

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NURIT ZEEVI;
M.Z. (A MINOR)**

c/o
Zell & Associates International Advocates, LLC
800 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20005

Plaintiffs,

v.

**UNITED STATES DEPARTMENT OF
STATE**

600 19th Street NW
Washington DC 20522

Defendant.

Civil Action No. 1:25-cv-3854

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. PRELIMINARY STATEMENT

1. This case concerns the unlawful denial of U.S. citizenship to the minor daughter of Plaintiff—her second child—a U.S. citizen who resided in the United States for more than eight years before the child’s birth.
2. Prior to 2017, Plaintiff Nurit Zeevi fell within a class of unwed mothers effectively excluded from transmitting citizenship to their children — those who resided in the United States for many years but lacked a single continuous 365-day period of physical presence. While living in the United States, Plaintiff Zeevi worked, married, gave birth to her older son, later divorced, and continued to raise him there. Because her life and

employment required periodic travel abroad each year, she never accumulated a full uninterrupted year within the United States, even though her total residence exceeded eight years.

3. On April 14, 2025, after several prior attempts to secure recognition of her daughter's citizenship, the U.S. Embassy in Jerusalem rejected the child's applications for a Consular Report of Birth Abroad ("CRBA")¹ and U.S. passport. The Embassy cited a failure to prove one year of continuous physical presence in the United States prior to birth under 8 U.S.C. § 1409(c), even though it acknowledged that Plaintiff satisfied the five-year residence requirement under 8 U.S.C. § 1401(g). The Embassy's decision rested solely on the fact that, at the time of birth, Plaintiff was an unwed mother. Such treatment impermissibly penalizes Plaintiff for her marital status and for engaging in the same lawful travel patterns as any other U.S. citizen—married or unmarried, male or female.
4. This denial is unlawful. It rests on an erroneous and discriminatory reading of the citizenship statutes, one that directly conflicts with the Supreme Court's decision in *Sessions v. Morales-Santana*, 582 U.S. 47 (2017). In *Morales-Santana*, the Court rejected as unconstitutional the very distinction between a one-year continuous presence rule and a five-year aggregate presence rule. By requiring Plaintiff to satisfy the one-year standard despite her undisputed compliance with the five-year rule, the

¹ A *Consular Report of Birth Abroad* (Form FS-240), sometimes called a "Certificate of Birth Abroad," is an official document issued by the U.S. Department of State to children born outside the United States to a U.S. citizen parent. It serves as proof of acquisition of U.S. citizenship at birth. See 22 U.S. Code § 2705; see also, in general, https://travel.state.gov/en/international-travel/living-abroad/birth.html?utm_source=chatgpt.com. See also 7 FAM 1440 "Consular Report of Birth of a Citizen/Non-Citizen National of the United States."

Embassy has revived almost the same unconstitutional discrimination that the Supreme Court already struck down.

5. At minimum, the statute should be construed to permit unwed mothers, like unwed fathers, to rely on the five-year presence rule which, in any case, reflects the legislative purpose of ensuring a meaningful connection to the United States. If such a reading is unavailable, then the statute as applied violates equal protection under the Fifth Amendment.
6. Plaintiff brings this action under the Constitution and the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* (“APA”), seeking a declaration that her daughter is a U.S. citizen at birth and an order requiring the government to issue proof of that citizenship in the form of a CRBA and a U.S. passport.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.
8. The government has waived sovereign immunity under the APA. *See Chacoty v. Tillerson*, 285 F. Supp. 3d 293, 302 (D.D.C. 2018) and *Chacoty v. Pompeo*, 392 F. Supp. 3d 1, 4 (D.D.C. 2019).
9. Venue is proper in this District under 28 U.S.C. § 1391(e) because Defendant agencies are headquartered in Washington, D.C., and the challenged actions emanated from there.

III. PARTIES

10. Plaintiff Nurit Zeevi (“Nurit”) is a U.S. citizen residing in Israel. Before her daughter’s birth, she lived in the United States for more than eight years, during which she worked, volunteered, married, and gave birth to her first

child. Following her divorce, she continued to raise her son under a shared physical and legal custody arrangement. Throughout those years, Nurit traveled abroad at least once annually for work and family reasons, and therefore never accumulated a single continuous 365-day period of physical presence in the United States.

11. Plaintiff M.Z., a minor (“M.Z.”) was born in Israel on April 1, 2013, to Nurit, who, at the time of the birth, was an unwed U.S. citizen mother.
12. Defendant United States Department of State, through its agencies and divisions, including the U.S. Embassy in Israel, denied Plaintiffs’ application on April 14, 2025.

IV. LEGAL FRAMEWORK

13. U.S. citizenship at birth for children born abroad is governed principally by 8 U.S.C. § 1401(g), which requires that one U.S. citizen parent have five years of physical presence in the United States, at least two after age fourteen.
14. Section 1409 sets forth additional provisions for children born to unmarried parents. Historically, subsection (c) allowed **unwed mothers** to transmit citizenship to their children if the mother had one **continuous** year of physical presence in the United States before the child’s birth, regardless of whether that presence included any time after age 14 or whether it was aggregated over several periods, so long as it was continuous. 8 U.S.C. § 1409(c).

12. In contrast, **unwed fathers** (via § 1409(a) in combination with § 1401(a)(7)) had to satisfy a much more demanding physical presence requirement: generally five years before the child’s birth, with at least two years of that after age 14. That requirement was **not continuous**, but cumulative. At the time, this was “one of the few remaining statutes in the country which [...] permissibly categorizes individuals on the basis of sex in order to establish citizenship rights.” Melissa Fernandez, *Title 8 U.S.C. S 1409 of the United States Immigration and Nationality Act-Children Born Out of Wedlock: Undermining Fathers’ Rights and Perpetuating Gendered Parenthood in Citizenship Law*, 54 FLA. L. REV. 949, 950 (2002).
13. In *Sessions v. Morales-Santana*, the Supreme Court held that this gender-based distinction in the Immigration and Nationality Act violates the Equal Protection component of the Fifth Amendment. The Court found that the differential treatment imposed by § 1409(c) (one-year continuous presence for unwed mothers) versus § 1401(a)(7)/§ 1409(a) (aggregate, longer physical presence for unwed fathers) lacked an “exceedingly persuasive justification,” required for any gender classification under heightened scrutiny.
14. The government’s asserted interests—ensuring a meaningful connection to the United States (*i.e.*, that the U.S.-citizen parent has deep ties), and reducing the risk of statelessness for children born abroad—were examined and found either not sufficiently served by the distinction, or not proven to justify the magnitude of the burden imposed on unwed fathers.

15. The Court pointed out that under § 1409(c), an unwed U.S.-citizen mother could transmit citizenship even if her U.S. residence consisted of only a one-year continuous stay. By contrast, an unwed father, even if he acknowledged paternity or raised the child in the U.S., would still lose the right to transmit citizenship if he failed to meet the longer and age-calibrated presence requirement. Thus, the distinction was based on overbroad generalizations about gender roles that are no longer tenable.
16. As for remedy, the Court did not rewrite § 1409(c) to make the one-year rule apply to fathers, but rather held that going forward, the five-year presence requirement [§ 1401(a)(7)/§ 1409(a)] should apply uniformly to both unwed mothers and unwed fathers for children born *after* June 12, 2017.
17. However, for children born before June 12, 2017, the prior framework remains in effect—requiring one year of continuous physical presence for unwed mothers and five years of aggregate physical presence for unwed fathers. Thus, the Supreme Court’s remedial rule in *Morales-Santana* applies prospectively only. While the Court’s decision addressed circumstances in which the earlier rule disadvantaged men, it did not directly consider cases, like Plaintiff’s, in which the same statutory distinction now operates to the detriment of women. In such situations, the underlying constitutional logic of *Morales-Santana* requires parity: the more generous five-year aggregate presence standard must be made available to unwed mothers as well. The Department of State, therefore, should apply the statute consistent with that principle—by reading § 1409(c) to permit either one year of continuous presence **or** five years of

aggregate presence. As things currently stand, however, this is the legal framework as interpreted and applied by the Defendant:

	Child Born Before June 12, 2017	Child Born On/After June 12, 2017
Unwed Mother	1 year continuous presence	5 years aggregate presence (2 after 14)
Unwed Father	5 years aggregate presence (2 after 14)	5 years aggregate presence (2 after 14)

18. Because *Morales-Santana* held that gender-based distinctions in § 1409 violate equal protection and set the longer physical presence requirement as the uniform standard for future cases, the Embassy's current refusal to recognize a claim based on the five-year standard, when the Plaintiff satisfies it but is being required instead to meet the shorter rule tied to gender, is precisely the kind of discriminatory enforcement the Supreme Court rejected.

V. FACTUAL BACKGROUND

19. Plaintiff is a naturalized U.S. citizen and lived for many years in Santa Monica, California. It was in California where she married, worked, and gave birth to her son.

20. In 2006-2007, Nurit went through a divorce proceeding and ultimately received joint physical and legal custody over her son. Throughout this time Nurit was required to travel to and from California and Israel for family and work-related issues.

21. On April 1, 2013, Plaintiff gave birth in Israel to her daughter, Plaintiff M.Z.

22. On October 28, 2024, Plaintiff met with a consular officer at the U.S. Embassy in Jerusalem, Israel. She submitted extensive documentation of her U.S. residence exceeding the five-year statutory requirement. The officer acknowledged that this evidence satisfied the five-year rule under 8 U.S.C. § 1401(g).
23. Despite this, the Embassy denied the child's application on April 14, 2025, on the sole ground that Plaintiff had not shown one year of *continuous* presence in the United States before the birth, citing 8 U.S.C. § 1409(c).
24. The denial letter went further, instructing Plaintiff to use the decision as proof that her daughter "does not qualify for U.S. citizenship" for visa purposes.

VI. CLAIMS FOR RELIEF

Count I – Administrative Procedure Act (APA) – Unlawful Interpretation

25. Defendant's denial of Plaintiff's application was arbitrary, capricious, and contrary to law within the meaning of 5 U.S.C. § 706(2)(A).
26. First, the Embassy misinterpreted 8 U.S.C. § 1409(c) by requiring Plaintiff to prove one year of continuous physical presence to the exclusion of the five-year standard in § 1401(g). Nothing in the statutory text bars an unwed mother from relying on the five-year rule, and construing the statute to prohibit that option produces unconstitutional gender discrimination. Under the doctrine of constitutional avoidance, the statute must be read to permit Plaintiff to transmit citizenship under § 1401(g), just as unwed fathers may.

27. Under the government's current interpretation, the statute yields an untenable and absurd result. Even a forty-year-old unwed mother—born and raised in the United States and a lifelong resident—would be barred from transmitting U.S. citizenship to a child born abroad in 2013 solely because she traveled outside the country once a year, even briefly. Each short trip would interrupt the required 365-day “continuous physical presence” period and thereby disqualify her entirely, denying citizenship to a child who, by any rational measure, should be recognized as American at birth. Meanwhile, unwed fathers and all married parents—both mothers and fathers—face no comparable restriction, as they may aggregate years of residence without any prohibition on travel or requirement of consecutive days. Such an interpretation not only penalizes ordinary, lawful travel but also imposes an irrational burden on the freedom of movement of U.S. citizens, in direct conflict with constitutional guarantees and congressional intent.

28. Essentially, Plaintiffs ask the Court to order Defendant to properly execute the statute in such a way that, simply put, allows unwed mothers who gave birth prior to June 12, 2017 to invoke the five-year requirement. This point is illustrated in the following demonstrative exhibit:

<p>2. Child of U.S. Citizen Mother</p> <p>The rules that determine whether a child born out of wedlock outside of the United States derives citizenship at birth from the U.S. citizen mother vary depending on when the child was born.</p> <p><i>Child Born On or After December 23, 1952 and Before June 12, 2017</i></p> <p>A child born between December 23, 1952 and June 12, 2017 who is born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:</p> <ul style="list-style-type: none"> • The person is a child^[30] of a U.S. citizen parent(s); • The child's mother was a U.S. citizen at the time of the child's birth; and • The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for 1 continuous year before the child's birth.^[31] OR <p><i>Child Born On or After June 12, 2017</i></p> <p>A child born on or after June 12, 2017, who is born out of wedlock outside of the United States or one of its outlying possessions acquires citizenship at birth if:</p> <ul style="list-style-type: none"> • The person is a child^[32] of a U.S. citizen parent(s); • The child's mother was a U.S. citizen at the time of the child's birth; and • The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for at least 5 years before the child's birth (at least 2 years of which were after age 14).^[33] <p><i>Effect of Sessions v. Morales-Santana Decision</i></p> <p>Prior to the U.S. Supreme Court's decision in <i>Sessions v. Morales-Santana</i>,^[34] the physical presence requirements for children born out of wedlock were different for a child acquiring citizenship through a U.S. citizen mother than for those acquiring through a U.S. citizen father. An unwed U.S. citizen mother could transmit citizenship to her child if the mother was physically present in the United States for 1 continuous year prior to the child's birth.^[35] An unwed U.S. citizen father, by contrast, was held to the longer physical presence requirement of 5 years (at least</p>

Source: <https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3>

29. The government's erroneous interpretation also appears in its *Foreign Affairs Manual* ("FAM"). See 8 FAM 301.7-10(B) ("Acquisition of U.S. Citizenship by Birth Abroad When One Parent is a U.S. Citizen Out of Wedlock"), which instructs consular officers that an unwed U.S.-citizen mother must establish "**one year of continuous physical presence**" in the United States or its outlying possessions prior to the child's birth. This directive is not compelled by the statutory text, is contrary to the equal protection principles articulated in *Sessions v. Morales-Santana*, and unlawfully forecloses reliance on the five-year aggregate presence requirement in § 1401(g). By embedding this unconstitutional gender-based distinction into the Department's operative guidance, the FAM itself violates the APA, 5 U.S.C. § 706(2)(A), because it is arbitrary, capricious, and not in accordance with law.

30. Second, even if the statute is not subject to the above interpretation, the Embassy's denial is unlawful because it applied § 1409(c) in a manner that violates the Fifth Amendment. An agency may not enforce a statute in a way that perpetuates unconstitutional discrimination. By failing to account for the Supreme Court's decision in *Morales-Santana*, and by denying citizenship despite Plaintiff's undisputed satisfaction of the five-year requirement, the Embassy disregarded constitutional limits and acted outside the law, in violation of 5 U.S.C. § 706(2)(A).

31. For these reasons, Defendant's decision must be set aside under the APA.

Count II – Fifth Amendment Equal Protection

32. Alternatively, if the statute is construed to bar unwed mothers from invoking § 1401(g), then the statute as applied violates equal protection under the Fifth Amendment.

33. As things currently stand, the discrimination is plain: unwed fathers who accumulated five years of residence in the United States—even if not continuous—can transmit their citizenship to children born before June 12, 2017. By contrast, unwed mothers with the very same U.S. residence are barred unless they can show one continuous year of presence.

34. This unequal treatment imposes a harsher burden on unwed mothers than on other parents, even though the five-year rule better serves Congress's stated interest in ensuring a meaningful connection to the United States.

35. *Sessions v. Morales-Santana* makes clear that such gender-based differentiation is unconstitutional. The Court held that distinctions in citizenship transmission based solely on the sex of the parent violate equal

protection under the Fifth Amendment. The Embassy's application of the one-year continuous presence rule to Plaintiff perpetuates exactly the type of discrimination the Supreme Court has already condemned.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Declare that Plaintiff M.Z. is a U.S. citizen at birth;
- b. Vacate the Embassy's April 14, 2025 denial as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and contrary to a constitutional right, 5 U.S.C. § 706(2)(A)-(B), and remand with instructions to immediately issue documentation of U.S. citizenship (e.g., a Consular Report of Birth Abroad and/or a U.S. passport) consistent with this Court's order.
- c. Enjoin Defendant from applying the one-year continuous presence rule in a manner inconsistent with the Fifth Amendment and *Morales-Santana*;
- d. Award Plaintiffs costs and reasonable attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, because Defendant's position was not substantially justified and Plaintiffs have incurred expenses in vindicating their rights; and
- e. Grant such other relief as the Court deems just and proper.

Date: November 4, 2025

Respectfully submitted,

/s/ L. Marc Zell

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