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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID ISRAEL GASTELUM CHAVEZ

Petitioner,

v.

LORETTA E. LYNCH,

Respondent.

Case No. CV 14-07566 DMG (AGR~~x~~)

**ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT
[35, 37]**

**I.
INTRODUCTION**

On October 7, 2015, Respondent United States Attorney General Loretta E. Lynch filed a motion for summary judgment (“Gov. Mot.”). [Doc. # 35.] On October 9, 2015, Petitioner David Israel Gastelum Chavez filed his own motion for summary judgment. [Doc. # 37.] A hearing on the cross-motions is scheduled for November 20, 2015. Having duly considered the parties’ written submissions, the Court now renders its decision. For the reasons set forth below, the cross-motions for summary judgment are **DENIED.**

II.
FACTUAL BACKGROUND

The Court sets forth the material facts and views all reasonable inferences to be drawn from them in the light most favorable to the non-moving party.¹

On February 4, 1929, Gastelum Chavez's maternal grandmother, Maria de Jesus Vargas Olivo ("Gastelum Chavez's grandmother"), was born. Respondent's Statement of Genuine Dispute of Material Fact ("Gov. SDF") ¶ 11 [Doc. # 40-1.] The parties dispute whether Gastelum Chavez's grandmother was born in El Paso, Texas or in the city of Juarez, Mexico. In support of his argument that his grandmother was born in the United States, Gastelum Chavez relies primarily on a baptismal record from the Sacred Heart Church in El Paso, Texas, where he states his grandmother was baptized on June 15, 1929. Tolchin Decl., Ex. H ("June 15, 1929 Baptismal Record").² The Sacred Heart Church is located less than two blocks from Juarez. Gov. SDF ¶ 7. The June 15, 1929 Baptismal Record contains information for baptisms that occurred in the church. Respondent's Statement of Uncontroverted Facts ("Gov. SUF") ¶ 23 [Doc. # 35.] The baptismal record does not contain a specific field, entry location, line, or box that identifies the baptized person's birthplace. *Id.* ¶ 28. It does contain a column entitled "Nomen Infantis et residentia." *Id.* ¶ 27. The entry for Gastelum Chavez's grandmother under this column states: "Ma. de Jesus Vargas/ de el Paso Tex. / S. El Paso 713."³ *Id.*

No state within the United States has ever issued Gastelum Chavez's grandmother a birth certificate. *Id.* ¶ 19. A United States Department of Labor, Immigration Service

¹ The Court addresses the parties' evidentiary objections only to the extent it relies on the corresponding evidence.

² Both parties stipulated that the June 15, 1929 Baptismal Record is authentic for the purposes of Rule 901 of the Federal Rules of Evidence. [Doc. # 34 at 2-3.]

³ Although the parties failed to provide a certified English translation of terms in the Spanish language, the Court assumes for purposes of deciding this motion that the baptismal certificate refers to the name and residence of the infant and states that Petitioner's grandmother, "Maria de Jesus Vargas," is "from" El Paso, Texas.

1 manifest card, dated November 12, 1929, for Gastelum Chavez's grandmother, however,
2 identifies Juarez, Mexico, as her place of birth. *Id.* ¶ 16; *see* George Decl., Ex. 7.

3 On December 22, 1951, Gastelum Chavez's grandmother gave birth to Luz Elena
4 Chavez Vargas, Gastelum Chavez's mother, in Mexico. Gov. SDF ¶ 18. A birth
5 certificate for Gastelum Chavez's mother identifies Gastelum Chavez's grandmother as a
6 "native of Ciudad Juarez" Gov. SUF ¶ 17; *see* George Decl., Ex. 9. In 1968,
7 Gastelum Chavez's mother got married. Her marriage certificate, dated May 16, 1968,
8 identifies Gastelum Chavez's grandmother as "born in" Juarez.⁴ Gov. SUF ¶ 18; *see*
9 George Decl., Ex. 11.

10 On April 16, 1977, Luz Elena Gastelum Chavez and Carlos Gastelum gave birth to
11 Petitioner Gastelum Chavez in Mexico. Gov. SUF ¶¶ 1-2.

12 On July 22, 2008, Gastelum Chavez was deported to Mexico from the United
13 States. Tolchin Decl., Ex. W (criminal indictment). Gastelum Chavez subsequently
14 reentered the United States without authorization. *Id.* On December 18, 2013, Gastelum
15 Chavez was indicted and charged for illegal reentry after removal under 8 U.S.C. section
16 1326. *Id.*

17 On May 15, 2014, a jury acquitted Gastelum Chavez. Tolchin Decl., Ex. Y
18 (verdict). On June 11, 2014, the Department of Homeland Security arrested Gastelum
19 Chavez and issued a reinstatement of removal. [Doc. # 1.] Gastelum Chavez
20 subsequently filed a petition for review and request for stay of removal with the Ninth
21 Circuit Court of Appeals. *Id.* On September 25, 2014, the Ninth Circuit transferred the
22 case to the district court to conduct a *de novo* hearing on Gastelum Chavez's claim that
23 he is a United States citizen. *Id.*; 8 U.S.C. § 1252(b)(5)(B).

24 In essence, Gastelum Chavez seeks a declaratory judgment that he is a United
25 States citizen under a derivative citizenship theory. Specifically, Gastelum Chavez
26

27 ⁴ The parties stipulated that the manifest card, birth certificate, and marriage certificate are
28 authentic under Rule 901 of the Federal Rules of Evidence and are admissible. [Doc. # 34 at 3, 4.]

1 asserts that he acquired United States citizenship from his mother, who in turn had
2 acquired her American citizenship from Gastelum Chavez's grandmother, who he claims
3 was born in El Paso, Texas.

4 **III.**
5 **EVIDENTIARY OBJECTIONS**

6 The government objects that statements from Gastelum Chavez's relatives
7 regarding his grandmother's birthplace are inadmissible hearsay, and that the declarant
8 family member (as opposed to the deponent) who made the statement lacks personal
9 knowledge. Gov. Opp. at 34-35. In particular, the government argues that Gastelum
10 Chavez "points to nothing that rises above mere rumor and speculation heard by his
11 mother, sister, first cousin once removed, and wife." Gov. Reply at 13. Gastelum
12 Chavez responds that these statements fall under two exceptions to the hearsay rule:
13 Federal Rules of Evidence 803(19) (reputation concerning personal or family history) and
14 804(b)(4)(B) (statement of personal or family history from an unavailable declarant).

15 In support of the proposition that the Court should exclude Gastelum Chavez's
16 evidence because he "fails to establish a trustworthy foundation for the rumors heard by
17 Petitioner's self-interested family members about his grandmother's birthplace," *id.*, the
18 government relies on *Blackburn v. United Parcel Serv. Inc.*, 179 F.3d 81, 100-01 (3d Cir.
19 1999). According to *Blackburn*:

20 A proponent of Rule 803(19) evidence [must] establish that the
21 reputation testimony arises from sufficient inquiry and
22 discussion among persons with personal knowledge of the
23 matter to constitute a trustworthy "reputation." Rumors and
24 speculation are clearly insufficient in this regard. Testimony by
25 a declarant that he heard, from some unknown source, that two
26 people were related in some way would be inadmissible under
27 Rule 803(19). Rather, what is required is the laying of a
28 foundation of knowledge grounded in inquiry, discussion,
interactions, or familiarity "among a person's associates, or in
the community" in which he works.

1 *Id.*

2 In contrast to *Blackburn*, which involved a workplace community and a plaintiff
3 who alleged relationships between people he did not appear to know, the instant case
4 involves a community of family members. *See, e.g., Acosta v. United States*, 2015 WL
5 1965318, at *10 (W.D. Wash. Apr. 29, 2015) (finding plaintiff’s testimony that “his
6 parents, relatives, and family friends have always told him that he was born in the United
7 States” admissible under Rule 803(19)). Moreover, courts have considered reputation
8 among a plaintiff’s family that he or she was born in the United States. *United States v.*
9 *Jean-Baptiste*, 166 F.3d 102, 110 (2d Cir.1999) (“[T]here is a special need for this type of
10 evidence,” because, as here, “[o]ther evidence of family matters is frequently unavailable,
11 and it is likely that these matters have been sufficiently inquired about and discussed with
12 persons who have personal knowledge so that a trustworthy consensus has been
13 reached.”). Such “statements of family members about family history are ‘generally
14 presumed to be truthful.’” *Acosta*, 2015 WL 1965318, at *9 (quoting *U.S. v. Palomares–*
15 *Munoz*, 2001 WL 219951, at *1 (9th Cir.2001)).

16 Thus, a family member declarant testifying as to *another family member’s*
17 birthplace falls under Rule 803(19). A family member declarant’s statement as to *her*
18 *own* birthplace (i.e., the grandmother’s own birthplace) or where she gave birth to her
19 child (i.e., the great grandmother’s statement of where her daughter was born) does not
20 fall under Rule 803(19) as the declarant is not testifying about her own reputation.
21 Accordingly, the Court overrules the government’s objections as to all statements based
22 on what a witness heard from a family member declarant other than Gastelum Chavez’s
23 grandmother and great grandmother. *See, e.g., Tolchin Decl., Exs. FF (Luz Elena*
24 *Chavez Vargas Depo.)*⁵ at 9, 42-43.; *HH (Umberto Vargas Depo.)* at 17, 21, 35.

26 ⁵ The Court does sustain the government’s hearsay objection as to the declarant’s reference that
27 “older uncles” told her that Gastelum Chavez’s grandmother was born in El Paso. “Older uncles” is not
28 specific enough as to the “source of the information.” *See Blackburn*, 179 F.3d at 101-02.

1 1216 (9th Cir. 2011). Material facts are those that may affect the outcome of the case.
2 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine “if the
3 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”
4 *Id.* The moving party bears the initial burden of establishing the absence of a genuine
5 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) .

6 Once the moving party has met its initial burden, Rule 56(c) requires the
7 nonmoving party to “go beyond the pleadings and by her own affidavits, or by the
8 ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts
9 showing that there is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(c),
10 (e) (1986)); *see also Norse v. City of Santa Cruz*, 629 F.3d 966, 973 (9th Cir. 2010) (*en*
11 *banc*) (“Rule 56 requires the parties to set out facts they will be able to prove at trial.”).
12 “In judging evidence at the summary judgment stage, the court does not make credibility
13 determinations or weigh conflicting evidence.” *Soremekun v. Thrifty Payless, Inc.*, 509
14 F.3d 978, 984 (9th Cir. 2007). “Rather, it draws all inferences in the light most favorable
15 to the nonmoving party.” *Id.*

16 A court presented with cross-motions for summary judgment should review each
17 motion separately, giving the nonmoving party for each motion the benefit of all
18 reasonable inferences from the record. *Center for Bio-Ethical Reform, Inc. v. Los*
19 *Angeles County Sheriff Dep’t*, 533 F.3d 780, 786 (9th Cir. 2008), *cert. denied*, 555 U.S.
20 1098 (2009). The Court must consider all evidence submitted by both parties when
21 ruling on cross-motions for summary judgment. *Fair Hous. Council of Riverside Cnty.,*
22 *Inc. v. Riverside Two*, 249 F.3d 1132, 1136 (9th Cir. 2001).

23 V. 24 DISCUSSION

25 In a *de novo* citizenship hearing, a petitioner seeks a declaratory judgment that he
26 is a United States citizen and bears the burden of proving citizenship by a preponderance
27 of the evidence. *Sanchez-Martinez v. INS*, 714 F.2d 72, 74 n.1 (9th Cir. 1983).

1 Here, the main issue in the cross-motions is whether Gastelum Chavez's
2 grandmother was born in El Paso, Texas.⁷ According to the government, Gastelum
3 Chavez "presented no admissible evidence that his maternal grandmother was born in the
4 United States and no rational factfinder could find that she was born in the United
5 States." Gov. Mot. at 23. As such, the government asserts that he "cannot meet his
6 burden of showing it more likely than not that he is a United States citizen." *Id.* at 23-24.

7 But Gastelum Chavez does submit contrary evidence that creates a triable issue of
8 fact. For instance, he presents the June 15, 1929 Baptismal Record from Sacred Heart
9 Church, where his grandmother was baptized.⁸ The entry for Gastelum Chavez's
10 grandmother in the church's baptismal ledger uses the term "de El Paso" under the
11 column "Nomen Infantis et residentia." The church's current administrative assistant of
12 over 21 years, Teresa Ortega, is responsible for recording church baptisms,
13 confirmations, marriages, and deaths. Tolchin Decl., Ex. B (Ortega Depo.) at 7. She
14 attests that she interprets the term "de El Paso" to mean "from El Paso" or "born in El
15 Paso." *Id.* at 39.

16 In addition, Gastelum Chavez presents deposition testimony from four of his
17 family members. These family members testified to hearing from another family
18 member—or from Gastelum Chavez's great grandmother and grandmother herself—that
19 Gastelum Chavez's grandmother was born in El Paso. *See* Tolchin Decl., Exs. FF, GG,
20 HH, II [Doc. # 41-4, 41-5.]

22
23 ⁷ Neither Gastelum Chavez's father nor his maternal grandfather has ever been a United States
citizen. Gov. SUF ¶¶ 6, 9.

24 ⁸ The government objects that the "baptismal records are inadmissible as untrustworthy . . ."
25 Gov. Opp. at 4 [Doc. # 40.] To the extent the government objects that the baptismal record is hearsay,
26 the objection is overruled. *See* Fed. R. Evid. 803(11) (providing hearsay exception for a "statement of
27 birth, legitimacy, ancestry . . . or similar facts of personal or family history, contained in a regularly kept
28 record of a religious organization."), 803(16) (providing hearsay exception for statements in a document
that is at least 20 years old and whose authenticity is established). The government's objection goes to
the weight of the document, not its admissibility.

1 On the other hand, having considered the admissible evidence in the record, the
2 Court is not persuaded by Gastelum Chavez's argument that there is no genuine dispute
3 of material fact regarding his grandmother's birthplace. Indeed, the government presents
4 evidence that suggests his grandmother was born in Mexico. For instance, a United
5 States Department of Labor, Immigration Service manifest card dated November 12,
6 1929, for Gastelum Chavez's grandmother identifies Juarez, Mexico as her place of birth.
7 Moreover, Gastelum Chavez's mother's Mexican birth certificate and marriage license
8 both state that Gastelum Chavez's grandmother was born in Juarez. Gastelum Chavez
9 does not object to the admissibility of these three documents. Viewed in the light most
10 favorable to the government, these documents raise a genuine issue of fact as to whether
11 Gastelum Chavez's grandmother was born in Juarez, Mexico.

12 In sum, the Court concludes that both sides have failed to show that there is no
13 genuine dispute of material fact as to the birthplace of Gastelum Chavez's grandmother.⁹

14 **VI.**
15 **CONCLUSION**

16 In light of the foregoing, the Court **DENIES** both the government's and Gastelum
17 Chavez's motions for summary judgment.

18 **IT IS SO ORDERED.**

19 DATED: November 20, 2015

20 
21 **DOLLY M. GEE**
22 **UNITED STATES DISTRICT JUDGE**

23
24
25 ⁹ Gastelum Chavez raises two additional issues in his summary judgment motion necessary to
26 satisfy his burden of establishing United States citizenship: whether his mother acquired citizenship
27 from his grandmother, and whether he acquired citizenship from his mother. But because a genuine
28 dispute exists as to Gastelum Chavez's grandmother's citizenship, the Court need not analyze these
remaining two issues at this time.