION

8. Jurisdiction lies under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346(a)(2) (actions against officers of the United States), 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act), 8 U.S.C. § 1503 (denial of rights and privileges as a U.S. Citizen), and 5 U.S.C. §§ 701-702 (Administrative Procedures Act). This Court may grant declaratory and injunctive relief pursuant to 28 USC §§ 1361, 2202, and 5 USC § 702. This Court may award reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 5 USC § 504 and 28 USC § 2412.

9. Venue is proper under 28 U.S.C. § 1391. Plaintiff's usual residence is in Midland, Texas which within the jurisdiction of this Court.

NATURE OF ACTION

10. It is imperative that a passport be secured by the Plaintiff; she is currently in Mexico, and she does not have the ability to cross the border without her passport and return to her home in Midland, Texas. She applied for a passport in 2007, and supplemented her passport package at the request of the Houston Passport Agency in January 2008. After much delay, the passport application was denied; since she is a U.S. Citizen, born in the United States, the application was wrongfully denied.

FACTS

11. Maria Celia Lopez, Plaintiff, was born in Watts, California, USA on December 26, 1929.

12. Plaintiff's Certificate of Baptism states that Maria Celia Lopez, was baptized on September 28, 1930 in Los Angeles, CA.

13. Plaintiff obtained a declaratory judgment regarding her birth in California from the 210th District Court County of El Paso, Texas on November 29, 1991; the Court examined documents and heard testimony and rendered a declaratory judgment that Plaintiff was born December 26, 1929 in Watts, California. She was issued a Delayed Birth Certificate on December 18, 1991.

14. Plaintiff is registered to vote in Midland County, Texas.

15. In November 2007, Plaintiff applied for a U.S. passport. On November 26, 2007 Plaintiff was sent a request for more information.

16. On January 14, 2008 Plaintiff complied with the request for more information, sending original documents and a completed biographical statement.

17. Over the next several months, Plaintiff made numerous attempts to obtain information regarding the processing of her passport. On July 23, 2008 Plaintiff sent a letter to the National Customer Service Office, attempting to discover why she had not been issued a passport. Additionally, a letter was sent to Congressman Michael Conway.

18. On August 6, 2008 another letter was sent to Congressman Michael Conway.

19. On December 11, 2008; May 13, 2009 and June 25, 2009 email correspondence was made with Corbett Padilla through the House of Representatives. Ms. Padilla had checked and could only say that the State Department had 'red-flagged' the passport application, and that Plaintiff should be 'getting a denial letter and a return of her original documents'.

20. On or about May/June 2009, Plaintiff had to travel to Mexico due to an illness in the family.

21. On July 16, 2009 a letter was sent to Congressman Michael Conway's office and the Houston Passport Agency, indicating that there had not yet been a response to the passport application, and that Plaintiff did not have her original documents. Additionally, the State Department was put on notice that Plaintiff was trapped in Mexico with now way to return.

22. On August 19, 2009 a letter was sent out from the Houston Passport Agency. The letter indicated that the passport application had been denied nearly a year earlier, and that original documents had been archived. Plaintiff's original documents were included with this letter.

23. Plaintiff is an 80 year old American who is trapped in Mexico with no way to return to her home in Midland.

CLAIMS FOR RELIEF

HABEAS CORPUS

24. The inability to travel freely which results from Defendants' denial of the Plaintiff's application for a passport are a significant restriction on her liberty. Under current law, she is unable to return to the United States following foreign travel without a U.S. passport. Because these restrictions are not shared by otherwise similarly situated U.S. citizens, they constitute unlawful custody cognizable in habeas corpus under 28 U.S.C. §2241.

DECLARATORY JUDGMENT

25. The named plaintiff has been denied rights and privileges claimed as a Citizen of the United States, within the meaning of 8 U.S.C. §1503, by virtue of the denial of her application for a United States Passport, and consequent inability to travel freely. Therefore, the Plaintiff is entitled to bring a declaratory judgment action, seeking a declaration that she is, indeed, a United States Citizens, under 8 U.S.C. §1503.

REVIEW OF ADVERSE AGENCY ACTION

26. The Plaintiff also seeks review of the final, adverse agency action, denying her applications for United States Passport, under the Administrative Procedure Act, ("APA"). Plaintiff urges that said denial is arbitrary, capricious, and contrary to law, within the meaning of the APA. See, 5 U.S.C. §703:

Form and venue of proceeding. The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of

competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

See also, 5 U.S.C. §706:

Scope of review. To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall ——— (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be ——— (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law ...

ARGUMENT

27. Since all of the Defendants participate in the State Department functions of issuing United States Passports, the Defendants will be collectively referred to as the State Department.

28. Rather than receiving prompt adjudication of her passport application by the State Department, Plaintiff has encountered a bureaucracy that has subjected her to an arbitrary, unreasonable, excessive, and burdensome procedure, prior to denying her application.

29. The State Department has refused to recognize Plaintiff as a U.S. Citizen, despite the fact that a judge has already reviewed the evidence and taken testimony, and declared her to be a U.S. Citizen.

30. The State Department has not provided a meaningful explanation as to what it perceived to be deficient in Plaintiff's submission, and until the Congressional representative got involved, the State Department would not even admit that they had adjudicated the application.

31. On information and belief, the State Department allows adjudicators to deflect and reject applications that may present complications in the minds of adjudicators, but as to which there is insufficient basis for denial of the application.

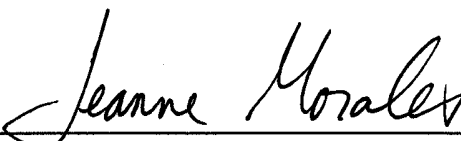
32. The State Department's policy, pattern, and practice also has a chilling effect upon similarly situated applicants who receive arbitrary, unreasonable, excessive, and burdensome demands.

PRAYER FOR RELIEF

WHEREFORE, it is respectfully requested that this Honorable Court set aside the denial of Plaintiff's application for a United States Passport. Plaintiff further urges the Court to issue a Declaratory Judgment, declaring her to be a U.S. citizen, and a permanent injunction, restraining and enjoining Respondent/Defendant Clinton, from not issuing the requested passport. Finally, it is also

urged that the Court require Defendants to pay Plaintiff's costs, and reasonable attorneys fees, and grant such other and further relief as the Court may consider appropriate.

Respectfully submitted,

By:  _____

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