

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Mark Gilbert Esqueda,

Plaintiff,

v.

Michael R. Pompeo, in his official
capacity as United States Secretary of
State,

Defendant.

Case No.

**COMPLAINT FOR
DECLARATORY RELIEF**

INTRODUCTION

1. Plaintiff Mark Gilbert Esqueda, a U.S. citizen and veteran, brings this lawsuit against Secretary of State Michael R. Pompeo seeking a declaration that he is a U.S. citizen. Mark put his life at risk to protect and defend this country as a U.S. Marine. The U.S. Navy, Marines, and Army have all recognized Mark's citizenship, granting him a security clearance available only to U.S. citizens. But despite that, when Mark applied for a U.S. passport and provided the required information to show that he was born here, the State Department twice denied his application. And the State Department has demanded additional and burdensome documentation that is impossible—and legally unnecessary—for Mark to provide.

2. Mark was born in the United States and is entitled to the rights and privileges afforded to U.S. citizens, including the right to travel freely across U.S. borders using a passport. Through this lawsuit, Mark seeks a declaration that he is

a United States citizen, and thus a national of the United States, and that he is entitled to a U.S. passport.

STATEMENT OF CLAIMS

3. This is a civil action brought pursuant to 8 U.S.C. § 1503 to redress the Defendant's unlawful action of not providing Mark with a passport by claiming he is not a U.S. national.

4. Mark requests judgment declaring that he is a United States citizen, and a national of the United States pursuant to 8 U.S.C. § 1503. He also seeks a declaration that he is entitled to a U.S. passport.

JURISDICTION AND VENUE

5. Jurisdiction is proper under 8 U.S.C. § 1503 (Denial and Rights and Privileges as National) and 18 U.S.C. § 1331 (federal question).

6. Venue is proper in this court as Plaintiff resides in Minnesota. 8 U.S.C. § 1503(a); 28 U.S.C. § 1391(e)(1)(C).

ADMINISTRATIVE EXHAUSTION

7. Plaintiff exhausted all potential administrative remedies. He sought a passport and the government denied the application. There is no other avenue to challenge the denial.

PARTIES

8. Plaintiff Mark Esqueda was born in Hidalgo, Texas, and currently resides in Heron Lake, Minnesota.

9. Defendant Michael R. Pompeo is Secretary of State of the United States. He is the head of the U.S. Department of State and is responsible for setting and overseeing the implementation of the policies and procedures employed by the U.S. Department of State and all its various subdivisions. Secretary Pompeo is sued in his official capacity.

FACTS

10. Plaintiff Mark Esqueda was born on September 22, 1988, at 424 South Bridge Street, Hidalgo, Texas.

11. Mark's birth was attended to by midwife practitioner Robert Nunez. Nunez treated Mark's mother during her pregnancy in his Hidalgo, Texas medical clinic.

12. A police officer was also present for Mark's birth. The police officer signed a birth report that was filed with the City of Hidalgo. That report remains on file in the Vital Statistics records of the City of Hidalgo, Hidalgo County, Texas.

13. The City of Hidalgo's records reflect that Mark was born on September 22, 1988, in Hidalgo. Mark has received multiple certified copies of his birth certificate from the city.

14. In 1989, Mark's family moved from Texas to Minnesota, where he remained for the majority of his childhood.

15. As a young man, Mark bravely joined the U.S. Marines out of a sense of duty and honor to his country. He served in the Marines from 2007-2011, when he was honorably discharged.

16. While in the Marines, Mark served as an infantryman stationed in combat zones. His first combat zone deployment was in Iraq, where he served for approximately seven months.

17. The government later deployed Mark to Sangin, Afghanistan, where he also served for approximately seven months.

18. As part of Mark's Marine service, the government granted him the second-highest form of its security clearance: Secret. To be eligible for secret security clearance, an applicant must be a United States citizen per Executive Order 12968, Access to Classified Information.¹

19. Before the government granted Mark the Secret security clearance, the Department of the Navy conducted a comprehensive background investigation. The government granted the clearance, and the U.S. Marine Corp. provided Mark with a Certification of Security Clearance.

20. As a matter of law, the government could not have granted Mark a Secret security clearance if it did not believe him to be a U.S. citizen.

¹ <https://www.state.gov/m/ds/clearances/cl0977.htm#2>

21. The government then provided Mark with access to classified information that he used as part of his service as a Marine to protect and defend the United States.

22. After leaving the Marines with an honorable discharge and partial disability, Mark returned to Minnesota.

23. Continuing his history of service to this country, Mark then joined the National Guard, serving from 2012-2015.

24. In 2012, while Mark was serving in the National Guard, Mark applied for a passport. He included the required information: a signed passport application, fees, passport photos, and a copy of his birth certificate.

25. The State Department responded by letter. Instead of granting Mark's application, the State Department requested additional information. At the time, Mark did not have any additional information to demonstrate his birth in the United States, and was therefore unable to supply it. The State Department denied his application.

26. Mark spent the next several years gathering additional information to demonstrate his birth in the United States and support his passport application—despite having previously provided all that the State Department purports to require.

27. In 2015, Mark again applied for a passport. At the time, his sister was living in Germany while her husband, a U.S. Army warrant officer, was stationed there. Mark's sister and brother-in-law were expecting their first child, and Mark wanted to visit them.

28. In support of his passport application, Mark again submitted the required documentation: a signed passport application, fees, passport photos, and a copy of his birth certificate. This time, however, he also provided additional information to prove that he was born in the United States: the signed birth report from the police officer who was present at his birth; a Marine Security Check form, which demonstrated his secret security clearance and acknowledgment by the government that he was a U.S. citizen; and information about his family's receipt of government benefits during his early childhood.

29. Despite providing the additional information, the State Department again sent Mark a letter demanding yet more documentation. The State Department alleged, without additional detail, that it had reason to believe that the midwife who attended his birth was not reliable.

30. Mark then submitted five affidavits from friends and family in Hidalgo to demonstrate that he was born there.

31. But again, on January 13, 2017, the State Department insisted that Mark's documentation was insufficient and denied his application. The State

Department stated that it had returned all of Mark's documents to him with its letter, but it did not, in fact, do so.

32. Throughout both application processes, Defendant made burdensome demands on Mark to produce evidence beyond what is required to demonstrate his birth in the United States.

33. As a United States citizen, Mark has the right to travel in and out of the country. But his country has unlawfully denied him that right. Indeed, during his brother-in-law's military service overseas, Mark was unable to visit him and his family.

34. Despite the government acknowledging his U.S. citizenship, Mark is concerned that the Department of State's questioning of his citizenship will put his other citizenship rights in jeopardy in the future.

35. Mark regretfully files this lawsuit against the government he so loves so that he may have the rights entitled to him by birth.

CLAIM
(Declaration under 8 U.S.C. § 1503)

36. Plaintiff incorporates Paragraphs 1-35 as if fully set forth herein.

37. Plaintiff is a U.S. national.

38. Defendant has denied Plaintiff a passport claiming that he did not sufficiently prove his birth in the United States. Defendant thereby denied Plaintiff a right of citizenship claiming he is not a U.S. National.

39. Defendant denied Plaintiff the right in a final decision issued on January 13, 2017, which is less than five years from the date Plaintiff initiated this lawsuit.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this court enter judgment in favor of Plaintiff and against the Defendants, and grant the following:

- A. Declare that Plaintiff is a United States citizen;
- B. Declare that Plaintiff is entitled to the issuance of a U.S. Passport;
- C. Order Defendants to pay Plaintiff's attorneys' fees and costs as authorized by the Equal Access to Justice Act, 28 U.S.C. § 2412; and,
- D. Grant all other and additional relief to which Plaintiff may be entitled in this action, at law or in equity.

Dated: May 9, 2019

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