

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

LAURA NANCY CASTRO, et al.,	§	
PLAINTIFFS,	§	
	§	
v.	§	Civil Action No. B-09-208
	§	
MICHAEL T. FREEMAN,	§	
Port Director, U.S. Customs and Border	§	
Protection, Brownsville Port of Entry, et al.,	§	
DEFENDANTS.	§	

**DEFENDANTS' MOTION TO DISMISS  
SEVENTH CAUSE OF ACTION  
IN PLAINTIFFS' FOURTH AMENDED COMPLAINT**

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## **INTRODUCTION**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(c), Defendants move to dismiss cause of action seven in Plaintiffs' Fourth Amended Class Action Complaint for Declaratory and Injunctive Relief ("Fourth Amended Complaint"). The seventh cause of action alleges violations by U.S. Customs and Border Protection ("CBP") of the constitutional rights of individuals crossing the border who purport to be U.S. citizens.<sup>1</sup> However, in the seventh cause of action, Plaintiffs Yuliana Castro and Jessica Garcia, who are now bringing these claims as individuals and not members or representatives of a class, fail to allege facts that establish they have standing to bring the claims in the seventh cause of action. Further, all Plaintiffs fail to state claims alleging due process violations for which relief can be granted. Accordingly, this Court should dismiss the seventh cause of action in the Fourth Amended Complaint, and enter judgment in favor of Defendants.

### **I. STATEMENT OF ISSUES TO BE RULED ON BY THE COURT**

The seventh cause of action against CBP alleges a violation of Plaintiffs' due process rights. This cause of action must be dismissed because Plaintiffs Yuliana Castro and Jessica Garcia, who are now bringing this action as individuals and not representatives or members of a class, cannot show that they have standing to bring these claims for injunctive relief. Further, all Plaintiffs have failed to state individual claims upon which relief may be granted by this Court.

### **II. SHORT STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING**

Plaintiffs Laura Castro, Yuliana Castro and Trinidad Castro originally filed this action as a motion for preliminary injunction against CBP based on events that occurred on August 24,

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<sup>1</sup> Counsel for the parties have conferred, and have determined that they disagree on the parties who remain in the seventh cause of action, and on the nature of that cause of action. Plaintiffs have stated that they do not intend to seek class certification on the seventh cause of action, but contend that three Plaintiffs (Laura and Yuliana Castro, and Jessica Garcia) nonetheless have live individual claims that remain in this cause of action. Defendants disagree, and file this Motion in part to clarify which parties and what, if any, live claims remain in this cause of action.

2009, when the Castros applied for entry to the United States, and were inspected by CBP. (*See* ECF No. 1.) After the filing of this action, the parties reached a resolution, and the Castros withdrew their motion for a preliminary injunction at the hearing before this Court on September 24, 2009. DOS later issued Yuliana Castro a passport and re-issued Laura Castro's passport. (*See* ECF Nos. 44, 102 at ¶ 16.) Since then, Plaintiffs have filed four amended complaints, adding a number of additional plaintiffs and multiple additional claims challenging the policies of both DOS and CBP.

The Fourth Amended Complaint (ECF No.165) was filed after the Court, on April 26, 2011, severed this action against DOS and CBP from several other individual claims. (ECF No. 158.) The Fourth Amended Complaint added three new plaintiffs, and restated with some amendments the alleged class action claims for declaratory and injunctive relief against DOS and CBP. On July 15, 2011 Defendants filed a motion to dismiss Plaintiffs' Fourth Amended Complaint. (ECF No. 178.) On November 22, 2011, the Court issued an order granting in part and denying in part Defendants' motion to dismiss. (ECF No. 190.)

The Fourth Amended Complaint alleged two causes of action with regard to Defendant CBP: the seventh and eighth causes of action. The Court dismissed the eighth cause of action but did not dismiss the seventh cause of action which alleges that CBP violated Plaintiffs' due process rights when it stopped and questioned them regarding their claims to citizenship as they sought to cross the border into the United States. (ECF No. 190 at 12-16.) Specifically, the Court found that Laura Castro had a due process interest in her admission into the United States because she had a U.S. passport at the time she sought admission, and had standing to seek injunctive relief because she alleged that she intended to travel between the United States and Mexico in the future. (ECF No. 190 at 14-15.) Because the seventh cause of action was styled as a purported class action, the Court found that its conclusion that Laura Castro had standing was sufficient to allow the cause of action to go forward, and it therefore did not consider the standing issue as to the other plaintiffs. (ECF No. 190 at 14.)

### III. STATEMENT OF FACTS<sup>2</sup>

#### A. Laura Castro

Laura Castro alleges that she was born in Brownsville, Texas in 1980, and that her birth was registered there. (Fourth Amended Complaint at ¶ 44.) When she was four years old, her mother also registered her birth in Matamoros, Mexico. (*Id.* at ¶ 46.) Laura applied for a United States passport which was issued to her on January 30, 2008. (*Id.* at ¶ 47.) On August 24, 2009, Laura alleges that she sought entry to the United States with her family members. (*Id.* at ¶ 48.) She presented her U.S. passport; her sister Yuliana presented a birth certificate, Texas identification, and the receipt for her U.S. passport application; and her mother presented a laser visa. (*Id.*) All of the women were sent to secondary inspection because Officer Eliseo Cabrera noted that Yuliana's birth certificate reflected a midwife birth. (*Id.*) Laura alleges that Officer Cabrera "detained, interrogated, threatened, and otherwise treated all [of them] inhumanely for about ten hours." (*Id.*) She also alleges that all of them were denied access to an attorney while they were being questioned. (*Id.* at ¶ 51.)

Laura's mother, Trinidad Castro, ultimately gave a confession that Laura and Yuliana had been born in Mexico. (*Id.* at ¶ 50.) Based on that confession, Officer Cabrera confiscated Laura's passport and processed her as having withdrawn her applications for entry to the United States. (*Id.* at ¶ 52.) After all of her family was processed, they returned to Mexico. (*Id.*) Laura Castro alleges that prior to the August 24, 2009 incident, she and her family "had crossed into the U.S. frequently, without problems or complications." (*Id.* at ¶ 53.) She acknowledges that her passport has since been returned to her, and she has been able to cross the border between Mexico and the United States as a United States citizen. (*Id.* at ¶ 57.) She alleges that she is afraid that she "could experience similar problems in the future . . . ." (*Id.* at ¶ 58.)

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<sup>2</sup> On June 29, 2012, Plaintiff Rodrigo Antonio Sampayo filed a stipulation of dismissal for all of his claims in this case.

**B. Yuliana Castro**

Yuliana Castro alleges that she was born in Brownsville, Texas in 1984, and that her birth was registered there. (*Id.* at ¶ 44.) When she was four-and-a-half months old her mother also registered her birth in Matamoros, Mexico. (*Id.* at ¶ 46.) In January 2009, Yuliana applied for a United States passport. (*Id.* at ¶ 47.) DOS sent her two letters requesting additional evidence to support her claim that she was born in Texas, one on March 17, 2009, and a second on July 14, 2009. (*Id.*) On August 24, 2009, Yuliana alleges that she sought entry to the United States with her family members. (*Id.* at ¶ 48.) She presented a birth certificate, Texas identification, and the receipt for her U.S. passport application. (*Id.*) All of the women were sent to secondary inspection because Officer Cabrera noted that Yuliana's birth certificate reflected a midwife birth. (*Id.*) There, they were questioned by Officer Cabrera. (*Id.*) She alleges that Officer Cabrera "detained, interrogated, threatened, and otherwise treated all [of them] inhumanely for about ten hours." (*Id.*) She also alleges that all of them were denied access to an attorney while they were being questioned. (*Id.* at ¶ 51.)

Yuliana's mother, Trinidad Castro, ultimately gave a confession that Laura and Yuliana had been born in Mexico. (*Id.* at ¶ 50.) Based on that confession, Officer Cabrera confiscated Yuliana's documents, and processed her as having withdrawn her applications for entry to the United States. (*Id.* at ¶ 52.) After all of her family was processed, they returned to Mexico. (*Id.*) Yuliana has since been issued a United States passport. (*Id.* at ¶ 56.) However, she alleges that she is afraid that she "could experience similar problems in the future . . . ." (*Id.* at ¶ 58.)

**C. Jessica Garcia**

Jessica Garcia alleges that she was born in Brownsville, Texas, in 1987 and her birth was registered in Brownsville two-and-a-half weeks later. (*Id.* at ¶ 73.) Shortly after that, her birth was also registered in Matamoros, Mexico. (*Id.*) In May 2009, Garcia applied for a United States passport. (*Id.* at ¶ 74.) In September 2009 DOS requested additional information from Garcia in support of her application. (*Id.* at ¶ 74.)



On October 31, 2009 Garcia sought entry to the United States. (*Id.* at ¶ 75.) She presented her U.S. birth certificate, Texas identification, and the receipt for her passport application. (*Id.* at ¶ 75.) Officer Cabrera sent her to secondary inspection. (*Id.* at ¶ 75.) Officer Cabrera then produced her Mexican birth certificate and questioned her regarding the location of her birth. (*Id.* at ¶ 76.) While she was being questioned, her mother came to the port of entry and was also questioned by Officer Cabrera. (*Id.* at ¶ 77.) Ultimately, Officer Cabrera issued a notice to appear, confiscated Garcia's documents, and sent her back to Mexico. Garcia has a pending cause of action under 8 U.S.C. § 1503(a) asking this Court to review all available evidence and declare that she is a United States citizen. *Garcia v. Clinton*, No. B-11-83 (S.D. Tex.).

#### **IV. STANDARDS OF REVIEW AND REGULATORY FRAMEWORK**

##### **A. Standard of Review for Motions to Dismiss Under Fed. R. Civ. P. 12(b)(1).**

Federal Rule of Civil Procedure Rule 12(b)(1) permits a party to challenge, through motion, whether a court has subject matter jurisdiction. "It is well-settled that subject matter jurisdiction can be raised at any time or even sua sponte by the court." *Johnston v. United States*, 85 F.3d 217, 218 n. 2 (5th Cir. 1996). Federal courts are courts of limited jurisdiction and must have statutory or constitutional power to adjudicate a claim. *See Home Builders Ass'n of Mississippi, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Absent jurisdiction conferred by statute or the Constitution, courts lack the power to adjudicate claims and must dismiss an action if subject matter jurisdiction is lacking. *Id.*; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). In evaluating whether subject matter jurisdiction exists, the court accepts all uncontroverted, well-pleaded factual allegations as true. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). "On a 12(b)(1) motion, challenging the jurisdiction of the court, the burden lies with the party invoking the court's jurisdiction." *McDaniel v. United States*, 899 F. Supp. 305, 307 (E.D. Tex. 1995) (citing *Thomson v. Gaskill*, 315 U.S. 442 (1942)). Therefore, the Plaintiffs

bear the burden to establish that jurisdiction does in fact exist. *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980).

**B. Standard of Review for Motions to Dismiss Under Fed. R. Civ. P. 12(c)**

Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the pleadings. “The standard for dismissal under Rule 12(c) is the same as that for dismissal for failure to state a claim under Rule 12(b)(6).” *Chauvin v. State Farm Fire & Cas. Co.*, 495 F.3d 232, 237 (5th Cir. 2007) (citing *Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004)). Therefore, to survive a Rule 12(c) motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Mere conclusions, labels, or “naked assertions” will not survive a Rule 12(c) motion to dismiss. *Id.* “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* When considering such a motion, a court must “accept the complaint’s well-pleaded facts as true and view them in the light most favorable to the plaintiff.” *Johnson* 385 F.3d at 529.

**V. ARGUMENT**

**A. The Court Should Dismiss Yuliana Castro, and Jessica Garcia From The Seventh Cause Of Action Because They Lack Standing.**

This cause of action was originally filed as a class action, seeking injunctive relief against CBP. (See Fourth Amended Complaint, ¶¶ 155-57, Prayer for Relief ¶¶ 19, 20.) The Court denied Defendants’ initial motion to dismiss with regard to the seventh cause of action because one of the proposed class representatives, Laura Castro, had standing to seek relief as a

named class member. (ECF No. 190 at 14-15.)<sup>3</sup> Because it found that Laura Castro had standing, the Court did not consider the standing issue as to the other Plaintiffs. (ECF No. 190 at 14.) Plaintiffs have now stated that they do not intend to seek class certification on this issue, but will seek injunctive relief as individuals, and assert that Yuliana Castro and Jessica Garcia have live individual claims because the Court has not ruled on the standing issue as to them. However, Yuliana Castro and Jessica Garcia, as individual plaintiffs, do not have standing, and the seventh cause of action must be dismissed as to them.

Article III of the Constitution requires that federal courts adhere to the requirement, sometimes described as the justiciability doctrine, that a case may not go forward unless there is a “case or controversy.” *See* U.S. Const. art. III, § 2, cl. 1. Under this requirement, courts have routinely held that a litigant must have “standing” to invoke the power of a federal court, and it has been noted that the standing requirement “is perhaps the most important of these doctrines.” *Allen v. Wright*, 468 U.S. 737, 750 (1984). At the center of the standing requirement is the clear mandate that a plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief. *Id.* at 751 (citing *Valley*

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<sup>3</sup> Defendants do not concede that Laura Castro has standing to seek the broad injunctive relief that Plaintiffs request in their prayer for relief. *City of Los Angeles v. Lyons*, made clear that in order to seek injunctive relief, it is not enough for a Plaintiff to show that she has been injured, but she must also show that she is likely to suffer the same injury in the future if the requested injunctive relief is not granted. 461 U.S. 95, 109 (1983). Laura Castro herself states that she “frequently” crossed the border without incident prior to August 24, 2009. (Fourth Amended Complaint at ¶ 53.) Despite the fact that this case has been pending since 2009, Plaintiffs have failed to identify other individuals -- much less certify a class of individuals -- who were also crossing the border with a U.S. passport, along with a sister who claimed U.S. citizenship but did not have a passport and a mother who held a laser visa, and who were stopped and questioned about their citizenship under similar circumstances. As discussed in Defendants Motion to Dismiss Fourth Amended Complaint (ECF No. 178 at 15-19), Laura Castro’s assertion that she fears that she “could experience similar problems in the future” when crossing the border (Fourth Amended Complaint at ¶ 57) is merely “speculative,” and is not sufficient to establish a likelihood that she will suffer the same injury. *See Lyons*, 461 U.S. at 109. Therefore she does not have standing to seek injunctive relief against CBP. Nonetheless, at this stage Defendants are bound by the Court’s holding. (ECF No. 190 at 15.)

*Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)).

In *Lujan v. Defenders of Wildlife*, the Supreme Court stated that one key element of the standing requirement is that the plaintiff must have an “injury in fact.” 504 U.S. 555, 560 (1992). Moreover, it is the plaintiff’s burden to establish that this element exists. *Id.* at 561. To establish an “injury in fact” Plaintiffs must show that they have suffered “an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 560 (citations and internal quotations omitted). Plaintiffs’ claims fail to meet this test and so the seventh cause of action must be dismissed.

Plaintiffs allege that they were injured because CBP violated their due process rights under the Fifth Amendment. However, the Supreme Court “has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). As Plaintiffs acknowledge, it is illegal for a U.S. citizen to attempt to enter the United States without a valid U.S. passport. 8 U.S.C. § 1185(b). (Fourth Amended Complaint at ¶ 35.) “[A] passport, during its period of validity is evidence of citizenship.” *Manning v. Rice*, 2008 WL 2008712, at \*3 (E.D. Tex. May 8, 2008) (citing 22 U.S.C. § 2705).

Yuliana Castro and Jessica Garcia were both seeking entry into the United States without U.S. passports at the time of the alleged incidents on which they base their claims. Therefore, they were both considered at that time to be aliens seeking admission to the United States. 8 C.F.R. § 235.1(b) (“A person claiming U.S. citizenship must establish that fact to the examining officer’s satisfaction and must present a U.S. passport or alternative documentation as required by 22 C.F.R. Part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien.”); *see also Castro, et al. v. Cabrera, et al.*, Case No. 11-0087, Order, March 27, 2012, ECF No. 180 at

6 (S.D. Tex.). Agents of CBP have the statutory authority, without requiring a warrant, “to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States[.]” 8 U.S.C. § 1357(a)(1). And as noted above, aliens being interrogated as to their right to enter the United States do not have constitutional rights with regard to their application for entry. *Landon*, 459 U.S. at 32. Accordingly, Yuliana Castro and Jessica Garcia had no constitutional right to due process when they were stopped and questioned by Officer Cabrera, and they have not alleged a violation of any legally protected interest. Therefore they have no standing to bring this cause of action because they have not alleged an “injury in fact.”

**B. The Court Should Dismiss The Seventh Cause of Action For Failure To State A Claim Upon Which This Court May Grant Relief.**

1. *Plaintiffs Yuliana Castro and Jessica Garcia Have Not Stated A Claim For Which Relief Can Be Granted Because They Have Not Alleged That They Had Any Right To Due Process At The Time Of The Alleged Violations.*

Plaintiffs Yuliana Castro and Jessica Garcia allege that they were injured because CBP violated their due process rights under the Fifth Amendment. However, for the reasons discussed above, these two plaintiffs have not alleged facts to establish that they had any right to due process at the time of the alleged violations. Yuliana Castro and Jessica Garcia both sought entry into the United States without a passport at the time of the alleged incidents on which they base their claims, and therefore were considered at that time to be aliens seeking admission to the United States. 8 C.F.R. § 235.1(b); *see also Castro, et al. v. Cabrera, et al.*, Case No. 11-0087, Order, March 27, 2012, ECF No. 180 at 6 (S.D. Tex.). Aliens being interrogated as to their right to enter the United States do not have constitutional rights with regard to their application for entry. *Landon*, 459 U.S. at 32. Accordingly, Yuliana Castro and Jessica Garcia have not alleged that they had any right to due process at the time of the alleged violations, and therefore cannot establish that they suffered any injury for which this Court can grant relief. This cause of action must be dismissed as to Yuliana Castro and Jessica Garcia because they have not stated a claim for which relief can be granted.

2. *Plaintiff Laura Castro Has Not Stated A Claim For Which Relief Can Be Granted Because She Has Not Alleged A Violation Of Any Due Process Right.*

Laura Castro has failed to state a claim upon which relief can be granted because she has not alleged a violation of any due process right. Although she was in possession of a U.S. passport when she was seeking admission at the time of the alleged violations, this fact alone does not establish that a violation of any right occurred. Laura Castro does not clearly identify the behavior that she alleges was a violation of due process. Instead, she alleges broadly that when she was at the border Officer Cabrera “detained, interrogated, threatened, and otherwise treated [her and her family members] inhumanely for about ten hours.” (Fourth Amended Complaint at ¶ 48.)

Laura Castro’s bare allegations that she was detained, interrogated and threatened, do not state a claim for any violation of due process under the Fifth Amendment. First, it is not a violation of any constitutional right to send any individual to secondary inspection. *See U.S. v. Garcia*, 616 F.2d 210, 211 (5th Cir. 1980) (citing *U. S. v. Martinez-Fuerte*, 428 U.S. 543, 562-3 (1976)) (“[S]topping and questioning and referral of motorists to a secondary inspection area are permissible under the Fourth Amendment, even in the absence of any individualized suspicion, much less probable cause.”). Moreover, Laura Castro acknowledges that Officer Cabrera was questioning her, and her family members, because he did not believe her claim, and her sister’s claim, to U.S. citizenship. Officer Cabrera, therefore had the legal authority to stop and interrogate her. *See* 8 U.S.C. § 1357(a)(1) (“Any officer or employee of [CBP] authorized under regulations prescribed by the Attorney General shall have the power without warrant . . . to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.”); *see also* 8 C.F.R. § 235.1(b) (“A person claiming U.S. citizenship must establish that fact to the examining officer’s satisfaction *and* must present a U.S. passport or alternative documentation as required by 22 C.F.R. Part 53.”) (emphasis added). Where she was detained for no more than ten hours, and that detention was pursuant to the legal authority of

CBP to question individuals seeking entry into the United States, she has failed to allege that her detention for questioning was a violation of her due process rights.

Further, the Supreme Court has held that the mere use of compulsive questioning does not support a claim for a violation of a constitutional right. *Chavez v. Martinez*, 538 U.S. 760, 767 (1994). There is no constitutional violation until the allegedly coerced statements are used against a criminal defendant at trial. *Id.*; see also *U.S. v. Enriquez*, EP-08-cr-059-DB(15), 2008 WL 4600557, at \*2 (W.D. Tex., Sept. 30, 2008) (explaining that “the Due Process Clause protects a defendant from the use of coerced confessions which would, if permitted at trial, deprive a defendant of life, liberty, or property without due process of law”). Laura Castro does not allege any such use of any coerced statements. Therefore, her allegations that she was threatened and interrogated also fail to state a claim for any Fifth Amendment violation. See *Castro, et al. v. Cabrera, et al.*, Case No. 11-0087, Order, March 27, 2012, ECF No. 180 at 8-9 (S.D. Tex.).

Laura Castro also alleges that she and her family members were “treated inhumanely” while they were being interrogated. However, she provides no “plausible” independent allegations of fact in support of this conclusory allegation. See *Twombly*, 550 U.S. at 564-65 (“[O]n fair reading these are merely legal conclusions resting on the prior allegations.”). Mere conclusions, labels, or “naked assertions” will not survive a 12(c) motion to dismiss. *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Where Laura Castro provides no

independent allegations of fact in support of her claims to “inhumane” treatment, this allegation is not sufficient to state a claim for any due process violation.<sup>4</sup>

Overall, Laura Castro alleges that Officer Cabrera interrogated her, her sister, and her mother, and that her mother, Trinidad Castro, provided a confession that neither of her daughters was born in the United States. (Fourth Amended Complaint at ¶ 50.) Thus, despite her possession of a U.S. passport, Laura Castro at that time had failed to establish her U.S. citizenship to the satisfaction of Officer Cabrera. *See* 8 C.F.R. § 235.1(b) (“A person claiming U.S. citizenship must establish that fact to the examining officer’s satisfaction *and* must present a U.S. passport or alternative documentation as required by 22 C.F.R. Part 53.”) (emphasis added). She alleges that, based on this confession, she was processed for withdrawal. (*Id.* at ¶ 52.); *see also* 8 U.S.C. § 1225(a)(4) (“An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.”).

Laura Castro alleges that by processing her for withdrawal, Defendants deprived her “of all statutory means of asserting U.S. citizenship.” (*Id.* at ¶ 52 n.4.) However, she acknowledges that, as a result of this incident, her passport was revoked on the basis of fraud. (*Id.* at ¶ 55.) She requested, and received a hearing regarding that revocation. (*Id.*) She also filed an action in this Court on September 7, 2009, under 8 U.S.C. § 1503(a), seeking a judicial declaration that she is a U.S. citizen. (Complaint, Sept. 7, 2009, ECF No. 5 at ¶ 63-64.) Before any hearing was held, her passport was re-issued on the grounds of newly-discovered evidence. (*Id.*) She does not otherwise explain how she was deprived of the ability to assert her U.S. citizenship. She also

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<sup>4</sup> Moreover, to the extent that these allegations are intended to suggest a claim of excessive force, Laura Castro does not explain how this alleged “inhumane” treatment gives rise to any due process violation. *See Graham v. Connor*, 490 U.S. 386 (1989) (holding that “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ approach”).



does not otherwise explain how, once her mother's confession made it impossible for her to establish her U.S. citizenship to Officer Cabrera's satisfaction, CBP's processing of her for withdrawal was a violation of due process. Accordingly, these allegations do not state a claim that she was deprived of any liberty or property interest without due process.<sup>5</sup>

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<sup>5</sup> Laura Castro also appears to assert that her Fifth Amendment due process rights were violated because she was denied access to an attorney while she was being questioned. However, this questioning related to her admissibility into the United States, and was therefore civil in nature, and no due process right to counsel attached during her questioning. *See, e.g., Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245, 1255 (5th Cir. 1971) ("It has been uniformly held that deportation proceedings are civil rather than criminal; thus, the warnings required by *Miranda* are not automatically applicable."); *Ah Chiu Pang v. Immigration and Naturalization Service*, 368 F.2d 637, 639 (3d Cir. 1966) (noting that immigration proceedings do not require the same benefit of counsel and notification of constitutional rights as is required in criminal cases).

## **VI. CONCLUSION**

Plaintiffs' seventh cause of action in the Fourth Amended Complaint should be dismissed because Yuliana Castro and Jessica Garcia lack standing to bring these claims, and because all three Plaintiffs fail to state a claim that they are entitled to relief. Accordingly, and for the reasons stated above, the Court should enter judgment in favor of Defendants on this cause of action.

Dated July 5, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2012, I served the foregoing pleading on all counsel of record by means of the District Clerk's electronic filing system.

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