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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Ilai Kanutu KOONWAIYOU,

Plaintiff,

v.

Antony BLINKEN, Secretary of State; U.S.  
DEPARTMENT OF STATE,

Defendants.

Case No. 3:21-cv-5474

**COMPLAINT**

**INTRODUCTION**

1. Plaintiff Ilai Kanutu Koonwaiyou (Mr. Koonwaiyou) was born in Western Samoa to a Western Samoan father and a U.S. national mother on November 19, 1967. The Immigration and Nationality Act (INA) deems individuals like Mr. Koonwaiyou who were born to a noncitizen parent and a U.S. national parent who has met certain physical presence requirements to be U.S. nationals “at birth.” 8 U.S.C. § 1408(4). Because Mr. Koonwaiyou’s U.S. national mother satisfied the physical presence requirements, Mr. Koonwaiyou is a U.S. national, and has been since birth.

2. Despite this fact, the United States Department of State (State Department) recently denied Mr. Koonwaiyou’s application for a certificate of noncitizen national status based on an erroneous interpretation of § 1408. That statute guarantees national status to

1 qualifying individuals “at birth,” regardless when that status is formally recognized by the  
2 Secretary of State. The State Department erroneously concluded that because Mr. Koonwaiyou’s  
3 mother’s nationality was recognized after his birth, she was not a U.S. national when he was  
4 born, and therefore Mr. Koonwaiyou was not born to a U.S. national parent as required to satisfy  
5 § 1408(4). This conclusion is at odds with the plain language of the statute, and therefore not in  
6 accordance with law.

7         3. Mr. Koonwaiyou previously attempted to raise his nationality claim when placed  
8 in removal proceedings. The immigration court ruled that his claim must be brought first to the  
9 State Department. After the Board of Immigration Appeals sustained the immigration judge’s  
10 order, Mr. Koonwaiyou filed a petition for review with the Ninth Circuit Court of Appeals. In its  
11 decision, the Court of Appeals denied Mr. Koonwaiyou’s petition. The Court instead directed  
12 that he must satisfy the requirements of subsection 15(b) of Public Law 99-396, which amended  
13 the INA to enact the current version of § 1408(4). Subsection 15(b) states that those born prior to  
14 the amendment’s enactment should first seek approval of their U.S. national status from the  
15 Secretary of State. Upon completion of his removal proceedings and in accordance with this  
16 directive, Mr. Koonwaiyou applied for a certificate of noncitizen national status from the State  
17 Department, but was denied.

18         4. Accordingly, Mr. Koonwaiyou now asks that the Court exercise its jurisdiction  
19 pursuant to 8 U.S.C. § 1503(a) to review the denial of his application for a certificate of non-  
20 citizen national status, correct the State Department’s legal error, and declare Mr. Koonwaiyou to  
21 be a U.S. national.

1 **JURISDICTION AND VENUE**

2 5. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331  
3 (federal question jurisdiction); 8 U.S.C. § 1503(a) (denial of rights and privileges as national);  
4 and 28 U.S.C. § 2201 (creation of remedy).

5 6. Venue is proper in the Western District of Washington pursuant to 8 U.S.C. §  
6 1503(a) because Plaintiff is detained at the Northwest Detention Center (NWDC), which is  
7 located within this district.

8 **PARTIES**

9 7. Plaintiff Ilai Kanutu Koonwaiyou is a 53-year-old native of Samoa. He was born  
10 on November 19, 1967, in Western Samoa to a Western Samoan father and a U.S. national  
11 mother. After his birth, Mr. Koonwaiyou spent his entire life in American Samoa before arriving  
12 in the mainland United States. He is currently detained at the NWDC in Tacoma, Washington.

13 8. Defendant Anthony Blinken is the United States Secretary of State. He is  
14 ultimately responsible for adjudicating applications for certificates of noncitizen national status,  
15 as well as determining whether an applicant has met the requirements for deriving U.S.  
16 nationality at birth pursuant to 8 U.S.C. § 1408(4). He is sued in his official capacity.

17 9. Defendant U.S. Department of State (State Department) is an executive agency of  
18 the United States and an “agency” within the meaning of the APA. 5 U.S.C. § 551(1). The State  
19 Department is the agency responsible for issuing certificates of noncitizen national status, U.S.  
20 passports, and Consular Reports of Birth Abroad.

21 **LEGAL BACKGROUND**

22 10. This case concerns Mr. Koonwaiyou’s application for a certificate of noncitizen  
23 national status. As detailed below, Defendants found that Mr. Koonwaiyou does not qualify as a  
24

1 U.S. national because his father was not a U.S. citizen and his mother did not acquire U.S.  
2 nationality until after his birth.

3 11. Defendants' finding that Mr. Koonwaiyou's mother's nationality does not qualify  
4 to render Mr. Koonwaiyou a U.S. national contradicts the statute's plain language. The INA  
5 deems individuals like Mr. Koonwaiyou's mother, and Mr. Koonwaiyou himself, U.S. nationals  
6 "at birth." 8 U.S.C. § 1408(4) (emphasis added).

7 12. In 1986, Congress enacted Public Law 99-396, which amended 8 U.S.C. § 1408,  
8 the statutory provision that determines the circumstances by which a person is considered a U.S.  
9 national "at birth." Prior to its enactment, the statute required a person born abroad to have two  
10 U.S. national parents in order to obtain derivative nationality at birth. *See* Nationality Act of  
11 1940, Pub. L. No. 76-853, § 204(b), 54 Stat. 1137, 1139.

12 13. When Congress amended the law in 1986, subsection 15(a) of Public Law 99-396  
13 broadened the scope of the statute. The new law established that a child of a single U.S. national  
14 parent and a noncitizen parent acquires U.S. national status at birth.

15 14. Consequently, § 1408(4) now confers U.S. nationality on a person born outside  
16 the United States and its outlying possessions to one noncitizen parent and one U.S. national  
17 parent, if the U.S. national parent meets certain physical presence requirements. Specifically,  
18 prior to the individual's birth, their U.S. national parent must have been "physically present in  
19 the United States or its outlying possessions for a period or periods totaling not less than seven  
20 years in any continuous period of ten years." *Id.* § 1408(4)(B). At least five of those years must  
21 occur after the U.S. national parent turned fourteen years old. *Id.* Furthermore, the U.S. national  
22 parent must not have spent in excess of one continuous year outside of the U.S. or its territories  
23 during this time. *Id.* § 1408(4)(A).

1           15.     The plain language of § 1408 unequivocally deems qualifying individuals as  
2 “nationals . . . of the United States at birth.” This language makes clear that status as a national  
3 will be recognized from the time of birth, rather than any time after.

4           16.     Subsection 15(b) of the amendment reinforces this reading, indicating § 1408(4)  
5 “shall apply to persons born before, on, or after the date of the enactment of this Act.” The  
6 statute thus applies retroactively to those born before the date of enactment, demonstrating that  
7 those who satisfy the statutory requirements of § 1408(4) are U.S. nationals at birth, regardless  
8 when that status is recognized.

9           17.     For those born prior to the amendment’s enactment, subsection 15(b) imposes an  
10 additional procedural requirement, indicating that “the status of a national of the United States  
11 shall not be considered to be conferred upon the person until the date the person establishes to  
12 the satisfaction of the Secretary of State” that the person meets § 1408(4)’s requirements. Pub. L.  
13 99–396 § 15(b), 100 Stat 837, 843 (1986).

14           18.     Unlike subsection 15(a), subsection 15(b) was not codified in the statute. *See* 8  
15 U.S.C. § 1408. However, the Ninth Circuit interpreted this provision to require Mr. Koonwaiyou  
16 to obtain approval from the Secretary of State to satisfy its requirements, by either applying for a  
17 U.S. passport or Consular Report of Birth Abroad. *Koonwaiyou v. Barr*, 830 F. App’x 566, 567  
18 (9th Cir. 2020).

19           19.     Congress also provided for judicial review of any denied nationality claims in the  
20 federal district courts. 8 U.S.C § 1503(a).

21           20.     Section 1503(a) also has an exception. Specifically, it denies its remedy to claims  
22 of nationality “if the issue of such person's status as a national of the United States (1) arose by  
23 reason of, or in connection with any removal proceeding under the provisions of this chapter or  
24 any other act, or (2) is in issue in any such removal proceeding.”



1           26.     Therefore, as the son of a noncitizen and a U.S. national who met § 1408(4)'s  
2 physical presence requirements, Mr. Koonwaiyou—like his mother—is a U.S. national pursuant  
3 to 8 U.S.C. § 1408(4).

4 **Mr. Koonwaiyou's Immigration Proceedings**

5           27.     In 2006, Mr. Koonwaiyou was placed in removal proceedings in Eloy, Arizona,  
6 where he asserted his claim that as a U.S. national he is not removable. The Immigration Judge  
7 (IJ) terminated his removal proceedings, finding that Mr. Koonwaiyou was born outside of the  
8 United States to a U.S. national mother who, prior to his birth, had met the physical presence  
9 requirements of 8 U.S.C. § 1408(4)(A) and (B), rendering Mr. Koonwaiyou a U.S. national not  
10 subject to removal from this country.

11           28.     The Department of Homeland Security (DHS) appealed to the Board of  
12 Immigration Appeals (BIA). The BIA subsequently remanded the case back to the IJ to consider  
13 the retroactivity of § 1408(4) and whether Mr. Koonwaiyou's nationality claim was undermined  
14 because he had not applied for a U.S. passport or Consular Report of Birth Abroad.

15           29.     On remand before the IJ, the parties jointly moved to administratively close the  
16 proceedings, and the IJ agreed, administratively closing the proceedings in 2008 as Mr.  
17 Koonwaiyou was in prison after he was convicted of Child Sex Abuse in Utah.

18           30.     In 2019, after Mr. Koonwaiyou finished serving his sentence, DHS moved to  
19 reopen removal proceedings in Tacoma, Washington.

20           31.     Mr. Koonwaiyou once more asserted U.S. nationality, moving to terminate the  
21 proceedings. This time, however, the IJ denied Mr. Koonwaiyou's motion, and ordered him  
22 removed to Western Samoa.

1           32.     Mr. Koonwaiyou appealed that decision to the BIA, which dismissed his appeal  
2 on December 4, 2019. The BIA refused to accept Mr. Koonwaiyou’s nationality claim, asserting  
3 that “only the Secretary of State can confer the status of U.S. national upon [Mr. Koonwaiyou].”

4           33.     Mr. Koonwaiyou subsequently filed a Petition for Review with the Ninth Circuit  
5 Court of Appeals, which dismissed his petition on December 4, 2020. *See Koonwaiyou*, 830 F.  
6 App’x at 568. The Ninth Circuit interpreted subsection 15(b) of Public Law 99-396 to require  
7 those born after the amendment’s enactment to first seek approval of their U.S. nationality from  
8 the Secretary of State, either by applying for a U.S. passport or Consular Report of Birth Abroad.  
9 *Id.* at 567. The Court denied Mr. Koonwaiyou’s petition, finding he had not met this procedural  
10 requirement. *Id.* As such, the Court of Appeals refused to address the merits of Mr.  
11 Koonwaiyou’s claim to U.S. nationality.

12           34.     On January 21, 2021, after removal proceedings concluded, and following the  
13 Ninth Circuit’s order, Mr. Koonwaiyou applied for a certificate of noncitizen national status with  
14 the State Department.

15           35.     That application was denied on February 26, 2021. According to the State  
16 Department, Mr. Koonwaiyou is not a U.S. national, and cannot become one, because his U.S.  
17 mother “did not acquire nationality until after [his] birth.”

18           36.     This interpretation directly contradicts the plain language of § 1408, which  
19 unequivocally deems qualifying individuals as “nationals . . . of the United States at birth.”

20           37.     It is undisputed that Ms. Uti is U.S. national. And § 1408(4) expressly states that  
21 all U.S. nationals are deemed to hold that status from birth. As a result, Defendants’ denial of  
22 Mr. Koonwaiyou’s certificate of noncitizen national status on the basis that his mother was not a  
23 U.S. national at the time of his birth directly contravenes the statute. Defendants’ denial fails to  
24



1 recognize that regardless of when Ms. Uti was certified to be a U.S. national, her nationality was  
2 acquired at birth.

3 38. Mr. Koonwaiyou now seeks review of Defendants' decision denying his  
4 application for certification as a U.S. national. Defendants' wrongful denial of Mr.  
5 Koonwaiyou's application has resulted in his continued detention at the NWDC, as he otherwise  
6 remains subject to removal to Western Samoa, despite being a U.S. national.

7 **CAUSES OF ACTION**

8 **COUNT I**

9 **Declaratory Relief for Denial of the Rights/Privileges of a U.S. National**  
10 **8 U.S.C. § 1503**  
11 **(Unlawful Denial of Certificate of Noncitizen National Status)**

12 39. All the foregoing allegations are repeated and realleged as though fully set forth  
13 herein.

14 40. Under 8 U.S.C. § 1503(a), an individual may seek declaratory relief pursuant to  
15 28 U.S.C § 2201 for a judgment declaring a person within the United States to be a U.S. national.

16 41. Mr. Koonwaiyou claimed a right or privilege as a U.S. national by applying for a  
17 certificate of noncitizen national status.

18 42. Defendants denied Mr. Koonwaiyou's claim based on a legally erroneous  
19 interpretation of 8 U.S.C. § 1408(4).

20 43. Due to Defendants' wrongful denial, Mr. Koonwaiyou remains detained by DHS  
21 at the NWDC in Tacoma, Washington, and faces imminent removal to Western Samoa despite  
22 being a national of the United States.  
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- 1 b. Declare that Defendants' interpretation of 8 U.S.C. § 1408(4) is unlawful and  
2 contrary to the Immigration and Nationality Act;
- 3 c. Declare that Plaintiff Ilai Kanutu Koonwaiyou meets the requirements for  
4 nationality pursuant to 8 U.S.C. § 1408(4);
- 5 d. Declare that Plaintiff Ilai Kanutu Koonwaiyou is a U.S. national;
- 6 e. Order the State Department to issue a certificate of non-citizen national status to  
7 Mr. Koonwaiyou;
- 8 f. Award Plaintiff's counsel reasonable attorneys' fees under the Equal Access to  
9 Justice Act and any other applicable statute or regulation; and
- 10 g. Grant such further relief as the Court deems just, equitable, and appropriate.

11 DATED this 30th day of June, 2021.

12 Respectfully submitted,

13 s/ Matt Adams  
14 Matt Adams, WSBA No. 28287

15 s/ Aaron Korthuis  
16 Aaron Korthuis, WSBA No. 53974

17 s/ Margot Adams  
18 Margot Adams, WSBA No. 56573

19 s/ Tim Warden-Hertz  
20 Tim Warden-Hertz, WSBA No. 53042

21 **NORTHWEST IMMIGRANT RIGHTS PROJECT**

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