

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Maria Isabel Perales Serna on her own §
 behalf and as next friend for her minor §
 daughter, K.Z.P.S.; Luisa Ines Barragan §
 Gutierrez on her own behalf and as next §
 friend for her minor son, L.A.B.; §
 Maria del Rosario Teran Uriegas on her §
 own behalf and as next friend for §
 her minor son, S.Z.; Nancy Garcia §
 Castro on her own behalf and as next §
 friend for her minor children, L.M., §
 J.M. and Y.M., Rosa Isela Garcia Naranjo §
 on behalf of her minor son F.D., Flavia §
 Garza on her own behalf and on behalf of §
 her minor sons D.G. and S.G., Juana §
 Gomez on her own behalf and on behalf §
 of her minor daughter E.S., Diana §
 Hernandez and Javier Reyes on their §
 own behalf and on behalf of their minor §
 son M.A.R.H., Nancy Hernandez on her §
 own behalf and on behalf of her minor §
 daughter, R.J.H. , Marta Ibarra Luna and §
 Juan Carlos Rodriguez Velasquez, on behalf §
 of their minor daughter Y.R.R.I. , Katerine §
 Johana Portillo on her own behalf and on §
 behalf of her minor daughter, K.E.P., §
 Marcelina Rangel Martinez for her minor §
 children A.M.P. and S.A.P. , Antonia §
 Rodriguez on her own behalf and on behalf §
 of her minor daughter J.N.A.R., Damaris §
 Romero Hernandez de Reyes on her own §
 behalf and on behalf of her minor sons §
 J.R.R. and G.G.R., Brizeida Sanchez on her §
 own behalf and on behalf of her minor §
 children, B.L.R. and L.A.R. , Yveth Vega §
 Diaz on behalf of her minor daughter §
 N.Y.R., Fany Ventura on her own behalf §
 and on behalf of her minor daughter E.I.H. , §
 §
 §
 Plaintiffs §
 §
 §
 v. §

C.A. 15-cv-00446

**Texas Department of State Health
Services, Vital Statistics Unit,
Commissioner Kirk Cole, in his
official capacity, Unit Chief
Geraldine Harris, in her official capacity,
Defendants**

§
§
§
§
§
§
§
§

FIRST AMENDED COMPLAINT

TABLE OF CONTENTS

I. Introduction p. 3

II. Jurisdiction and Venue p. 3

III. Parties p. 4

IV. Facts..... p. 6

State Regulations and Policies resulting in Exclusion of Plaintiffs p. 6

Plaintiffs..... p. 11

Harms to Plaintiffs..... p. 25

State Encroachment on Exclusive Federal Functions..... p. 26

Discrimination p. 26

V. First Cause of Action..... p. 28

VI. Second Cause of Action p. 30

VII. Third Cause of Action p. 32

VIII. Fourth Cause of Action..... p. 33

IX. Prayer for Relief p. 35

I. Introduction:

1. The adult Plaintiffs in this case are citizens of Mexico and Central America who now reside in Texas. They bring suit on behalf of themselves and as next friend for their Plaintiff children, who were born in Texas and are citizens of the United States.
2. The Defendant officials have refused, and continue to refuse, to provide the adult Plaintiffs with certified copies of the birth certificates for their Texas-born sons and daughters. Such refusal is de facto based upon the immigration status of the Plaintiff parents. The lack of a birth certificate, in turn, is causing serious harm to all Plaintiffs.
3. Defendants' actions violate the Equal Protection Clause of the Fourteenth Amendment, as well as the Supremacy Clause. Defendants are sued in their official capacities. Plaintiffs seek declaratory and injunctive relief.

II. Jurisdiction and Venue:

4. This court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, and pendent jurisdiction over state law claims arising from the same operative facts. 28 U.S.C. § 1367.
5. Declaratory judgment is sought pursuant to 28 U.S.C. § 2201.
6. Venue is proper pursuant to 28 U.S.C. § 1391 because many of the complained of acts in this case occurred in Travis County, Texas, and because the Defendants reside in Travis County, Texas.

III. Parties:

7. Plaintiff Maria Isabel Perales Serna (“Plaintiff Perales”) is a resident of Hidalgo County, Texas. She brings suit on her own behalf and as next friend for her minor daughter K.Z.P.S.
8. Plaintiff Luisa Ines Barragan (“Plaintiff Barragan”) is a resident of Cameron County. She brings suit on her own behalf and as next friend for her minor son L.A.B.
9. Plaintiff Maria Del Rosario Teran Uriegas (“Plaintiff Teran”) is a resident of Cameron County, Texas. She brings suit on her own behalf and as next friend for her minor son, Plaintiff S.Z.
10. Plaintiff Nancy Garcia Castro (“Plaintiff Garcia”) is a resident of Hidalgo County, Texas. She brings suit on her own behalf and as next friend for her three minor children, Plaintiffs L.M., J.M., and Y.M.
11. Plaintiff Rosa Isela Garcia Naranjo is a resident of Hidalgo County, Texas. She brings suit her own behalf and on behalf of her minor son, Plaintiff F.D.
12. Plaintiff Flavia Garza is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor sons, Plaintiffs D.G. and S.G.
13. Plaintiff Juana Gomez is a resident of Starr County. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff E.S..

14. Plaintiffs Diana Hernandez and Javier Reyes are residents of Cameron County, Texas. They bring suit on their own behalf and on behalf of their minor son Plaintiff M.A.R.H.
15. Plaintiff Nancy Hernandez is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff R.J.H...
16. Plaintiffs Marta Alicia Ibarra Luna and Juan Carlos Rodriguez Velasquez are residents of Hidalgo County, Texas. They bring suit on their own behalf and on behalf of their minor daughter, Plaintiff Y.R.R.I.
17. Plaintiff Katerine Johana Portillo is a resident of Hidalgo County. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff K.E.P.
18. Plaintiff Marcelina Rangel Martinez is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor children, Plaintiffs A.M.P. and S.A.P.
19. Plaintiff Antonia Rodriguez is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff J.N.A.R.
20. Plaintiff Damaris Romero Hernandez de Reyes is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor sons, Plaintiffs J.R.R. and G.G.R.
21. Plaintiff Brizeida Sanchez is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor children, Plaintiffs B.L.R. and L.A.R.

22. Plaintiff Yveth Vega Diaz is a resident of Hidalgo County, Texas. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff N.Y.R.
23. Plaintiff Fany Ventura is a resident of Hidalgo County. She brings suit on her own behalf and on behalf of her minor daughter, Plaintiff E.I.H.
24. Defendant Texas Department of State Health Services, Vital Statistics Unit is the state agency and unit charged with recording Texas births and providing certified birth certificates upon proper applications therefore. State headquarters for the agency are located in Travis County, Texas.
25. Defendant Kirk Cole is the Commissioner of the Texas Department of State Health Services. He resides in Travis County, Texas. He is sued in his official capacity.
26. Defendant Geraldine Harris is the Unit Chief for the Texas Department of State Health Services, Vital Statistics Unit. She is a resident of Travis County, Texas. She is sued in her official capacity.

IV. FACTS:

A. State Regulations and Policies Resulting in Exclusion of Plaintiffs:

27. The Texas Department of State Health Services, Vital Statistics Unit, (“DHS-VSU”), is responsible for registering, collecting, compiling, and preserving all state birth, death, marriage, and adoption records.
28. This duty is carried out through a network of local Vital Records offices located throughout the state. Tex. Health & Saf. Code, Title 3 (Vital Statistics), §191.002.

29. Vital Statistics officers must provide certified copies of birth certificates upon request to all persons qualified to receive them. *Id.*, Title 3 (Vital Statistics), Chapter § 191.051.
30. To qualify for receipt of a certified copy of a birth certificate, a person must produce acceptable personal identification. Specifically, the person must present one of the identification documents set forth in the regulations. 25 Tex. Admin. Code, (“T.A.C.”), §181.28 (i)(10-11).
31. The acceptable forms of identification are divided into two categories, primary and secondary.
32. Primary forms of identification are available only to U.S. citizens or to persons who already have legal immigration status in this country, such as a Permanent Resident card, an Employment Authorization Document, or a U.S. Re-Entry or Border Crossing permit. §181.28 (i)(10)(D).
33. Persons who cannot produce a primary document may qualify by producing two forms of secondary identification, as set forth in §181.28 (i)(11)(D).
34. Most of these secondary documents will also only be available to persons who can establish their legal immigration status, whether temporary or permanent, in this country.
35. However, national identity cards from Central America and Mexican electoral cards are acceptable, and could provide one of the two required secondary identification documents.

36. As set forth below, many persons leave Mexico and Central America when they are still minors, and have thus never attained such national or electoral identity cards.
37. These national and electoral identification cards cannot be obtained once the person arrives in the United States.
38. Even those who once possessed Mexican electoral cards soon find them expired, stolen or lost.
39. Central Americans making the extremely dangerous journey north are often forcibly stripped of their national identification cards before even arriving in Texas, either through assaults and theft, or for the other grim reasons discussed herein below. See, Plaintiff Katerine Johana Portillo, Para. 60.
40. Even Central Americans managing to arrive here with their national identification cards in their possession face problems of expiration, loss or theft.
41. If the person is apprehended by U.S. Border Patrol, immigration officials often retain the person's identity cards as well.
42. Unlike the Plaintiffs, persons residing in Texas with a recognized immigration status are able to easily obtain replacements for lost or stolen identification documents.
43. §181.28 (i)(11) (xiv and xv) permits acceptance of a foreign government photo identification card.

44. For many years, this option has also been satisfied by producing official photo identification cards, known as “*matriculas*”, issued by the person’s local consulate. This has long resolved the problems described above.
45. The *matricula* is an official photo identification card provided by the Mexican or Central American consulates to their citizens residing in the United States. Such persons must provide proof of their citizenship and identity to their consulate to obtain this card.
46. However, the Defendants have recently decided that such *matriculas* are to be rejected; knowing and intending that a large percentage of undocumented persons would then be unable to produce any other acceptable foreign identification card.¹
47. The rejection of *matriculas* evidently began a few years ago; but as the facts below indicate, this policy was only sporadically enforced until approximately 2013, when it began to be ever more strictly enforced.
48. Tellingly, although passports are internationally recognized government identification documents of the highest formality, and may be obtained from the local consulates, §181.28 (i)(11)(D)(ix) permits the acceptance of foreign passports only if they bear a current U.S. visa.
49. This combination of regulations and policy changes leaves a very large percentage of the undocumented community without any form of identification

¹ Current foreign driver’s licenses are accepted. However, for economic reasons, many undocumented persons have never obtained a license, or left their homeland before they were old enough to have one. Those who do possess such a license soon find it expired, lost or stolen. These cannot be obtained or replaced once the person is in the United States.

acceptable to the Defendants; and without any possibility of obtaining such identification.

50. Defendants have provided no reasonable alternative means for the Plaintiffs to obtain the birth certificates, such as presentation of a parental passport without a U.S. visa, together with supplementary materials and the child's hospital records and social security card.
51. As a result of this situation, hundreds, and possibly thousands, of parents from Mexico and Central America have recently been denied birth certificates for their Texas-born children.²
52. Counsel for these children has also been denied birth certificates for their infant clients.
53. This leaves the child with no birth certificate at all, and both the parents and child with no official proof of the parent-child relationship.
54. No amendment to T.A.C. §181.28(11) foreclosing official consular identification and other matters has ever been promulgated or even proposed.
55. Defendants have knowingly and intentionally instructed and/or ordered their local officers to deny birth certificates to the mothers and children in the Plaintiffs' situation, as described below, and will continue to do so.
56. Defendants and their attorneys have been notified of the growing problem, but have failed and refused to correct the situation.

² As set forth below, some of the families have been told that the Texas-born child may obtain the birth certificate when he or she turns eighteen years of age.

B. Plaintiffs:

57. Plaintiff Maria Isabel Perales Serna was born and raised in Mexico.
- a. As a young adult, Plaintiff Perales fled to Texas to escape from an abusive husband.
 - b. Ms. Perales gave birth in Texas to a daughter, “Y”, now fourteen years old.
 - c. To obtain the birth certificate for this U.S. citizen child, Ms. Perales simply presented her *matricula* from the Mexican consulate.
 - d. The Texas Vital Statistics office accepted the *matricula* and issued the birth certificate pursuant to Texas Administrative Code §181.28(11)(D)(xv).
 - e. On November 24, 2014, Plaintiff Perales gave birth to Plaintiff K.Z.P.S. in a McAllen, Texas hospital.
 - f. Ms. Perales took her hospital records, *matricula*, and Mexican passport to the Vital Statistics office in McAllen, Texas.
 - g. There, she was informed that the *matricula* would no longer be accepted. The passport was also rejected.
 - h. Plaintiff Perales had fled Mexico before she had obtained a voter card, and cannot obtain one now that she is in the United States.
 - i. As a result of Defendants’ wrongful denial of the birth certificate, Plaintiff Perales faces serious problems in enrolling her daughter in day care, travelling with her child, obtaining necessary medical care and other health, education, and

welfare services requiring parental consent and/or proof of Plaintiff K.Z.P.S.'s Texas birth.

58. Plaintiff Luisa Ines Barragan Gutierrez is a citizen of Mexico and has lived in Texas for approximately eight years. She too had fled an abusive relationship.
- a. Ms. Barragan gave birth to Plaintiff L.A.B. in Texas on November 28, 2010.
 - b. She obtained a birth certificate, but it was later stolen.
 - c. In April 2015, she brought the hospital records, her son's social security, her *matricula*, and her expired Mexican voter identification card to the local Vital Statistics office.
 - d. The officer rejected her *matricula*, suggesting that Ms. Barragan could get into trouble for asking for the document of a U.S. citizen and threatened to report her to U.S. Immigration and Customs Enforcement (I.C.E.).
 - e. Plaintiff Barragan needs to enroll her child in school, but school officials have told her she must present a birth certificate. They will not accept the other papers.
59. Plaintiff Maria Del Rosario Teran-Uriegas is a citizen of Mexico who has lived in the United States since 1998.
- a. She and her husband have 2 children.
 - b. The first child was born on November 24, 2014 and Ms. Teran had no trouble getting a birth certificate for him.
 - c. The second child, Plaintiff S.Z., was born December 18, 2014.

d. Plaintiff Teran has her *matricula*, passport, hospital papers, and the child's social security card, but no Mexican voter card.

e. In February 2015, Plaintiff Teran went to the Registrar's office to get the birth certificate. The official there would not accept the *matricula* and told her to get a passport.

f. Plaintiff Teran obtained the passport and returned, only to be rejected because she did not have a valid U.S. visa in the passport.

g. The third time, Ms. Teran took her mother-in-law, who had a Mexican voter identification card, and has also been in the United States for many years. They rejected her mother-in-law's voter card because it was too old.

60. Plaintiff Katerine Johana Portillo is a citizen of Guatemala.

a. She and her three year old son fled her violent spouse in Guatemala, and were brought to Texas by a "Coyote", or human smuggler.

b. As the group neared northern Mexico, the Coyote ordered everyone to throw all of their identification cards and telephone lists into the field.³

c. Pregnant and fearing for her safety if she disobeyed, Plaintiff Portillo discarded her Guatemalan identification card. She cannot be issued a new one in the United States.

³ Plaintiff was told that the cartels in northern Mexico charged the Coyotes much higher "crossing fees" for Central Americans. For this reason, all of the women were told to say they were Mexicans. Other persons report that the cards are sold later by the coyotes.

d. On November 20, 2014 Plaintiff gave birth to her daughter, Plaintiff K.E.P.

e. Because she had lived in the U.S. as a child with her mother, Plaintiff Portillo still had her Minnesota identification card for minors, which was still in effect, and a social security card.

f. Plaintiff Portillo took her own identification card and social security card, together with her daughter's hospital record and social security card, to the Vital Statistics office in McAllen, Texas.

g. Plaintiff was denied a birth certificate for K.E.P., and was told to bring a passport.

g. Plaintiff returned with a Guatemalan passport but was still denied the birth certificate for Plaintiff K.E.P.

h. Plaintiff Portillo faces difficulties in enrolling her child in Head Start and later in the public schools, as well as in renewing the child's Medicaid benefits.

61. Plaintiff Nancy Garcia Castro is a citizen of Mexico who has lived in the United States for many years.

a. Ms. Garcia gave birth in Texas to Plaintiff L.M. on March 5, 2009, to Plaintiff J.M. on May 9, 2010, and to Y.M. on October 10, 2012.

b. Initially, Ms. Garcia had to arrange for her birth certificates and other Mexican records to be sent to her.

c. In 2013 she was finally able to obtain a *matricula*.

d. From 2013 through early 2015, Plaintiff Garcia sought birth certificates for her three U.S. citizen children at the McAllen, Texas Vital Statistics office.

e. The registrar refused to accept Plaintiff Garcia's valid *matricula*.

61. Plaintiff Rosa Isela Garcia Naranjo is a citizen of Mexico. She arrived in Texas more than ten years ago, when she was still a minor.

a. Because she arrived as a minor, Plaintiff Garcia-Naranjo never had a Mexican electoral card or driver's license, and she cannot obtain them here in the United States.

b. Plaintiff Garcia Naranjo's first two children were born in Texas in 2008 and 2011 respectively.

c. Plaintiff Garcia-Naranjo obtained a birth certificate for the first child with her U.S. student identification papers.

d. Plaintiff Garcia-Naranjo was able to obtain a birth certificate for her second child with her husband's *matricula* card.

e. Her third child, Plaintiff F. D., was born on April 5, 2013.

f. Plaintiff Garcia-Naranjo sought to get a birth certificate for F.D. with her own *matricula* and her husband's passport. Both documents were rejected.

g. On F.D.'s first birthday, Plaintiff returned to the Registrar's office to obtain a birth certificate. She was again turned away.

h. Plaintiff then telephoned the Vital Statistics office in Austin, but was told that without the required identification documents, nothing could be done.

i. The local church will not baptize Plaintiff F.D. without a birth certificate, and Garcia-Naranjo faces serious problems in the future with regard to school enrollment, travel and other programs and benefits.

62. Plaintiffs Marta Alicia Ibarra Luna and Juan Carlos Rodriguez Velasquez are citizens of Mexico now residing in Texas.

a. Plaintiff Marta Ibarra has both a Mexican *matricula* and current electoral card.

b. Her husband, Plaintiff Juan Carlos Rodriguez has a Mexican *matricula* and passport.

c. Their daughter, Plaintiff Y.R.R.I., was born on March 27, 2015.

d. They took their credentials and the baby's birth records to the McAllen Vital Statistics Office.

e. Marta Ibarra's current electoral card was rejected and she was told she would need a passport with a valid U.S. visa.

f. Juan Carlos Rodriguez' Mexican passport and *matricula* were also rejected.

g. Plaintiffs face renewal deadlines for the child's Medicaid in six months, and face potential obstacles with school enrollment and Head Start as well as other benefits for which their child is eligible.

h. When Plaintiffs asked the McAllen Vital Statistics official why birth certificates had become so difficult to obtain, the woman responded that since 2014-2015 the requirements had become stricter to prevent undocumented persons from obtaining status through their U.S. citizen children.

63. Plaintiff Flavia Garza is a citizen of Mexico. She arrived in Texas as a child and has lived here for more than twenty years.

a. Because of her age on arrival, she has never had, and cannot obtain, a Mexican electoral card or driver's license.

b. She gave birth in Texas to her first son, D.G., in 2003.

c. She had no official identification at that time, and could not obtain a birth certificate.

d. Approximately four years ago, Plaintiff Garza obtained a *matricula* card from her local consulate. She was still denied a birth certificate for D.G.

e. Plaintiff Garza gave birth to S.G. on August 13, 2013.

f. She returned to the local Vital Statistics office, this time with her own *matricula*, her school transcripts, and her birth certificate as well as S.G.'s records. She was again denied a birth certificate for S.G.

g. She approached other Vital Statistics offices, seeking assistance. All denied her a birth certificate, telling her that S.G. could obtain one when he turned 18 years of age.

h. Approximately two months ago, Plaintiff called the Vital Statistics office, asking for assistance for both sons. She was told no birth certificates can be issued to her.

i. The lack of birth certificates has caused Plaintiff Garza problems in caring for her U.S. citizen children, including but not limited to obtaining SSI for them, and enrolling them in Head Start and grade school.

65. Plaintiff Fany Ventura was born in Honduras and arrived in Texas as a minor. She has lived here since 1996.

a. Because she left Honduras as a minor, she has no national identification card or driver's license and cannot obtain them here.

b. Plaintiff gave birth to a son, Plaintiff V.H., on July 5, 2011 in Edinburg, Texas.

c. Plaintiff Ventura obtained a birth certificate for V.H. using her own birth certificate, Medicaid receipts, rent receipts and other similar materials.

d. Plaintiff gave birth to her daughter E.I.H. on February 19, 2014.

e. Plaintiff again went to the registrar's office and produced her own birth certificate and Honduran school photo i.d. card, and the child's hospital records and social security card.

f. Plaintiff has been repeatedly denied the birth certificate for Plaintiff E.I.H.

g. As a result of this denial Plaintiff is having serious problems with her Section 8 apartment, and knows that she will face similar obstacles with respect to school enrollment and other benefits due to her citizen child.

66. Plaintiffs Diana Hernandez and Javier Reyes are citizens of Mexico. They arrived in Texas more than a decade ago.
- a. Plaintiff Hernandez was a minor at the time of her arrival, and Plaintiff Reyes had just turned 18 years of age.
 - b. Because of their age on arrival in Texas, they have never had and cannot now obtain, a Mexican electoral card or driver's license.
 - c. Their first child was born in 2009, and they obtained a birth certificate for him with their *matriculas*.
 - d. Their second child was born in 2010, and again, they obtained a birth certificate with their *matriculas*.
 - e. Their son M.E.R.H. was born in Texas on January 4, 2015.
 - f. Plaintiff Reyes went to the Harlingen Vital Statistics office with his *matricula*, but was turned away.
 - g. The official at the Vital Statistics office stated that the new laws did not permit them to accept the *matricula*.
 - h. Plaintiffs were told they could apply by mail to the Austin office of Vital Statistics.
 - i. Plaintiff Hernandez sent copies of her passport, recent receipts, Medicaid and school paperwork together with the application form and fee. The application was denied.

67. Plaintiff Damaris Romero Hernandez and her husband are both citizens of Mexico.
- a. Both arrived in this country when they were minors and hence do not have, and cannot obtain, a Mexican driver's license or electoral card.
 - b. Their first child, Plaintiff J.R.R., was born here on August 2, 2011.
 - c. Plaintiff Damaris Romero took JRR's paperwork, together with her own birth certificate and *matricula*, to the local Vital Statistics office.
 - d. There, she was told she would have to produce a passport.
 - e. She returned with a passport and was again denied.
 - f. The child's grandparents also applied for the birth certificate, using their unexpired Mexican electoral cards. These were also rejected.
 - g. On July 20, 2013 her second son, Plaintiff G.G.R. was born.
 - h. Plaintiff Damaris Romero returned to the Vital Statistics office requesting birth certificates for both Texas born children.
 - i. The birth certificates were again denied.
68. Plaintiff Marcelina Rangel Martinez is a citizen of Mexico.
- a. Plaintiff Marcelina Rangel arrived in Texas at the age of 21 and has resided here for 17 years.

b. Plaintiff arrived here before she had obtained a Mexican voter electoral card or driver's license and she cannot obtain those here.

c. Plaintiff gave birth to her first four children in 1999, 2002, 2004, and 2011.

d. All four children received birth certificates with Plaintiff Marcelina Rangel's *matricula* and birth certificate, and/or her husband's Mexican passport.

e. Plaintiff gave birth to her son, Plaintiff S.A.P., on February 28, 2014.

f. She brought the same *matriculas* and passport to the Vital Statistics office but was denied the birth certificate for S.A.P.

g. Plaintiff, after applying at several different local Vital Statistics offices, sent her application to Austin in December 2014. She never received a reply.

h. In late 2014 Plaintiff lost the birth certificate of her daughter A.M.P.

i. She has been denied a duplicate copy of A.M.P.'s birth certificate.

69. Plaintiff Brizeida Sanchez is a citizen of Mexico, now residing in Texas.

a. Because Ms. Sanchez left Mexico as a minor, she has no Mexican electoral card or driver's license and cannot obtain them.

b. In 2010 Brizeida did obtain a Mexican *matricula*.

c. On September 27, 2012 she gave birth to her son, Plaintiff L.A.R.

d. She presented her *matricula* and old school identification to the Vital Statistics office in Edinburg, Texas but was denied the birth certificate.

e. She tried again in 2014 but was again rejected.

f. On June 8, 2014 she gave birth to her daughter, Plaintiff B.L.R.

g. Plaintiff Brizeida Sanchez took her daughter's hospital records and social security card, together with her *matricula*, to the Vital Statistics office.

h. The officials there again denied her a birth certificate, telling her she needed a Mexican voter identification card or a U.S. visa or a Texas identification card.

i. The mother of Brizeida Sanchez is married to a U.S. citizen.

j. The citizen grandparent was not allowed to obtain the birth certificate for B.L.R. because he is not a biological relative.

k. Plaintiff Brizeida Sanchez has not been able to baptize her child and is very concerned about trying to enroll her children in school.

70. Plaintiff Iveth Vega Diaz is a citizen of Mexico. She arrived in Texas as a child nearly twenty years ago.

a. Because she left Mexico as a minor, she has no Mexican driver's license or voter registration card and cannot obtain them.

b. On April 12, 2013, Plaintiff Iveth Vega gave birth to her daughter, Plaintiff N.Y.R., in McAllen, Texas.

c. Plaintiff took her daughter's hospital records and social security card, together with her own *matricula*, to her local Vital Statistics office.

d. Officials there denied the birth certificate for N.Y.R., and told Iveth she needed a passport.

e. Plaintiff then obtained a passport was again turned down at the Vital Statistics office.

f. Plaintiff then wrote to Austin, requesting the birth certificate for N.Y.R.

g. The Austin Office of Vital Statistics denied the birth certificate on December 4, 2014.

71. Plaintiff Juana Gomez is a citizen of Mexico who resided in Texas for sixteen years.

a. Because she left Mexico as a minor, Ms. Gomez has no Mexican electoral card and cannot obtain one.

b. On October 17, 2013 Plaintiff Gomez gave birth to her daughter, Plaintiff E.S., in Edinburg, Texas.

c. Plaintiff Gomez has attempted repeatedly to obtain a birth certificate for her infant daughter E.S., but continues to have her *matricula* rejected.

72. Plaintiff Nancy Hernandez is a citizen of Mexico.

a. She arrived in Texas at the age of fourteen and has lived here for about fifteen years.

b. Because she left Mexico as a minor, she has no Mexican electoral card or driver's license and cannot obtain one.

c. Her husband is also a Mexican citizen residing in Texas, and he has a *matricula* and his birth certificate.

d. Plaintiff Nancy Hernandez gave birth to her first two children in Texas in 2010 and 2012.

e. Both children were given birth certificates upon presentation of their father's *matricula*.

f. On August 19, 2014 Ms. Hernandez gave birth in Texas to her daughter, Plaintiff R.J.H.

g. The local Vita Statistics office refused to issue a birth certificate for Plaintiff R.J.H. even when presented with the hospital records, the *matricula* and other supplementary materials.

h. Plaintiffs have repeatedly returned to seek the birth certificate for R.J.H., but have been told that the law changed in 2014.

i. Plaintiffs are deeply concerned about problems they face for Plaintiff R.J.H.'s baptism and school enrollment.

73. Plaintiff Antonia Rodriguez is a citizen of Mexico.

a. She fled the violence in Mexico and has resided in Texas since 2009.

b. Plaintiff has her Mexican birth certificate, passport, *matricula* and school certificate.

c. Ms. Rodriguez gave birth to her daughter, Plaintiff J.N.A.R., in Texas on August 29, 2014.

d. Shortly after the birth, U.S. Immigration and Customs Enforcement (“ICE”) apprehended and detained both Plaintiffs Rodriguez and her infant daughter, later releasing them on bond.

e. ICE officials have not returned any of Plaintiff Rodriguez’s identification papers.

f. Plaintiff Rodriguez obtained a new *matricula* and passport from the Mexican consulate.

g. The local Vital Statistics office has nevertheless refused to issue a birth certificate for Plaintiff J.N.A.R.

Harms to Plaintiffs:

74. The Defendants’ denial of birth certificates is causing all Plaintiffs problems with school enrollment, travel, medical care and other benefits due to the Plaintiff children on the basis of their U.S. citizenship.
75. By denying the Plaintiff children their birth certificates, Defendants have created a category of second- class citizens, disadvantaged from childhood on with respect to health and educational opportunities.
76. By denying the Plaintiff parents the birth certificates of their infant children, Defendants have greatly encumbered Plaintiffs’ ability to care for and raise their

children, see to their education, assure their medical care, travel with them, and even establish that the child is indeed their own.

77. All Plaintiffs have suffered and will continue to suffer such irreparable harm.

78. Defendants knew and intended that their actions would result in such harm.

State Encroachment on Exclusive Federal Functions:

79. Defendants' conduct has created an undue burden upon the foreign consulates to somehow support and protect their citizens.

80. The burden on the consulates would become untenable should all fifty states issue individualized requirements.

81. Moreover, all matters of immigration, including the benefits to be provided to, or penalties imposed upon, immigrants are preempted by the federal government.

82. Defendants actions interfere with the exclusive federal authority over matters involving immigrant rights and penalties, and diplomatic affairs.

83. Defendants are acting beyond the scope of their authority in denying birth certificates on the basis of the parents' immigration status, as set forth above.

Discrimination:

84. Defendants, in deciding to reject the *matriculas*, knew and intended that a substantial percentage of undocumented persons arriving from Mexico and Central America would be unable to obtain birth certificates for their Texas born children as a result.

85. Likewise the Defendants, in rejecting foreign passports lacking U.S. visas, knew and intended that a substantial percentage of undocumented persons arriving from Mexico and Central America would be unable to obtain birth certificates for their Texas born children as a result.
86. Defendants have acted with the intent to discriminate against the Texas-born children on the basis of their parents' immigration status, depriving the children of the rights, benefits and privileges granted to all other citizen children.
87. Defendants have also acted with the intent to discriminate against undocumented parents on the basis of their immigration status, penalizing them and making their personal/family lives near untenable.
88. Defendants also have acted with the intent to discriminate against all Plaintiffs on the basis of their national origin.
89. Such discriminatory animus and intent is evidenced in many ways, including but not limited to the following:
 - a. Passports, the most formal of international identification documents, are rejected unless accompanied by a current U.S. visa.
 - b. In changing state policy and rejecting the *matriculas*, Defendants made no attempt to provide any other means for undocumented persons to obtain the birth certificates of their Texas born children.
 - c. Such policy changes and the escalating denials of birth certificates occurred as the public debate over growing immigration intensified.

d. As explained by one Vital Statistic officer, the law was changed to keep undocumented persons from gaining legal status in this country.

90. There is no reasonable state justification for denying a U.S. citizen his or her own birth certificate on the basis of their parents' entry into the United States.

91. There is no reasonable state justification for denying citizens of Mexico or Central America a birth certificate for their Texas-born children.

92. Defendants have at all times acted in their official capacities in this case and under color of state law.

FIRST CAUSE OF ACTION: 42 U.S.C. § 1983

FOURTEENTH AMENDMENT

93. Plaintiffs herein incorporate Paragraphs 1- 92 above.

94. At all relevant times, Defendants in this case were acting in their official capacities on behalf of the State of Texas.

95. At all relevant times, Defendants were acting under color of state law.

96. Defendants have a current policy, pattern, and practice of denying birth certificates to the Texas-born, infant children of undocumented immigrants from Mexico and Central America.

97. The Plaintiff children in this case were born in the United States and are United States citizens.

98. The Plaintiff parents have produced valid and official identification in seeking the birth certificates for their Texas-born children. They were nevertheless denied, pursuant to Defendants' intentional policies and practices.
99. All persons born in the United States are entitled to receive their own birth certificates.
100. Defendants are violating the Fourteenth Amendment by abridging the privileges and immunities of the U.S. citizen children.
101. Furthermore, Defendants are giving unequal treatment to the Plaintiff children, as compared with the treatment of all otherwise similarly situated children in the State of Texas.
102. Specifically, the Plaintiff children are being denied birth certificates on the basis of their parents' immigration status; and as a result are being denied numerous health, educational and legal benefits to which they are entitled as well as other basic rights of all citizens.
103. The Plaintiff children are further being discriminated against on the basis of their national origin.
104. Defendants have no reasonable justification for their discriminatory denial of birth certificates to the Plaintiff children.
105. Defendants have taken the actions complained of in this suit with the intention and goal of discriminating against the Plaintiff children and depriving them of their rights.

106. Defendants have at all times acted knowingly, intentionally, and under color of state law.
107. Defendants' conduct violates the Fourteenth Amendment of the United States Constitution.
108. Defendants' conduct is causing and will cause Plaintiffs irreparable harm as set forth above.
109. Plaintiffs seek declaratory and injunctive relief, declaring the Defendants' current practices and/or regulation unconstitutional, and enjoining the current rejection of valid consular *matriculas* and/or passports.
110. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201.

SECOND CAUSE OF ACTION:

EQUAL PROTECTION

111. Plaintiffs herein incorporate Paragraphs 1-92 above.
112. At all relevant times, the Defendants were acting in their official capacities on behalf of the State of Texas.
113. At all relevant times, the Defendants were acting under color of state law.
114. The Defendants have a current policy, pattern, and practice of denying birth certificates to undocumented immigrant parents from Mexico and Central America, for their Texas-born children.

115. As set forth above, the Plaintiff parents in this case have proffered valid and official forms of identification, but have been denied the birth certificates for their U.S. citizen children.
116. All parents have the right to receive a birth certificate for their U.S. born children.
117. The denial of this birth certificate deprives the Plaintiff parents of any official confirmation of their relationship to their own children.
118. Such denial greatly complicates and obstructs the Plaintiffs parents' rights to consent to urgent medical care, to enroll their children in school, and to obtain other educational, health and cultural benefits for which such U.S. citizen children are eligible.
119. Defendants are treating the Plaintiff parents unequally to all otherwise similarly situated parents of U.S. born children.
120. Defendants are discriminating against the Plaintiff parents on the basis of their immigration status and national origin.
121. Defendants have taken the actions complained of in this suit with the intention and goal of discriminating against and penalizing the Plaintiff parents as set forth above.
122. Defendants have no reasonable state justification for their discriminatory denial of birth certificates to Plaintiffs.
123. Defendants have at all times acted knowingly, intentionally and under color of state law.

124. Defendants' conduct violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.
125. Defendants' conduct is causing and will cause the Plaintiff parents irreparable harm.
126. The Plaintiff mothers seek declaratory and injunctive relief, declaring Defendants' current practices and/or regulations unconstitutional, and enjoining the current rejection of valid consular *matriculas* and/or passports.
127. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201.

THIRD CAUSE OF ACTION

SUPREMACY CLAUSE AND PREEMPTION

128. Plaintiffs herein incorporate Paragraphs 1-92 above.
129. Defendants have, during all relevant time periods, acted in their official capacities on behalf of the State of Texas.
130. Defendants have at all times acted under color of state law.
131. The federal government has preempted the field of immigration, especially matters involving the rights, privileges, and penalties applicable to persons present in this country who have not yet attained legal immigration status.
132. Specifically, Congress has promulgated extensive statutory provisions and regulations with regard to such immigrants' documentation, employment, benefits, shelter, penalties, and numerous other matters.

133. Determination of immigration policies, including the treatment, rights and privileges of such immigrants, is the exclusive function of the federal government.
134. Likewise, matters of international diplomacy are solely matters for the federal government.
135. Defendants have no authority to interfere with such matters.
136. Defendants have violated the Supremacy Clause of the United States Constitution by refusing to accept valid consular identification cards and/or valid foreign passports.
137. Plaintiffs have been and will be irreparably harmed by the unconstitutional actions and policies of Defendants.
138. Defendants have at all times acted knowingly and intentionally.
139. Plaintiffs seek declaratory and injunctive relief, declaring Defendants' current practices unconstitutional, and enjoining the current rejection of valid consular *matriculas* and/or passports.
140. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983 and 28 U.S.C. §2201.

FOURTH CAUSE OF ACTION:

PENDANT STATE CLAIM

141. Plaintiffs herein incorporate Paragraphs 1- 92 above.

142. At all relevant times, Defendants were acting in their official capacities on behalf of the State of Texas.
143. At all relevant times, Defendants were acting under color of state law.
144. T.A.C. §181.28 (i)(11) specifies that consular *matriculas* are acceptable forms of identification for purposes of obtaining a birth certificate.
145. In previous times, these documents were properly accepted and the birth certificates were issued.
146. As set forth above, these documents are no longer being accepted by the local registrar officials.
147. Such denials are being made upon the current orders and policies of Defendants.
148. Certainly, such matters are of great public interest and impact, and cause great harm to Plaintiffs.
149. Such substantial changes to published regulations are required to be promulgated in accordance with the Texas State Administrative Procedure Act (“A.P.A.”), including, but not limited to, an opportunity for public comment. V.T.C.A., Government Code, §§2001 et seq.
150. Such changes have been made, and new rules de facto issued, without benefit of any of the A.P.A. required procedures.
151. Such new policies and de facto regulations are accordingly void.

152. Plaintiffs are suffering and will continue to suffer serious and irreparable harm as a result of these violations.
153. Plaintiffs seek declaratory and injunctive relief, declaring Defendants' current practices unconstitutional, and enjoining the current rejection of valid consular *matriculas*.

WHEREFORE PLAINTIFFS PRAY THAT THIS COURT:

1. GRANT Plaintiffs' request for a Declaratory Judgement, declaring that the denial of birth certificates to U.S. born children on the basis of their parents' immigration status is a violation of the Fourteenth Amendment.
2. GRANT Plaintiffs' request for a Declaratory Judgement, declaring the rejection of the Plaintiff mothers' consular *matriculas* and/or passports, and hence the denial of birth certificates for their U.S. born children, a violation of the Equal Protection Clause.
3. GRANT Plaintiffs' request for a Declaratory Judgement, declaring that the denial of birth certificates to undocumented women for their U.S. born children is preempted by the federal government, and that Defendants' current policies violate the Supremacy Clause.
4. ISSUE an injunction requiring Defendants to once again accept the consular *matriculas* and/or passports of women seeking birth certificates for their U.S. born children; or in the alternative, to provide the Plaintiffs other reasonable access to such birth certificates.

5. ORDER Defendants to pay attorneys' fees, costs, interest, and all other such matters as this Court deems just and reasonable.

Respectfully Submitted,

/S/Jennifer K. Harbury

Jennifer K. Harbury
Attorney in Charge⁴
Texas Bar No. 08946500
S.D. No.26569
TEXAS RIOGRANDE LEGAL AID, INC.
300 S. Texas Blvd.
Weslaco, Texas 78596
Tel. 956-447-4800
Fax: 956-968-8823

/S/ Marinda Van Dalen

Marinda Van Dalen
Attorney at Law
Texas Bar No. 00789698
S.D. No. 17577
TEXAS RIOGRANDE LEGAL AID, INC.
531 E. St. Francis St.
Brownsville , TX 78520
Tel. 956-982-5540
Fax: 956-541-1410

/S/ James C. Harrington

James C. Harrington
Attorney at Law
State Bar No. 09048500
TEXAS CIVIL RIGHTS PROJECT
1405 Montopolis Drive
Austin, Texas 78741-3438

⁴ Texas RioGrande Legal Aid, Inc. represents all Plaintiff children in this case. All adult Plaintiffs are represented by the Texas Civil Rights Project.

/S/ Efrén C. Olivares

Efrén C. Olivares
Attorney at Law
Texas Bar No. 24065844
Southern District of Texas No. 1015826

SOUTH TEXAS CIVIL RIGHTS PROJECT
1017 W. Hackberry Ave.
Alamo, Texas 78516
Tel 956-787-8171
Fax: 956-787-6348