

**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. §

C.A. _____

Plaintiffs §

v. §
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 §

COMPLAINT

I. Introduction:

1. The adult Plaintiffs in this case are citizens of Mexico now residing in Texas.

They bring suit on behalf of themselves and as next friend for their 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 children. 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, as discussed herein.

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, L.M., J.M., and Y.M.
11. 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.
12. Defendant Kirk Coles is the Commissioner of the Texas Department of State Health Services. He resides in Travis County, Texas. He is sued in his official capacity.
13. 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. Introduction:

14. 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.
15. 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.

16. 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.
17. To qualify for receipt of a certified copy of a birth certificate, a person must produce adequate 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).
18. The acceptable forms of identification are divided into two categories, primary and secondary.
19. 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).
20. 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).
21. These documents will only be available, for the most part, to persons who can establish their legal immigration status, whether temporary or permanent, in this country.
22. Although passports are internationally recognized government identification documents of the highest formality, §181.28 (i)(11)(D)(ix) accepts foreign passports only if they bear a current U.S. visa.

23. §181.28 (i)(11) (xiv and xv) list the only documents available to persons other than those who can prove their legal status within the United States. This section permits acceptance of Mexican Voter Registration cards and/or a foreign photo identification card.
24. For the last many years, the foreign photo identification has been satisfied by producing official photo identification cards, known as “*matriculas*”, issued by the person’s local consulate.
25. Should a person have but one of the secondary documents, they may still satisfy the requirements by producing two forms of supporting identification.
26. For the past many months, Defendants have been refusing to accept any of the secondary documents set forth in §181.28 (i)(11) (xiv and xv).
27. As a result, scores of women from Mexico and Central America have been denied birth certificates for their Texas born children.
28. Counsel for these children has also been denied birth certificates for their infant client.
29. This leaves the child with no birth certificate, and both mother and child with no official proof of the parent-child relationship.
30. No amendment to T.A.C. §181.28(11) foreclosing official consular identification and other matters has been promulgated or even proposed.
31. In rejecting the *matricula* and other such documents, the local registrars are acting upon the instructions, policies, and orders of Defendants.

32. This situation is causing and will cause grave and irreparable harm to the parents and children.
33. Defendants and their attorneys have been notified of this growing problem, but have failed and refused to correct the situation.
34. Instead, Defendants have consulted with the foreign consulates, explaining the state requirements and reasons for rejecting the *matricula*.
35. The burden on the consulates would become untenable should all fifty states issue individualized requirements.
36. Such actions interfere with the exclusive federal authority over matters involving diplomatic affairs.
37. Matters of immigration, and the benefits to be provided to immigrants, are preempted by the federal government.
38. Defendants' conduct fails to serve any reasonable state purpose.
39. Defendants' conduct violates the equal protection rights of both the Plaintiff mothers and children.
40. 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.
41. Defendants have at all times acted in their official capacities in this case.

42. As set forth below, Defendants are engaged in actions beyond the scope of their authority and in violation of the U.S. Constitution.

B. Plaintiffs:

43. Plaintiff Maria Isabel Perales Serna was born and raised in Mexico.

44. As a young adult, Plaintiff Perales fled to Texas to escape from an abusive husband.

45. Ms. Perales gave birth in Texas to a daughter, “Y”, now fourteen years old.

46. To obtain the birth certificate for this U.S. citizen child, Ms. Perales simply presented her *matricula* from the Mexican consulate.

47. The *matricula* is an official photo identification card provided by the Mexican consulate to Mexican citizens residing in the United States. Such persons must provide proof of their Mexican citizenship and identity to the consulate to obtain this identification card.

48. The Texas Vital Statistics office accepted the *matricula* and issued the birth certificate to Ms. Perales, pursuant to Texas Administrative Code §181.28(11)(D)(xv).

49. On November 24, 2014, Plaintiff Perales gave birth to Plaintiff K.Z.P.S. in a McAllen, Texas hospital.

50. Ms. Perales took her hospital records, *matricula*, and Mexican passport to the Vital Statistics office in McAllen, Texas.

51. There, she was informed that the *matricula* would no longer be accepted by the State of Texas. The passport was also rejected.
52. Plaintiff Perales had fled Mexico before she had obtained a voter card, and can only obtain one now by returning to Mexico, at great risk to her own safety.
53. Birth certificates are the only official proof of the parent-child relationship.
54. As a result of Defendants' wrongful denial of the birth certificates, there is no official proof of the parent-child relationship between Ms. Perales and K.Z.P.S.
55. 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.
56. 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.
57. Ms. Barragan gave birth to L.A.B. in Texas on November 28, 2010. The father has refused to recognize his child.
58. This birth certificate was stolen.
59. In April 2015, she brought the hospital records, her son's social security, her *matricula*, and her expired Mexican voter identification card.

60. 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.).
61. Plaintiff Barragan needs to enroll her child in school, but school officials have told her she must present a certified copy of the birth certificate. They will not accept the other papers.
62. Plaintiff Maria Del Rosario Teran-Urriegas is a citizen of Mexico who has lived in the United States since 1998.
63. She and her husband have 2 children.
64. The first child is 17 months old, and Ms. Teran had no trouble getting a birth certificate for him.
65. The second child, Plaintiff S.Z., was born December 18, 2014.
66. Plaintiff Teran has her *matricula*, passport, hospital papers, and the child's social security card, but no Mexican voter card.
67. In February 2015, Plaintiff Teran went to the Registrar's office to get the birth certificate and spoke to a man there. He would not accept the *matricula* and told her to get a passport.
68. Plaintiff Teran obtained the passport and returned, only to be rejected because she did not have a valid U.S. visa in the passport.

69. 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.
70. Plaintiff Nancy Garcia Castro is a citizen of Mexico who has lived in the United States for many years.
71. 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.
72. In early May 2015, Plaintiff Garcia sought birth certificates for her three U.S. citizen children at the McAllen, Texas Vital Statistics office.
73. The registrar refused to accept Plaintiff Garcia's valid *matricula*.
74. This Defendants' denial of birth certificates is causing all of the Plaintiff mothers problems with school enrollment, travel, medical assistance and other benefits for their U.S. citizen children.
75. Numerous other women from Central America are being denied birth certificates for their U.S. citizen infants at this time as well.
- C. *Discrimination and Harm:*
76. The current Texas Vital Statistics Unit's practice and policy of denying birth certificates to U.S. citizen children is causing and will continue to cause serious harm to Plaintiffs as set forth above.
77. A birth certificate is the primary official confirmation of the parent-child relationship as well as of the citizenship of the child born in the U.S.

78. Denial of the birth certificate will greatly complicate and/or obstruct the Plaintiff children's right to enroll in schools and other educational and cultural programs, to obtain a passport and travel, and even to receive medical care and assistance.
79. The denial of the birth certificates also interferes with the Plaintiff mothers' ability to properly care for their children, and hence with the parent-child relationship.
80. Should any of the Plaintiff mothers be deported to Mexico in the future, their U.S. born children will later face complications in establishing their citizenship.
81. Every U.S. citizen has a right to receive his or her birth certificate.
82. A minor has no way to obtain his or her own birth certificate other than through his or her parents.
83. The State of Texas is discriminating against U.S. citizen children on the basis of their national origin and their parents' immigration status.
84. There is no 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.
85. The State of Texas is also discriminating against the Plaintiff mothers in this case on the basis of their national origin and immigration status.
86. There is no justification for denying citizens of Mexico or Central America a birth certificate for their Texas born children.
87. This Texas practice and policy interferes with the exclusive federal function of regulating immigration.

88. The State of Texas has also engaged in communications with the Mexican and Central American consulates, suggesting changes in the official *matricula* system.
89. Such requests and requirements, if made by all fifty states, would create a severe burden on the foreign consulates and grossly interfere with federal diplomatic relationships.
90. The determination of the rights and privileges of undocumented immigrants and their families has long been preempted by the federal government.
91. The de facto changes in the regulations accepting the consular *matriculas* and/or Mexican Voter Registration cards were never properly promulgated.
92. The requirement that a Mexican passport bear a current U.S. visa has no rational basis and furthers no state concerns.
93. Plaintiffs are facing imminent and irreparable harm.

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

FOURTEENTH AMENDMENT

94. Plaintiffs herein incorporate Paragraphs 1- 93 above.
95. At all relevant times, Defendants in this case were acting in their official capacities on behalf of the State of Texas.
96. At all relevant times, Defendants were acting under color of state law.
97. 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.

98. The Plaintiff children in this case were born in the United States and are United States citizens.
99. The Plaintiff mothers have produced valid and official identification in seeking the birth certificates for their Texas born children. They were nevertheless denied, pursuant to Defendants' policies and practices.
100. All persons born in the United States are entitled to receive official copies of their own birth certificates.
101. Defendants are violating the Fourteenth Amendment by abridging the privileges and immunities of the Texas born children.
102. 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.
103. Specifically, the Plaintiff children are being denied birth certificates on the basis of their parents' immigration status.
104. The Plaintiff children are further being discriminated against on the basis of their national origin.
105. Defendants have no valid justification for their discriminatory denial of birth certificates to the Plaintiff children.

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 1-93 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 women from Mexico and Central America, who have given birth to a child in Texas.

115. As set forth above, the Plaintiff mothers 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 mothers of any official confirmation of their relationship to their own children.
118. Such denial greatly complicates and obstructs the Plaintiffs mothers' 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 mothers unequally to all otherwise similarly situated mothers of U.S. born children.
120. Defendants are discriminating against the Plaintiff mothers on the basis of their immigration status and national origin.
121. Defendants have no adequate justification for their discriminatory denial of birth certificates to Plaintiffs.
122. Defendants have at all times acted knowingly, intentionally and under color of state law.
123. Defendants' conduct violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

124. Defendants' conduct is causing and will cause the Plaintiff mothers irreparable harm.
125. 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.
126. 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

127. Plaintiffs herein incorporate Paragraphs 1-93 above.
128. Defendants have during all relevant time periods acted in their official capacities on behalf of the State of Texas.
129. Defendants have at all times acted under color of state law.
130. The federal government has preempted the field of immigration, especially matters involving the rights and privileges due to persons present in this country who have not yet attained legal immigration status.
131. Specifically, Congress has promulgated extensive statutory provisions and regulations with regard to such immigrants' documentation, employment, benefits, shelter, and numerous other matters.

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

FOURTH CAUSE OF ACTION:

PENDANT STATE CLAIM

140. Plaintiffs herein incorporate Paragraphs 1- 93 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.

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 Charge¹
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

/S/ Efrén C. Olivares
Attorney at Law

¹ Texas RioGrande Legal Aid, Inc. represents all Plaintiff children in this case. All adult Plaintiffs are Represented by the Texas Civil Rights Project.

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