

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

Laura Nancy CASTRO,	)	
Yuliana Trinidad CASTRO,	)	
Trinidad Muraira de CASTRO,	)	
Rodrigo SAMPAYO,	)	
Jessica GARCIA,	)	
Ana ALANIS,	)	
Luis MONTEMAYOR,	)	Civil Action No. B-09-208
Ana Luisa GUERRERO,	)	
Ervey Lorenzo SANTOS	)	
Alicia RUIZ,	)	
Maria REYES,	)	Honorable Hilda G. Tagle
Jenifer Itzel GONZALEZ,	)	
	)	
PLAINTIFFS, In Their Own	)	
Name and On Behalf of All Others Similarly Situated,	)	
	)	
v.	)	
	)	
Michael T. FREEMAN, Port Director,	)	
U.S. Customs and Border Protection, and	)	
Hillary CLINTON, U.S. Secretary of State,	)	
Janet NAPOLITANO, Secretary, Department of	)	
Homeland Security,	)	
	)	
DEFENDANTS.	)	
_____	)	

**FOURTH AMENDED CLASS ACTION COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Laura Nancy Castro (“Laura”), Yuliana Trinidad Castro (“Yuliana”), in their own names and on behalf of their mother, Trinidad Muraira de Castro (“Trinidad”), Rodrigo Sampayo (“Sampayo”), Jessica Garcia, (“Garcia”), her mother, Ana Alanis (“Alanis), Luis Montemayor, (“Montemayor”), Ana Luis Guerrero, (“Guerrero”), Ervey Lorenzo Santos, (“Santos”), Alicia

Ruiz (“Ruiz”), Maria Reyes (“Reyes”), and Jenifer Itzel Gonzalez, (“Gonzalez”), through undersigned counsel, file their Fourth Amended Class Action Complaint for Declaratory and Injunctive relief.

## I. INTRODUCTION

Justice Joseph Story long ago wrote: “Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country while the parents are resident there under the protection of the government and owing a temporary allegiance thereto are subjects by birth.” *Inglis v. Trustees of Sailor’s Snug Harbor*, 28 U.S. 99, 164 (1830). Thirty-eight years later, Congress adopted the Fourteenth Amendment to the Constitution, which, pursuant to the Citizenship Clause, automatically confers U.S. citizenship on persons born within the United States. The Citizenship Clause reads: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

This case is about protecting the right to birthright citizenship, to ensure that no person born within the United States is unlawfully deprived of the privileges, benefits and protections that accompany this sacred Constitutional right. Through the instant class action complaint, Plaintiffs challenge the Department of State’s (“DOS”) inappropriate application of the standard of proof in adjudicating U.S. citizenship claims and the agency’s failure to afford U.S. citizenship claimants any meaningful opportunity to challenge its decisions to deny a U.S. passport application or revoke an existing passport. Plaintiffs further challenge the Department of Homeland Security’s (“DHS”) unlawful tactics at ports of entry in encounters whereby DHS officers subject U.S. citizenship claimants, and, in some cases, their parents, to coercion, threats,

duress, prolonged interrogations, or similar harsh tactics based on DHS' disbelief that the individual, or individual's child, was born in the United States.

## **II. JURISDICTION AND VENUE**

1. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1651 (Writs), as a civil action arising under the Constitution and laws of the United States; 5 U.S.C. § 701 *et seq.*, as an action to compel agency action unlawfully withheld or unreasonably delayed; and 28 U.S.C. § 1361, as an action to compel officers or employees of the United States to perform a duty owed to Plaintiffs. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1), (2), (4) because Defendants are head officers of U.S agencies and a Port Director of a subdivision of a U.S. agency; Defendants have a residence in this district; because "a substantial part of the events or omissions giving rise to the claim[s] occurred" in the jurisdiction of this district; because most of the Plaintiffs reside in this district; and because no real property is involved.

## **III. THE PARTIES**

### **A. PLAINTIFFS**

3. Laura and Yuliana Castro are citizens of the United States. They reside in Cameron County, Texas.

4. Sampayo, Garcia, Montemayor, Guerrero, Santos, Ruiz, Gonzalez, and Reyes have bona fide claims to being natives and citizens of the United States based on birth within the country, and specifically within the State of Texas. Sampayo, Garcia, Montemayor, Guerrero, Santos, Ruiz, and Gonzalez were born in Cameron County, Texas. Reyes was born in Creedmore,

Texas, and has a residence in Brownsville, Texas.

5. Trinidad Castro and Ana Alanis are Mexican nationals. Trinidad Castro is the mother of Laura and Yuliana Castro. Ana Alanis is the mother of Jessica Garcia. Trinidad Castro and Ana Alanis reside in Matamoros, Mexico.

## **B. DEFENDANTS**

6. Michael T. Freeman is an employee of U.S. Customs and Border Enforcement (“CBP”), a subdivision of the Department of Homeland Security. His title is Port Director. He is responsible for CBP operations at the ports of entry in Brownsville, Texas.

7. Hillary Clinton is the duly appointed and confirmed Secretary of State of the United States.

8. Janet Napolitano is the duly appointed and confirmed Secretary of the Department of Homeland Security.

9. All Defendants are sued in their official capacities.

## **IV. LEGAL BACKGROUND AND GENERAL ALLEGATIONS**

### **A. U.S. PASSPORT AUTHORITY**

10. Only the Secretary of State or her designee is authorized to grant, issue and verify U.S. passports. 22 U.S.C. § 211a.

11. The regulations governing the granting, issuing and verifying passports are located at 22 C.F.R. Part 51.

12. The regulations at 22 C.F.R. Part 51, Subparts C, D and E, govern the adjudication of passport applications.

13. The Secretary of State may revoke a passport in accordance with 8 U.S.C. § 1504 (passport

illegally, fraudulent or erroneously obtained); 42 U.S.C. § 652(k) (non-payment of child support); 22 U.S.C. § 2714 (certain drug traffickers); 22 U.S.C. § 2671(d)(3) (default on repatriation loan); and 22 U.S.C. § 212a (persons convicted of sex tourism). The regulations at 22 C.F.R. Parts E and F govern the revocation of passports.

**B. ARBITRARY APPLICATION OF THE PREPONDERANCE OF THE EVIDENCE TEST FOR ESTABLISHING U.S. CITIZENSHIP**

**1. The Preponderance of the Evidence Standard**

14. A U.S. citizenship claimant bears the burden of establishing that he or she is a national of the United States. 22 C.F.R. § 51.40.

15. The standard of proof under 22 C.F.R. § 51.40 is preponderance of the evidence, *i.e.*, that it is “more likely than not” that the person is a U.S. citizen: (not whether the evidence “sufficiently establishes” U.S. citizenship, or citizenship has been shown to DOS’ “satisfaction” or whether the agency is of the “opinion” that the person is not U.S. citizens). *See Patel v. Rice*, 403 F. Supp. 2d 560, 562 (N.D. Tex. 2005) (“The plaintiff [in an 8 U.S.C. § 1503 case] bears the burden of establishing, by a preponderance of the evidence, that he is a United States national.” (citing *Reyes v. Neelly*, 264 F. 2d 673, 674-75 (5th Cir. 1959)); 7 *Foreign Affairs Manual* 1381 (passport applicant must prove citizenship by preponderance of the evidence); and 8 C.F.R. § 341.2(c) (burden of proof for issuance of a certificate of citizenship is preponderance of the evidence).

**2. Pre-September 7, 2003:  
Application of the Preponderance of the Evidence Standard**

16. Although previously improper under Mexican law, Mexican nationals who had children

born in the United States frequently registered their births in Mexico, particularly if they intended to raise the child in Mexico. More recently, Mexican law changed to now allow the children of Mexican nationals born abroad to have Mexican citizenship. Although less common since the change in law, the practice of dual registration persists.

17. In the past, such dual registration rarely if ever caused problems, provided the child was first registered in the United States, and/or had a baptismal certificate showing birth in the United States that predated the Mexican birth certificate.

18. In determining citizenship, the former Immigration and Nationality Service (“INS”) (now part of the Department of Homeland Security) and the Executive Office for Immigration Review (part of the Department of Justice) previously sought out and relied upon the *oldest* “public” document, including both birth and baptismal certificates, as the most reliable evidence of the place and date of birth.

19. This practice was reflected in pre-printed language in INS requests for evidence where birth facts were at issue. *See, e.g., In re Pagan*, 22 I&N Dec. 547, 548 (BIA 1999); *In re Bueno-Almonte*, 21 I&N Dec. 1099, 1030 (BIA 1997).

20. In fact, baptismal certificates were previously considered by the Board of Immigration Appeals (“BIA”) to carry almost the same degree of evidentiary weight as birth certificates. *See In re Matter of S.S. Florida*, 3 I&N Dec. 111, 116 (BIA 1948).

### **3. Post-September 7, 2003: Application of the Preponderance of the Evidence Standard**

21. The preponderance of the evidence standard is applied arbitrarily. Although the U.S. claimant continues to bear the burden of establishing citizenship by a preponderance of the

evidence, the law surrounding this burden has not changed, and, at some point after September 7, 2003, DOS stopped relying on the *oldest* “public” document in adjudicating citizenship claims, unless the oldest public document shows Mexican nationality. Otherwise, they consider that even a much later filed Mexican birth certificate effectively “cancels” a timely filed U.S. birth certificate, showing midwife birth. DOS also considers that a delayed Texas birth certificate constitutes evidence both of birth in Texas, and evidence that the bearer was *not* born in Texas.<sup>1</sup>

22. Now, in cases of dual birth registration cases, and regardless of when the Mexican registration occurred, DOS ignores affidavits and other evidence explaining the existence of the Mexican registration. If the Mexican birth registration occurred prior to the U.S. birth registration, DOS generally takes it as conclusive of birth in Mexico, even ignoring evidence created before the Mexican registration, such as baptismal certificates. However, the converse is not true: in most such cases, if the U.S. registration occurred first, DOS still requires more than one corroborating “public” document, in the absence of which, the passport application is almost always denied.

23. Now, in cases where DOS questions a claim of U.S. citizenship, they make arbitrary requests for documents, such as, for example, in the case of an applicant who was born in 1934, where DOS requested evidence of his mother’s prenatal care, and a 1935 census record. They also now request personal information which bears no reasonable relationship to the citizenship claim, such as the addresses, both in the U.S. and abroad, of every place where the applicant has

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<sup>1</sup> See, e.g., Plaintiffs’ Exhibit EE, [161:3-4], where a passport application was denied, even though the applicant has a court ordered delayed birth certificate, and there is no Mexican birth certificate. There was no adverse evidence, unless the delayed birth certificate is construed as adverse evidence. By contrast, another application was denied, where the applicant alleged birth by a suspicious midwife, on the sole grounds that there was no Mexican birth certificate, [162:5].

resided and every school s/he ever attended, and the names, addresses, and phone numbers of every employer and former employer.

#### **4. DOS “Decisions”**

24. In some cases, DOS articulates its finding as an “opinion.”<sup>2</sup>

25. In others, DOS states that the applicable standard has not been met to their “satisfaction.”

26. In many cases, DOS simply asserts that the burden has not been met, without analyzing the evidence, or explaining why the evidence fails to meet that standard.

27. At times, DOS even denies passport applications where there is *no* evidence of foreign birth, documentary or testimonial, based apparently on their claim that a delayed birth certificate, or one showing delivery by a “suspicious” midwife, constitutes *evidence* of foreign birth.

### **C. LACK OF DUE PROCESS PROTECTIONS IN THE DENIAL AND REVOCATION OF U.S. PASSPORTS**

#### **1. Lack of Due Process Hearing When Passport Denied or Revoked Based on Non-nationality**

28. Where citizenship is questioned, the procedures by which applications for United States passports are adjudicated, or previously issued passports are revoked, do not afford Due Process. DOS often makes arbitrary and capricious requests for evidence, and personal information. There is no requirement that a denial or revocation reflect meaningful consideration of all the evidence, or fair application of the “preponderance of the evidence” standard, and there are no administrative procedures affording Due Process protections by which the person can contest the denial of an application for a U.S. passport, or revocation of a previously issued passport.

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<sup>2</sup> See, e.g., the denial of the passport application on behalf of the minor I.H. by a form letter stating that it is the “opinion” of DOS that she “[n]ever had claim to U.S. citizenship,” [101:3].



29. Specifically, the regulations at 22 C.F.R. § 51.70(a) provides:

(a) A person whose passport has been denied or revoked under 22 CFR 51.60(b)(1) through (10), 51.60(c), 51.60(d), 51.61(b), 51.62(a)(1) where the basis for the adverse action would entitle the applicant to a hearing under this section, or § 51.62(a)(2) may request a hearing to the Department to review the basis for the denial or revocation within 60 days of receipt of the notice of the denial or revocation.

(b) The provisions of §§ 51.70 through 51.74 do not apply to any action of the Department taken on an individual basis in denying, restricting, revoking, or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport for reasons excluded from § 51.70(a) including:

**(1) Non-nationality;**

(2) Refusal under the provisions of 51.60(a);

(3) Refusal to grant a discretionary exception under emergency or humanitarian relief provisions of § 51.61(c);

(4) Refusal to grant a discretionary exception from geographical limitations of general applicability.

Emphasis added.

30. Thus, “non-nationality” is one of the few grounds for denial or revocation of a U.S. passport which does *not* entitle one to a hearing.

## 2. Lack of Adequate Procedures When Passport Denied or Revoked Based on Fraud Relating to Place of Birth

31. Under 22 C.F.R. § 51.62(b), DOS may revoke a U.S. passport on the grounds that DOS has “determined” that the holder is not a U.S. national, although neither the standard of proof, nor on whom the burden rests, is specified therein. In such cases, the prior passport holder is not entitled to any due process protections. 22 C.F.R. § 51.70(b)(1).

32. Even where the regulations provide for a “hearing,” (*e.g.*, where a passport is revoked for “fraud,” under 22 C.F.R. § 51.62(a)(2)), current procedures afford no Due Process safeguards. *See*, Doc. [151]. 22 C.F.R. § 51.71 through § 51.74.

33. The hearing officer is not an Administrative Law Judge, but an employee of the Department of State. There are no publicized hearing procedures, and DOS refuses to allow pre-hearing conferences to be recorded. There is no body of applicable law, or redacted decisions from other cases. There is no procedure by which legal questions, (e.g., the standard and burden of proof), can be raised and resolved, or proposed evidence can be challenged, prior to the hearing. If the applicant is within the United States, all hearings are conducted in Washington, D.C., completely at the expense of the citizenship claimant. There is no assurance that witnesses residing abroad can be paroled in to testify, and if they chose to testify by tele-video, they must pay all costs. There is no assurance that adverse witnesses will be required to testify in person, or even be subjected to cross-examination. *See*, Doc. [151]. If the applicant is outside the United States, the hearing may be conducted at a U.S. embassy or consulate abroad. The lack of any Due Process safeguards reduces such a hearing, where available, to an extremely expensive sham.

#### **D. UNLAWFUL PROCEDURES AND TACTICS BY BORDER OFFICIALS**

34. The right of a U.S. citizen to engage in international travel is protected by the Due Process clause. *See, Regan v. Wald*, 468 U.S. 222, 240-42 (1984); *Atem v. Ashcroft*, 312 F. Supp. 2d 792 (E.D.Va. 2004).

35. On June 1, 2009, the Western Hemisphere Travel Initiative (“WHTI”), Pub. L. No. 110–53, title VII, § 724 (Aug. 3, 2007) was fully implemented. With only limited exceptions, WHTI made it illegal for U.S. citizens to “depart from or enter the United States” without a valid U.S. passport. 8 U.S.C. § 1185(b); 22 C.F.R. § 53.1(a). ).

36. Under 22 C.F.R. § 53.2(h) and (i), the Department of State may waive the requirement

that a U.S. citizen must have a passport in order to enter the U.S., in the case of an “unforeseen emergency,” or for “humanitarian or national interest reasons.”

37. Under 22 C.F.R. § 53.3, CBP is required to report any citizen who seeks to enter without a U.S. passport to DOS, “so that the Department of State may apply the waiver provisions of § 53.2(h) and § 53.2(i) to such citizen, if appropriate.”

38. Instead, CBP adopted and publicized a policy that passport applicants could travel to and from Mexico, by presenting to CBP their Texas birth certificates, identification documents, and receipts for passport applications, when they seek re-entry. The policy does not inform such persons that, notwithstanding that they present the required documents, they may be detained on their return, subjected to very harsh treatment, and denied re-entry, without access to a hearing.

39. When encountered at a port of entry, and notwithstanding *Hernandez v. Cremer*, 913 F.2d 230 (5th Cir. 1990), CBP considers that even applicants for entry who have facially valid documents showing U.S. citizenship, including a U.S. passport, have no Constitutional rights unless and until criminal charges are contemplated.

40. If CBP officers are not convinced of a claim to U.S. citizenship, such officers often confiscate the person’s documents, “convince” them to withdraw their applications for entry, by use of threats, prolonged interrogation, and other harsh tactics, and force them to leave the United States, where they are left with no apparent means of asserting their citizenship claims.

41. CBP officers have used measures prohibited by 42 U.S.C. § 2000dd-0 in attempting to coerce U.S. citizen claimants and/or their parents to “confess” that they were falsely registered as born in the U.S., without regard to the veracity of such confessions, if obtained.

42. Defendants fail to properly train CBP and DOS officers on the fact that under Fifth

Circuit precedent, persons seeking entry as U.S. citizens with facially valid documents showing U.S. citizenship have constitutional rights, or on the permissible limits of interrogation of U.S. citizenship claimants, and/or their parents.

43. On information and belief, it is alleged that agents of Defendants have acted similarly in scores of cases. Plaintiffs' experiences reflect and are the product of policies, patterns and practices adopted and overseen by Defendants.

## **V. FACTS**

### **A. THE CASTRO FAMILY**

44. Laura Nancy Castro and Yuliana Trinidad Castro are natives and citizens of the United States, born in Brownsville, Texas in 1980 and 1984, respectively. Their births were attended by midwife Trinidad Saldivar, who, shortly thereafter, timely registered them in Brownsville, Texas.<sup>3</sup> Their mother, Trinidad Muraira de Castro, is a Mexican citizen, who at all relevant times had documents with which to lawfully enter the United States. Docs [110,112].

45. Shortly after the births of Laura and Yuliana, their mother, Trinidad, returned with them to her home in Matamoros, Mexico, where she has resided at all pertinent times. *Id.*

46. When Laura was about four years old, Trinidad registered her birth in Mexico, as born in Matamoros, so that she could attend school there. The same day, and for the same reason, Trinidad also registered the birth of Yuliana, (who was then four and a half months old), in Matamoros, Mexico, also showing birth in Matamoros. *Id.*

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<sup>3</sup> Trinidad Saldivar, the midwife who delivered Laura and Yuliana, is on Defendants' list of suspicious midwives. CBP Officer Cabrera represented to Trinidad Castro that Ms. Saldivar had spent five years in prison for filing false birth certificates, but a PACER search of her name turned up no entries. Ms. Saldivar has received anonymous threats of unspecified harm if she fails to "admit" that she falsely registered births in the United States.

47. Laura Castro applied for, and on January 30, 2008, received, a U.S. passport. Yuliana Castro applied for a U.S. passport in January, 2009. DOS requested additional evidence of her birth in Texas, to which Yuliana responded on or about July 30, 2009.

48. On August 24, 2009, at about 9:40 a.m., Laura, Yuliana, and Trinidad Castro, with Yuliana's infant daughter, C.A.G., applied for admission/entry at the Old Bridge in Brownsville, Texas. Laura presented her U.S. passport. Yuliana presented her birth certificate, Texas ID, the receipt for her application for a U.S. passport, and the Texas birth certificate of C.A.G. Trinidad presented her laser visa. The agent on duty, CBP Officer Eliseo Cabrera, noted that Yuliana's birth certificate reflected a midwife birth, and took them to secondary inspection, where he detained, interrogated, threatened, and otherwise treated all four Plaintiffs inhumanely for about ten hours. *Id.*

49. At the time of the events in question, all four were in a delicate medical state. Trinidad suffers from high blood pressure. Laura was in the early months of pregnancy, and was experiencing symptoms demonstrating that it was a high-risk pregnancy. Yuliana was recovering from complications of childbirth. C.A.G., who was only a few weeks old, was deprived of the care and environmental conditions any newborn requires, and cried uncontrollably. *Id.*

50. Based on threats, fear, hunger, exhaustion, and her inability to continue listening to the cries of her infant granddaughter, C.A.G., complicated by her own the delicate medical condition, and awareness of the medical vulnerability of the others, Trinidad succumbed to the efforts of Officer Cabrera to extract a false "confession" from her, to the effect that Yuliana and Laura had in fact been born in Mexico, and signed a document that he had prepared. *Id.*

51. The Castros' family was so concerned by their detention that they sent an attorney to the port of entry, but he was not allowed to represent, or even communicate with Plaintiffs. The family also called the police, who came to the bridge, and made a report. *Id.*

52. After forcing Trinidad Castro to sign a false "confession," Defendants confiscated the documents of Laura, Yuliana, and Trinidad, and returned them to Mexico, without giving them any opportunity to contest his actions. Laura and Yuliana were treated as having "withdrawn" their applications for entry. Trinidad was found to be inadmissible for fraud, under 8 U.S.C. § 1182(a)(6) (C)(i), and subjected to "expedited removal." *Id.*<sup>4</sup>

53. Other than by requesting additional documentation in support of their passport applications, at no time prior to August 24, 2009, did any Defendant attempt to inform anyone in the Castro family that there were questions as to whether Laura and Yuliana had in fact been born in Texas. Prior to that date, all three: Laura, Yuliana, and their mother, Trinidad Castro, had crossed into the U.S. frequently, without problems or complications.

54. When the instant action was filed, Laura, Yuliana and Trinidad Castro were at the Old Brownsville Bridge. At the time of filing, they were therefore within the United States, in Brownsville, Texas, within the jurisdiction of this Court.

55. On April 5, 2010, Laura's U.S. passport was revoked, allegedly for fraud, under 22

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<sup>4</sup> By treating them as having "withdrawn" applications for admission, rather than putting them in proceedings, or issuing orders of expedited removal, Defendants Napolitano and Freeman deprived Laura and Yuliana Castro of all statutory means of asserting U.S. citizenship. Similarly, by forcing Trinidad Castro to sign a "confession" of fraud, Defendants Napolitano and Freeman deprived her of the ability to have a hearing before the Immigration Judge with respect to the bona fides of her visa, and her request for admission, under 8 U.S.C. § 1229a, or to contest the cancellation of her laser visa. *See*, 8 U.S.C. § 1252(e)(1). Therefore, Trinidad Castro challenges the means by which the false confession was extracted, and seeks a declaration that it is, indeed, false, and that she committed no fraud.

C.F.R. § 51.62(a)(2) [125]. She requested a hearing, and expended substantial energy and funds into preparing to go to Washington, D.C., [151], but the hearing was canceled at the last minute, based on the evidence developed before this Court, and her passport was returned to her, [96].

56. Based on the same evidence, Yuliana also received a U.S. passport. *Id.* Removal proceedings against Yuliana were terminated, but notwithstanding DOS' decision to give Yuliana a passport, Defendant DHS reserved the right to re-institute proceedings against her, and the Immigration Judge held that the citizenship of persons such as the Castro sisters can only be determined following an order of expedited removal, which would, in most cases, involve lengthy administrative detention, with no possibility of parole, [99].

57. For weeks after receiving her passport, Laura continued to have problems when she crossed the border with her passport. This causes her to be fearful and suffer emotional distress each time she crosses. Both Laura and Yuliana fear that they could experience similar problems in the future, and only be able to assert their U.S. citizenship by being physically detained. This adversely affects both of them emotionally and physically.

58. The finding that Trinidad Muraira de Castro committed fraud, derived from the false "confession" that Laura and Yuliana were actually born in Mexico, permanently bars her from the United States. 8 U.S.C. § 1182(a)(6)(C)(i). Since she is not the spouse, son, or daughter or a U.S. citizen or lawful permanent resident, she is ineligible for a waiver under 8 U.S.C. § 1182(i). She has close relatives born in Texas, and will be deprived of the opportunity to participate fully in the lives of her U.S. citizen children and grandchildren, or to immigrate to the United States.

59. By order dated April 26, 2011, [158], this Court dismissed claims raised by Laura and

Yuliana under 8 U.S.C. § 1503, concluding that they were mooted by their possession of U.S. passports. However, Laura and Yuliana remain Plaintiffs in this action as representatives of the proposed class of individuals who were subject to mistreatment by agents of Defendant Napolitano, and with their mother, in seeking a declaratory judgment that she did not commit fraud in registering them as born in Texas. *See* § IV (Class Allegations), *infra*.

60. By that same order, the Court dismissed the habeas claim raised by Trinidad Castro based on the fact a visa petition had not been filed on her behalf. However, like her daughters, Trinidad Castro remains a Plaintiff in the instant amended action as a representative of the proposed class of individuals who were subject to mistreatment by agents of Defendant Napolitano. *See* § IV (Class Allegations), and in seeking a declaratory judgment that she did not commit fraud in registering them as born in Texas, *infra*.

## **B. RODRIGO SAMPAYO**

61. Rodrigo Sampayo is a United States native and citizen, born in Brownsville, Texas in 1949. His birth was attended by midwife Belen Lopez, who registered his birth in Brownsville a few months later.<sup>5</sup> His mother, Rebecca Ortiz, was a Mexican citizen. His father, Ramon Sampayo, was a Spanish national. Both are now deceased. Mr. Sampayo's birth was also registered in Mexico City, as having been born there, when he was about five years old. [64].

62. At some point after his birth, Mr. Sampayo's parents took him to Mexico City, Mexico, where he grew up. Until recently, the only birth certificate of which he was aware was the one stating that he had been born in Mexico City, Mexico. As a result, for most of his life, Mr. Sampayo used his Mexican birth certificate, and even had a border crossing card, issued by INS.

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<sup>5</sup> Midwife Belen Lopez is not on the USCIS or other known list of suspicious midwives.



It was only after both parents were deceased that Mr. Sampayo learned that he had been born in Texas. His parents never sought monetary, immigration, or other benefits from the fact that Mr. Sampayo was born in Texas. *Id.* To the contrary, the fact that they never informed him of the existence of his birth in Texas is strong circumstantial evidence that they had no intention of using his U.S. citizenship to obtain any benefit, and thus no motive to have falsely registered him as born in Texas.

63. In early 2009, Plaintiff Sampayo applied for a U.S. passport. He received a letter, dated June 24, 2009, asserting that his midwife was on a “suspicious” list, and requesting additional documentation of his birth. Since both parents are deceased, he was unable to provide some of the information about them that was requested by DOS, but he responded as fully as was reasonably possible. *Id.*<sup>6</sup>

64. On September 17, 2009, Mr. Sampayo applied for entry at Brownsville, Texas. He presented his birth certificate, Texas driver’s license, and the receipt for his U.S. passport. The agent on duty, CBP Officer Eliseo Cabrera, noted that his birth certificate reflected a midwife birth, and was filed several months, (but less than one year), after his birth.<sup>7</sup> *Id.*

65. Officer Cabrera then took Mr. Sampayo to secondary inspection, where for approximately six hours he detained and interrogated him, threatening that if he did not “admit” foreign birth, he would be detained. During the interrogation, Mr. Sampayo’s attorney, Jaime Diez, arrived with a signed G-28, and sought to represent him. Defendants Napolitano and Freeman refused Mr.

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<sup>6</sup> Due to counsel’s error, Mr. Sampayo’s statement in support of his passport application indicated that he had heard as a child that he had been born in Brownsville. This was incorrect. He only learned this when he discovered his Texas birth certificate.

<sup>7</sup> Under 22 C.F.R. § 51.42(a), a U.S. birth certificate filed within one year of birth is deemed primary evidence of U.S. birth.

Diez all access to Mr. Sampayo, and refused to even inform Mr. Sampayo that his attorney was outside, attempting to represent him. *Id.*

66. After about six hours, Mr. Sampayo concluded that he had no option but to sign whatever papers Mr. Cabrera presented to him. Mr. Cabrera wrote up the incident, making a knowing false assertion that Mr. Sampayo had “freely” admitted foreign birth. *Id.*

67. After forcing Mr. Sampayo to sign the papers he had prepared, Mr. Cabrera confiscated his documents, and returned him to Mexico. Mr. Sampayo was given no chance to contest said actions, but was treated as having “withdrawn” an application for admission.<sup>8</sup> *Id.*

68. Other than by requesting additional documentation in support of his passport application, at no time prior to September 17, 2009, did any Defendant make any attempt to inform Mr. Sampayo that there were questions as to whether he had in fact been born in Texas, or that his midwife was on a “suspicious” list. After having found his Texas birth certificate, he had crossed into the U.S. frequently, without problems or complications. *Id.*

69. On March 1, 2010, Defendant Clinton denied Mr. Sampayo’s passport application, parroting Officer Cabrera’s claim that Mr. Sampayo had “admitted freely” birth in Mexico. [64:3]. The text of the letter reads, [64:3]:

This agency sent you a letter identifying one or more deficiencies in your passport application and requesting additional information to establish your entitlement to a U.S. passport. A copy of that letter is enclosed. Since we received an incomplete response from you, your passport application is hereby denied due to the deficiency or deficiencies that letter identified. In addition, our records indicate that in 1986, an individual with your given name and other matching biographical data was issued a Border Crossing Card that grants non-U.S. citizens permission to travel to the United States. Further, on September 17, 2009, you gave to U.S.

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<sup>8</sup> By forcing him to “withdraw” his application to enter, rather than ordering his expedited removal, Defendants Napolitano and Freeman deprived Mr. Sampayo of the statutory means of asserting U.S. citizenship by contesting the removal order. *See*, 8 U.S.C. § 1252(e)(2).

Customs and Border Protection a sworn statement in which you admitted freely that you were born in "Mexico, Mexico DF [Distrito Federal]" and that you are a citizen of Mexico.

70. By letter dated May 7, 2010, Defendants refused to reconsider the denial, again citing Mr. Sampayo's alleged confession. [69:13].

71. At the moment the instant action was filed, Mr. Sampayo was at the Gateway Bridge in Brownsville, Texas. At the time of filing, he was therefore within the United States, in Brownsville, Texas, within the jurisdiction of this Court, but unable to enter the United States. He has been deprived of all evidence of his U.S. citizenship. Mr. Sampayo has ties on both sides of the Rio Grande. His business requires that he travel back and forth between Mexico and the U.S., and he has suffered greatly because of his inability to do so. *Id.*

72. By order dated April 26, 2011, this Court dismissed Mr. Sampayo's prior habeas corpus claim, and severed his claim under 8 U.S.C. § 1503 into an individual action, CA B-11-082. However, Mr. Sampayo remains a Plaintiff in this amended action as a representative of the proposed class of individuals who have had their passport applications erroneously denied without a due process hearing and the proposed class of individuals who have been subject to mistreatment by agents of Defendant Napolitano. *See* § IV (Class Allegations), *infra*.

### **C. JESSICA GARCIA AND ANA ALANIS**

73. Jessica Garcia was born in Brownsville, Texas in 1987. Her birth was also attended by midwife Trinidad Saldivar, who registered it in Brownsville two and a half weeks later. Shortly after her birth, her mother took Jessica to her home in Matamoros, Mexico. When Jessica was about seven weeks old, her mother registered her birth in Matamoros, as having been born there, in order to obtain vaccinations for her in Mexico. [48,49].

74. In May, 2009, Ms. Garcia applied for a U.S. passport. Because she was born with the aid of a midwife, DOS made arbitrary requests for evidence and personal information. Said application was not adjudicated until at least June 24, 2010, [141:3].<sup>9</sup> She has never received a denial letter, although she continues to receive mail at the address given on the application.

75. On October 31, 2009, at about 9:30 a.m., Ms. Garcia sought entry at the new bridge, in Brownsville, Texas. Officer Cabrera was working primary. She showed him her Texas ID, Texas birth certificate, and the receipt for her passport application. He asked if she also had a Mexican birth certificate. She was unaware of the existence of such a document, and replied that she did not. Officer Cabrera then sent her in to secondary inspection. [48,49].

76. Ms. Garcia waited a while, and when nothing happened, asked another CBP officer what was going on, because she was due at work in Brownsville at 10:00 a.m. That officer locked her in a small room, to await Officer Cabrera, who arrived about 30 minutes later. He eventually produced her Mexican birth certificate, which had been filed a month after her Texas birth certificate. He claimed that the Texas birth certificate was fraudulent, and began to hurl threats and insults at her, and make false representations, in a vain attempt to force Ms. Garcia to sign the papers he had prepared apparently to “withdraw” her application for admission. *Id.*

77. Eventually, Ms. Garcia’s mother, Ana Alanis, also came to the port of entry. She explained why Jessica Garcia had two birth certificates, and insisted that she had been born in Brownsville. Nonetheless, she was also treated with threats, insults, and false statements by Officer Cabrera, in a vain attempt to get her to falsely “confess” that Jessica had been born in Matamoros. *Id.*

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<sup>9</sup> Defendants incorrectly state therein that the denial letter was attached as an exhibit.

78. When neither woman would “confess” to the untruth sought by Officer Cabrera, he was forced (apparently by his Supervisor), to issue an NTA. He confiscated all the documents Jessica and her mother had with them, and sent them back to Mexico. *Id.* Among the documents confiscated was the request of the Department of State seeking additional evidence of her birth in the United States, and papers relating to her outstanding student loan.

79. The NTA against Ms. Garcia was never filed with the EOIR, so no hearing was ever scheduled. Nor was she afforded a hearing by which to challenge the confiscation of her documents. This left Ms. Garcia completely in the air.

80. As a result, Jessica Garcia lost her employment, and the income on which she and her family depended. In order to settle her motion for preliminary injunction, Defendants agreed to allow her to enter as a U.S. citizen until her citizenship claim is finally determined. However, she continues to be sent into secondary inspection, interrogated, and often delayed for extended periods when she enters. Among other hardships, she lost her employment, health insurance, and defaulted on other financial obligations, including a payment schedule for a traffic ticket in Brownsville, Texas. Her health has suffered, and she gained a lot of weight. Her relationships with her husband and children have also deteriorated. Her old job is no longer available, and she has had difficulty finding new employment.

81. DOS claims that, on June 24, 2010, they denied Ms. Garcia’s passport application. [141:3]. By order dated April 26, 2011, this Court severed her claim under 8 U.S.C. § 1503 into an individual action, CA B-011-083. However, Ms. Garcia remains a Plaintiff in this amended action as a representative of the proposed class of individuals who have had their passport applications erroneously denied without a due process hearing and the proposed class of

individuals who have been subject to mistreatment by agents of Defendant Napolitano. *See* § IV (Class Allegations), *infra*

82. Like her daughter, Ms. Alanis remains a Plaintiff in the instant amended action as a representative of the proposed class of individuals who were subject to mistreatment by agents of Defendant Napolitano. *See* § IV (Class Allegations), *infra*.

#### **D. LUIS MONTEMAYOR**

83. Luis Montemayor was born in Mercy Hospital, in Brownsville, Texas, in September, 1967, during the height of Hurricane Beulah, which caused extreme flooding and devastation in the Rio Grande Valley, Texas. His birth certificate was signed the day of his birth, but apparently as a result of the hurricane, the hospital neglected to file it, and the oversight was not discovered and corrected for over ten years, [164].

84. Mr. Montemayor is the youngest of eight children, all of whom were born in Mercy Hospital in Brownsville. Like his siblings, his birth was also registered in Mexico, about a month after his birth. And like most of his siblings, his Mexican birth certificate asserted birth in Mexico, even though they, too, were actually born in Mercy Hospital, in Brownsville, Texas.

85. In 2007, Mr. Montemayor obtained a United States passport, and in 2009, a U.S. passport card. He departed and entered the U.S. numerous times without incident.

86. However, in January, 2011, he received a letter from the Department of State, stating that his passport and passport card had been revoked. The letter (incorrectly) alleged that he had been contacted, and given an opportunity to provide additional evidence of his birth in Texas. The letter further stated that, since revocation was based on “non-citizenship,” he was not entitled to a hearing.

87. The revocation letter also threatened Mr. Montemayor with criminal prosecution, if he continued to use his passport or passport card.

88. In relevant part, the letter states:

In support of your application for U.S. passport 433348288, you submitted a birth record showing that you were born on September 21, 1967 in Brownsville, Texas. This birth certificate was registered on March 3, 1978, more than ten years after your birth. Thereafter, U.S. Passport Number 433348288 was issued to you on October 29, 2007. In support of your application for U.S. passport card C02269400 you submitted U.S. passport 433348288. Thereafter, U.S. passport card C02269400 was issued to you on September 23, 2009.

An investigation revealed a Mexican birth registration in your name, indicating that you were born on September 21, 1967, in Matamoros, Tamaulipas, Mexico, less than one month after your birth. The Department contacted you and you indicated that you did not have any additional evidence supporting your claim of birth in the U.S. Based on this new evidence and the totality of the circumstances, we have determined that the revocation of your passport is warranted.

89. Mr. Montemayor disputes having ever having received any such communication from the Department of State, or asserting that he was unable to provide additional evidence of his birth in Texas. He submits that he only learned that his citizenship was in question when he received the letter revoking his passport and passport card.

90. Mr. Montemayor joins this action as a named Plaintiff in the passport revocation class. *See* § IV (Class Allegations), *infra*.

#### **E. ANA LUISA GUERRERO**

91. Ana Luisa Guerrero was born in Brownsville, Texas, in July, 1977. Her birth in Texas was an accident, since her parents were shopping in Brownsville when her mother's water broke. Her birth was assisted by Victoria Grimaldo, who was recommended by the girlfriend, (Mariana), of her paternal grandfather. Her birth was registered in Brownsville approximately one month

later. Mariana and her daughter were present for the actual birth. [160].

92. Two days after her birth, Ms. Guerrero's mother registered her in Mexico, as having been born there. She changed the date of birth to June, 1977, to enable Ms. Guerrero to start school in Mexico a year earlier than she would be able to do if her date of birth were shown as July, 1977. In December, 1977, Ms. Guerrero was baptized in Mexico, also showing birth in Mexico.

93. In 2006, Ms. Guerrero petitioned a Mexican Court to correct her Mexican birth certificate, to reflect her actual date and place of birth. The petition was granted in January, 2007. A few days later, she applied for, and promptly received, a U.S. passport.

94. In 2008, Ms. Guerrero filed an I-130 petition, seeking to immigrate her Mexican national husband. The couple was interviewed by DHS in Harlingen, Texas. However, notwithstanding that she had a facially valid U.S. passport, in January, 2009, DHS demanded additional documents to substantiate her birth in Texas. Ms. Guerrero complied with their request. In December, 2009, Ms. Guerrero and her parents were interviewed by DHS. They steadfastly maintained that she had been born in Texas. Nonetheless, by letter dated a few days later, DOS informed Ms. Guerrero that her U.S. passport had been revoked. She was given no opportunity to challenge the revocation, either before or after it occurred.

95. In relevant part, the revocation letter states:

The Department was recently informed of an investigation regarding the circumstances of your birth. The investigation uncovered a Mexican birth record in the name Ana Luisa Guerrero Ornelas that lists your date and place of birth as June 20, 1977, in Matamoros, Mexico. This birth record was filed on July 6, 1977. You provided a sworn statement to U.S. Citizenship and Immigration Services in which you stated that you were aware of this Mexican birth record since you were ten years old. However, the birth record was not amended until February 2, 2007 - three days before your application for a U.S. passport. The amended Mexican birth record changed your date and place of birth to July 4, 1977, Brownsville, Texas. Based on this new evidence and the totality of the



circumstances, we have determined that the revocation of your passport is warranted.

96. Shortly thereafter, Ms. Guerrero received a Notice of Intent to Deny the I-130 filed on behalf of her husband. She responded with additional evidence, and the I-130 petition remains pending.

97. Ms. Guerrero also has an individual action pending. CA B-11-cv-16. By Order dated May 9, 2011, this Court dismissed her habeas causes of action, leaving only her claim under 8 U.S.C. § 1503. She is therefore joining this action as a named Plaintiff in the passport revocation class. *See* § IV (Class Allegations), *infra*.

#### **F. ALICIA RUIZ**

98. Alicia Ruiz was born in 1933, in Mercedes, Texas, where her family had been living for some time, and where her older brother had been born and baptized. As was common at that time, her birth was not timely registered. At the age of nine months, she was baptized in Mercedes, Texas. Her baptismal certificate shows birth in “Relampago Ranch,” Texas. Ms. Ruiz’ parents moved to Mexico, and when she was ten, registered her birth in Mexico, as having been born there. When she married in Mexico, in 1951, she was required to present a birth certificate, but the only one she possessed showed birth in Mexico, so her marriage certificate also shows birth in Mexico. However, the birth certificates of two of her three children reflect that she was born in Texas. [57].

99. Ms. Ruiz has applied three times for a U.S. passport. Each time, her application has been rejected. The most recent denial, in 2009, from which there is no administrative appeal, notes only that she was registered in Mexico before her delayed Texas birth certificate was filed.

The denial recites as follows, [57:36]:

A check with the Mexican vital records office revealed that there was a birth certificate recorded for you on 9/22/1943 Reynosa, Tamaulipas, Mexico. This record was filed before the Texas birth certificate. As a result of this finding, a US passport cannot be issued to you at this time.

100. This denial simply ignores all other evidence, including her contemporaneous baptismal certificate, and denies her Due Process.

101. By order dated April 26, 2011, this Court severed Ms. Ruiz' claim under 8 U.S.C. § 1503 into an individual action, CA B-11-084. However, Ms. Ruiz remains a Plaintiff in this amended action as a representative of the proposed class of individuals who have had their passport applications erroneously denied without a due process hearing. *See* § IV (Class Allegations), *infra*

#### **G. MARIA REYES**

102. Maria Reyes was born in Creedmore, Travis County, Texas, in 1931. Her brother, Hermenegildo Reyes, was born in Lockhart, Texas, in 1928. In October, 1931, the family was repatriated to Mexico. The repatriation document states that her parents, Abraham Reyes and Carmen Lucio de Reyes, were accompanied by Hermenegildo Reyes, age 3, and Maria Reyes, age five months, and that they were coming from "Greehmore, Texas." On April 21, 1932, Maria Reyes was baptized in Lampazos, N.L., Mexico. Her baptismal certificate reflects birth in "Cremord, Tex." The following day, her parents registered her birth in Lampazos, N.L., showing the same date of birth, but reflecting her place of birth as Anahuac, N.L., Mexico. [163].

103. In 1975, Ms. Reyes obtained a delayed Texas birth certificate, using her baptismal certificate, and repatriation record. In 2006, she attempted to obtain a U.S. passport. The

application was denied, based solely on the fact that the Mexican birth record predated the delayed Texas birth certificate.

104. In 2007, Ms. Reyes applied for a copy of her Texas birth certificate. The request was denied, since the U.S. Consulate had advised the State of Texas of the Mexican birth certificate. She requested a hearing in Austin, Texas, where the ALJ found that she had, indeed, been in born in Texas, and a new birth certificate was issued, [163:18-30].

105. In 2008, Ms. Reyes again applied for a U.S. passport, using her newly issued Texas birth certificate. On May 9, 2008, that application was also denied, [163:3]:

A check with the Mexican vital records office revealed that there was a birth certificate recorded for you on 04/22/1932. This record was filed before the Texas birth certificate. As a result of this finding, a U.S. passport cannot be issued to you at this time.

106. This denial, from which no administrative appeal exists, ignores all the other relevant evidence, and denies her Due Process.

107. By order dated April 26, 2011, this Court severed Ms. Reyes' claim under 8 U.S.C. § 1503 into an individual action, CA B-11-085. However, Ms. Reyes remains a Plaintiff in this amended action as a representative of the proposed class of individuals who have had their passport applications erroneously denied without a due process hearing. *See* § IV (Class Allegations), *infra*.

#### **H. JENIFER ITZEL GONZALEZ**

108. Jenifer Itzel Gonzalez was born in 1992 in Port Isabel, Texas, with the aid of midwife Marta A. Martinez, who is "suspected," but neither was convicted of, nor confessed to, filing false birth certificates. Her birth was registered in Cameron County two days later. Her mother

was a schoolteacher in Mexico, and returned with Ms. Gonzalez to Matamoros, where her birth was registered about a week after it was registered in Texas. The Mexican reflected birth in Matamoros, so that she could obtain medical services there. When she was about six months old, Ms. Gonzalez was baptized, also in Matamoros. The baptismal certificate also shows birth in Port Isabel, Texas. [65]

109. Ms. Gonzalez applied for a U.S. passport on June 8, 2007, in Brownsville, Texas. Twice Defendants made arbitrary requests for more documents and information, and twice she responded. Her application was denied on March 25, 2010. The denial stated, in pertinent part, [65:3]:

An individual applying for a U.S. passport has the burden of proving by a preponderance of the evidence through documentary evidence his or her U.S. citizenship or nationality (22 C.F.R. 51.40, 51.41). Because your birth record was filed by a birth attendant who the Department has reason to believe is not reliable, you were asked to provide supplementary documentation to support your claim of birth in the United States. ...

The additional documentation you provided to support your claim of birth in the United States is not sufficient to establish by a preponderance of the evidence that you were born in the United States. There exists a foreign birth record indicating that your birth occurred in Mexico AND you have not submitted sufficient early public records to support your birth in the United States. Therefore, we are unable to determine that you are entitled to a passport and your application is denied.

110. This denial ignores the other relevant evidence. It does not explain why a contemporaneously filed Texas birth certificate, and baptismal certificate, showing birth in Texas, weighed against a later filed Mexican birth certificate, for which a credible explanation was provided, do not constitute a “preponderance” of the evidence. This demonstrates that Defendants’ *suspicion* that the midwife who delivered her had in other cases fraudulently registered children in Texas was deemed to be “evidence” that Ms. Gonzalez was not born here.

Otherwise, a finding that she had not met the “preponderance of the evidence” standard would not have been possible.

111. By order dated April 26, 2011, this Court severed Ms. Gonzalez’ claim under 8 U.S.C. § 1503 into an individual action, CA B-11-086. However, she remains a Plaintiff in this amended action as a representative of the proposed class of individuals who have had their passport applications erroneously denied, without lawful application of the preponderance of the evidence standard, or a post-denial, due process hearing. *See* § IV (Class Allegations), *infra*.

### **I. ERVEY LORENZO SANTOS**

112. Ervey Lorenzo Santos was born in Brownsville, Texas, on August 1974. His mother was attended by Vicenta A Vitte, a midwife. His birth was timely registered in Texas six days later. When he was born, his parents were residing in Poblado Anahuac in Matamoros, Mexico. [161]

113. Approximately three months after his birth, Mr. Santos was baptized in the City of Anahuac, part of the dioceses of Matamoros, Mexico. His baptismal certificate reflects birth in Brownsville.

114. In August of 1980, at the age of six, Mr. Santos’ father registered him in Matamoros, Mexico showing his birth in the City of Anahuac, Tamaulipas, Mexico. The registration also indicated that he was born in July 1974. This was done so that Mr. Santos could attend school in Mexico, starting one year earlier than would otherwise be the case.

115. To the best of his recollection and belief, Mr. Santos first applied for a U.S. Passport in Brownsville, Texas, in about 1995, when he was approximately twenty-one years old. He remembers that a government official told him that he would not receive a passport because he was born with a midwife. Mr. Santos did not receive his U.S. Passport.

116. On or about March 20, 2001, Mr. Santos again applied for a U.S. Passport in Mississippi, where he was living at that time. He recalls being told it would take approximately 2 months to receive his U.S. Passport. He did not receive it within 2 months. He later moved, without having received his passport.

117. On or about December 7, 2007, Mr. Santos applied for the third time for a U.S. Passport in Brownsville, Texas. Shortly after, DOS contacted Mr. Santos to ask why he needed another U.S. Passport if he already had one. Mr. Santos wrote back to DOS informing them that he did not received any prior passport.

118. On May 1, 2008, DOS issued Mr. Santos a U.S. Passport.

119. On or about November 30, 2007, Mr. Santos went with his parents to the U.S. Consulate in Ciudad Juarez, Mexico for an interview regarding their pending applications to immigrate to the United States. At this interview, DOS intensively questioned his mother for approximately two hours about the place where her son was born. Throughout the interrogation, his mother repeatedly told the consular officer that Mr. Santos was born in Texas. However, after his mother was interviewed, the consular officer called his father and interviewed him for approximately two hours. Through the use of threats, lies and intimidation, his father was pressured into falsely "admitting" that his son was not born in the United States. Among other things, the consular officer told his father that if he did not admit that his son was not born in the U.S. that they would send his son to jail. Mr. Santos' father signed a document which he could not read because it was in English. The consular officer did not provide him with a copy of the document.

120. Shortly after his father signed this document, Mr. Santos was called in and told that his

father had admitted he was not born in the United States. The consular officer confiscated his social security card and cut in half his Texas Drivers' License.

121. The consular officer also instructed Mr. Santos to sign a document written in English, which he could not read. Again, the consular officer did not provide him with a copy of it.

122. After this incident, Mr. Santos' parents, both of whom suffer from high blood pressure, became very ill.

123. On or about June 14, 2009, Mr. Santos wrote a letter to immigration informing them that because of the incident in Ciudad Juarez, where they were threatened and intimidated, his parents had decided for health reasons that at this time they did not want to continue with the process of immigrating to the United States. On or about June 17, 2009, DHS sent Mr. Santos a letter informing him that his parents' case was closed.

124. On or about March 10, 2011, Mr. Santos received a certified letter from the Department of State, informing him that his U.S. Passport was being revoked, and ordering him to surrender his U.S. Passports. The letter stated, in relevant part (emphasis added), [161:19-20]:

An investigation conducted by the Department revealed that the birth certificate presented by you for both applications was false and that you submitted false identity documents in support of your application for U.S. Passport. Your father, Lorenzo Santos Lopez, admitted in a signed statement that you were in fact born in Tamaulipas, Mexico, and that his father in law had purchased the false U.S. birth certificate for you for the sum of \$150.00. Additionally, you admitted in a signed statement that you have known of the true circumstance of your birth since 1993. A Mexican birth certificate was located during the investigation that confirms that you were born on July 18, 1974 in Tamaulipas, Mexico. Because you made a false statement of material fact on the passport applications, your passports are revoked pursuant to Section 51.62(a)(2) of Title 22 of the U.S. Code of Federal Regulations.

...

You have a right to a hearing under Sections 51.70 through 51.74 of Title 22 of the U.S. Code of Federal Regulations, a copy of which is enclosed. *This hearing would address the evidence presented upon which the passports were issued.*

Should you desire such a hearing, you must notify this office in writing within 60 days of receipt of this notice. A request for a hearing does not serve to stay the revocation action taken by the Department of State.

125. On or about April 25, 2011, as mandated by DOS, Mr. Santos surrendered his U.S. Passports.

126. For financial and other reasons, including the facts that the hearing offered would address only the “*evidence presented upon which the passports were issued*,” could be conducted only in Washington D.C., at Mr. Santos’ expense, and would offer no Due Process protections, [151], and given DOS’ recognition that not requesting such a hearing does not constitute a failure to exhaust administrative remedies, [151:8], Mr. Santos did not request such a hearing.

#### **IV. CLASS ALLEGATIONS**

127. Plaintiffs hereby incorporate by reference the allegations of paragraphs 1 through 126.

128. Plaintiffs seek to represent the following related classes:

##### **First Proposed Class:**

*Passports Revoked Based on Allegations Related to Non-Nationality*  
(Represented by Plaintiffs Montemayor, Guerrero and Santos)

Individuals who:

- have received or will receive U.S. passports;
- whose passports, on or after September 7, 2003, have been or will be revoked by Defendant Clinton based, in whole or in part, on 22 C.F.R. § 51.62(b) (non-national) or 22 C.F.R. § 51.62(a)(2) (obtained illegally, or obtained by fraud or error), where Defendant Clinton’s underlying assertion is that the bearer is not a citizen of the United States; and
- whose claims of U.S. citizenship have not been finally adjudicated by a federal court.

##### **Second Proposed Class:**

*Passport Applications Denied Based on Failure to Prove U.S. Nationality*  
(Represented by Plaintiffs Sampayo, Garcia, Ruiz, Reyes, Gonzales)



Individuals who:

- on or after September 7, 2003, applied for, or who will in the future apply for, United States passport;
- whose passport application has been or will be denied by Defendant Clinton based, in whole or in part, on 22 C.F.R. § 51.62(b) (non-national) or 22 C.F.R. § 51.62(a)(2) (obtained illegally, or obtained by fraud or error), where Defendant Clinton's underlying assertion is that the applicant is not a citizen of the United States; and
- whose claim of U.S. citizenship has not been finally adjudicated by a federal court.

**Third Proposed Class:**

*Mistreatment at the Border Related to Citizenship*

(Represented by Plaintiffs Laura and Yuliana Castro, Garcia, Sampayo)

Individuals who:

- on or after September 7, 2003, presented or will present at a U.S. ports of entry facially valid documentation of their U.S. citizenship (including a U.S. passport, U.S. birth certificate showing birth in the United States or one of its territories; voter registration card; certificate of citizenship; or naturalization certificate);
- who were refused entry or, in the future will be refused entry, into the United States by agents of Defendants Napolitano and/or Clinton;
- who were subjected to, or will be subjected to, coercion, threats, duress, or similar harsh tactics by agents of Defendants Napolitano and/or Clinton; and
- whose claim of U.S. citizenship has not been finally adjudicated in federal court.

**Fourth Proposed Class:**

*Mistreatment at the Border Relating to Accusation of Having Falsely Registered a Child As Born in the United States*

(Represented by Plaintiffs Trinidad Castro and Ana Alanis)

Individuals who:

- who have or will have a child with facially valid documents showing birth in the United States, (including a U.S. passport, U.S. birth certificate showing birth in the United States or one of its territories; voter registration card; certificate of citizenship; or naturalization certificate), but whose claim of U.S. citizenship has been called into question by agents of the Department of Homeland Security or the Department of State, and
- who, on or after September 7, 2003, on U.S. soil, were or will be detained and

questioned by agents of Defendants Napolitano and/or Clinton for more than two hours, during which they were or will be accused of having falsely registered their child as born in the United States.

129. As used in these class definitions, September 7, 2003, represents six years before the date of the initial filing of the instant action (September 7, 2009) as contemplated by the applicable statute of limitations, 28 U.S.C. § 2401.

130. On information and belief, Plaintiffs allege that, as so defined, the classes number in the hundreds, not counting future members.

131. The classes are so numerous that joinder of all members would be impracticable. Joinder is particularly impracticable since the classes include future members.

132. The claims of the representative parties are typical of the claims of the classes.

133. The representative parties, and their counsel, can and will fairly and adequately protect the interests of the classes. Class counsel are experienced in class action litigation and in litigation of the type of claims raised here.

134. There are questions of law and fact that are common to the classes which predominate over any individual questions. Further, Defendants have acted, or refused to act, on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief, with respect to the class as a whole.

## **V. THE CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Violation of the Preponderance of Evidence Standard**

*Violation of Fifth Amendment (Due Process Clause), Fourteenth Amendment (Citizenship Clause); 5 U.S.C. §§ 702, 706 (APA Claims);*

*28 U.S.C. § 2201 (Declaratory and Corresponding Injunctive Relief);  
28 U.S.C. § 1361 (Mandamus Act)*

(Plaintiffs Sampayo, Garcia, Montemayor, Guerrero, Ruiz, Reyes, and Gonzalez, on their own behalf and behalf of all others similarly situated, Against Defendant Clinton)

135. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 134.

136. As alleged above, Defendant Secretary of State improperly applies the “preponderance of evidence” standard, both in adjudicating U.S. passport applications and in determining whether to revoke previously issued U.S. passports. Such action deprives Plaintiffs of the full enjoyment of the rights and privileges of U.S. citizenship to which they are entitled by virtue of birth within the United States.

137. Defendant Clinton’s actions violate Plaintiffs’ rights under the Fifth and Fourteenth Amendments, the Administrative Procedures Act, the Mandamus Act, and entitle Plaintiffs to relief under the Declaratory Judgment Act.

## **SECOND CAUSE OF ACTION**

### **Lack of Due Process in Adjudicating Passport Applications**

*Violation of Fifth Amendment (Due Process Clause); and Fourteenth Amendment (Citizenship Clause); 8 U.S.C. § 1101(a)(22); 22 U.S.C. § 211a; and 5 U.S.C. §§ 702, 706 (APA Claims for violations of Executive Orders 11295 and 13323)*

(Plaintiffs Sampayo, Garcia, Ruiz, Reyes, and Gonzalez, on their own behalf and behalf of all others similarly situated, Against Defendant Clinton)

138. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 137.

139. The regulations implementing 22 U.S.C. § 211a do not provide for Due Process protections in the adjudication of applications for United States passports.

140. Under federal law, a person whose U.S. passport application has been denied based on

non-nationality is not entitled to request a hearing in which he or she could obtain review of the basis for the denial.

141. Such actions violate the Fifth and Fourteenth Amendments, 8 U.S.C. § 1101(a)(22), 22 U.S.C. § 211a, and the Administrative Procedures Act and are inconsistent with Executive Orders 11295 and 13323.

### **THIRD CAUSE OF ACTION**

#### **Lack of Due Process in Revoking U.S. Passport Based on Non-Nationality**

*Violation of Fifth Amendment (Due Process Clause); and Fourteenth Amendment (Citizenship Clause); 8 U.S.C. § 1101(a)(22); 22 U.S.C. § 211a; and 5 U.S.C. §§ 702, 706 (APA Claims for violations of Executive Orders 11295 and 13323)*

(Plaintiffs Montemayor and Guerrero, on their own behalf and behalf of all others similarly situated, Against Defendant Clinton)

142. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 141.

143. Under federal law, a person whose U.S. passport has been revoked based on non-nationality is not entitled to request a hearing in which he or she could obtain review of the basis for the denial.

144. Such actions violate the Fifth and Fourteenth Amendments, 8 U.S.C. § 1101(a)(22), 22 U.S.C. § 211a, and the Administrative Procedures Act and are inconsistent with Executive Orders 11295 and 13323.

### **FOURTH CAUSE OF ACTION**

#### **Inadequate Hearing for Passports Denied or Revoked Under 22 C.F.R. § 51.62(a)(2)**

*Violation of Fifth Amendment (Due Process Clause)*

(Plaintiff Santos, on his own behalf and behalf of all others similarly situated,  
Against Defendant Clinton)

145. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 144.

146. Plaintiffs complain about the hearing afforded to them when Defendants deny U.S. passports or revoke previously issued U.S. passports where the underlying assertion is that the bearer claims to have been, but was not, born in the United States.

147. The hearing does not afford adequate notice and a meaningful opportunity to contest Defendants' determinations because, among other things, the hearing officer is not an impartial adjudicator, there is no right to discovery, there are no publicized procedures, no body of applicable law, no right to subpoena critical witnesses, and no contemporaneous record of the hearing for appellate review.

148. Such actions violate Plaintiffs' right under the Fifth Amendment.

#### **FIFTH CAUSE OF ACTION**

##### **Unequal Treatment of Persons Whose Passport Applications Have Been Denied Based on Non-Nationality**

##### *Violation of Equal Protection under the Fifth Amendment*

(Plaintiffs Sampayo, Garcia, Ruiz, Reyes, and Gonzalez, on their own behalf and behalf of all others similarly situated, Against Defendant Clinton)

149. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 148.

150. Plaintiffs complain that Defendant wrongfully denies a hearing to applicants for U.S. passports whose applications are denied based on non-nationality. In contrast, a hearing is afforded to persons whose U.S. passports applications are denied based on grounds not-related to non-nationality, specifically under 22 C.F.R. §§ 51.60(b)(1)-(10), 51.60(c), 51.60(d), 51.61(b), 51.62(a)(1), or 51.62(a)(2).

151. Such action violates Equal Protection as applied through the Due Process Clause of the

Fifth Amendment.

## **SIXTH CAUSE OF ACTION**

### **Unequal Treatment of Persons Whose Passports Have Been Revoked Based on Non-Nationality**

#### *Violation of Equal Protection under the Fifth Amendment*

(Plaintiffs Montemayor and Guerrero, on their own behalf and behalf of all others similarly situated, Against Defendant Clinton)

152. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 151.

153. Plaintiffs complain that Defendant wrongfully denies a hearing to persons whose U.S. passports are revoked based on non-nationality. In contrast, a hearing is afforded to persons whose U.S. passports applications are revoked based on grounds not-related to non-nationality, specifically under 22 C.F.R. §§ 51.60(b)(1)-(10), 51.60(c), 51.60(d), 51.61(b), 51.62(a)(1), or 51.62(a)(2).

154. Such action violates Equal Protection as applied through the Due Process Clause of the Fifth Amendment.

## **SEVENTH CAUSE OF ACTION**

### **Border Mistreatment of U.S. Citizenship Claimants**

#### *Violation of Fifth Amendment (Due Process Clause), Fourteenth Amendment (Citizenship Clause); United Nations Convention Against Torture, 42 U.S.C. § 2000dd-0 Executive Orders 11295 and 13323, and Failure to Adhere to Precedent*

(Plaintiffs Laura, and Yuliana Castro, Sampayo, and Garcia, on their own behalf and behalf of all others similarly situated, Against Defendants Clinton, Freeman and Napolitano)

155. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 154.

156. Plaintiffs complain of a pattern and practice of employing unlawful tactics at ports of

entry when questioning U.S. citizen claimants about their citizenship claims. Defendants' interrogation tactics are cruel, inhumane and degrading because, among other things, persons are denied access to counsel, and subjected to lengthy periods of detention and interrogation, and deprivation of food, water and access to bathroom facilities.

157. Such actions violate the Citizenship Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, p.20, 1465 U.N.T.S. 85 and 42 U.S.C. § 2000dd-0.

## **EIGHTH CAUSE OF ACTION**

### **Border Mistreatment of Parents of U.S. Citizen Claimants**

*Violation of Due Process, United Nations Convention Against Torture, 42 U.S.C. § 2000dd-0, and Executive Orders 11295 and 13323.*

(Plaintiffs Trinidad Castro and Ana Alanis, Laura and Nancy Castro, and Jessica Garcia, on their own behalf and behalf of all others similarly situated, Against Defendants Clinton, Freeman and Napolitano)

158. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 157.

159. Plaintiffs complain of a pattern and practice by Defendants of employing unlawful tactics at ports of entry when interrogating parents of U.S. citizen claims about their child's birth. Defendants' interrogation tactics are cruel, inhumane and degrading because, among other things, persons are denied access to counsel, and subjected to lengthy periods of detention and interrogation, and deprivation of food, water and access to bathroom facilities.

160. Defendants' treatment at ports of entry of the parents of U.S. citizen claimants violates the Due Process Clause of the Fifth Amendment, the Convention Against Torture and Other

Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, p.20, 1465 U.N.T.S. 85 and 42 U.S.C. § 2000dd-0.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs' respectfully request that this Court:

- 1) Assume jurisdiction over the instant action;
- 2) Certify this case as a class action, as proposed above; and
- 3) Declare that the actions, practices and determinations challenged herein violate federal law, including but not limited to, the Constitution, Immigration and Nationality Act, and the Administrative Procedures Act, and issue an appropriate order for injunctive and declaratory relief to remedy these violations and prevent future violations.

Plaintiffs further request that this Court:

- 4) Declare that the actions, practices and determinations challenged herein violate federal law, including but not limited to, the Constitution, Immigration and Nationality Act, and the Administrative Procedures Act, and issue an appropriate order for injunctive and declaratory relief to remedy these violations and prevent future violations.
- 5) Declare 22 C.F.R. § 51.70(b)(1) unlawful in that it does not afford due process protections where U.S. passport applications are denied or previously issued passports are revoked for "non-nationality";
- 6) Declare that the standard for adjudicating applications for United States passports is whether the applicant has shown U.S. citizenship by a preponderance of the evidence;
- 7) Declare that when the Department of State proposes to revoke a U.S. passport for non-nationality, under 22 C.F.R. § 51.62(b), or under 22 C.F.R. § 51.62(a)(2), where the



underlying claim is that the bearer is not a national or citizen of the United States, the bearer is entitled to be advised of and given an opportunity to rebut the adverse evidence upon which the proposed revocation is based, and that such a passport may be revoked only upon a showing by the Department of State, that the preponderance of the evidence shows that the bearer is not a national or citizen of the United States.

8) Declare that applicants for United States passports are entitled to fair and transparent application of the preponderance of the evidence standard, in accordance with Fifth Circuit precedent, including, if a passport application is denied, or a previously issued passport is revoked, a discussion of the evidence presented, and the reasons it does not meet the preponderance test;

9) Declare that the discretion granted by 22 C.F.R. § 51.45 is circumscribed by Plaintiffs' liberty and privacy interests, as protected by Due Process, and does not give the Department of State either unbridled discretion to request documents, or personal information that does not bear a reasonable relationship to the applicant's citizenship claim, or the discretion to deny a passport application if requested information or documents are not produced, where the evidence demonstrates, by a preponderance of the evidence, that the passport applicant is, in fact a U.S. national;

10) Declare that the phrase "documentary evidence" as used in 22 C.F.R. § 51.41 includes affidavits, declarations under penalty of perjury, and any other evidence presented tending to show that the person is a national of the United States;

11) Declare that in adjudicating an application for a U.S. passport, the fact that a birth certificate was not promptly filed in the U.S., or reflects delivery by a midwife or under other

non-traditional circumstances, can be considered in deciding whether to request additional evidence of the person's birth in the U.S., but that such facts do not constitute *evidence* that the individual was not born in the U.S. for purposes of applying the preponderance of the evidence test.

12) Declare that applicants for entry into the United States who hold facially valid documents reflecting United States citizenship are entitled to fair procedures in determining whether they will be allowed to enter, or placed in proceedings under 8 U.S.C. § 1229, including but not limited to the right to be represented by counsel, and to be free from interrogation tactics which violate the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, p.20, 1465 U.N.T.S. 85 and 42 U.S.C. § 2000dd-0.

13) Declare that the parents of individuals who claim United States citizenship and whose claim to U.S. citizenship is questioned by Defendants are also entitled to be represented by counsel during any questioning by Defendants, and to be free from interrogation tactics which violate the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, p.20, 1465 U.N.T.S. 85 and 42 U.S.C. § 2000dd-0.

14) Declare that neither Ana Alanis nor Trinidad Castro committed fraud by causing their daughters, Plaintiffs Jessica Garcia, Laura Castro and Yuliana Castro, to be registered as having been born in Brownsville, Texas,

15) Issue an injunction, mandating that DOS:

- Re-adjudicate the passport applications and adjudicated future passport applications, of members of the First and Second Classes as defined above, applying the preponderance of

evidence standard in a manner consistent with Fifth Circuit precedent; and

- Provide adequate training and supervision to all adjudicators and supervisors with respect to the proper application of the preponderance of evidence standard, consistent with Fifth Circuit precedent;

16) Enjoin the Department of State from not providing due process protections to contest denials of passport applications based on “non-nationality,” including but not limited to a local hearing conducted within a reasonable time after the date of the denial;

17) Enjoin the Department of State from revoking a U.S. passport for non-nationality, under 22 C.F.R. § 51.62(b), or under 22 C.F.R. § 51.62(a)(2), where the underlying claim is that the bearer is not a national or citizen of the United States, without first advising the bearer of, and giving him or her an opportunity at a locally conducted hearing to rebut, the adverse evidence upon which the proposed revocation is based, and from revoking such a passport, absent a showing by the Department of State, that the preponderance of the evidence shows that the bearer is not a national of the United States.

18) Enjoin the Department of State from denying a passport application, or revoking a previously issued passport, without issuing a written decision which includes a discussion of the evidence presented, and how application of the preponderance of the evidence test results in the action taken;

19) Issue an injunction limiting the interrogation tactics DHS and DOS officers at ports of entry may utilize in cases of where the officer questions the U.S. citizen claimant, or their parents, about birth within the United States. Specifically, Plaintiffs request an injunction which:

- establishes their right to counsel in such encounters;

- sets a limit of no more than two hours that they may be detained and interrogated;
- prohibits using threats, including but not limited to threatened detention, or criminal prosecution, as a means of obtaining a “confession” of alienage or fraudulent registration, or withdrawal of an application for entry as a United States citizen;
- prohibits the use of lies as a means of obtaining such a “confession” or withdrawal of an application for entry as a United States citizen;
- guarantees humane conditions during such encounters; and
- mandates that persons with facially valid documents showing United States citizenship not be subjected to expedited removal and, if put in removal proceedings under 8 U.S.C. § 1229, and if hearings as to their right to enter or to possess any documents which were seized cannot be conducted within 72 hours, and absent clear indications that the person is a flight risk, and/or a threat to the community or national security, s/he will be given a multiple entry document, as “nationality unknown,” and have all confiscated documents returned;
- mandates that the parents of applicants for entry with facially valid documents showing birth in the United States not be subjected to expedited removal or other sanctions on the grounds that they allegedly committed fraud in registering their children as born in the U.S., and that any evidence developed during or as a result of such an encounter not be used against them for any purpose, unless and until such time as the citizenship of the applicant has been finally determined; and
- requires DHS and DOS to provide adequate training and supervision with respect to the treatment of U.S. citizenship claimants, and their parents, at the ports of entry;

- 20) Enjoin Defendants from using against them for any purpose, any statements, admissions, or other information obtained during or as a result of the encounters at the port of entry between Ana Alanis, Jessica Garcia, Trinidad, Laura, and Yuliana Castro, and CBP Officer Eliseo Cabrera,
- 21) Issue an award of attorneys' fees, and such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

s/ Lisa S. Brodyaga

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically served on all counsel of record on May 27, 2011.

s/ Lisa S. Brodyaga