

CASE NO. 22-10300

**THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

KELVIN OSVALDO SILVA,
Petitioner,

v.

MERRICK GARLAND,
United States Attorney General,
Respondent.

On Petition for Review of an Agency Order
Board of Immigration Appeals
Executive Office of Immigration Review
File No. A 041 421 501

**PETITIONER'S EMERGENCY MOTION FOR A STAY OF REMOVAL
PENDING APPEAL**

Peter M. Isbister
Bacardi Jackson
Southern Poverty Law Center
150 East Ponce De Leon Blvd.
Ste 340
Decatur, GA 30030
T: 404-221-4039

Cristina Velez+
National Immigration Project of the
National Lawyers Guild
2201 Wisconsin Avenue NW, Ste 200
Washington, DC 20007
+licensed in and working from New
York

F: 912-335-4997
peter.isbister@splcenter.org
bacardi.jackson@splcenter.org

Counsel for Petitioner

T: 347-943-1164
F: 617-227-5495
cristina@nipnl.org

Counsel for Petitioner

Meredyth L. Yoon
Laura Murchie
Asian Americans Advancing
Justice-Atlanta
5680 Oakbrook Parkway, Ste 148
Norcross, GA 30093
T: 770-634-5892
F: 404-890-5690
myoon@advancingjustice-atlanta.org
lmurchie@advancingjustice-atlanta.org

Counsel for Petitioner

Naikang Tsao
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703
T: 608-258-4250
F: 608-258-4258
ntsao@foley.com

Counsel for Petitioner

Kelvin Osvaldo Silva v. Merrick Garland
C-i of ii

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following listed persons and entities as described in the 11th Cir. R. 26.1-2 have an interest in the outcome of this case:

Garland, Merrick, U.S. Attorney General, U.S. Department of Justice (*Respondent*)

Asian Americans Advancing Justice - Atlanta (*Counsel for Petitioner*)

Brown, Denise G., Temporary Appellate Immigration Judge, Board of Immigration

Appeals, Executive Office for Immigration Review, U.S. Department of
Justice

Duncan, Randall W., Immigration Judge, Atlanta Immigration Court, Executive

Office for Immigration Review, U.S. Department of Justice

Isbister, Peter, Southern Poverty Law Center (*Counsel for Petitioner*)

Jackson, Bacardi, Southern Poverty Law Center (*Counsel for Petitioner*)

Madrigal, Francisco, Field Office Director, Atlanta Field Office, U.S. Immigration

and Customs Enforcement, U.S. Department of Homeland Security, U.S.

Department of Justice

Kelvin Osvaldo Silva v. Merrick Garland

C-ii of ii

Mayorkas, Alejandro, Secretary, U.S. Department of Homeland Security, U.S.

Department of Justice

McConnell, David, M., Office of Immigration Litigation, U.S. Department of

Justice

Murchie, Laura, Asian Americans Advancing Justice - Atlanta (*Counsel for*

Petitioner)

National Immigration Project of the National Lawyers Guild (*Counsel for*

Petitioner)

Office of the Principal Legal Advisor (OPLA), U.S. Department of Homeland

Security, U.S. Department of Justice

Silva, Kelvin Osvaldo (*Petitioner*)

Southern Poverty Law Center (*Counsel for Petitioner*)

Tsao, Naikang, Foley & Lardner LLP (*Counsel for Petitioner*)

U.S. Department of Homeland Security, U.S. Department of Justice

U.S. Department of Justice

U.S. Immigration and Customs Enforcement, U.S. Department of Homeland

Security, U.S. Department of Justice

Velez, Cristina, National Immigration Project of the National Lawyers Guild

Kelvin Osvaldo Silva v. Merrick Garland
C-ii of ii

(Counsel for Petitioner)

Waldrop, Ashley S., Assistant Chief Counsel, Office of Principal Legal Advisor

(OPLA), U.S. Department of Homeland Security, U.S. Department of Justice

Yoon, Meredyth L., Asian Americans Advancing Justice - Atlanta *(Counsel for
Petitioner)*

The undersigned counsel of record further certifies there are no publicly
traded companies or corporations that have an interest in the outcome of the case or
appeal.

Respectfully submitted this 11th day of February, 2022.



Peter Isbister
Counsel for Petitioner

TABLE OF CONTENTS

FACTS & PROCEDURAL HISTORY	3
ARGUMENT	5
I. Mr. Silva Is Likely To Succeed On The Merits.	5
1. Section 1432(a)(3) Unconstitutionally Discriminates Based on Gender and Legitimacy.	9
2. Section 1432(a)(3) Has a Racially Discriminatory Purpose.	12
II. Mr. Silva Is Likely to Suffer Irreparable Harm If Removed Before His Petition for Review Is Adjudicated.	15
1. Forced Deportation Would Adversely Affect Mr. Silva's Mental and Physical Health, Separate Him from Family, and Subject Him to Additional Harm Resulting from the COVID-19 Pandemic in the Dominican Republic.	16
2. DHS' Return Policy Does Not Afford Mr. Silva Effective Relief If He Prevails on His Petition for Review.	20
III. A Stay Will Not Injure the Government and the Public Interest Favors a Stay.	22

PETITIONER'S EMERGENCY MOTION FOR A STAY OF REMOVAL
PENDING APPEAL

Pursuant to Fed. R. App. P. 18 and 27 and 11th Cir. R. 27-1, Petitioner Kelvin Osvaldo Silva (“Mr. Silva”) files this emergency motion for a stay of his removal from the United States pending this appeal. Mr. Silva asserts he is not deportable because he automatically derived U.S. citizenship through his father in 1988. “An assertion of United States citizenship is thus a denial of an essential jurisdiction fact in a deportation proceeding.” *Poole v. Mukasey*, 522 F.3d 259, 264 (2d. Cir. 2008) (internal quotations omitted). Mr. Silva should not be removed from the United States before his claims have been thoroughly reviewed and adjudicated.

Mr. Silva’s citizenship claim involves constitutional challenges to a derivative citizenship law that affords him less favorable treatment based on his legitimacy status, his father’s gender, and his father’s marital status. The statute was enacted with the racially discriminatory purpose of limiting ways people of color could acquire U.S. citizenship. But for the unconstitutional law, Mr. Silva would stand recognized as a U.S. citizen, having satisfied the last requirement to automatically derive citizenship through his father in April of 1988.

FACTS & PROCEDURAL HISTORY

Mr. Silva was born in the Dominican Republic on October 16, 1976. Ex. 1. His father, Salomon, and mother, Petra, were not married, and they separated before Mr. Silva was born. Ex. 2. Shortly after Mr. Silva's birth, Petra relinquished all responsibility for Mr. Silva's care and gave him to his father. *Id.* Throughout Mr. Silva's childhood, Salomon remained his sole custodial parent. *Id.*

Salomon relocated to the United States in the 1980s. Ex. 3. Mr. Silva remained in the Dominican Republic with his paternal grandparents. Ex. 2. During that time, Salomon continued to fully support Mr. Silva. *Id.* When Salomon became a U.S. citizen in January of 1988, he promptly arranged for Mr. Silva to join him in New Jersey. *See* Ex. 4. On April 13, 1988, when Mr. Silva was eleven years old, he was admitted to the U.S. as a lawful permanent resident. *Id.* He immediately began living with his father and half-siblings in Passaic, New Jersey, and he has lived in the U.S. ever since. Ex. 2; Ex. 3; Ex. 4; Ex. 5. Mr. Silva's father died in 1993, when Mr. Silva was seventeen. Ex. 6.

The Department of Homeland Security ("DHS" or "Department") initiated removal proceedings against Mr. Silva on July 5, 2019, following his 2013 conviction for drug offenses. Ex. 7. Mr. Silva filed a motion to terminate the removal proceedings, asserting he automatically derived U.S. citizenship through

his father pursuant to 8 U.S.C. § 1432(a)(3) and therefore was not subject to removal. On March 6, 2020, the immigration judge (“IJ”) denied Mr. Silva’s motion to terminate the proceedings and ordered Mr. Silva removed to the Dominican Republic. Ex. 8. The IJ found that Mr. Silva was born out of wedlock on October 16, 1976, that his father naturalized on January 5, 1988, that Mr. Silva was admitted to the U.S. at age eleven on April 13, 1988, and that he was in his father’s custody. *Id.* at 3. However, the IJ held that because Mr. Silva’s parents never legally married, they could not have achieved a “legal separation,” and that Mr. Silva therefore did not automatically derive U.S. citizenship through his father. *Id.* Mr. Silva filed a timely notice of appeal with the Board of Immigration Appeals (“BIA”) and submitted his BIA appeal brief on June 3, 2020. On September 30, 2020, the BIA affirmed the IJ’s decision and upheld the removal order. Ex. 9. On October 19, 2020, Mr. Silva filed a petition in this Court seeking review of the BIA’s decision. *Silva v. Garland*, No. 20-13916-HH (11th Cir. filed Oct. 19, 2020). On June 3, 2021, this Court remanded the matter to the BIA for consideration of the full administrative record. *Id.* (Order, June 3, 2021). On January 19, 2022, the BIA issued a new decision dismissing the appeal. On January 27, 2022, Mr. Silva filed a petition in this Court seeking review of the BIA’s decision.

ARGUMENT

Mr. Silva requests that this Court stay his removal during the period required to litigate his petition for review and any resultant proceedings. To win a stay of removal, a petitioner must show that (1) he is likely to succeed on the merits; (2) he will be irreparably injured absent a stay; (3) the stay will not substantially injure the other parties interested in the proceeding; and (4) a stay is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). The first two factors are the most important, and the third and fourth factors “merge when the Government is the opposing party.” *Id.* at 434-435. A stay motion “can still be granted upon a lesser showing of a substantial case on the merits when the balance of the equities identified in factors 2, 3, and 4 weighs heavily in favor of granting the stay.” *LabMD, Inc. v. Fed. Trade Comm’n*, 678 F. App’x 816, 819 (11th Cir. 2016) (quoting *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986)). Here, all factors favor a stay.

I. Mr. Silva Is Likely to Succeed on The Merits.

Mr. Silva is likely to succeed in his petition for review. Pursuant to § 1432(a),

A child born outside of the United States of [non-citizen] parents, or of [a non-citizen] 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 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.

8 U.S.C. § 1432(a) (emphasis added). Put another way, under § 1432(a), a child born abroad to non-citizen parents would automatically derive U.S. citizenship after both parents naturalized, or after one parent naturalized if the other parent was “out of the picture” due to death, failure to establish paternity through legitimation, or a legal separation of the parents. *See Levy v. U.S. Att’y. Gen.*, 882 F.3d 1364, 1368 (11th Cir. 2018). Under § 1432(a)(3), parents who never legally married

could not achieve a “legal separation;” thus, a non-marital child’s ability to automatically derive citizenship through his single custodial father was contingent upon his parents’ marital status. *See Matter of H-*, 3 I&N Dec. 742 (BIA 1949). Because of this rule (hereinafter the “parental marriage requirement”), the custodial father of a non-marital child whose mother had abandoned him could not automatically transmit U.S. citizenship to the child unless the child’s mother *also* naturalized before the child’s eighteenth birthday. In contrast, the *mother* of an un-legitimated child (or the divorced parent of a *marital* child) could independently confer their citizenship to their child under § 1432(a)(3)¹.

Section 1432(a)(3) violates the Fifth Amendment’s equal protection guarantee by affording preferential treatment to unwed mothers over unwed fathers, and by affording preferential treatment to marital children over non-marital children. Because Mr. Silva asserts a claim to U.S. citizenship, and because he challenges the constitutionality of a derivative citizenship statute based on suspect classifications, his claims invoke heightened judicial review. *See Sessions v.*

¹ Congress repealed § 1432(a) and its parental marriage requirement via the Child Citizenship Act of 2000 (“CCA”), § 103, 8 U.S.C. §§ 1431–33 (2001), effective February 27, 2001. Because all relevant events respecting Mr. Silva’s derivative citizenship occurred before that date, § 1432(a) applies. *See Tineo v. U.S. Att’y Gen.*, 937 F.3d 200, 206, n.5 (3d. Cir. 2019).

Morales-Santana, 137 S. Ct. 1678, 1693-1694 (2017); *Tineo*, 937 F.3d at 209-210.

In the context of claims to U.S. citizenship, the nature of the challenged classification will determine the standard of scrutiny. *See Morales-Santana*, 137 S. Ct. at 1690; *Tineo*, 937 F.3d at 210. Thus, *Morales-Santana* casts serious doubt on cases that upheld §1432 (a)(3) under rational basis review. *See Tineo*, 937 F.3d at 210. Moreover, because *Morales-Santana* makes clear that “no important government interest is served” by laws that rely upon “once habitual, but now untenable, assumptions” about “the way women and men are,” it follows that § 1432(a)(3) cannot withstand intermediate scrutiny. *See Morales-Santana*, 137 S. Ct. at 1692; *Dale v. Barr*, 967 F.3d 133, 146 (2d. Cir. 2020) (Rakoff, D.J., concurring).

Additionally, although § 1432(a)(3) does not explicitly mention race, it was enacted with a racially discriminatory purpose. When the parental marriage requirement was enacted, non-marital unions were the prevailing form of nuptial arrangement in many Latin American and Caribbean countries with majority Black and/or Indigenous populations.² By preventing non-marital children from

² COHABITATION AND MARRIAGE IN THE AMERICAS: GEO-HISTORICAL LEGACIES AND NEW TRENDS, Albert J. Esteve, Ron J. Lesthaeghe, Antonio Lopez-Gay, & Joan Garcia Roman, *The Rise of Cohabitation in Latin America and the Caribbean, 1970-2011* (2016) (“In many provinces, and especially those with larger native and

automatically deriving citizenship through their fathers, lawmakers helped ensure fewer Black and Brown children became U.S. citizens. These outcomes were intentional and entirely consistent with racial nativism, as well as prevailing views that “considered racial mixing a sin that posed a danger to the purity of the white race.”³

1. Section 1432(a)(3) Unconstitutionally Discriminates Based on Gender and Legitimacy.

On its face, section 1432(a)(3) differentiates based on two suspect classifications: gender and legitimacy. It creates an automatic citizenship exception for unwed mothers, to the exclusion of unwed fathers. And it allows marital children, but not non-marital children, to automatically derive citizenship through a single parent. There is no reason to believe that unwed fathers have a lesser interest in their child’s citizenship than unwed mothers. Nor is there reason to believe that fathers of non-marital children have a lesser interest in their child’s citizenship than fathers of marital children.

black populations, cohabitations and visiting unions have always existed as alternatives to the classic ‘European’ marriage.”)

³ See Kristin A. Collins, *Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation*, 123 YALE L.J. 2134, 2164 (2014). Notably, when the Nationality Act of 1940 took effect, many states had laws prohibiting interracial marriage.

In *Morales-Santana*, the Supreme Court made clear that in the context of a citizenship claim, laws “granting or denying benefits on the basis of the sex of the qualifying parent . . . differentiate on the basis of gender, and therefore attract heightened review under the Constitution’s equal protection guarantee.” 137 S. Ct. at 1689. Classifications that draw a distinction between fathers and mothers must serve actual and important governmental objectives, and the discriminatory means employed must be substantially related to the achievement of those objectives. *Id.* at 1690. “[I]f a statutory objective is to exclude or protect members of one gender in reliance on fixed notions concerning that gender’s roles and abilities, the objective itself is illegitimate.” *Id.* at 1692. Thus, “no important governmental interest is served by laws grounded . . . in the obsolescing view that unwed fathers are invariably less qualified and entitled than mothers to take responsibility for nonmarital children.” *Id.*

Section § 1432(a)(3) treats mothers and fathers differently by allowing an unwed mother to pass citizenship to her child “when the father, by failing to legitimate the child, has absented himself from the child’s life,” but not allowing an unwed father to pass citizenship to his child “where the mother . . . h[as] similarly abandoned the child.” *Dale*, 967 F.3d at 147 (Rakoff, D.J., concurring) (quoting *Pierre v. Holder*, 738 F.3d 39, 57 (2d. Cir. 2013)). This differentiation is far from

minimal; as the Second Circuit has acknowledged, “there is nothing an unwed father can do, short of marrying and divorcing the biological mother of this child, to receive automatic citizenship for his children under § 1432(a)(3).” *Id.* at 148; *Pierre*, 738 F.3d at 54. Following *Morales-Santana*, the Third Circuit ruled in *Tineo* that § 1432(a)(3) unconstitutionally discriminated against Mr. Tineo’s father based on gender. *See Tineo*, 937 F.3d at 215. And at least one jurist has expressed serious doubts about the statute’s facial validity, *see Dale*, 967 F.3d at 146 (Rakoff, D.J., concurring). “To put it plainly, § 1432(a)(3) unconstitutionally discriminates on the basis of sex in a way that no longer even comes close to passing constitutional muster.” *Id.* “[J]ust like the offending provision in *Morales Santana*, [§ 1432(a)(3)] is premised on the view that unwed fathers are invariably less qualified and entitled than mothers to take responsibility for non-marital children.” *Id.* at 149.

In *Levy*, this Court considered whether § 1432(a)(3) unconstitutionally discriminates based on legitimacy. The panel found “the classification at issue is substantially related to an important government interest” and described the government’s interest as “rights of an alien parent⁴ who may not wish his child to

⁴ Mr. Silva’s mother naturalized to U.S. citizenship on June 5, 1998. *See Ex. 10.*

become a U.S. citizen,” quoting *Pierre*, 738 F.3d at 52. However, *Pierre* was decided prior to *Morales-Santana*, and the Second Circuit has since acknowledged that § 1432(a)(3) “may reflect outdated notions of gender and parenthood[.]” See *Dale*, 967 F.3d at 145 (petition for rehearing *en banc* filed September 9, 2020). Stereotypes that “unwed fathers care little about, indeed are strangers to, their children are not a proper basis for legislation because they ‘disserve men who,’ failing to confirm to this stereotype, ‘exercise responsibility for raising their children.” See *id.* at 149 (Rakoff, D.J., concurring) (quoting *Morales Santana*, 137 S. Ct. 1693-95).

2. Section 1432(a)(3) Has a Racially Discriminatory Purpose.

Section 1432(a)(3)’s parental marriage requirement was intended to limit pathways to citizenship for people of color. Laws that have a racially discriminatory purpose are subject to the most rigid scrutiny, and, if ever upheld, must be necessary to serve a compelling government interest. See, e.g., *Miller v. Johnson*, 515 U.S. 900, 904-905 (1995); *Loving v. Virginia*, 388 U.S. 1, 11 (1967). Government action may violate equal protection “if a discriminatory purpose was one motivating factor.” See *Ramos v. Nielsen*, 321 F. Supp. 3d 1083, 1124 (N.D. Cal. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp 3d 307, 325-326 (D.

Md. 2018); *Centro Presente v. U.S. Dept. of Homeland Security*, 332 F. Supp. 3d 393, 415 (D. Mass. 2018).

Section 1432(a)(3) codifies an administrative policy created to prevent people of color from becoming U.S. citizens. First codified in the Nationality Act of 1940,⁵ the law was written when general racial bars to naturalization remained in effect. In the years leading to the 1940 Act's passage, lawmakers were concerned derivative citizenship laws would help people circumvent the racial bars. For example, lawmakers who helped draft the 1940 Act suggested that a law allowing foreign-born children to acquire U.S. citizenship through either parent would open the doors to "thousands of cases . . . involving persons in various countries, including Oriental countries," thus "letting down the immigration barriers established by the Immigration Act [quotas] of 1924."⁶ Congress members believed such a law could extend naturalization privileges to people who otherwise would be racially ineligible.⁷ Amidst these concerns, lawmakers enacted Section

⁵ See H.R. 9980, AN ACT TO REVISE AND CODIFY THE NATIONALITY LAWS OF THE UNITED STATES INTO A COMPREHENSIVE NATIONALITY CODE, 54 Stat. 1137, 76th Cong. 3d. (Oct. 14, 1940) (hereinafter "1940 Act").

⁶ See Letter from A. Dana Hodgdon, Dep't of State, Visa Div., to Wilbur J. Carr, Ass't Sec'y of State 1-2 (Jan 19, 1933).

⁷ See HEARINGS ON H.R. 3673 AND H.R. 77 BEFORE THE H. COMM. ON IMMIGRATION AND NATURALIZATION, 73d Congress 23 at 37 (1933).

313 of the 1940 Act, later recodified in 8 U.S.C. § 1432(a)(3), limiting the automatic acquisition of citizenship to cases in which *both* parents had naturalized, unless the parents were legally separated.⁸ The law was consistent with a position State Department officials had already taken: that U.S.-citizen fathers could unilaterally confer their citizenship only to *marital* children, and that the validity of the parents' marriage would be decided under U.S. law.⁹ From its inception, administrators used the parental marriage requirement as a pretextual justification for rejecting citizenship claims based on applicants' race,¹⁰ and its codification in the 1940 Act was similarly rooted in racial animus. Shedding light on lawmakers' discriminatory intent, one State Department official who was heavily involved in drafting the 1940 Act had stated it was "an absurdity to leave the doors wide open to the admission of negroes, one of the most backward races in the world, while

⁸ See 1940 Act, *supra* n.5.

⁹ See Letter from George Rives, Ass't Sec'y of State, to Harold M. Sewall, U.S. Consul Gen., Samoa (Apr. 26, 1888), and Letter from George Rives, Ass't Sec'y of State, to Harold M. Sewall, U.S. Consul Gen., Samoa (July 19, 1888), in MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING DOCUMENTS RELATING TO THE CONDITION OF AFFAIRS IN SAMOA, S. EXEC. DOC. NO. 50-31, at 55, 102 (1888).

¹⁰ See *Ng Suey Hi v. Weedin*, 21 F.2d 801 (9th Cir. 1927); *Chin Suey v. Tillinghast*, 26 F.2d 588 (1st Cir. 1928); *Louie Wah You v. Nagle*, 27 F.2d 573 (9th Cir. 1928).

keeping them closed to prevent the admission of a few Chinese and Japanese who might enter under the quotas.”¹¹ Notably, non-marital unions were a primary form of nuptial arrangement in Latin American and Caribbean countries where a significant proportion of the population was Black and/or Indigenous.¹²

II. Mr. Silva Will Suffer Irreparable Harm If Removed Before His Petition for Review Is Adjudicated.

Along with the likelihood of success on the merits, the irreparable injury inquiry is one of “the most critical” factors in adjudicating stay applications. *Nken*, 556 U.S. at 433. Absent a stay of removal, Mr. Silva will suffer irreparable harm for two main reasons. First, forced deportation would injure Mr. Silva’s mental health and cause extraordinary risk to his health and safety due to the impact of the COVID-19 pandemic in the Dominican Republic. Second, Respondent, the Attorney General, lacks the capability to return Mr. Silva if he is deported and then prevails before this Court. Whether DHS will return him depends entirely on DHS’ return policy, which is non-binding, vague, and discretionary. It also does not, by its terms, apply to U.S. citizens. As the U.S. Embassy in the Dominican

¹¹ PATRICK D. LUKENS, A QUIET VICTORY FOR LATINO RIGHTS: FDR AND THE CONTROVERSY OVER “WHITENESS”, (2017).

¹² *See* Jose E. Arraros, *Concubinage in Latin America*, 3 Fam L. 330, 332 (1963).

Republic is currently open mainly for emergency processes, and only accepting limited non-emergency appointments, Mr. Silva is likely to be stranded in the Dominican Republic if he prevails on this petition for review.

1. Forced Deportation Would Adversely Affect Mr. Silva's Mental and Physical Health, Separate Him from Family, and Subject Him to Additional Harm Resulting from the COVID-19 Pandemic in the Dominican Republic.

Mr. Silva would suffer irreparable injury if forced to return to a country where he has not lived since early childhood, has no family members with whom he has an ongoing relationship, and is currently impacted by the COVID-19 pandemic.¹³

Mr. Silva has lived in the United States for more than 30 years, and for his entire adult life. He is 44 years old and has lived in the United States since he was 11. His children live in the United States. Mr. Silva has no close family members

¹³ *Accord Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 1481 (2010) (“[D]eportation is a particularly severe ‘penalty.’”) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893); *Lehman v. United States*, 353 U.S. 685, 691 (1957) (Black, J., concurring) (“To banish [an immigrant] from home, family, and adopted country is punishment of the most drastic kind.”); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (“Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.”)).

remaining in the Dominican Republic, and no residence to return to if he is removed.

Mr. Silva's removal will negatively impact his emotional and mental health. He has remained in detention for years hoping his claims of citizenship and unconstitutional discrimination against him and his father would be heard. As noted above, Mr. Silva was abandoned by his mother as a baby and raised by his father and paternal grandparents. At the tender age of 11, he entered the United States as a lawful permanent resident due to his father's concerted efforts to secure a visa for him. Upon arrival, he lived with his father and half-siblings, struggling to fit into his new surroundings and learn English while also navigating the complicated terrain of young adulthood.

Mr. Silva's father took affirmative steps to ensure that Mr. Silva would be recognized as his son, protect any succession rights he might have, and support him emotionally and financially. Unfortunately, Mr. Silva's father died when he was seventeen years old. Removal to the Dominican Republic before Mr. Silva could effectively assert his citizenship claim, and his father's right to transmit U.S. citizenship to him, would cause irreparable emotional pain to Mr. Silva, especially in light of the dire circumstances currently existing in the Dominican Republic.

Removal of Mr. Silva to the Dominican Republic before the resolution of his petition for review would cause irreparable harm to his physical health. Because he has multiple pre-existing chronic health conditions, including asthma and untreated renal insufficiency, Mr. Silva faces heightened risk if he contracts COVID-19. Currently, the Department of State maintains a Level 4 Travel Advisory “recommending U.S. citizens not travel to the Dominican Republic due to health and safety measures and COVID-19-related conditions.”¹⁴ The advisory notes that “medical care is limited with some hospitals at or near full capacity,” and that the availability of emergency medical care is “significantly reduced.”¹⁵ Though the advisory also notes that vaccinations “may” lower an individual’s risk of contracting and developing severe symptoms from COVID-19, the recommendation and country conditions discussed above apply to all individuals, despite vaccination status.¹⁶ Thus, due to Mr. Silva’s pre-existing conditions, he remains at risk of becoming ill with COVID-19 and being unable to access medical care in the Dominican Republic .

¹⁴ Coronavirus Information For the Dominican Republic, U.S. Embassy in the Dominican Republic, <https://do.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited Feb. 9, 2022).

¹⁵ *Id.*

¹⁶ *Id.*

In addition to the heightened risk of COVID-19 and reduced medical capacity, the Department of State also maintains a Level 4 Travel Advisory citing the prevalence of violent crime in the Dominican Republic.¹⁷ The advisory notes that the “wide availability of weapons, [and] the use and trade of illicit drugs” leads to the “high level of criminality” in the country as a whole.¹⁸ The advisory also notes such violence is worse in urban areas than in tourist resort areas.¹⁹ Mr. Silva would return to an urban area rather than remaining in a tourist area. As Mr. Silva has no residence to return to in the Dominican Republic and will be without shelter, he risks serious injury from violent crime.

For these reasons, the harm that Mr. Silva will suffer if removed to the Dominican Republic is qualitatively different from the harm that a petitioner would ordinarily suffer. Thus, Mr. Silva has satisfied this factor of the inquiry under *Nken*.

¹⁷ Dominican Republic Travel Advisory, U.S. Department of State - Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/dominican-republic-travel-advisory.html> (last visited Feb. 9, 2022).

¹⁸ *Id.*

¹⁹ *Id.*

2. DHS's Return Policy Does Not Afford Mr. Silva Effective Relief If He Prevails on His Petition for Review.

i. Background.

Mr. Silva also faces irreparable injury because the Respondent cannot ensure that the government will facilitate his return to the United States if the Court grants his petition for review. This is because an effective return policy—one that consistently and predictably returns those who prevail on their petitions for review—does not exist.

With respect to irreparable harm, the Court in *Nken* stated:

It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury. Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal.

Nken, 556 U.S. at 435. The Court's belief in the existence of effective return procedures arose from a claim that the Solicitor General (SG) made in its brief that it later retracted. *Id.* (citing Resp. Br. at 44, *Nken v. Holder*, 556 U.S. 418, No. 08-861 (Jan. 2009)).

In fact, no formalized “policy and practice” then existed. The SG

subsequently informed the Supreme Court that it was “not confident that the process for returning removed aliens, either at the time the brief was filed or during the intervening three years, was as consistently effective as the statement in its brief in *Nken* implied.”²⁰ In this letter, the SG acknowledged the “absence of a written, standardized process for facilitating return” and the “the lack of clear or publicly accessible information for removed aliens to use in seeking to return if they received favorable judicial rulings.” *Id.* at 3–4.

On February 24, 2012, U.S. Immigration and Customs Enforcement (ICE), a subagency of DHS, issued a general policy directive regarding returns for a limited set of cases.²¹ However, as explained *infra*, this general policy is ineffective to ensure the facilitation of Mr. Silva’s return.

Thus, in addition to assessing the individualized injury that will result absent a stay of removal, this Court should assess whether Respondent is capable of

²⁰ Ltr. From Michael R. Dreeben, Deputy Solicitor General, to William K. Suter, Clerk of the Supreme Court, at 4 (Apr. 24, 2012), *available at* https://nipnlg.org/PDFs/practitioners/our_lit/foia_dhs_return/2012_24Apr_osg-ltr-supt.pdf.

²¹ *See* ICE Policy Directive Number 11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens, *available at* https://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf

returning Mr. Silva if the Court grants the instant petition for review.²²

ii. Respondent Cannot Ensure Mr. Silva's Return If the Court Denies a Stay and Later Grants His Petition for Review.

a. ICE's Return Policy Does Not Account for Wrongful Removal of U.S. Citizens

ICE's facilitated return policy does not, by its terms, apply to Mr. Silva, who presents a good faith and meritorious argument that he is a U.S. citizen. If Mr. Silva prevails on his petition for review, he will be deemed a U.S. citizen, and "[t]he Executive Branch may remove certain [noncitizens] but has no authority to remove citizens." *Poole v. Mukasey*, 522 F.3d 259, 264 (2d Cir. 2008) (remanding for consideration of petitioner's derivative citizenship claim). As a U.S. citizen, Mr. Silva would no longer be under ICE's jurisdiction, and ICE could potentially decline to facilitate his return.

If ICE fails to apply its policy to Mr. Silva, he could be stranded in the Dominican Republic despite prevailing on his citizenship claim. Currently, the U.S. Embassy in the Dominican Republic is limited to reduced services for U.S. Citizens.²³ These services are available to U.S. Citizens who need to replace their

²² These factors overlap to the extent that the inability to return is itself an individualized injury that results from deportation.

²³ Coronavirus Information For the Dominican Republic, U.S. Embassy in the Dominican Republic,

passports, but only limited appointments are available for an initial passport application.²⁴ Even if the U.S. Embassy would accept Mr. Silva's application for a U.S. passport, given the health and financial precarities discussed *supra*, Mr. Silva may be unable to access these services, navigate the passport requirements imposed by the embassy, or pay the cost of a U.S. passport.

Even if Respondent could authoritatively state ICE would apply its policy to Mr. Silva, the policy remains inadequate to ensure his return.

b. ICE Asserts Its Return Policy Is Neither Binding Nor Enforceable.

Even if it applies, the ICE return policy does not negate Mr. Silva's risk of irreparable harm, because ICE asserts it is non-binding and "is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal

<https://do.usembassy.gov/u-s-citizen-services/covid-19-information/> (last visited Oct. 15, 2020).

²⁴ Passport Services, U.S. Embassy in the Dominican Republic, <https://do.usembassy.gov/u-s-citizen-services/passports/> (on this page is a link for "emergency passports" that provides information for "Lost, Stolen, or Damaged Passports," explicitly limiting services to "tourists only," and noting non-application to U.S. Citizens residing in the Dominican Republic, <https://do.usembassy.gov/u-s-citizen-services/passports/lost-stolen-damaged-passport-replacements/>) (last visited Feb. 9, 2022); Adult First - Time Passport Issuance, <https://do.usembassy.gov/u-s-citizen-services/passports/adult-first-time-passport-issuance/> (last visited Feb. 9, 2022).

matter.”²⁵ ICE did not promulgate the policy through notice and comment procedures, and it can be retracted or replaced at any time.

c. ICE’s Return Policy Is Vague and Discretionary.

As noted above, ICE’s return policy does not ensure that ICE would facilitate Mr. Silva’s return to the United States. Under the policy, ICE facilitates *only* the return of persons who were previously lawful permanent residents or whose “presence is necessary for continued administrative removal proceedings,” and, within those groups, only those who can afford to pay.²⁶ The policy directive does not address the specific mechanisms that would be used to facilitate the return of prevailing U.S. citizens such as Mr. Silva.

In sum, ICE’s return policy provides no assurance that the harm of deportation could ever be repaired. For these reasons, the Court should evaluate the irreparable harm of deportation without regard to the Supreme Court’s discussion of this factor in *Nken*.

²⁵ *Supra* n.19, ¶ 8.

²⁶ *Id.* at ¶¶ 2, 3.1

III. A Stay Will Not Injure the Government, and the Public Interest Favors a Stay.

In an immigration case, the last two factors in a stay analysis merge because the Government is both the opposing litigant and the public interest representative. *Nken*, 556 U.S. at 435. Staying Mr. Silva’s removal pending appeal will not injure the Government, and the public interest favors a stay.

A stay supports the public interest because the public has an “interest in preventing [noncitizens] from being wrongfully removed.” *Nken*, 566 U.S. at 436. This interest is heightened when a petitioner asserts a defensible claim to U.S. citizenship. Removal to the Dominican Republic will impede Mr. Silva’s ability to communicate with counsel, authorize strategy, and guide the arguments in this case. As Mr. Silva will have extremely limited resources if removed to the Dominican Republic, his ability to stay in contact with his attorneys by use of technology, even telephone calls, is likely to be very limited. A stay of removal supports the public’s interest in due process protections, including access to counsel, in matters involving interests in citizenship.

Staying Mr. Silva’s appeal will not injure the government. This is plainly not a case where the interest in prompt removal may be heightened, such as where “the [non-citizen] ... has substantially prolonged his stay by abusing the processes

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. Type-Volume

This document complies with the word limit of Fed. R. App. P. 27(d)(2) because this document contains 5,198 words, excluding the parts of the document exempted by Fed. R. App. P. 32(f).

2. Typeface and Type-Style

This document complies with the typeface requirements of Fed R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14 point Times New Roman.

DATED: February 11, 2022



Peter Isbister

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2022, I caused PETITIONER'S EMERGENCY MOTION FOR A STAY OF REMOVAL PENDING APPEAL and attached pages to be served on all parties or their counsel of record by serving a true and correct copy by Federal Express at the addresses listed below:

Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

David M. McConnell
Director
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

Francisco Madrigal
Field Office Director
Atlanta Field Office
U.S. Immigration and Customs Enforcement
180 Ted Turner Drive, SW Suite 522
Atlanta, GA 30303


Peter Isbister

Counsel for Petitioner

provided to him.” *Id.* Mr. Silva has no incentive to abuse the appeal process, as he is currently detained by immigration authorities; his appeal is a plausible challenge to removability on account of his claim to citizenship, and represents his first opportunity to be heard on the merits of these claims, which is not abusive in any way.

CONCLUSION

For these reasons, this Court should stay Mr. Silva’s removal pending this petition for review.

Respectfully submitted this 11th day of February, 2022,



Peter Isbister, Esq.
Counsel for Petitioner

Index of Exhibits**Exhibit****Page**

Documents Pertaining to Kelvin Silva	
1. Kelvin Osvaldo Silva's Birth Certificate, with Certified English Translation, Birth Date October 16, 1976.	31
2. Statements of Witnesses: Donay Silva; Petra Ramona Susana; Esperanza Silva; Juan Farrier Dias, Olga Fermina Farrier, Rafaela Antonia Diaz, Marcelo Silverio Diaz, Jovin Heredia Marrero, Beatriz Montero Mota, Enders Manuel Segura Olivero.	35
3. Application, Petition, and Certificate of Naturalization of Salomon Silva, Kelvin Osvaldo Silva's Father..	49
4. Application and Petition for Kelvin Osvaldo Silva, Beneficiary.	57
5. New Jersey Department of Education Immunization Record of Kelvin Osvaldo Silva.	62
6. Certificate of Death of Salomon Silva, Kelvin Osvaldo Silva's Father, on November 14, 1993.	65
7. Notice to Appear, Stamped July 16, 2019.	67
8. Order of Immigration Judge, Dated March 6, 2020.	71
9. Order of Board of Immigration Appeals, Dated January 19, 2022.	77

10. Memorandum of Law filed with the Executive Office of Immigration Review by the Department of Homeland Security.	81

Exhibit 1

FORM. OC - 11

01-0604629-6
BAR CODEDOMINICAN REPUBLIC
CENTRAL ELECTORAL BOARD
NATIONAL DIRECTION OF THE CIVIL STATE REGISTRYEvent No.
900-01-2009-01-07000383
Mun. O.C. Year Reg No.EXTRACT OF BIRTH ACT
(Art. 99 Law No. 659, of 17-7-1944)

WE CERTIFY: That in the Civil State Office of the 1ST CIRCUMSCRIPTION, VILLA ALTAGRACIA, registered on the Twelfth (12) days of the month of November of the year Nineteen Seventy Six (11-12-1976), is found inscribed in the Book No. 00076 of registries of BIRTH, OPPORTUNE DECLARATION, File No. 0110, Act No. 01510, year 1976, the registry belonging to:

**** KELVIN OSVALDO ****

Of MALE sex, born in VILLA ALTAGRACIA on the sixteenth (16) days of the month of October of the year Nineteen Seventy Six (10-16-1976).

FATHER: SALOMON SILVA PIMENTELMOTHER: PETRA RAMONA SUSANA, country of nationality Dominican Republic, National Identification No. 013173-068.
-----No Further Information below this line-----

The present document is issued upon request of the interested party in SANTO DOMINGO, NATIONAL DISTRICT, Dominican Republic, today on the EIGHTH (8) days of the month of JANUARY of the year TWO THOUSAND NINE (2009).

[Signed and sealed]

TRANSLATION CERTIFICATION

I, Lourdes D. Morillo, hereby state that I can fluently write and speak in both English and Spanish, and that I have translated this document based on the original.

On this 8th day of the month of August of the year 2019, before me, the undersigned Notary Public, personally appeared


Translator8/8/19
UBALDO F. SANTOSNotary Public - State of New York
Qualified in New York County
No. 4844928My Commission Expires 8/31/2021


01-0604629-6



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
900-01-2009-01-07000383
Mun. O.C. Año Reg. No.

CERTIFICAMOS: Que en la Oficialía del Estado Civil de la IRA. CIRCUNSCRIPCION, VILLA ALTAGRACIA, registrado el día doce del mes de noviembre del año mil novecientos setenta y seis (12-11-1976), se encuentra inscrito en el Libro No. 00076 de registros de NACIMIENTO, DECLARACIÓN OPORTUNA, Folio No. 0110, Acta No. 01510, Año 1976, el registro perteneciente a:

**** KELVIN OSVALDO ****

De sexo MASCULINO nacido en VILLA ALTAGRACIA el día dieciseis del mes de octubre del año mil novecientos setenta y seis (16-10-1976).

PADRE: SALOMON SILVA PIMENTEL

MADRE: PETRA RAMONA SUSANA, país de nacionalidad República Dominicana, cédula de identidad No. 013173-068

~~~~~ No más información debajo de esta línea ~~~~~



El presente documento se expide a petición de la parte interesada en SANTO DOMINGO, DISTRITO NACIONAL República Dominicana, hoy día OCHO (8) del mes de ENERO del año DOS MIL NUEVE (2009)



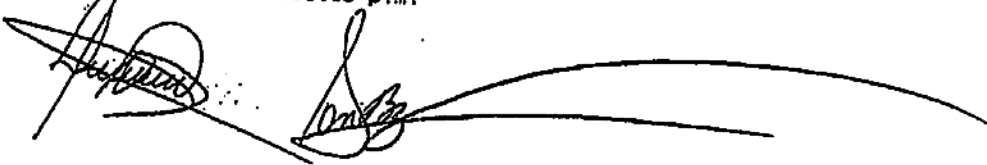
  
LIC. DOLORES ALTAGRACIA FERNANDEZ SANCHEZ  
Director de la Oficina Central del Estado Civil

MARIANILSY DIAZ 08/01/2009 1:23PM



2009-996-0007660

La Firma estampada en este documento ha  
sido certificada por la Oficina Central  
del Estado Civil. 08/01/2009 01:36:13 p.m.

A handwritten signature in black ink, consisting of a stylized 'H' followed by a large, sweeping flourish that extends to the right.

# Exhibit 2

### DECLARATION OF DONAY SILVA

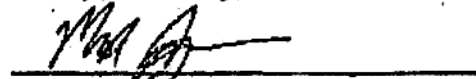
I, Donay Silva, am over the age of eighteen and am competent to testify. I am providing this declaration in support of my half-brother, Kelvin Osvaldo Silva, A# 041 421 501, in his immigration case before the Atlanta Immigration Court. This declaration was prepared with the assistance of an interpreter between the Spanish and English languages. I hereby swear and affirm under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Donay Silva. I was born in Villa Altagracia, Dominican Republic on April 28, 1976. My mother is Agustina Rodriguez, D/O/B 08/28/1957. My father is Salomon Silva, D/O/B 03/13/1951, D/O/D/ 11/14/1993. My address is 14 Halpine Street, Paterson, NJ, 07522, and my telephone number is 973-413-0561.
2. Kelvin Osvaldo Silva is my half-brother. We have the same father, Salomon Silva. We have different mothers.
3. Our father Salomon brought me and my brother Kelvin to live with him in the U.S. in April of 1988. Our paternal grandparents joined us in the U.S. shortly after that.
4. After coming to the U.S., my brother Kelvin and I lived together with our father, our father's wife and children, and our paternal grandparents in Passaic, New Jersey, where Kelvin and I enrolled in school. Our father took care of us and provided for all our needs physically, emotionally, and financially until his death.
5. Our father's death was very hard on me and Kelvin. In Kelvin's case, he lost the only parent who cared or provided for him, and it affected him deeply.

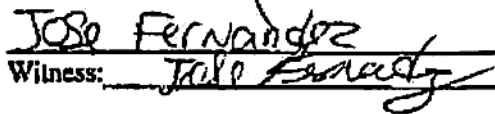
SO SWORN under penalty of perjury, this 20th day of January, 2020.



Donay Silva



Interpreter: Mark Scaggs

  
Witness: Jose Fernandez

**NEW JERSEY**  Motor Vehicle  
Commission

**FOR IDENTIFICATION ONLY**

*AS211*  
ID S4403 17382 54762 CLASS I  
DOB 04-28-1976  
ISS 11-30-2019 EXP 04-28-2023

SILVA  
DONAY S  
14 HALPINE ST  
PATERSON, NJ 07522-1836

RESTR NONE

SEX F HGT 5'-03" EYES BRN  
GG YN251533480002766

RENC

Honorable Immigration Judge

The undersigned, Esperanza Silva, United States citizen, born in Dominican Republic, domiciled at 280 Gregory Ave Apt 308 Passaic NJ 07055, hereby declare under penalties of perjury the following:

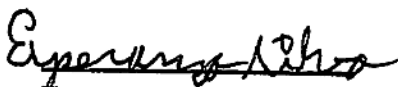
That I am the paternal aunt of Kelvin Osvaldo Silva. He is my older (deceased) brother Salomon's son. I was to babysit him when he was younger and he has always have a special place in my heart. He was raised by my grandparents and my brother brought him very young and he had full custody of him.

Kelvin is a kind hearted person, very loving and very family oriented. All of us in the family love him dearly and I am very sad knowing how his mistakes have cost him his freedom.


I personally know there is a lot of sadness in his heart. Our family and I can assure you that given another opportunity, Kelvin can turn his life around and become a productive member of society.

Thanking you in advance for your attention, I can be reached at the above listed address or at (717) 606-9349.

Sincerely yours,

  
Esperanza Silva

State of New Jersey - Passaic County  
Sworn and subscribed on Date 11-8-19  
Esperanza Silva  
appeared personally and took an oath under penalties of  
perjury that the foregoing statements are true and correct.  
RUTH ORTIZ, Notary Public #2344163  
My Commission Expires on \_\_\_\_\_



**NEW JERSEY**  Motor Vehicle  
Commission

**AUTO DRIVER LICENSE**



DL S4403 23800 52572 CLASS D  
DOB 02-20-1967  
ISS 06-19-2019 EXP 02-20-2023

SILVA  
ESPERANZA  
280 GREGORY AVE APT 308  
PASSAIC, NJ 07055-3958  
END NONE  
RESTR NONE

SEX F HGT 5'-04" EYES BRN ORGAN DONOR  
SS WL201917000000327 CHG 11.00

TRANSLATED FROM SPANISH

**SWORN DECLARATION****Act Num. Three Hundred Eleven (311)**

In the municipality of Villa Altagracia, province San Cristobal, Dominican Republic, on the Sixth (06) days of the month of September of the year Two Thousand Nineteen (2019). Before me, Lic. Julian Mateo Jesus, Dominican, of legal age, bearer of the National and Electoral Identification No. 068-0000711-1, attorney notary public of the number for the municipality of Villa Altagracia, province of San Cristobal, Dominican Republic, with license No. 7392, with professional study open at street Juan Reyes Nova, apartment 201, sector Los Multis of this municipality of Villa Altagracia, province of San Cristobal; Appeared Freely and Voluntarily the Messrs.:

- 1) Juan Farrier Dias, Dominican, of legal age, single, mechanic, Holder of the National and Electoral Identification No. 402-2014623-3, domiciled and resident at Nicaragua, house no. 4, Midtown of the municipality of Villa Altagracia, Province San Cristobal, Dominican Republic;
- 2) Olga Fermina Farrier Diaz Dominican, of legal age, single, stylist, Holder of the National and Electoral Identification No. 068-0039647-2, domiciled and resident in Nicaragua, house no. 4, Midtown of the municipality of Villa Altagracia, San Cristobal, Dominican Republic;
- 3) Rafaela Antonia Diaz, Dominican, of legal age, single, dressmaker, Holder of the National and Electoral Identification No. 068-0039963-3, domiciled and resident at street Nicaragua, house no. 4, Midtown of this municipality of Villa Altagracia, San Cristobal, Dominican Republic;
- 4) Marcela Silverio Diaz, Dominican, of legal age, single, housewife, Holder of the National and Electoral Identification No. 068-0022325-4, domiciled and resident at Anacaona, house No. 68 of the municipality of Villa Altagracia, province San Cristobal, Dominican Republic;
- 5) Jovina Heredia Marrero, Dominican, of legal age, single, operator, Holder of the National and Electoral Identification No. 068-0021637-3, domiciled and resident at La Torre, house No. 10, sector Fatima of the municipality of Villa Altagracia, Dominican Republic.
- 6) Beatriz Montero Mota, Dominican, of legal age, single, of occupation housewife, Holder of the National and Electoral Identification No. 068-0004406-4, domiciled and resident at La Torre, Villa Nueva, municipality of Villa Altagracia, province San Cristobal, Dominican Republic;
- 7) Enders Manuel Segura Olivero, Dominican, of legal age, single, technician, Holder of the National and Electoral Identification No. 068-0041684-1, with domicile and residence at street Las Mercedes, house No. 11, sector Pajarito of this municipality of Villa Altagracia, province of San Cristobal, Dominican Republic; instrumental and required witnesses for such purpose, free of all faults and exceptions established by the law, whom declare to me Under the Faith of Oath, what is declared as follows: **FIRST:** That they personally know for over Ten (10) years the young man Kelvin Osvaldo Silva, Dominican, of legal age, Alien Resident No. A41421501, born on 10/16/1976 in Villa Altagracia, province of San Cristobal, Dominican Republic; **SECOND:** That it is their knowledge that his parents are Mr. Salomon Silva Pimentel, Dominican, of legal age, deceased on 11/14/1993, in the United States, and Petra Ramona Susana, Dominican, National Identification No. 013173-068; **THIRD:** That it is the knowledge of each one of them, that Mr. Kelvin Osvaldo Silva, was always since his childhood until he reached his legal age under the care and custody of his father, the late Mr. Salomon Silva Pimentel.

**DONE AND DRAFTED**, in the place and date previously mentioned in presence of the Messrs. whom have appeared for such purposes, whom after hearing the lecture of the present act, proceeded to sign before me Notary Public, **THAT CERTIFY AND GIVE FAITH.**

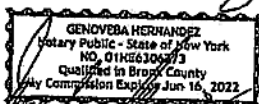
**[SIGNED AND SEALED]****TRANSLATION CERTIFICATION**

I, Lourdes D. Morillo, hereby state that I can fluently write and speak in both English and Spanish, and that I have translated this document based on the original.

On this 27 of September of the year 2019, before me, the undersigned Notary Public, personally appeared

  
Translator

  
Notary Public




 Cristóbal, 7332  
 Mes 14 de 899. Dma.

10



HECHO Y REDACTADO, en el lugar y fecha antes mencionados en presencia de los señores que han comparecido para tales fines, quienes después de haber oído lectura del presente Acto, procedieron a firmar por ante mí Notario Público, QUE CERTIFICO Y DOY FE.

Juan Farrier Díaz  
Testigo

Olga Fermín Farrier Díaz  
Testigo

Rafaela Antonia Díaz  
Testigo

Marcia Silverio Díaz  
Testigo

Jervina Mercedes Marrero  
Testigo

Beatriz Montero Mota  
Testigo

Endora Manuel Segura Olivero  
Testigo

Lic. Julian Mateo  
Notario Público



[Translation of signatures and seals represented by "[SIGNED AND SEALED]" in the translation by Lourdes D. Morillo dated 27 September 2019]

[signature]  
Juan Farrier Díaz  
Witness

[signature]  
Olga Fermina Farrier Díaz  
Witness

[signature]  
Rafaela Antonia Díaz  
Witness

[signature]  
Marcela Silverio Díaz  
Witness

[signature]  
Jovina Heredia Marrero  
Witness

[signature]  
Beatriz Montero Mota  
Witness

[signature]  
Enders Manuel Segura Olivero  
Witness

[signature]  
Lic. Julian Mateo Jesus  
Notary Public

[seal:]  
JULIAN MATEO JESUS  
NOTARY PUBLIC ATTORNEY  
MAT. 7392  
Villa Altagracia, Dominican Republic

[seal:]  
ATTORNEY GENERAL OF THE REPUBLIC  
Citizen Service Center, Santo Domingo Ceiba  
General Secretariat  
Santo Domingo

[seal:]  
Dominican Republic  
Attorney General of the Republic  
Confirms the validity of this document entering the  
CIS Code in portal.servicios.pgr.gob.do  
[barcode] [QR code]  
CIS Code: 056-9102-8743909-7

[signature]  
Authorized signature Maria De La [illegible]

[seal:]  
MINISTRY OF EXTERIOR RELATIONS  
MIREX  
Santo Domingo, D.R.

I, James Michael Thomas, hereby certify that I am qualified to translate between the Spanish and English languages. I have read the foregoing original document, and attached a true and correct translation from Spanish to English to the best of my abilities.

A handwritten signature in black ink, appearing to read 'J. Thomas', with a horizontal line extending from the end of the signature.

---

James Michael Thomas

10 October 2019

---

Date

# DECLARACIÓN DE PETRA RAMONA SUSANA

USCA11 Case: 22-10300 Date Filed: 02/11/2022 Page: 50 of 93 RESTRICTED

Yo, Petra Ramona Susana, tengo más de dieciocho años y soy competente para testificar. Esta declaración fue preparada con la asistencia de un intérprete entre los idiomas español e inglés. Por la presente juro y afirmo bajo pena de perjurio que lo siguiente es verdadero y correcto a lo mejor de mi conocimiento.

1. Mi nombre es Petra Ramona Susana. También uso el nombre de Patricia. Nací en Santiago, República Dominicana, el 15 de febrero de 1958. He vivido en los Estados Unidos desde 1981.

2. Kelvin Osvaldo Silva, A # 041 421 501, es mi hijo. Nació en Villa Altagracia, República Dominicana, el 16 de octubre de 1976. El padre de Kelvin es Salomon Pimentel Silva. La relación entre el padre de Kelvin y yo terminó cuando Kelvin nació, pero seguimos siendo amigos.

3. Tenía dieciocho años cuando tuve Kelvin. Mi madre era racista y no aprobaba mi relación con el padre de Kelvin o el hecho de que tuviéramos un hijo juntos, porque el padre de Kelvin era de piel oscura. Por esta razón, le di Kelvin a su padre poco después de su nacimiento, y Kelvin se fue a vivir con su padre y la familia de su padre.

4. El padre de Kelvin lo trajo a Nueva Jersey, Estados Unidos en 1988. Kelvin vivió y fue a la escuela en Nueva Jersey. En ese momento, vivía en Nueva York con mi esposo en ese momento, Ramón Peña, y nuestras dos hijas.

5. Con los años, he mantenido contacto con mi hijo Kelvin. Era joven cuando tuve a Kelvin, y las circunstancias me hicieron difícil mantenerlo conmigo. Pero siempre he querido lo mejor para él.

TAN JURADO bajo pena de perjurio, este 21 día de enero de 2020.

State of New York County of Bronx  
Subscribed and sworn to (or affirmed) before me  
this 21<sup>st</sup> day of January, 2020.  
by Patricia Susana  
Patricia Susana  
NORMAN HALLIBURTON, Notary Public  
My Commission Expires June 20, 2022

Patricia Susana  
Patricia / Susana



January 22<sup>nd</sup>, 2020



DECLARATION OF PETRA RAMONA SUSANA

I, Petra Ramona Susana, am over the age of eighteen and am competent to testify. This declaration was prepared with the assistance of an interpreter between the Spanish and English languages. I hereby swear and affirm under penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Petra Ramona Susana. I also use the first name Patricia. I was born in Santiago, Dominican Republic on February 15, 1958. I have lived in the United States since 1981.
2. Kelvin Osvaldo Silva, A# 041 421 501, is my son. He was born in Villa Altagracia, Dominican Republic on October 16, 1976. Kelvin's father is Salomon Pimentel Silva. The relationship between Kelvin's father and I ended by the time Kelvin was born, but we remained friends.
3. I was eighteen years old when I had Kelvin. My mother was racist and did not approve of my relationship with Kelvin's father or the fact that we had a child together, because Kelvin's father was dark-skinned. For this reason, I gave Kelvin to his father shortly after his birth, and Kelvin went to live with his father and his father's family.
4. Kelvin's father brought him to New Jersey, United States in 1988. Kelvin lived and went to school in New Jersey. At that time, I was living in New York with my husband at the time, Ramon Pena, and our two daughters.
5. Over the years, I have maintained contact with my son Kelvin. I was young when I had Kelvin, and the circumstances made it difficult for me to keep him with me. But I have always wanted the best for him.

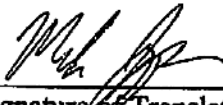
SO SWORN under penalty of perjury, this 22<sup>nd</sup> day of January, 2020.

---

Patricia Susana

**CERTIFICATE OF TRANSLATION**

I, Mark Scaggs, am competent to translate from Spanish  
into English, and certify that the translation of Declaration of Petia Ramona Susana  
is true and accurate to the best of my abilities

  
Signature of Translator

Mark Scaggs  
Name of Translator

PO Box 368, Folkston, GA 31537  
Address of Translator

904-347-6877  
Telephone Number of Translator

# NEW YORK STATE <sup>USA</sup>

## DRIVER LICENSE

NOT FOR  
FEDERAL  
PURPOSES

*Mark JF. Schneider*  
Commissioner of Motor Vehicles

ID **976 574 074**

Class **E**

SUSANA  
PATRICIA

2010 GRAND AVE # 6G  
BRONX, NY 10453

Sex **F** Height **5'-02"** Eyes **GRN**

DOB **02/15/1958**

Expires **02/15/2027**

E **NONE**

R **NONE**

Issued **11/26/2019**



*Patricia Susana*

FEB 58

1958 PATRICIA SUSANA

EXCELSIOR

# Exhibit 3

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION AND NATURALIZATION SERVICEOMB NO. 1115-0009  
Approval Expires 10-87

## APPLICATION TO FILE PETITION FOR NATURALIZATION

Mail or take to:  
IMMIGRATION AND NATURALIZATION SERVICE

(See INSTRUCTIONS. BE SURE YOU UNDERSTAND EACH QUESTION BEFORE YOU ANSWER IT. PLEASE PRINT OR TYPE.)

|                                                                                                                                                               |                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| FEE STAMP                                                                                                                                                     |                |
| NEWARK, NEW JERSEY                                                                                                                                            | 1987 JUL 23    |
| MAIL ROOM                                                                                                                                                     |                |
| ALIEN REGISTRATION                                                                                                                                            |                |
| (Show the exact spelling of your name as it appears on your alien registration receipt card, and the number of your card. If you did not register, so state.) |                |
| Name                                                                                                                                                          | Salomon Siluag |
| No.                                                                                                                                                           | A39085331      |

- Section of Law 319 @ (Leave Blank) Date: 7-7-87
- (1) My full true and correct name is SALOMON Siluag  
(Full true name without abbreviations)
- (2) I now live at 305 Madison Street  
(Number and street,)  
Passaic NJ 07055  
(City, county, state, zip code)
- (3) I was born on 3 13 51 in St. Domingo Dom. Rep.  
(Month) (Day) (Year) (City or town) (Country, province, or state) (Country)
- (4) I request that my name be changed to none
- (5) Other names I have used are: none  
(Include maiden name)
- (6) Was your father or mother ever a United States citizen? ☐ Yes ☒ No  
(If "Yes", explain fully)
- (7) Can you read and write English? ☒ Yes ☐ No
- (8) Can you speak English? ☒ Yes ☐ No
- (9) Can you sign your name in English? ☒ Yes ☐ No
- (10) My lawful admission for permanent residence was on 5 25 84 under the name of same  
(Month) (Day) (Year) (City) (State)
- (11) (a) I have resided continuously in the United States since 5 25 84  
(Month) (Day) (Year)
- (b) I have resided continuously in the State of New Jersey since 5 25 84  
(Month) (Day) (Year)
- (c) During the last five years I have been physically in the United States for a total of 18 months
- (12) Do you intend to reside permanently in the United States? ☒ Yes ☐ No - If "No," explain:
- (13) In what places in the United States have you lived during the last 5 years? List present address FIRST.

| FROM -             | TO -           | STREET ADDRESS        | CITY AND STATE    |
|--------------------|----------------|-----------------------|-------------------|
| (a) <u>2, 1987</u> | PRESENT TIME   | <u>305 Madison St</u> | <u>Passaic NJ</u> |
| (b) <u>3, 1984</u> | <u>2, 1987</u> | <u>76 Sherman St</u>  | <u>Passaic NJ</u> |
| (c) <u>19</u>      | <u>19</u>      |                       |                   |
| (d) <u>19</u>      | <u>19</u>      |                       |                   |

- (14) (a) Have you been out of the United States since your lawful admission as a permanent resident? ☐ Yes ☒ No  
If "Yes" fill in the following information for every absence of less than 6 months, no matter how short it was.

| DATE DEPARTED | DATE RETURNED | NAME OF SHIP, OR OF AIRLINE, RAILROAD COMPANY, BUS COMPANY, OR OTHER MEANS USED TO RETURN TO THE UNITED STATES | PLACE OR PORT OF ENTRY THROUGH WHICH YOU RETURNED TO THE UNITED STATES |
|---------------|---------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
|               |               |                                                                                                                |                                                                        |
|               |               |                                                                                                                |                                                                        |
|               |               |                                                                                                                |                                                                        |

- (b) Since your lawful admission, have you been out of the United States for a period of 6 months or longer? ☐ Yes ☒ No  
If "No", state "None"; If "Yes", fill in following information for every absence of more than 6 months.

| DATE DEPARTED | DATE RETURNED | NAME OF SHIP OR OF AIRLINE, RAILROAD COMPANY, BUS COMPANY, OR OTHER MEANS USED TO RETURN TO THE UNITED STATES | PLACE OR PORT OF ENTRY THROUGH WHICH YOU RETURNED TO THE UNITED STATES |
|---------------|---------------|---------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
|               |               |                                                                                                               |                                                                        |
|               |               |                                                                                                               |                                                                        |
|               |               |                                                                                                               |                                                                        |

(15) The law provides that you may not be regarded as qualified for naturalization, if you knowingly committed certain offenses or crimes, even though you may not have been arrested. Have you ever, in or outside the United States:

(a) knowingly committed any crime for which you have not been arrested? ☐ Yes ☒ No

(b) been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance, including traffic regulations? ☐ Yes ☒ No

If you answer "Yes" to (a) or (b), give the following information as to each incident.

| WHEN | WHERE | (City) | (State) | (Country) | NATURE OF OFFENSE | OUTCOME OF CASE, IF ANY |
|------|-------|--------|---------|-----------|-------------------|-------------------------|
| (a)  |       |        |         |           |                   |                         |
| (b)  |       |        |         |           |                   |                         |
| (c)  |       |        |         |           |                   |                         |
| (d)  |       |        |         |           |                   |                         |
| (e)  |       |        |         |           |                   |                         |

(16) List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society or similar group in the United States or in any other country or place, and your foreign military service. (If none, write "None.")

|     |         |            |
|-----|---------|------------|
| (a) | 19..... | to 19..... |
| (b) | 19..... | to 19..... |
| (c) | 19..... | to 19..... |
| (d) | 19..... | to 19..... |
| (e) | 19..... | to 19..... |
| (f) | 19..... | to 19..... |
| (g) | 19..... | to 19..... |

(17) (a) Are you now, or have you ever, in the United States or in any other place, been a member of, or in any other way connected or associated with the Communist Party? (If "Yes", attach full explanation) ☐ Yes ☒ No

(b) Have you ever knowingly aided or supported the Communist Party directly, or indirectly through another organization, group or person? (If "Yes", attach full explanation) ☐ Yes ☒ No

(c) Do you now or have you ever advocated, taught, believed in, or knowingly supported or furthered the interests of Communism? (If "Yes", attach full explanation) ☐ Yes ☒ No

(18) During the period March 23, 1933 to May 8, 1945, did you serve in, or were you in any affiliated with, either directly or indirectly, any military unit, paramilitary unit, police unit, self-defense unit, vigilante unit, citizen unit, unit of the Nazi Party or SS, government agency or office, extermination camp, concentration camp, prisoner of war camp, prison, labor camp, detention camp or transit camp, under the control of or affiliated with:

(a) the Nazi Government of Germany ☐ Yes ☒ No

(b) any Government in any area occupied by, allied with, or established with the assistance or cooperation of, the Nazi Government of Germany? ☐ Yes ☒ No

(19) During the period March 23, 1933 to May 8, 1945, did you ever order, incite, assist, or otherwise participate in the persecution of any person because of race, religion, national origin, or political opinion? ☐ Yes ☒ No

(20) Have you borne any hereditary title or have you been of any order of nobility in any foreign state? ☐ Yes ☒ No

(21) Have you ever been declared legally incompetent or have you ever been confined as a patient in a mental institution? ☐ Yes ☒ No

(22) Are deportation proceedings pending against you, or have you ever been deported or ordered deported, or have you ever applied for suspension of deportation? ☐ Yes ☒ No

(23) (a) My last Federal income tax return was filed..... (year) Do you owe any Federal taxes? ☐ Yes ☒ No

(b) Since becoming a permanent resident of the United States, have you:

—filed an income tax return as a nonresident? ☐ Yes ☒ No

—failed to file an income tax return because you regarded yourself as a nonresident? ☐ Yes ☒ No

(If you answer "Yes" to (a) or (b) explain fully.)

(24) Have you ever claimed in writing, or in any other way, to be a United States citizen? ☐ Yes ☒ No

(25) (a) Have you ever deserted from the military, air, or naval forces of the United States? ☐ Yes ☒ No

(b) If male, have you ever left the United States to avoid being drafted into the Armed Forces of the United States? ☐ Yes ☒ No

(26) The law provides that you may not be regarded as qualified for naturalization, if, at any time during the period for which you are required to prove good moral character, you have been a habitual drunkard; advocated or practiced polygamy; have been a prostitute or procured anyone for prostitution; have knowingly and for gain helped any alien to enter the United States illegally; have been an illicit trafficker in narcotic drugs or marijuana; have received your income mostly from illegal gambling, or have given false testimony for the purpose of obtaining any benefits under this Act. Have you ever, anywhere, been such a person or committed any of these acts? (If you answer yes to any of these, attach full explanation.) ☐ Yes ☒ No

(27) Do you believe in the Constitution and form of government of the United States? ☒ Yes ☐ No

(28) Are you willing to take the full oath of allegiance to the United States? (See Instructions) ☒ Yes ☐ No

(29) If the law requires it, are you willing:

(a) to bear arms on behalf of the United States? (If "No", attach full explanation) ☒ Yes ☐ No

(b) to perform noncombatant services in the Armed Forces of the United States? (If "No", attach full explanation) ☒ Yes ☐ No

(c) to perform work of national importance under civilian direction? (If "No", attach full explanation) ☒ Yes ☐ No

(30) (a) If male, did you ever register under United States Selective Service laws or draft laws? ☒ Yes ☐ No  
If "Yes" give date.....; Selective Service No.....; Local Board No.....; Present classification.....

(b) Did you ever apply for exemption from military service because of alienage, conscientious objections, or other reasons? ☐ Yes ☒ No  
If "Yes," explain fully.....

(3)

(31) If serving or ever served in the Armed Forces of the United States, give branch.....  
 from....., 19..... to....., 19....., and from....., 19..... to....., 19.....  
☐ inducted or ☐ enlisted at.....; Service No.....  
 type of discharge..... (Honorable, Dishonorable, etc.)  
 rank at discharge.....  
 reason for discharge..... (allergic, conscientious objector, other)

☐ Reserve or ☐ National Guard from....., 19..... to.....

(32) My occupation is..... Clerk

List the names, addresses, and occupations (or types of business) of your employers during the last 5 years. (If none, write "None.")

List present employment FIRST.

| FROM        | TO           | EMPLOYER'S NAME   | ADDRESS              | OCCUPATION OR TYPE OF BUSINESS |
|-------------|--------------|-------------------|----------------------|--------------------------------|
| (a) 2, 1986 | PRESENT TIME | Perez Fashion     | 142 main st. Pat. nj |                                |
| (b) 19      | 19           | W. Industrial Inc | moonachie nj         |                                |
| (c) 19      | 19           |                   |                      |                                |
| (d) 19      | 19           |                   |                      |                                |

(33) Complete this block if you are or have been married. (b)(6)

I am..... married..... The first name of my husband or wife is (was)..... (b)(6)

We were married on..... 12-9-82 at..... Paterson nj He or she was born at..... (b)(6)  
 on..... (b)(6) He or she entered the United States at (place).....  
 on (date)..... for permanent residence and now resides ☒ with me

☐ apart from me at..... (Show full address if not living with you.)

He or she was naturalized on..... at.....; Certificate No.....  
 or became a citizen by..... His or her Alien Registration No. is.....

(34) How many times have you been married? Two How many times has your husband or wife been married? one If either of you has been married more than once, fill in the following information for each previous marriage.

| DATE MARRIED | DATE MARRIAGE ENDED | NAME OF PERSON TO WHOM MARRIED | SEX | (Check One)<br>PERSON MARRIED WAS<br>CITIZEN <input type="checkbox"/> ALIEN <input type="checkbox"/> | HOW MARRIAGE ENDED |
|--------------|---------------------|--------------------------------|-----|------------------------------------------------------------------------------------------------------|--------------------|
| (a) 3-30-75  | 3-31-79             | (b)(6)                         | F   | <input type="checkbox"/> <input checked="" type="checkbox"/>                                         | Divorce            |
| (b)          |                     |                                |     | <input type="checkbox"/> <input type="checkbox"/>                                                    |                    |
| (c)          |                     |                                |     | <input type="checkbox"/> <input type="checkbox"/>                                                    |                    |
| (d)          |                     |                                |     | <input type="checkbox"/> <input type="checkbox"/>                                                    |                    |

(35) I have none children: (Complete columns (a) to (h) as to each child. If child lives with you, state "with me" in column (h), otherwise give city and State of child's residence.)

| (a) Given Names | (b) Sex | (c) Place Born (Country) | (d) Date Born | (e) Date of Entry | (f) Port of Entry | (g) Alien Registration No. | (h) Now Living at- |
|-----------------|---------|--------------------------|---------------|-------------------|-------------------|----------------------------|--------------------|
| (b)(6)          | M       |                          |               |                   |                   |                            |                    |
| Donay           | F       |                          |               |                   |                   |                            |                    |
|                 |         |                          |               |                   |                   |                            |                    |
|                 |         |                          |               |                   |                   |                            |                    |

(36) READ INSTRUCTION NO. 6 BEFORE ANSWERING QUESTION (36)

I..... want certificates of citizenship for those of my children who are in the U.S. and are under age 18 years that are named below.  
 (Do) (Do Not)

(Enclose \$35 for each child for whom you want certificates, otherwise, send no money with this application.)

(Write names of children under age 18 years and who are in the U.S. for whom you want certificates)

If present spouse is not the parent of the children named above, give parent's name, date and place of naturalization, and number of marriages.

(4)

|                                                                                                                                                                                                                         |  |                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------|
| Signature of person preparing form, if other than applicant.<br>I declare that this document was prepared by me at the request of applicant and is based on all information of which I have any knowledge.<br>SIGNATURE |  | SIGNATURE OF APPLICANT<br><i>Salomon Silva</i> |
| ADDRESS:                                                                                                                                                                                                                |  | ADDRESS AT WHICH APPLICANT RECEIVES MAIL       |
| DATE:                                                                                                                                                                                                                   |  | APPLICANT'S TELEPHONE NUMBER <i>778 1782</i>   |

TO APPLICANT: DO NOT FILL IN BLANKS BELOW THIS LINE.

NOTE CAREFULLY.—This application must be sworn to before an officer of the Immigration and Naturalization Service at the time you appear before such officer for examination on this application.

## AFFIDAVIT

I do swear that I know the contents of this application comprising pages 1 to 4, inclusive, and the supplemental forms thereto, No(s): \_\_\_\_\_, subscribed to by me; that the same are true to the best of my knowledge and belief; that corrections numbered ( ) to ( ) were made by me or at my request; and that this application was signed by me with my full, true, and correct name, SO HELP ME GOD.

Subscribed and sworn to before me by applicant at the preliminary investigation ( *EXAM* ) at *New York* this *5* day of *Jan*, 19*88*.  
I certify that before verification the above applicant stated in my presence that he/she had (heard) read the foregoing application, corrections therein and supplemental form(s) and understood the contents thereof.

(Complete and true signature of applicant)

(Naturalization examiner)

① *X: has is a family* ② *QES, decent*  
(For demonstration of applicant's ability to write English)  
Non Filled *THIS IS A FAMILY* ③ *I say the cat*  
*1/5/88 UWE* *I LOVE AMERICA*  
(Date, Reason) *Mellie* *I GO TO WORK*

## NOTICE TO APPLICANTS:

Authority for collection of the information requested on this form and those forms mentioned in the instructions thereto is continued in Sections 328, 329, 332, 334, 335 or 341 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1439, 1440, 1443, 1445, 1446 or 1452). Submission of the information is voluntary inasmuch as the immigration and nationality laws of the United States do not require an alien to apply for naturalization. If your Social Security number is omitted from a form, no right, benefit or privilege will be denied for your failure to provide such number. However, as military records are indexed by such numbers, verification of your military service, if required to establish eligibility for naturalization, may prove difficult. The principal purposes for soliciting the information are to enable designated officers of the Immigration and Naturalization Service to determine the admissibility of a petitioner for naturalization and to make appropriate recommendations to the naturalization courts. All or any part of the information solicited may, as a matter of routine use, be disclosed to a court exercising naturalization jurisdiction and to other federal, state, local or foreign law enforcement or regulatory agencies, Department of Defense, including any component thereof, the Selective Service System, the Department of State, the Department of the Treasury, Central Intelligence Agency, Interpol and individuals and organizations in the processing of the application or petition for naturalization, or during the course of investigation to elicit further information required by the Immigration and Naturalization Service to carry out its function. Information solicited which indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature may be referred, as 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 any or all of the solicited information may result in an adverse recommendation to the court as to an alien's eligibility for naturalization and denial by the court of a petition for naturalization.

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402

GPO : 1986 O - 157-897

W E E K L Y S E N A T I O N A L R E V I E W

A.R. No. **A39 085 331**

To the Honorable **JUDGES, DISTRICT** Court for the **DISTRICT OF NEW J** at **NEWARK, NJ**

This petition for naturalization, hereby made and filed under section **316 (6)** Immigration and Nationality Act, respectfully shows:

- (1) My full, true, and correct name is **SALOMON SILVA**  
(Full, true name, without abbreviations)
- (2) My present place of residence is **305 MADISON ST** **PASSAIC**  
(Apt. No.) (Number and Street) (City or Town)  
**ESSEX** **NEW JERSEY** **07055**  
(Country) (State) (ZIP Code)
- (3) I was born on **3/13/51**, in **DOMINICAN REPUBLIC**
- (4) I request that my name be changed to **NONE**
- (5) I was lawfully admitted to the United States for permanent residence and have not abandoned such residence.
- (6) [If petition filed under Section 316(a).] I have resided continuously in the United States for at least five years and continuously in the States in which this petition is made for at least six months, immediately preceding the date of this petition and after my lawful admission for permanent residence, and I have been physically present in the United States for at least one-half of such five year period.
- (7) [If petition filed under Section 319(a).] I have resided continuously in the United States in marital union with my present spouse for at least three years immediately preceding the date of this petition, and after my lawful admission for permanent residence, during all of which period my said spouse has been a United States citizen, and have been physically present in the United States at least one-half of such three-year period. I have resided continuously in the States in which this petition is made at least six months immediately preceding the date of this petition.
- (8) [If petition filed under Section 319(b).] My present spouse is a citizen of the United States, in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or subsidiary thereof, or of a public international organization in which the United States participates by treaty or statute, or is authorized to perform the ministerial or priestly functions of a religious denomination having a bona fide organization within the United States, or is engaged solely as a missionary by a religious denomination or by an interdenominational mission organization have a bona fide organization within the United States, and such spouse is regularly stationed abroad in such employment. I intend in good faith upon naturalization to live abroad with my spouse and to resume my residence within the United States immediately upon termination of such employment abroad.
- (9) [If petition filed under Section 328.] I have served honorably in the Armed Forces of the United States for a period or periods aggregating three years. I have never been separated from the Armed Forces of the United States under other than honorable conditions. If not still in service, my service terminated within six months of the filing of my petition.
- (10) [If petition filed under Section 329.] While an alien or noncitizen national of the United States, I served honorably in an active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950, and ending July 1, 1955, or during a period beginning February 28, 1961, and ending October 15, 1978, or I was discharged after five years of service under the Act of June 30, 1950 (P.L. 597, 81st Congress). If separated from such service, I was separated under honorable conditions. At the time of enlistment, reenlistment, or induction I was in the United States, the Canal Zone, American Samoa, or Swains Island. If not in any of these places, I was lawfully admitted to the United States for permanent residence subsequent to enlistment or induction. I was never separated from such service on account of alienage. I was not a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform. I have not previously been naturalized on the basis of the same period of service.
- (11) I am not and have not been, within the meaning of the Immigration and Nationality Act, for a period of at least 10 years immediately preceding the date of this petition, a member of or affiliated with any organization proscribed by such Act, or any section, subsidiary, branch, affiliate or subdivision thereof, nor have I during such period believed in, advocated, engaged in, or performed any of the acts or activities prohibited by such Act.
- (12) I am, and have been during all the periods required by law, a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.
- (13) It is my intention in good faith to become a citizen of the United States and take without qualification the oath of renunciation and allegiance prescribed by the Immigration and Nationality Act, and to reside permanently in the United States. I am willing, when required by law, to bear arms on behalf of the United States, to perform noncombatant service in the Armed Forces of the United States, and to perform work of national importance under civilian director [unless exempted therefrom].
- (14) I am able to read, write, and speak the English language [unless exempted therefrom], and I have a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States.
- (15) Wherefore I request that I may be admitted a citizen of the United States of America. I swear [affirm] that I know the contents of this petition for naturalization subscribed by me, and that the same are true to the best of my knowledge and belief, and that this petition is signed by me with my full, true name. So help me God.
- (16)

**Salomon Silva**  
(Full Name, Without Abbreviations)

**When Oath Administered by Clerk or Deputy Clerk of Court**

Subscribed and sworn to (affirmed) before me by above-named petitioner in the respective forms of oath shown in said petition and affidavit, and filed by said petitioner, in the office of the clerk of said court at **NEWARK, NJ**

this **5TH** day of **JANUARY**, 19**88**

**WILLIAM T. WALSH**

Clerk.

Deputy Clerk.

**When Oath Administered by Designated Examiner**

Subscribed and sworn to (affirmed) before me by above-named petitioner in the respective forms of oath shown in said petition and affidavit at **NEWARK, NJ** this **5** day of **Jan**, 19**88**

I HEREBY CERTIFY that the foregoing petition for naturalization was by petitioner named herein filed in the office of the clerk of said court at **NEWARK, NJ** this **5** day of **Jan**, 19**88**

**Elphira Boone**  
Clerk.  
Deputy Clerk.

(SEAL)

# RESULT OF EXAMINATION

## COURT ACTION

| English:                                                              | Speaks | Reads | Write  | Classes | Govt. | Date     | DENIED |
|-----------------------------------------------------------------------|--------|-------|--------|---------|-------|----------|--------|
| USCA11 Case: 22-10300 Date Filed: 02/11/2022 Page 61 of 93 RESTRICTED |        |       |        |         |       |          |        |
| G-325 ID.                                                             |        |       | G-325B |         |       | Grounds  |        |
| G-325 Rec. B.                                                         |        |       | N-426  |         |       | Examiner |        |
| G-325C                                                                |        |       | Other  |         |       | Cont'd   |        |
| (If Requested)                                                        |        |       |        |         |       | Cont'd   |        |

Eligibility 101 (f): OK

Documents presented:

*me  
BL-  
me  
BL-  
uic  
june*

*51*

Action or documents still required:

Investigation waived. Petitioner under oath approved all statements made at the preliminary investigation.

Recommendation 6 *[Signature]* 1/5 88  
Preliminary and Designated Examiner (Date) 19

Recommendation \_\_\_\_\_  
Preliminary Examiner (Date) 19

503280

# Exhibit 4

U.S. Department of Justice

Immigration and Naturalization Service (INS)

## Petition for Alien Relative

Expires 4-88

|                                         |                                     |                                               |                                               |
|-----------------------------------------|-------------------------------------|-----------------------------------------------|-----------------------------------------------|
| DO NOT WRITE IN THIS BLOCK              |                                     | 1987-AUG 13 DM 11 32                          |                                               |
| Case ID#                                | Action Stamp<br>LVS                 | Fee Stamp                                     | INFORMATION<br>NEWARK, NEW JERSEY 07102       |
| Ad#                                     | DEC X 9 1987                        | Petition was filed on 8/13/87 (priority date) |                                               |
| G-28 or Volag#                          | PO: [Signature]                     | <input type="checkbox"/> Personal Interview   | <input type="checkbox"/> Previously Forwarded |
| Section of Law:                         |                                     | <input type="checkbox"/> Document Check       | <input type="checkbox"/> Stateside Criteria   |
| <input type="checkbox"/> 201 (b) spouse | <input type="checkbox"/> 203 (a)(1) | <input type="checkbox"/> Field Investigations | <input type="checkbox"/> I-485 Simultaneously |
| <input type="checkbox"/> 201 (b) child  | <input type="checkbox"/> 203 (a)(2) |                                               |                                               |
| <input type="checkbox"/> 201 (b) parent | <input type="checkbox"/> 203 (a)(4) |                                               |                                               |
| <input type="checkbox"/> 203 (a)(5)     |                                     |                                               |                                               |
| AM CON: [Signature]                     |                                     |                                               |                                               |
| REMARKS: See Donay Silva                |                                     |                                               |                                               |

## A. Relationship

1. The alien relative is my:
- ☐ Husband/Wife ☐ Parent ☐ Brother/Sister ☒ Child

2. Are you related by adoption?
- ☐ Yes ☒ No

## B. Information about you

1. Name (Family name in CAPS) (First) (Middle)  
SILVA AIDA
2. Address (Number and Street) (Apartment Number)  
305 MADISON ST
- (Town or City) (State/Country) (ZIP/Postal Code)  
PASSAIC NJ 07055
3. Place of Birth (Town or City) (State/Country)  
ARECIBOS PUERTO RICO
4. Date of Birth (Mo/Day/Yr) 5. Sex 6. Marital Status  
1-30-44 ☒ Female ☐ Male ☒ Married ☐ Single  
☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name)  
MEDINA
8. Date and Place of Present Marriage (if married)  
12-9-82 Paterson, NJ
9. Social Security Number 10. Alien Registration Number (if any)  
582-92-6251 N/A
11. Names of Prior Husbands/Wives 12. Date(s) Marriage(s) Ended  
NONE N/A

## C. Information about your alien relative

1. Name (Family name in CAPS) (First) (Middle)  
SILVA KELVIN OSUALDO
2. Address (Number and Street) (Apartment Number)  
GENERAL LUPERON #78
- (Town or City) (State/Country) (ZIP/Postal Code)  
VILLA ALTAGRACIA DOM. REP.
3. Place of Birth (Town or City) (State/Country)  
VILLA ALTAGRACIA DOM. REP.
4. Date of Birth (Mo/Day/Yr) 5. Sex 6. Marital Status  
10-16-76 ☒ Male ☐ Female ☐ Married ☒ Single  
☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name)  
NONE
8. Date and Place of Present Marriage (if married)  
N/A
9. Social Security Number 10. Alien Registration Number (if any)  
N/A N/A
11. Names of Prior Husbands/Wives 12. Date(s) Marriage(s) Ended  
NONE N/A
- NRI 8-19-87  
G-361 SEEN  
NIF  
NRC

13. If you are a U.S. citizen, complete the following:  
My citizenship was acquired through (check one)

☒ Birth in the U.S. 55  
☐ Naturalization  
Give number of certificate, date and place it was issued

☐ Parents

Have you obtained a certificate of citizenship in your own name?  
☐ Yes ☐ No

If "Yes", give number of certificate, date and place it was issued

14. If you are a lawful permanent resident alien, complete the following.  
Date and place of admission for, or adjustment to, lawful permanent residence:

13. Has your relative ever been in the U.S.? MASTER INDEX  
☐ Yes ☒ No NR 8-19-87 ECO

14. If your relative is currently in the U.S., complete the following:  
He or she last arrived as a (visitor, student, exchange alien, crewman, stowaway, temporary worker, without inspection, etc.)  
N/A

Arrival/Departure Record (I-94) Number Date arrived (Month/Day/Year)  
N/A

Date authorized stay expired, or will expire as shown on Form I-94 or I-95  
N/A

15. Name and address of present employer (if any)  
N/A

Date this employment began (month/day/year)  
N/A

#18 HLB. SLB  
NEB

INITIAL RECEIPT

RESUBMITTED

RELOCATED

COMPLETED

|       |      |          |        |          |
|-------|------|----------|--------|----------|
| Rec'd | Sent | Approved | Denied | Returned |
|       |      | 11/1/87  |        | 76       |

IMPORTANT

This document must be read and signed by persons wishing to submit an affidavit of support on behalf of an alien applying for an immigrant visa. A signed copy of this document must be attached to each copy of any affidavit of support submitted on behalf of an applicant.

The Social Security Act, as amended, establishes certain requirements for determining the eligibility of aliens for Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC) benefits. The Food Stamp Act, as amended, contains similar provisions. These amendments require that the income and resources of any person (and that person's spouse) who executes an affidavit of support or similar agreement on behalf of an immigrant alien, be deemed to be the income and resources of the alien under formulas for determining eligibility for SSI, AFDC, and Food Stamp benefits during the three years following the alien's entry into the United States.

The eligibility of aliens for SSI, AFDC, and Food stamp benefits will be contingent upon their obtaining the cooperation of their sponsors in providing the necessary information and evidence to enable the Social Security Administration and/or State Welfare Agencies to carry out these provisions. An alien applying for SSI, AFDC, or Food Stamp benefits must make available to the Social Security Administration and/or State Welfare Agencies documentation concerning his income or resources or those of his sponsors, including information which he provided in support of his application for an immigrant visa or adjustment of status. The Secretary of Health and Human Services and/or State Welfare Agencies are authorized to obtain copies of any such documentation from other agencies.

The Social Security Act and the Food Stamp Act also provide that an alien and his or her sponsor shall be jointly and severally liable to repay any SSI, AFDC, and Food Stamp benefits which are incorrectly paid because of misinformation. Also, any incorrect payments of SSI and AFDC benefits which are not repaid will be withheld from any subsequent payments for which the alien or sponsors are otherwise eligible under the Social Security Act.

These provisions do not apply to aliens admitted as refugees or granted political asylum by the Attorney General. They also will not apply to the SSI eligibility of aliens who become blind or disabled after entry into the United States. The AFDC provisions do not apply to aliens who are dependent children of the sponsor or sponsor's spouse.

I, \_\_\_\_\_, residing at \_\_\_\_\_ (Street and number)  
\_\_\_\_\_, acknowledge that I have read the above  
and am aware of my responsibilities as an immigrant sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended. This statement is submitted on behalf of the following persons:

| NAME | SEX | AGE | COUNTRY OF BIRTH | MARRIED OR SINGLE | RELATIONSHIP TO SPONSOR |
|------|-----|-----|------------------|-------------------|-------------------------|
|      |     |     |                  |                   |                         |

IMPORTANTE

Este documento debe ser leído y firmado por las personas que desean someter una declaración de sostenimiento a favor de un aplicante de visa de inmigrante. Una copia firmada de este documento debe ser anexada a toda copia de cualquier declaración de sostenimiento sometida a favor de un aplicante.

El Acta de Seguro Social, enmendada, establece ciertos requisitos para determinar la elegibilidad de extranjeros para recibir beneficios del "Supplemental Security Income" (SSI) y beneficios del Aid to Families with Dependent Children (AFDC). El Acta de Estampilla de Comida, enmendada, contiene enmiendas similares. Estas enmiendas requieren que los ingresos y recursos de cualquier persona (y su conyuge) que someta una declaración de sostenimiento u otro acuerdo similar en respaldo de un inmigrante extranjero, se considerarán como los ingresos y recursos del extranjero bajo las normas para determinar la elegibilidad para beneficios bajo el SSI, AFDC y por Estampillas de Comida por un periodo de tres años subsiguientes a la entrada del extranjero a los Estados Unidos.

La elegibilidad de extranjeros para recibir SSI, AFDC y Estampilla de Comida dependerá de que ellos obtengan la cooperación de sus fiadores en proveer la información y las pruebas necesarias que permitan a la Administración del Seguro Social y/o Agencias de Bienestar Estatal llevar a cabo esta provisión. Un extranjero que solicite SSI, AFDC o Estampilla de Comida deberá presentar a la Administración del Seguro Social y/o Agencias de Bienestar Estatal cualquier documento relacionada a sus ingresos y recursos o aquellos de su fiadores que fueron presentados en respaldo a su solicitud de visa de residente o ajuste de status. El Secretario de Salud y Servicios Humanos y/o las Agencias de Bienestar Estatal están autorizados a obtener copias de cualquiera de estos documentos de otras agencias.

El Acta de Seguro Social y el Acta de Estampilla de Comida también previenen que un extranjero y sus fiadores estarán los dos obligados separadamente a pagar cualquier beneficio del SSI, AFDC y Estampilla de Comida que hayan sido pagados incorrectamente debido a información mal suministrada por los fiadores o por falta de proveer información. Además cualquier pago incorrecto de beneficios del SSI y AFDC que no sea reembolsado será retenido de cualquier reembolso subsiguiente al cual el extranjero o fiadores tengan derecho a recibir bajo el Acta de Seguro Social.

Estas medidas no aplicarán a los extranjeros que han sido admitidos como refugiados o los cuales se les ha concedido asilo político por el Procurador General. Tampoco aplicarán los beneficios del SSI a ningún extranjero que pierda la vista o se incapacite después de entrar a los Estados Unidos. Las provisiones del AFDC no aplicarán a los extranjeros que sean hijos menores dependientes del fiador de su conyuge.

Mrs. Solomon & Silva, residente 305 Madison St.

Passaic NJ 07055, declaro que he leído lo antes  
(Ciudad) (Estado)

expuesto y estoy enterado de mis responsabilidades como fiador de un inmigrante bajo el Acta de Seguro Social, enmendada y el Acta de Estampilla de Comida. Esta declaración es sometida a favor de la(s) siguiente(s) personas(s):

| NOMBRE               | SEXO | EDAD   | PAIS DE NAC        | CASADO O SOLTERO | RELACION CON EL FIADOR |
|----------------------|------|--------|--------------------|------------------|------------------------|
| Kelvin Osvaldo Silva | M    | 11 yrs | Dominican Republic | Soltero          | Hijo & Nieto           |

SDO-106 3/83 *Solomon Silva* *Ricardo Silva*  
Firma del fiador(es)

Optional Form 230  
(Rev. 5/82)  
ONS - English, 5/83  
Formulario Opcional 230  
(Rev. 5/82)

## APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION

## SOLICITUD DE VISA DE INMIGRANTE Y REGISTRO DE EXTRANJERO

INSTRUCTIONS: This form must be filled out in DUPLICATE by typewriter, or if by hand in legible block letters. All questions must be answered, if applicable. Questions which are not applicable should be so marked. If there is insufficient room on the form, answer on separate sheets, in duplicate, using the same numbers as appear on the form. Attach the sheets to the forms. DO NOT SIGN this form until instructed to do so by the consular officer. The fee for filing this application for an immigrant visa is \$25.00. The fee should be paid in United States dollars or local currency equivalent or by bank draft, when you appear before the consular officer.

ADVERTENCIA: Any false statement or concealment of a material fact may result in your permanent exclusion from the United States. Even though you should be admitted to the United States, a fraudulent entry could be grounds for your prosecution and/or deportation.

INSTRUCCIONES: Este formulario debe ser completado por duplicado a máquina o de hacerlo a mano, en letras de imprenta legibles. Responda todas las preguntas si corresponden. Cuando una pregunta no es pertinente debe indicarse. Si no hay suficiente espacio en el formulario, conteste en hojas separadas, por duplicado, utilizando los mismos números tal como figuran en el formulario. Adjunte esas hojas a los formularios. No firme este formulario hasta que se lo indique el funcionario consular. La tarifa para presentar una solicitud de visa de inmigrante es de US\$ 25.00. La tarifa debe abonarse en dólares de los Estados Unidos o en su equivalente en moneda local, o por transferencia bancaria, cuando se presente al funcionario consular.

ADVERTENCIA: TODA DECLARACION FALSA O ENCUBRIMIENTO DE UN HECHO MATERIAL PUEDE RESULTAR EN SU EXCLUSION PERMANENTE DE LOS ESTADOS UNIDOS. ABR CUANDO USTED HAYA SIDO ADMITIDO A LOS ESTADOS UNIDOS, UNA DECLARACION FRAUDULENTE PUEDE SER CAUSA DE SU PROCESAMIENTO Y/O DEPORTACION.

1. Apellido(s) (Family name) **Silva- Susaña** Nombre (First Name) **Kelvin** Segundo Nombre (Middle Name) **Osvaldo**

2. Otros nombres por los cuales se la conoce (d es mujer casada, indique el apellido de soltera) (Other names used or by which known. If married woman, give maiden name) **Same Above**

3. Nombre completo en alfabeto nativo (si no se utilizan caracteres romanos). (Full name in native alphabet. If Roman letters not used) **Same**

4. Fecha de Nacimiento (Date of birth) **16 Oct- 1976** 5. Edad (Age) **12 years** 6. Lugar de Nacimiento (Place of birth) **Villa Altagracia Dom Rep.**

7. Nacionalidad (Nationality) **Dominican** 8. Sexo (Sex) **Male** 9. Estado Civil (Marital Status) **Never Married** (Que nunca se ha casado) (Single) (Never married) ☐ Casado (Married) ☐ Viudo (Widowed) ☐ Divorciado (Divorced) ☐ Separado (Separated) ☐ Incluyendo mi matrimonio actual, me he casado (times.) **None**

10. Ocupación (Occupation) **Student**

11. Domicilio actual (Present address) **General Luperon #22, Villa Altagracia, Dom Rep.**

12. Nombre, domicilio, fecha y lugar de nacimiento del/la esposa (Name, address, date and place of birth of wife/husband.) (Dar apellido de soltera de la esposa) (Give maiden name of wife) **Does Not Apply**

Fecha y lugar de matrimonio. (Date and place of marriage)

13. Nombres, domicilios, fechas y lugares de nacimiento de todos los hijos (Names, addresses, dates and places of birth of all children.) **None**

14. La/s persona/s nombrada/s en 12 y 13 que me acompañarán o se reunirán conmigo en los Estados Unidos. (Person/s named in 12 and 13 who will accompany or follow me to the United States.) **None**

15. Domicilio definitivo que tendrá en los Estados Unidos (Final address in the United States) **305 Madison St Passaic, New Jersey USA**

16. Persona con quien tiene intención de reunirse. Indique nombre, dirección y parentesco, si alguno. (Person you intend to join. Give name, address and relationship, if any.) **Aida Medina de Silva (madrastra)**

17. Nombre y domicilio de la persona u organización que es su liador (guarantee) en el punto 16. (Name and address of sponsoring person or organization, if different from 16.) **Same As #16 And Salomón Silva (father)**

18. Descripción personal (Personal description) a) Color de cabello (Color of hair) **Black** b) Color de ojos (Color of eyes) **Black** c) Altura (Height): Pies (Feet) **4-7** Pulgadas (Inches) **10-11** d) Taz (Complexion) **Darkish**

19. Señas particulares (Marks of identification) **None**

20. Propósito del viaje a los Estados Unidos. (Purpose of going to the United States) **To stay near with my madrastra and Student**

21. Duración de su estadía propuesta - Si permanentemente, así lo indique. (Length of intended stay - If permanently, so state) **Permanently**

22. Puerto de entrada propuesto. (Intended port of entry) **J.F.K.**

23. ¿Tiene Ud. pasaje para su destino final? (Do you have a ticket to final destination?) **yes**

24. Recursos financieros personales. (Personal financial resources) a) Efectivo (Cash) **US \$150.00** b) Depósitos bancarios (Bank deposits)

c) Bienes Raíces - Valor (Real estate - Value) d) Otros - Describa (Others - Describe)

ESTE FORMULARIO PUEDE OBTENERSE GRATIS EN LAS OFICINAS CONSULARES DE LOS ESTADOS UNIDOS DE AMERICA.

No se puede utilizar la versión anterior.

ONS - 5/83

THIS FORM MAY BE OBTAINED GRATIS AT CONSULAR OFFICES OF THE UNITED STATES OF AMERICA.

Previous edition not usable.

# Exhibit 5

**Sei**

10/16/76

Malé

□ 100%

Phone No. 778-1783

471-1519-2

| VACCINE TYPE                                             | DISEASE<br>Mo/Yr | PRIMARY SERIES        |                       |                       | BOOSTERS  |           |        |
|----------------------------------------------------------|------------------|-----------------------|-----------------------|-----------------------|-----------|-----------|--------|
|                                                          |                  | 1st Dose<br>Mo/Day/Yr | 2nd Dose<br>Mo/Day/Yr | 3rd Dose<br>Mo/Day/Yr | Mo/Day/Yr | Mo/Day/Yr | Mo/Day |
| Diphtheria & Tetanus<br>(DPT and/or Td)                  |                  | 7/26/88               | 10/17/88              |                       |           |           |        |
| Polio: Indicate Oral or Salk in corner box.              |                  |                       |                       |                       |           |           |        |
| Oral: If monovalent indicate type 1, 2, 3 in corner box. |                  | 7/26/88               | 10/17/88              |                       |           |           |        |
| Salk: acceptable if given after 12/31/67.                |                  |                       |                       |                       |           |           |        |
| Measles                                                  |                  | 7/26/88               |                       |                       |           |           |        |
| Rubella                                                  |                  | 7/26/88               |                       |                       |           |           |        |
| Mumps                                                    |                  | 7/26/88               |                       |                       |           |           |        |

Reactions to Immun. (Type)

| DISEASE HISTORY    | TYPE            | YEAR | YEAR | OPERATIONS OR INJURIES | Y |
|--------------------|-----------------|------|------|------------------------|---|
| ALLERGIES          | ASTHMA          |      |      | OTITIS MEDIA           |   |
| CONGEN. DEFECTS    | CHICKEN POX     | 1951 |      | RHEUMATIC FEVER        |   |
| DRUG SENSITIVITIES | CONVULSIVE DIS. |      |      | STREP. INFECTIONS      |   |
| HEPATITIS          | DIABETES        |      |      | MONONUCLEOSIS          |   |
| NEUROMUSC. DIS.    | HEART DISEASE   |      |      | OTHER                  |   |

HEALTH SCREENING Code: N = Normal; R = Referred; T = Under Treatment; C = See Comments

[illegible][illegible]

SCOLIOSIS SCREENING (Beginning at Age 10)

|                                     |                                                                |
|-------------------------------------|----------------------------------------------------------------|
| The Solidening Date <u>12/25/73</u> | Results Neg. <u>X</u> Vesiculation _____ Induration (mm) _____ |
|-------------------------------------|----------------------------------------------------------------|

|           |                    |                  |
|-----------|--------------------|------------------|
| Follow-up | X-ray (date)       | Results          |
| Rx        | INH (date started) | (date completed) |

PARENT OR GUARDIAN — SIGNATURE

PARENT OR GUARDIAN — SIGNATURE

[illegible]

# Exhibit 6

NAME OF DECEDENT (First, Middle, Last) 1. Salomon Silva

AGE (Last Birthday) 42 Yrs

DATE OF BIRTH (Month, Day, Year) Mar 13, 1951

CITY, BORO, TWP OF DEATH Lancaster

COUNTY OF DEATH Berks

DATE OF DEATH (Month, Day, Year) November 14, 1993

SEX 2. Male

SOCIAL SECURITY NUMBER 1 #151-76-0533

HOSPITAL: Inpatient ☐ ERO-adjacent ☐ DOA ☒ OTHER: Nursing Home ☐ Other (Specify) ☐

WAS DECEDENT OF HISPANIC ORIGIN? No ☐ Yes ☒ If yes, specify Cuban, Mexican, Puerto Rican, etc. 9. Dominican Republic

WAS DECEDENT EVER IN U.S. ARMED FORCES? Yes ☐ No ☒ 12. Poultry

DECEDENT'S USUAL OCCUPATION (Give kind of work done during most of working life; do not use retired.) 11a. vaccinator

DECEDENT'S MAILING ADDRESS (Street, City/Town, State, Zip Code) 649 East End Ave., Lancaster PA 17602

FATHER'S NAME (First, Middle, Last) 18. Francisco Silva

MOTHER'S NAME (First, Middle, Last) 19. Mercedes Silva

INFORMANT'S NAME (Type and Print) 20a. Juanita Perez

METHOD OF DISPOSITION 21a. ☐ Donation ☐ Cremation ☐ Removal from State ☐ Bury ☒ Other (Specify) ☐

SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH 22a. *Alfred J. Gubler*

DATE OF DISPOSITION (Month, Day, Year) 21b. November 17, 1993

LICENSE NUMBER 22b. FD103326 L

PLACE OF DISPOSITION - Name of Cemetery, Crematory or Other Place 23b. 649 East End Ave., Lancaster PA 17602

NAME AND ADDRESS OF FACILITY 21c. St. Anthony's Catholic

LICENSE NUMBER 23c. 11-15-93

DATE PRONOUNCED DEAD (Month, Day, Year) 24. 3301

TIME OF DEATH 24. 11-15-93

27. PART I: List only one cause on each line.

IMMEDIATE CAUSE (Final disease or condition resulting in death) a. TRAUMATIC ASPHYXIA

Due to (OR AS A CONSEQUENCE OF): b. DUE TO (OR AS A CONSEQUENCE OF): c. DUE TO (OR AS A CONSEQUENCE OF): d. DUE TO (OR AS A CONSEQUENCE OF):

WERE AUTOPSY FINDINGS AVAILABLE PRIOR TO COMPLETION OF CAUSE OF DEATH? Yes ☒ No ☐ 28b.

MAINER OF DEATH: Natural ☐ Accident ☒ Suicide ☐ 29.

DATE OF INJURY (Month, Day, Year) 30a. 11-15-93

TIME OF INJURY 30b. 3301

PLACE OF INJURY - At home, farm, street, factory, office, building, etc. (Specify) 30c.

INJURY AT WORK? Yes ☐ No ☒ 30d.

DESCRIBE HOW INJURY OCCURRED. 30e. CAR FELL ON VICTIM

CERTIFIER (Check only one) 31b. *Edward A. Celis MD*

CERTIFYING PHYSICIAN (Physician certifying cause of death when another physician has pronounced death and completed item 27) 31c. MD-027598-L

DATE SIGNED (Month, Day, Year) 31d. 11-15-93

\*PRONOUNCING AND CERTIFYING PHYSICIAN (Physician both pronouncing death and certifying cause of death) 31e. NAME AND ADDRESS OF PERSON WHO COMPLETED CAUSE OF DEATH (Print 27) Type of Print: GETHAD S. AZAR (left md)

\*MEDICAL EXAMINER/CORONER 31f. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner as stated. 31g. 241 MAIN ST, LANCASTER, PA 17602

REGISTRAR'S SIGNATURE AND NUMBER 32.

DATE FILED (Month, Day, Year) 33.

# Exhibit 7

DETAINED

U.S. Department of Homeland Security

Notice to Appear

## In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 365864929

File No: 041 421 501

DOB: 10/16/1976

Event No: SAV1906000166

In the Matter of:

Respondent: KELVIN OSVALDO SILVA AKA: FLORES, DAVID; ARROYAS, MIGUEL; LEMUS, LUIS currently residing at:Villa Altagracia, UNKNOWN, DOMINICAN REPUBLIC

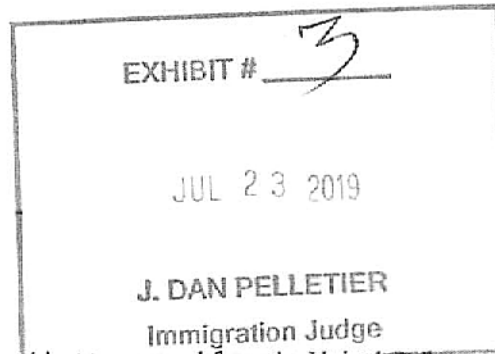
(Number, street, city and ZIP code)

(Area code and phone number)

- ☐ 1. You are an arriving alien.
- ☐ 2. You are an alien present in the United States who has not been admitted or paroled.
- ☒ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

See Continuation Page Made a Part Hereof



On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

180 TED TURNER DR, SW Atlanta GA 30303. EOIR Atlanta, GA

(Complete Address of Immigration Court, including Room Number, if any)

on To be set. at To be set. to show why you should not be removed from the United States based on the  
(Date) (Time)

charge(s) set forth above.

JEFFREY GRANT

SDDO

(Signature and Title of Issuing Officer)

Date: June 27, 2019Savannah, GA

(City and State)

See reverse for important information

## Notice to Respondent

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, 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 the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

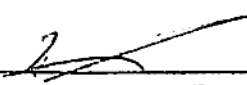
**Failure to appear:** You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

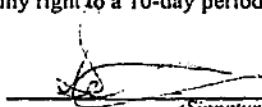
**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to one of the offices listed in 8 CFR 241.16(a). Specific addresses on locations for surrender can be obtained from your local DHS office or over the internet at <http://www.ice.gov/about/dro/contact.htm>. You must surrender within 30 days from the date the order becomes administratively final, unless you obtain an order from a Federal court, immigration court, or the Board of Immigration Appeals staying execution of the removal order. Immigration regulations at 8 CFR 241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Act.

## Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to a 10-day period prior to appearing before an immigration judge.

Before:

 DO  
(Signature and Title of Immigration Officer)

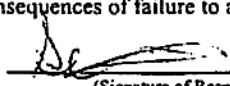
  
(Signature of Respondent)  
Date: 7/5/17

## Certificate of Service

This Notice To Appear was served on the respondent by me on 7/5/17, in the following manner and in compliance with section 239(a)(1)(F) of the Act.

- ☒ in person ☐ by certified mail, returned receipt requested ☐ by regular mail  
☐ Attached is a credible fear worksheet.  
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the Spanish / English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

  
(Signature of Respondent if Personally Served)

D 7805 CRUTE

DO  
(Signature and Title of officer)

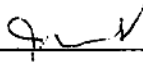
|                                              |                                                                     |                           |
|----------------------------------------------|---------------------------------------------------------------------|---------------------------|
| Alien's Name<br><b>SILVA, KELVIN OSVALDO</b> | File Number<br><b>041 421 501</b><br>Event No: <b>SAV1906000166</b> | Date<br><b>06/27/2019</b> |
|----------------------------------------------|---------------------------------------------------------------------|---------------------------|

THE SERVICE ALLEGES THAT YOU:

1. You are not a citizen or national of the United States;
2. You are a native of DOMINICAN REPUBLIC and a citizen of DOMINICAN REPUBLIC;
3. You were admitted to the United States at San Juan, PR on or about April 13, 1988 as an IR2 permanent resident;
4. You were, on February 27, 2013, convicted in the United States District Court, Western District of North Carolina for the offense of Conspiracy to Possess with Intent to Distribute Marijuana, in violation of 21 USC 841 and 841(b)(1)(A);
5. You were, on February 27, 2013, convicted in the United States District Court, Western District of North Carolina for the offense of Conspiracy to Possess with Intent to Distribute Cocaine, in violation of 21 USC 841 and 841(b)(1)(B);
6. You were sentenced to a total term of imprisonment of 127 months.

ON THE BASIS OF THE FOREGOING, IT IS CHARGED THAT YOU ARE SUBJECT TO REMOVAL FROM THE UNITED STATES PURSUANT TO THE FOLLOWING PROVISION(S) OF LAW:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (Act), as amended, in that, at any time after admission, you have been convicted of an aggravated felony as defined in Section 101(a)(43)(U) of the Act, an attempt or conspiracy to commit an offense described in Section 101(a)(43)(B) of the Act, an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

|                                                                                                                           |                          |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Signature<br><br><b>JEFFREY GRANT</b>  | Title<br><br><b>SDDO</b> |
|---------------------------------------------------------------------------------------------------------------------------|--------------------------|

# Exhibit 8

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
TED TURNER DRIVE  
ATLANTA, GEORGIA**

Matter of

**SILVA, Kelvin Osvaldo**

Respondent

File Number: **A041-421-501**

In Removal Proceedings

Charge:

Section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, as amended ("INA" or "the Act") in that, at any time after admission, Respondent has been convicted of an aggravated felony as described in INA § 101(a)(43)(U), an attempt or conspiracy to commit an offense described in INA § 101(a)(43)(B), an offense relating to the illicit trafficking in a controlled substance, as described in section 102 of the Controlled Substances Act, including a drug trafficking crime, as defined in section 924(c) of Title 18, United States Code.

**APPEARANCES**

**On Behalf of Respondent:**

Meredyth Yoon, Esq.  
Southeast Immigrant Freedom Initiative  
3409 Main Street  
P.O. Box 368  
Folkston, Georgia 31537

**On Behalf of DHS:**

Assistant Chief Counsel  
U.S. Department of Homeland Security  
180 Ted Turner Drive SW, Suite 332  
Atlanta, Georgia 30303

**DECISION OF THE IMMIGRATION JUDGE**

**I. BACKGROUND**

Kelvin Osvaldo Silva ("Respondent") is a native and citizen of the Dominican Republic who was admitted to the United States at San Juan, Puerto Rico, on or about April 13, 1988, as an IR2 lawful permanent resident. On February 27, 2013, Respondent was convicted in the United States District Court for the Western District of North Carolina, for the offense of Conspiracy to Possess with Intent to Distribute Marijuana, in violation of 21 United States Code sections 841 and 841(b)(1)(A), and for the offense of Conspiracy to Possess with Intent to Distribute Cocaine, in

violation of 21 United States Code sections 841 and 841(b)(1)(B). Respondent was sentenced to a total term of imprisonment of 127 months. See Form I-862, Notice to Appear (“NTA”).

On December 10, 2018, the United States Citizenship and Immigration Services (“USCIS”) denied Respondent’s Form N-600, Application for Certificate of Citizenship, finding that Respondent had not demonstrated that he had acquired United States citizenship through a United States citizen parent. See USCIS Notice of Decision (Dec. 10, 2018).

On July 5, 2019, the U.S. Department of Homeland Security (“DHS” or “Department”) issued Respondent a Notice to Appear (“NTA”), charging him as removable under INA §237(a)(2)(A)(iii). See NTA.

On August 30, 2019, during a master calendar hearing before the Court, Respondent, through counsel, asserted a claim of United States citizenship. During the hearing, Respondent denied that he was not a citizen or national of the United States (Allegation 1); that he was a native and citizen of the Dominican Republic (Allegation 2); and, that he was sentenced to a total term of imprisonment of 127 months (Allegation 6).<sup>1</sup> Respondent admitted that on or about April 13, 1988, he was admitted to the United States at San Juan, Puerto Rico, as an IR2 permanent resident (Allegation 3); on February 27, 2013, he was convicted in the United States District Court, Western District of North Carolina for the offense of Conspiracy to Possess with Intent to Distribute Marijuana (Allegation 4); on February 27, 2013, he was convicted in the United States District Court, Western District of North Carolina for the offense of Conspiracy to Possess with Intent to Distribute Cocaine (Allegation 5).

On January 28, 2020, Respondent filed a Motion to Terminate asserting he had derived United States citizenship through his father under INA §321. The Department opposed the Respondent’s Motion to Terminate.

The Court has carefully reviewed the entire record before it. All evidence has been considered, even if not specifically discussed further in this decision. For the reasons set forth below, the Court finds Respondent is removable as charged. Moreover, as Respondent indicated he was not eligible for any form of relief, Respondent is ordered removed to the Dominican Republic.

## II. ANALYSIS

In removal proceedings, the Department has the burden to establish alienage. Matter of Tijerina-Villareal, 13 I&N Dec. 327, 330 (BIA 1969). However, where a Respondent claims United States citizenship, “evidence of foreign birth gives rise to a rebuttable presumption of alienage, shifting the burden to the respondent to come forward with evidence to substantiate his citizenship claim.” Matter of Hines, 24 I&N Dec. 544, 546 (BIA 2008). To adjudicate Respondent’s citizenship claim, the Court must analyze the law in effect at the time when the last material condition was met. See e.g., Matter of L-, 7 I&N Dec. 512 (R.C. 1957) (noting that determinations involving derivative citizenship are controlled by the law in effect when the last

<sup>1</sup> The Court notes that on January 31, 2020, during a master calendar hearing, Respondent, through counsel, indicated that Respondent was sentenced to a total term of imprisonment of 120 months after the sentence was modified and reduced. Therefore, factual allegation 6 is amended to reflect the modification in the sentence.

material condition is met); Matter of Rodriguez-Tejedor, 23 I&N Dec. 153 (BIA 2001) (finding that the Child Citizenship Act of 2000 is not retroactive); Matter of Nwozuzu, 24 I&N Dec. 609, 616 (BIA 2008). The Court finds that the Child Citizenship Act, or INA § 320(a), does not apply to Respondent reached 18 years of age prior to February 27, 2001.

Further, the Court finds Respondent has not demonstrated that he satisfied the requirements contained in former INA § 321, which states the following:

- (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 naturalizing of the mother of the child 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 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.

In this case, Respondent asserts that the Court should grant his Motion to Terminate because he was under 18 years old when his father naturalized: he began permanently residing in the United States thereafter in his father's custody; and, his parents were legally separated. See Mot. to Terminate at 6 (Jan. 28, 2020). Respondent was born on October 16, 1976, out of wedlock. See Resp't's Submission of Supporting Docs., Tab K (Jan. 27, 2020). Respondent was admitted to the United States on April 13, 1988, at the age of 11, and was in the custody of his father. See Matter of Rivers, 17 I&N Dec. 419, 421 (BIA 1980); NTA; Resp't's Submission of Supporting Docs., Tab K (Jan. 27, 2020). Respondent's father naturalized to United States citizenship on January 5, 1988, when Respondent was 11 years old. See id., Tab F. Respondent has not submitted evidence to demonstrate that his mother ever naturalized.

Respondent's father noted on his January 1988 naturalization application that he was married to a female from March 30, 1975, until a March 31, 1979, "divorce." Resp't's Submission of Supporting Docs., Tab K. However, Respondent has not provided documentary evidence to support his position that his parents were ever legally married or that they divorced in 1979. Although Respondent contends that his parents were legally separated, the Court finds that Respondent's parents were never married and therefore could not have been legally separated. See Mot. to Terminate at 5; Levy v. U.S. Att'y Gen., 882 F.3d 1364, 1368 (11th Cir. 2018) (discussing that "[l]egal separation is a bright line rule marking the disunion of a married couple, and no analogous legal event marks the disunion of an unmarried couple." The Eleventh Circuit had previously noted, "Every circuit court to consider this question has concluded that, to qualify as a "legal"—rather than "informal" separation—some formal action must operate to dissolve or alter

the marital relationship by operation of law.” Claver v. U.S. Att’y Gen., 245 Fed. Appx. 904, 906 (11th Cir. 2007)

Even assuming a common law marriage, Respondent's parents could not be legally separated under INA § 321(a)(3) because they were not legally married. See Matter of H., 3 I&N Dec. 742, 744 (BIA 1949) (“since the subject's parents were not lawfully joined in wedlock, they could not have been legally separated.”); see also Johnson v. Whitehead, 647 F.3d 120 (4th Cir. 2011) (finding that “every circuit that has considered the issue has found a marriage requirement in the term “legal separation”); see also Brissett v. Ashcroft, 363 F.3d 130 (2d Cir. 2004) (recognizing legally separated for purposes of derivative citizenship under INA § 321(a)(3) requires marital relationship in the first instance). In a letter to the Court, Respondent’s birth mother wrote, “The relationship between Kelvin’s father and I ended by the time Kelvin was born, but we remained friends.” See Resp’t’s Submission of Supporting Documents at Tab K. It is interesting that she made no claim of marriage (formal, religious or civil) to Respondent’s father, but wrote that in 1988 she had been living with her “husband” in the United States. Id.

On his January 1988 naturalization application Respondent’s father indicated a (then) current marriage on December 9, 1982.<sup>2</sup> The fact that Respondent’s parents each married other individuals after their relationship ended does not, in any way, demonstrate that they were legally separated, if they were not legally married before their separation. See Resp’t’s Submission of Supporting Docs, Tab I. Further, the Court notes that in the USCIS Notice of Decision denying Respondent’s N-600 it stated the following:

You were born on October 16, 1976. You were granted permanent resident status on April 13, 1988. Your father became a naturalized United States citizen on January 05, 1988. Your parents never married and your mother was not a United States Citizen before you turned 18 years old. Therefore you are ineligible for a Certificate of Citizenship under former INA 321.

See USCIS Notice of Decision (Dec. 10 2018).

Respondent has failed to affirmatively establish his citizenship claim under INA § 321(a). Therefore, he is subject to the provisions of the Act, and this Court has personal jurisdiction over him in the removal proceedings.

### III. CONCLUSION

The Department has established by clear and convincing evidence that Respondent is a native and citizen of the Dominican Republic. See 8 C.F.R. § 1240.8(c) (placing the burden on the DHS to establish alienage); Matter of Gonzalez, 16 I&N Dec. 44, 47 (BIA 1976). The Court will sustain all six factual allegations in the NTA and the charge of removability under INA § 237(a)(2)(A)(iii).

<sup>2</sup> On December 9, 1987, a married (December 9, 1982) female named Aida Silva filed a Form I-130 for Respondent. She indicated on the form that the beneficiary of the petition was her child, not by adoption. See Resp’t’s Submission of Supporting Documents at Tab D.

Moreover, as Respondent indicated through counsel that he was not eligible for any form of relief, Respondent is ordered removed to the Dominican Republic on the charge contained in the NTA.

In light of the foregoing, the Court will issue the following orders:

**ORDERS OF THE IMMIGRATION JUDGE**

**IT IS ORDERED:**

The removal charge under INA § 237(a)(2)(A)(iii) is **SUSTAINED**.

**IT IS FURTHER ORDERED:**

Respondent's Motion to Terminate is **DENIED**.

**IT IS FURTHER ORDERED:**

Respondent shall be **REMOVED** to THE DOMINICAN REPUBLIC.

MARCH 6 2020

Date



RANDALL W. DUNCAN  
United States Immigration Judge

**FAILURE TO DEPART WARNINGS:** *The Court has ordered you removed from the United States. If you willfully fail or refuse to apply for the required travel documents to depart the United States, to present yourself for removal as instructed, to depart the United States as instructed, or to take any action, or conspire to take any action, to prevent or hamper your departure, you will be subject to a civil monetary penalty of not more than \$500 per day you are in violation. INA §§ 240(c)(5), 274D(a); 8 C.F.R. § 1240.13(d).*

**NOTICE OF THE RIGHT TO APPEAL:** *You are hereby notified that both parties have the right to appeal the Immigration Judge's decision in this case to the Board of Immigration Appeals ("Board"). 8 C.F.R. § 1003.38(a). A Notice of Appeal (Form EOIR-26) must be submitted to the Board within 30 calendar days from the issuance or mailing of this decision. 8 C.F.R. § 1003.38(b). If the final date for filing falls on a Saturday, Sunday, or legal holiday, the filing date is extended to the next business day. Id. If no appeal has been taken within the time allotted to appeal, the Immigration Judge's decision becomes final. Id. By failing to timely file an appeal, a party irrevocably relinquishes the opportunity to obtain review of the Immigration Judge's decision and challenge the ruling.*

# Exhibit 9



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041



Yoon, Meredyth  
SIFI  
3409 Main Street P.O. Box 368  
Folkston GA 31537

**DHS/ICE OFFICE OF CHIEF COUNSEL - SDC  
146 CCA ROAD, P.O. BOX 248  
LUMPKIN GA 31815**

**Name: SILVA, KELVIN OSVALDO**

**A 041-421-501**

**Date of this Notice: 1/19/2022**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Brown, Denise G

Userteam: Docket

**NOT FOR PUBLICATION**

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

---

MATTER OF:

Kelvin Osvaldo SILVA, A041-421-501

Respondent

---

**FILED**

Jan 19, 2022

ON BEHALF OF RESPONDENT: Meredyth Yoon, Esquire

ON BEHALF OF DHS: Ashley S. Waldrop, Assistant Chief Counsel

**IN REMOVAL PROCEEDINGS**

On Remand from a Decision of the United States Court of Appeals for the Eleventh Circuit

Before: Brown, Temporary Appellate Immigration Judge<sup>1</sup>

Opinion by Temporary Appellate Immigration Judge Brown

BROWN, Temporary Appellate Immigration Judge

This matter is before the Board pursuant to a remand from the United States Court of Appeals for the Eleventh Circuit due to exhibits missing from the record. The respondent, who is a native and citizen of the Dominican Republic and a lawful permanent resident of the United States, has filed copies of the missing exhibits. Both parties have filed briefs on remand.<sup>2</sup> We will dismiss the appeal.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

---

<sup>1</sup> Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

<sup>2</sup> We grant the Department of Homeland Security’s motion to accept untimely filing.

A041-421-501

The issue on appeal is whether the respondent obtained United States citizenship based upon his father's naturalization. We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).<sup>3</sup>

We agree with the Immigration Judge that the respondent did not derive citizenship after his father's naturalization because there was never "a legal separation of the parents" within the meaning of former section 321(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed) (providing, in relevant part, for derivative citizenship based on the "naturalization of the parent having legal custody of the child when there has been a legal separation of the parents"). The respondent's parents were never married. Their subsequent, respective marriages to others did not constitute a "legal separation."

The respondent's reliance on the cultural acceptance of informal unions and the legal protections given to such unions in the Dominican Republic does not establish the requisite *legal* separation of his parents. *See Matter of H-*, 3 I&N Dec. 742 (BIA 1949) (holding that identical language in the prior derivative citizenship statute required legal termination of a marriage). Nor has the respondent even established that his parents would have been considered to have been in a consensual union (*see* IJ at 4). His mother was a teenager when he was born, does not describe her relationship with his father as a marriage or civil union, and asserts that her relationship with his father ended prior to his birth (*id.*, citing Tab K of the respondent's submission).

The respondent's constitutional challenges to former section 321(a)(3) of the Act are not within the Board's authority to adjudicate. *Matter of Yanez*, 23 I&N Dec. 390, 401 (BIA 2002); *see also Levy v. U.S. Att'y Gen.*, 882 F.3d 1364 (11th Cir. 2018) (rejecting constitutional challenges to former section 321(a)(3) of the Act based on gender, legitimacy, and marital status).

Accordingly, we will dismiss the respondent's appeal.

ORDER: The appeal is dismissed.

---

<sup>3</sup> The respondent has filed copies of the exhibits that went missing from the record. The Department of Homeland Security (DHS) has not challenged the accuracy of the filings. The filings are consistent with the Immigration Judge's citation in the written decision to Tabs F and K of the respondent's submissions. Accordingly, we do not deem it necessary to remand the record to the Immigration Judge.

# Exhibit 10

RD 1 JAF me, Jan 31, 20

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ATLANTA, GEORGIA**

---

In the Matter of:

KELVIN OSVALDO SILVA

In removal proceedings

---

)  
)  
)  
)

A: 041-421-501

**DEPARTMENT OF HOMELAND SECURITY'S  
NOTICE OF FILING**

The Department of Homeland Security (DHS), by and through undersigned counsel, respectfully submits the following memorandum and document listed on the "Table of Contents," and attached hereto, for the Court's consideration in the above-styled case.

Respectfully submitted January 6, 2020.



---

**Bruna Walls**  
Assistant Chief Counsel  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

[ certificate of service follows on page 4 ]



REVIEW  
COURT  
CA

JAN -6 AM 11:20

**MEMORADUM OF LAW**

Pursuant to the USCIS Notice of Decision attached and the Immigration and Nationality Act, the Respondent is not eligible for citizenship. In this case, the respondent was born outside of the United States in the Dominican Republic on October 16, 1976. The respondent was also born out of wedlock. On April 13, 1988, the respondent was admitted to the United States as a permanent resident before his 18<sup>th</sup> birthday. On January 5<sup>th</sup>, 1988, the respondent's father naturalized. On June 5<sup>th</sup>, 1998, the respondent's mother naturalized, after the respondent's 18<sup>th</sup> birthday. Although the respondent's father naturalized before the respondent's 18<sup>th</sup> birthday, the respondent's parents were never married. For the respondent to have derived citizenship from his father, there would have had to have been a legal separation of the parents, which is not present in this case. Thus, the respondent has not derived citizenship and is not eligible for citizenship under section 320 and 321 of the Immigration and Nationality Act.

**TABLE OF CONTENTS**

**TAB A:** USCIS Notice of Decision

**Pg. 1**

**CERTIFICATE OF SERVICE**

I hereby certify that I mailed a copy of this "NOTICE OF FILING," by placing said copy, and any attached pages thereto, by placing a copy in my office's outgoing mail system in an envelope duly addressed to:

Kelvin Osvaldo Silva  
Folkston ICE Processing Center Annex  
PO Box 248  
3424 Hwy 252 E.,  
Folkston, GA 31537

Meredyth Yoon  
Respondent's Counsel  
3409 Main Street  
Folkston, GA 31537

Submitted this January 6, 2020



---

Bruna M. Walls  
Assistant Chief Counsel  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

DEC 10 2018

Kelvin O. Silva Susana  
 c/o: Patricia Susana  
 2010 Grand Avenues, Apt 6G  
 Bronx, NY 10453



U.S. Department of Homeland Security  
 U.S. Citizenship and Immigration Services  
 4121 Southpoint Boulevard  
 Jacksonville, FL 32216

U.S. Citizenship  
 and Immigration  
 Services



A041421501  
 NBC1890020332

RE: N-600, Application for Certificate of Citizenship

### NOTICE OF DECISION

Dear Kelvin O. Silva Susana:

Thank you for submitting Form N-600, Application for Certificate of Citizenship, to U.S. Citizenship and Immigration Services (USCIS). You are claiming that you are eligible to receive a Certificate of Citizenship because you acquired U.S. citizenship under former section 321 of the Immigration and Nationality Act (INA).

After a thorough review of your application and supporting documentation, and information in the record, USCIS has determined that you have not established eligibility for approval of your Form N-600. Therefore, USCIS must deny your application.

Generally, to be eligible for citizenship under former section 321 of the INA, an applicant must meet the following requirements on or before February 26, 2001:

- Be born outside the United States and its outlying possessions after December 24, 1952;
- Be the legitimate biological or adopted child of parents who are U.S. citizens by naturalization;  
OR
- Be the child of a naturalized parent if the other parent is deceased; OR
- Be the child of a naturalized parent who has legal custody of you and is **legally** separated from the other parent; OR
- Be born out of wedlock to a **mother** who naturalizes and where paternity is **not** established by legitimation; AND
- Be a lawful permanent resident of the United States;
- Be residing in the United States in the legal and physical custody of the naturalized parents (or, in the case of divorce or a legal separation, be residing in the legal custody of the naturalized parent); and
- Be **under 18 years** old at the time **all of the above** conditions are met.

**Statement of Facts and Analysis Including Ground(s) for Denial**

On March 05, 2018, USCIS received your Form N-600. You claim that you have acquired U.S. citizenship through a US Citizen parent.

You were born on October 16, 1976. You were granted permanent resident status on April 13, 1988. Your father became a naturalized United States citizen on January 05, 1988. Your parents never married and your mother was not a United States Citizen before you turned 18 years old. Therefore you are ineligible for a Certificate of Citizenship under former INA 321.

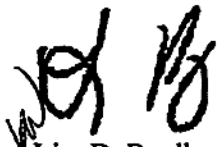
You are also ineligible for citizenship under the Child Citizenship Act of 2001 (INA320), which provides for automatic acquisition of United States citizenship when at least one parent is a citizen of the United States, the child is a permanent resident under the age of 18, and the child is residing in the United States in the legal and physical custody of the citizen parent. However, you must have been under age 18 on the effective date of enactment February 27, 2001. Because you were over 18 years old on February 27, 2001 you are also ineligible for citizenship under INA 320.

Based on a review of your application, supporting documentation, and information in the record, USCIS has found that you are not eligible for a Certificate of Citizenship under former section 321 of the INA, and Under Section 320 of the INA].

You may appeal this decision by filing Form I-290B with fee within 30 calendar days of the date of this notice (33 days if this decision was mailed). See Title 8, Code of Federal Regulations (8 CFR), sections 103.5 and 320.5. Please be aware that after a Form N-600 has been denied and the appeal time has expired, any subsequent Form N-600 submitted to USCIS by the same individual will be rejected. If the appeal time has expired, you must file a motion to reopen or reconsider using Form I-290B with fee. See 8 CFR 320.5.

To access Form I-290B, or if you need additional information, please visit the USCIS Web site at [www.uscis.gov](http://www.uscis.gov) or call the USCIS Contact Center toll free at 1-800-375-5283. You may also make an InfoPass appointment if you wish to speak to a USCIS employee in person at a USCIS office. To schedule an appointment, go to [www.uscis.gov](http://www.uscis.gov), select InfoPass, and follow the on-screen instructions.

Sincerely,



Lisa D. Bradley  
Director

**Attachment  
(Applicable Law/Regulations)**

To better assist you, the sections of law referenced in your decision are provided below:

**INA 321, 8 USC §1432 (repealed)**

(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;
- (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 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.

**INA 320**

(a) 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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).