

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

LAURA NANCY CASTRO,)	
YULIANA TRINIDAD CASTRO, and)	
TRINIDAD MURAIRA DE CASTRO,)	
PETITIONERS/PLAINTIFFS, In Their Own)	
Name and On Behalf of All Others)	
Similarly Situated,)	
)	
v.)	CIVIL ACTION
)	
MICHAEL T. FREEMAN, PORT DIRECTOR, U.S.)	
CUSTOMS AND BORDER PROTECTION,)	
BROWNSVILLE, TEXAS PORT OF ENTRY;)	
HILLARY CLINTON, U.S. SECRETARY OF STATE,)	
JANET NAPOLITANO, SECRETARY, DEPARTMENT)	
OF HOMELAND SECURITY, and)	
THE UNITED STATES OF AMERICA.)	
)	

PETITION FOR WRIT OF HABEAS CORPUS
CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
MOTION FOR PRELIMINARY INJUNCTION

Laura Nancy Castro ("Laura"), Yuliana Trinidad Castro ("Yuliana"), and Trinidad Muraira de Castro ("Trinidad"), by and through counsel, file the instant Petition for Writ of Habeas Corpus, and Class Action Complaint for Declaratory and Injunctive relief. Simultaneously, Laura and Yuliana seek a Temporary Restraining Order and Preliminary Injunction restraining and enjoining Respondents/Defendants ("Defendants"), from refusing them entry to the United States and from not returning the documents confiscated from them on August 24, 2009.

I. INTRODUCTION

The instant action challenges the procedures utilized by Customs and Border Protection, ("CBP"), in determining whether applicants for entry as United States citizens who claim to have been born with the aid of midwives in the State of Texas are entitled to enter, and, on reaching a negative conclusion, in confiscating

their documents, such as U.S. passports, Texas IDs, birth certificates, and receipts for U.S. passport applications, without providing for a hearing, either before or after said actions. Plaintiffs Laura and Yuliana Castro, in their own name and on behalf of all others similarly situated, seek both injunctive and declaratory relief, addressing the Due Process issues in the current procedures, or lack thereof. *See, Hernandez v. Cremer*, 913 F.2d 230 (5th Cir. 1990) (holding that applicant for admission with facially valid documents showing birth in the U.S. is entitled to "fair procedures" in determining whether he will be admitted, or placed in proceedings, and affirming, with minor modifications, injunction issued by the district court).

All three Plaintiffs, in their own names and on behalf of all others similarly situated, seek a declaratory judgment and corresponding injunctive relief, declaring unconstitutional and providing a remedy for the procedures by which Trinidad, and others similarly situated, are interrogated, intimidated, and threatened, without access to counsel, while on U.S. soil or at U.S. Consulates or Embassies, in order to obtain "confessions" that they falsely registered their children as born in Texas, on the basis of which "confessions" they are deemed inadmissible under 8 U.S.C. §1182(a)(6)(C)(i), and their children born in the United States are consequently deprived of their rights as U.S. citizenship.

Individually, Yuliana Castro also seeks APA review of Defendant Clinton's unreasonable delay in processing her application for a U.S. passport, which delay resulted in her not having said passport and was the precipitating factor for the events in question.

Plaintiffs Laura and Yuliana also seek declarations that they are United States citizens, and that Defendants acted illegally in confiscating their documents, including Yuliana's Texas birth certificate and ID, and Laura's valid U.S. passport. All three Plaintiffs seek a declaration that Trinidad did not commit fraud in

registering her daughters Laura and Yuliana as born in the State of Texas, when she obtained her laser visa, or in any other transaction relating to the subject matter of this action.

II. JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked under 28 U.S.C. §2241 (habeas corpus); 28 U.S.C. §§1331 (federal question), and 2201 et seq, (Declaratory Judgment Act), together with the Administrative Procedure Act, 5 U.S.C. §§702 et seq, ("APA"); and 8 U.S.C. §1503 (denial of rights and privileges as a U.S. citizen).

2. Jurisdiction and venue are proper in that, at the time the instant action is filed, all three Petitioners/Plaintiffs are at the B&M (Old) bridge in Brownsville, Texas, on U.S. soil, but Laura and Yuliana Castro are not allowed to enter the United States, and Trinidad Muraira de Castro is not being allowed to retract the "confession" she signed under extreme duress on August 24, 2009.

II. THE PARTIES

3. Petitioners Laura and Yuliana Castro are natives and citizens of the United States, who were born in Brownsville, Texas, in 1980 and 1984, respectively. See, Exhibit A, and sealed Exhibit B, incorporated herein by reference.

4. Michael T. Freeman is the Port Director of the Gateway Bridge, Brownsville, Texas. Hillary Clinton is the duly appointed and confirmed Secretary of State of the United States. Janet Napolitano is the duly appointed and confirmed Secretary of the Department of Homeland Security, ("DHS"). All are sued in their official capacities only. The United States is also a named Defendant.

III. THE FACTS

5. Laura Nancy Castro and Yuliana Trinidad Castro are natives and citizens of the United States, born in Brownsville, Texas in 1980 and 1984. Their births were attended by midwife Trinidad Saldivar,

who timely registered their births in Brownsville, Texas, within days of their births. ¹ 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. Exhs. A and B.

6. 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.*

7. 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 reasons, Trinidad also registered the birth of Yuliana, (who was then four and a half months old), in Matamoros, Mexico, showing birth in Matamoros. *Id.*

8. Although improper under Mexican law, it was at that time common for Mexican nationals residing in Mexico who had children born in the United States to register their births in Mexico, particularly if they intended to raise the child in Mexico.

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

10. In determining citizenship, it has long been the practice of the Department of Justice, (INS and Executive Office for Immigration Review), to seek out and rely upon the *oldest* "public" document, be it a birth or a baptismal certificate, as the most reliable evidence of the place and date of birth. This practice was so ingrained that it was reflected in pre-printed language in

¹ The midwife who delivered Petitioners Laura and Yuliana, Trinidad Saldivar, is on the list of suspicious midwives maintained by Defendants. The CBP Officer, Eliseo Cabrera, represented to Trinidad Muraira de Castro that Ms. Saldivar had spent five years in prison for filing false birth certificates. However, a PACER search of her name turns up no entries.

INS requests for evidence where birth facts were at issue. ²

11. 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. ³

² See, e.g., *In re Pagan*, 22 I&N Dec. 547,548 (BIA 1999):

On September 14, 1996, the Service notified the petitioner that because his name was added to the beneficiary's birth certificate 17 years after her birth, the birth certificate would not be given much evidentiary weight in establishing the claimed relationship. The Service informed the petitioner that, in order to establish the claimed relationship, he should submit "the oldest available evidence," which could include, but was not limited to, a baptismal certificate or other religious documents, early school records, and medical records, such as hospital birth records, all of which had to contain the names of the petitioner and the beneficiary. The petitioner was advised to submit affidavits as well.

See also, *In re Bueno-Almonte*, 21 I&N 1099, 1030 (BIA 1997):

On July 29, 1996, the RSC director sent a notice to the petitioner requesting additional evidence. The RSC director noted that the beneficiary's birth was registered 7 years after the fact and asked the petitioner to submit "the oldest available evidence" which establishes that he is the father of the beneficiary. According to the notice, such evidence could include, but was not limited to a baptismal certificate or other religious document showing the date and place of birth or baptism, affidavits sworn to by two or more persons who have personal knowledge of the beneficiary's birth, early school records showing the beneficiary's date and place of birth and the names of his parents, or medical records which name the parents and the child.

³ See *In re Matter of S.S. Florida*, 3 I&N Dec. 111, 116 (BIA 1948) (emphasis added):

Obviously, prospective passengers making unsupported claims to citizenship in the United States to carriers should place the carrier upon notice that reasonable diligence requires such carrier or their agents to *obtain proof of citizenship in the United States either in the form of a birth certificate, baptismal certificate, or secondary evidence if claim is made of nativity in the*

12. Petitioner Laura Castro recently applied for, and received, a U.S. passport. Petitioner Yuliana Castro also applied for a U.S. passport in January, 2009. Defendant Clinton requested additional evidence of her birth in Texas, to which Yuliana last responded on July 30, 2009. Said application is still pending. Exhs. A and B.

13. On August 24, 2009, at about 9:40 a.m., the three Plaintiffs, with Yuliana's four week old daughter, Camila Abigail XXXXXXXX, applied for admission at the Old Bridge in Brownsville, Texas. Laura presented her U.S. passport. Yuliana presented her birth certificate, Texas ID, and the receipt for her U.S. passport, along with the Texas birth certificate of her infant daughter. Trinidad presented her laser visa. The agent on duty, CBP Officer Eliseo Cabrera, noted that Yuliana's birth certificate reflected a midwife birth, and for no other reason, took them to secondary inspection, where for approximately eleven hours he detained, interrogated, threatened, and otherwise abused the three Plaintiffs, and Yuliana's infant daughter. *See, id.*

14. At the time of the events in question, all four were in a delicate medical state. Trinidad suffers from high blood pressure. Laura is in the early months of pregnancy. Yuliana is recovering from complications of childbirth, and her daughter, Camila Abigail XXXXXXXX, at only four weeks of age, needed the type of care, and environmental conditions, which any newborn requires. *Id.*

15. All four were treated inhumanely. Eventually, based on threats, fear, and sheer exhaustion, complicated by the delicate medical condition of each, Officer Cabrera extracted a false "confession" from Trinidad Muraira de Castro, stating that Yuliana and Laura had in fact been born in Mexico. Officer Cabrera also extracted some form of statements from Laura and Yuliana, although

United States or certificate of naturalization if claimed
by the person to have been so naturalized.

the content of these statements is unknown. *Id.*

16. Plaintiffs' family was so concerned that they sent an attorney to the port of entry, who was not allowed to communicate with the Plaintiffs. The family also called the police, who came to the bridge, to make a report. *Id.*

17. After extracting false confessions from some or all of the Plaintiffs, Respondents confiscated their documents, and returned them to Mexico, without giving any of them a chance to contest said actions, either before or after they occurred. Laura and Yuliana were treated as having "withdrawn" their applications for admission, and Trinidad was found to be inadmissible under 8 U.S.C. §1182(a)(6)(C)(i), and subjected to "expedited removal." *Id.*⁴

18. This is a systemic problem. On information and belief, it is alleged that, rather than confront suspected cases of midwife fraud in the U.S., where the person would have access to an attorney, and other due process rights, Defendants concentrate on apprehending and detaining them at the ports of entry, where, according to Defendants, even the purported U.S. citizen has no Constitutional rights, unless criminal charges are to be placed.⁵ Further, Officer Cabrera was overheard by Yuliana bragging to co-workers that the Castro family was his third such case of the day.

⁴ By forcing them to "withdraw" their applications for admission, rather than issuing orders of expedited removal, Defendants deprived Laura and Yuliana Castro of the statutory means of asserting U.S. citizenship by contesting the removal order. See, 8 U.S.C. §1252(e)(2). Similarly, by forcing Trinidad Muraira de Castro to "confess" to fraud, Defendants deprived her of the ability to contest the cancellation of her laser visa. 8 U.S.C. §1252(e)(1). Therefore, Trinidad Castro challenges the means by which the false confession was extracted, rather than the removal order itself, and seeks a declaration that it is, indeed, false.

⁵ See, e.g., *Martinez v. Jimenez et al*, CA M-08-087 (S.D.Tx pending); and *L.A.E. v. Freeman*, CA B-09-191, member case in *Trevino v. Clinton et al*, CA B-07-218 (S.D.Tx pending).

19. Other than by requesting additional documentation in support of Laura's passport application, at no time prior to August 24, 2009, did any Respondent make any attempt to inform any of the Plaintiffs herein that there were questions as to whether Laura and Yuliana had in fact been born in Texas. Prior to that date, all three Plaintiffs crossed into the United States frequently, without problems or complications.

20. At the moment the instant action is being filed, all three Plaintiffs are in the waiting room of the Old Brownsville Bridge. At the time of filing, Plaintiffs are therefore within the United States, in Brownsville, Texas, within the jurisdiction of this Court. They are in custody within the meaning of 28 U.S.C. §2241.

21. Petitioners Laura and Yuliana Castro are in custody because they have been and are still being prevented from returning to the country of their birth with the full rights of U.S. citizens, and have been deprived of all evidence of their U.S. citizenship. This places significant restrictions on their liberty not shared by the populace at large.

22. Plaintiff Trinidad Muraira de Castro is in custody because the finding that she had committed fraud, derived from the false "confession" that Laura and Yuliana were actually born in Mexico, permanently bars her from the United States. 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 on both sides of the border, and will be deprived of the opportunity to participate fully in the lives of her U.S. citizen children and grandchildren.

23. Petitioners Laura and Yuliana also have ties on both sides of the Rio Grande, and need to be able to travel back and forth. Laura Castro's husband is in the U.S., and she is pregnant with their second child. Similarly, Yuliana needs to be able to take her infant U.S. citizen daughter for regular medical treatment in the

U.S. Without U.S. passports, they will be unable to do so. Even if they receive their passports, absent an injunction from this Court, there is no assurance that Defendants would not again detain them, confiscate their passports and other documents, and return them to Mexico, with no hearing or other legal procedure to challenge said actions. *See, e.g., Martinez v. Jimenez et al*, CA M-08-087 (S.D.Tx pending).

IV. CLASS ALLEGATIONS

24. The instant case is not an isolated instance, but a window into the cases of dozens, if not hundreds, of similarly situated persons. Plaintiffs' experience reflects and is the product of a policy, pattern and practice adopted and overseen by Defendants.

25. Plaintiffs seek to represent two related national classes:

I. Laura and Yuliana Castro seek to represent all persons: (a) who are Mexican-American and/or have Latino surnames, (b) who have Texas birth certificates indicating that their births were attended not by licensed physicians, but by midwives or other non-physicians in the State of Texas, (c) who have traveled or will in the future travel abroad, and who will seek re-entry to the United States at a port of entry within the Southern District of Texas, or whose applications for re-entry to the United States at a port of entry within the Southern District of Texas were denied on or after September 7, 2004, and who were not afforded a hearing or other opportunity to contest said denial, and (d) whose claims of U.S. citizenship have not been adjudicated by a federal court, and

II. All three Plaintiffs seek to represent all persons: ⁶ (a) (1)

⁶ In the event the Court determines that Trinidad Castro cannot assert her own rights, and therefore, the rights of others similarly situated, Laura and Yuliana seek to do so on her behalf, and on behalf of all others similarly situated. *See, Miller v. Albright*, 523 U.S. 420, 422 (1998) (emphasis added):

who have a son or daughter who is Mexican-American and/or has Latino surnames, and (2) which son or daughter has a Texas birth certificate indicating that his/her birth was attended not by a licensed physician, but by a midwife or other non-physician in the State of Texas, and (3) whose claim of U.S. citizenship has not been adjudicated by a federal court, and (b) (1) who, on or after September 7, 2004, have signed or will sign a "confession" allegedly admitting that they falsely registered a child as having been born in the State of Texas, which "confession" they claim or will claim was false, and was the product of coercion, threats, duress, or similar harsh interrogation tactics by agents of the United States Departments of State or Homeland Security, or (2) who have or will apply for laser or other non-immigrant documents allowing them to visit the United States.

26. On information and belief, Plaintiffs allege that the classes as so defined number at least in the hundreds, if not the thousands, not counting future members.

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

Justice O'CONNOR, joined by Justice KENNEDY, concluded that petitioner should not be accorded standing to raise her father's gender discrimination claim. This Court applies a presumption against third-party standing as a prudential limitation on the exercise of federal jurisdiction, see, e.g., *Singleton v. Wulff*, 428 U.S. 106, 113, 96 S.Ct. 2868, 2873-2874, 49 L.Ed.2d 826, and that presumption may only be rebutted in particular circumstances: where a litigant has suffered injury in fact and has a close relation to a third party, and where some hindrance to the third party's ability to protect his or her own interests exists, see *Powers v. Ohio*, 499 U.S. 400, 411, 111 S.Ct. 1364, 1370-1371, 113 L.Ed.2d 411. *Petitioner has not demonstrated a genuine obstacle to her father's ability to assert his own rights that rises to the level of a hindrance.* Accordingly, she is precluded from raising his equal protection claims in this case.

classes include future members.

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

29. 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.

30. 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

A. HABEAS CORPUS

1. LAURA AND YULIANA CASTRO

31. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 30.

32. Plaintiffs Laura and Yuliana Castro seek APA review in habeas corpus of the actions of Customs and Border Protection of August 24, 2009, in refusing them entry, and in confiscating their documents indicating U.S. citizenship, without affording them an opportunity for a hearing or other legal process to determine their entitlement to enter, or to possess said documents, either before or after the challenged actions. Plaintiffs have both liberty and property interests in being able to enter the United States, and in the possession of said documents, which were lawfully issued to them by the State of Texas, and United States Department of State.

33. Yuliana Castro seeks APA review of the actions of the Department of State in unreasonably delaying the adjudication of her application for, and the issuance of, a United States Passport.

34. Both Plaintiffs have suffered legal wrong because of said agency actions, and have been adversely affected and aggrieved thereby. See, 8 U.S.C. §706:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall — (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

35. The action of CBP in refusing Plaintiffs entry to the United States, and in confiscating their documents, without providing for a hearing, may be challenged in habeas corpus. 5 U.S.C. §703.

2. TRINIDAD CASTRO, OR ALTERNATIVELY LAURA AND YULIANA CASTRO

36. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 35 above.

37. Plaintiff Trinidad Castro seeks APA review of Defendants' actions in cancelling her laser visa, ("DSP-150"), on the grounds that she allegedly obtained said visa "by fraud or by misrepresenting a material fact," to wit, that she misrepresented that her daughters Laura and Yuliana had been born in Texas, and of their refusal to allow her to retract the false "confession" extracted by Officer Eliseo Cabrera on August 24, 2009. (Exh. B at pp.).

38. The cancellation of Plaintiff's laser visa was based on an involuntary and untrue "confession" extracted from Plaintiff in a

manner contrary to her constitutional and statutory rights to be free from interrogation based, *inter alia*, on isolation, threats, and mistreatment of close relatives, in a manner designed to obtain a "confession," without regard to its veracity or voluntariness, let alone treatment by federal officials that was arguably cruel, inhuman and degrading within the meaning of 42 U.S.C. §2000dd-0:

(1) No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) Cruel, inhuman, or degrading treatment or punishment defined:

In this subsection, the term "cruel, inhuman, or degrading treatment or punishment" means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

39. Even in the context of suspected terrorists, it is becoming increasingly clear that information gained from "enhanced" interrogation techniques is unreliable. See, e.g., New York Times, September 6, 2009, "What Torture Never Told Us," Op-Ed by Ali H. Soufan, an F.B.I. special agent from 1997 to 2005. Plaintiffs' Exhibit C, incorporated herein. Harsh interrogation tactics of the type used on Trinidad Castro, when applied to ordinary civilians, are even less likely to produce reliable information.

40. The cancellation of Plaintiff's laser visa was therefore arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. It was also in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and was accomplished without observance of the procedures required by law.

41. Once the facts of the incident had been brought to their

attention, Defendants' refusal to allow Plaintiff to retract said involuntary and false "confession" is also arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

42. Plaintiff has been injured by said actions, in that they render her ineligible to enter the United States in the future, thus limiting her the ability to participate in the family life of her daughters and grandchildren in the United States.

43. Alternatively, her daughters Laura and Yuliana seek to raise these claims on her behalf, since they are also injured thereby, in that they were denied entry to the United States, had their documents confiscated, and, once they are successful in rectifying these wrongs, they will nonetheless be deprived of their mother's companionship, guidance, and assistance, for their own comfort and benefit, and in the rearing and education of their own children.

B. DECLARATORY AND INJUNCTIVE RELIEF

1. LAURA AND YULIANA CASTRO, ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

a. PROCEDURES FOR PURPORTED U.S. CITIZENS SEEKING ENTRY

44. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 43.

45. On their own behalf, and on behalf of all those similarly situated, Plaintiffs Laura and Yuliana Castro seek declaratory, and corresponding injunctive relief, with respect to the procedures utilized on August 24, 2009, leading up to Defendants' refusal to allow them entry as U.S. citizens, the confiscation of their lawfully issued documents, and expulsion from the United States, with no opportunity for a hearing, either before or after said actions were taken.

46. They urge the Court to declare that said procedures violated their Constitutional rights, and *Hernandez v. Cremer*, 913 F.2d 230 (5th Cir. 1990) (holding that an applicant for admission with

facially valid documents showing birth in the U.S. is entitled to "fair procedures" in determining whether he will be admitted, or placed in proceedings, and affirming, with minor modifications, injunction issued by the district court).

47. Plaintiffs also urge the Court to issue an injunction, similar to that approved by the Court in *Hernandez v. Cremer, supra*, enjoining Defendants from not implementing procedures ensuring that applicants for entry as U.S. citizens with facially valid documents showing U.S. citizenship receive due process in determining whether they will be allowed to enter, or placed in proceedings, and in determining whether any facially valid documents they possess will be confiscated, or returned to them.

b. TREATMENT OF PARENTS OF PURPORTED U.S. CITIZENS CLAIMING BIRTH BY MIDWIVES

48. Plaintiffs incorporate herein the allegations of paragraphs 1 through 47 above.

49. An alleged "confession" of midwife fraud by the parent or parents of a purported U.S. citizen affects the rights of the purported U.S. citizen, and may make it difficult, if not impossible, for the U.S. citizen to carry his or her burden of proving U.S. citizenship for purposes of, *inter alia*, obtaining United States passports, and immigrating close relatives.

50. The August 24, 2009 treatment by CBP officials of Trinidad Castro, her daughters Laura and Yuliana, and infant granddaughter, Camila Abigail XXXXXXXX, as described in Exhibit A, was designed to break their will or ability to resist, and was therefore likely to, and in fact did, produce false "confessions."

51. Any person on U.S. soil or under U.S. jurisdiction at a Consulate abroad is entitled to be free from being treated by U.S. officials in a cruel, inhuman or degrading manner. See, 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; 42 U.S.C. §2000dd-0.

52. The August 24, 2009 treatment by CBP officials of Trinidad Castro, her daughters Laura and Yuliana, and infant granddaughter, Camila Abigail XXXXXXXX, constituted cruel, inhuman or degrading treatment, in violation of 42 U.S.C. §2000dd-0.

53. When applied to ordinary civilians, who are suspected of nothing more serious than having falsely registered a Mexican born child as having been born in the U.S., even harsh interrogation tactics by agents of the U.S. Government which fall short of the definition of 42 U.S.C. §2000dd-0, but which are designed to break the person's will or ability to resist, and therefore are likely to produce false "confessions," violate Due Process.

54. On information and belief, Plaintiffs allege that it is common for agents of the United States Government to use the type of harsh interrogation tactics employed herein, at ports of entry, during interviews with Citizenship and Immigration Services, ("CIS"), and at U.S. Consulates abroad, in order to obtain "confessions" (false or otherwise) that children born in Mexico were falsely registered as having been born in Texas.

55. Therefore, Plaintiffs also urge that the Court issue a declaration that it violates the rights of a purported U.S. citizen for Defendants to question his/her parent on U.S. soil or while under U.S. jurisdiction at a Consulate abroad about his/her birth in a cruel, inhumane or degrading manner, or by use of other techniques designed to break the parent's will or ability to resist, and without affording the parent the right to counsel prior to giving any statement which would call into question the citizenship of the said purported U.S. citizen.

56. Plaintiffs also seek an injunction, enjoining Defendants from questioning the parent of a purported U.S. citizen on U.S. soil or

while under U.S. jurisdiction at a Consulate abroad about his/her birth in a cruel, inhumane or degrading manner, or by use of other techniques designed to break the parent's will or ability to resist, and without affording the parent the right to counsel prior to giving any statement which would call into question the citizenship of the said purported U.S. citizen.

**2. TRINIDAD MURAIRA DE CASTRO, ON HER OWN BEHALF AND ON
BEHALF OF ALL OTHERS SIMILARLY SITUATED:
CANCELLATION OF VISA PRIOR TO JUDICIAL DETERMINATION
OF CHILD'S CITIZENSHIP IN DISPUTED MIDWIFE CASES**

57. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 56 above.

58. For a parent of a child born in the United States who is neither a U.S. citizen or a lawful permanent resident, having or being able to obtain a laser or other non-immigrant visa can be important to their ability to participate fully in the lives of their children (and grandchildren).

59. Once someone who is neither a U.S. citizen or a lawful permanent resident has "confessed" to having registered a child born in Mexico as having been born in Texas, (whether or not the confession is true), Defendants cancel any non-immigrant visa possessed by that person, and, unless a waiver has been granted under 8 U.S.C. §1182(i), deny any future visa applications (immigrant or non-immigrant) by him or her.

60. In circumstances such as described in Paragraph 59, the person is not entitled to any form of hearing or other process to challenge either the manner in which the alleged "confession" was obtained, or its veracity.

61. Therefore, Plaintiffs urge the Court to issue a declaration that where a person has "confessed" while on U.S. soil or at a U.S. Consulate abroad, to having registered a child born in Mexico as having been born in Texas, it violates the rights of that person to

cancel a non-immigrant visa possessed by him or her, or to deny a visa application, (immigrant or non-immigrant), by him or her, without providing a hearing or other process by which said person, with the aid of counsel, may challenge the veracity of the "confession," and the process by which it was obtained.

62. Plaintiffs further urge the Court to issue an injunction, enjoining Defendants from canceling the non-immigrant visa, or denying the visa application, based on that person having "confessed," while on U.S. soil or under U.S. jurisdiction at a Consulate abroad, to having registered a child born in Mexico as having been born in Texas, by any person, without providing a hearing or other process by which said person, with the aid of counsel, may challenge the veracity of the "confession," and the process by which it was obtained.

C. DECLARATORY RELIEF UNDER 8 U.S.C. §1503(a)

63. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 62.

64. Plaintiffs Laura and Yuliana Castro further request that this Court declare that they are United States citizens, under 8 U.S.C. §1503(a). They were denied the right of entry to the U.S., and the right to possess their documents demonstrating U.S. citizenship, on the grounds that they are allegedly not United States citizens.

D. TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

WHEREFORE, it is respectfully urged that this Court issue a Temporary Restraining Order and Preliminary Injunction, restraining and enjoining Defendants from 1) not admitting Petitioners Laura Nancy Castro and Yuliana Trinidad Castro to the United States in a status which does not require that Defendants acknowledge their U.S. citizenship, or that Laura or Yuliana state that they are not U.S. citizens, with documents which are valid for multiple entries,

and can be renewed until such time as the instant litigation is finally concluded, and from not returning to them any and all documents confiscated from them on August 24, 2009, other than the United States passport of Laura Castro, which passport Defendants shall surrender to the Court for safekeeping until such time as her citizenship has been finally adjudicated, and 2) not returning to Trinidad Muraira de Castro her laser visa, or, alternatively, providing her with other documents allowing her admission to the United States under the same terms and conditions as a laser visa, which document can be renewed for so long as she complies with those conditions, and until such time as the instant litigation is finally concluded.

VI. CONCLUSION

It is therefore urged that this Court find that:

- 1) This Court has jurisdiction over the instant action;
- 2) Plaintiffs Laura and Yuliana Castro are United States citizens;
- 3) When Plaintiffs Laura and Yuliana Castro, and Laura's daughter Camila Abigail XXXXXXXX sought entry as United States citizens, and Trinidad Muraira de Castro sought admission as a visitor for pleasure at the Brownsville B&M Old Bridge on August 24, 2009, all four were treated in a cruel, inhumane or degrading manner, and in a manner designed to break the will to resist of Plaintiff Trinidad Muraira de Castro, and to extract from her a "confession" that she had falsely registered Laura and Yuliana as having been born in Texas, without regard to the veracity of that "confession,"
- 4) The procedures utilized by Defendants in extracting a "confession" from Muraira de Castro, and cancelling her laser visa; in forcing Laura and Yuliana Castro to "withdraw" their applications for entry, and in confiscating the documents of all three, violate Due Process, as determined, *inter alia*, by the Fifth Circuit in *Hernandez v. Cremer, supra*; and
- 5) Absent injunctive relief by this Court Plaintiffs, and the classes they represent, run the risk of having similar problems in

the future. *See also, Martinez v. Jimenez, supra.*

And on the basis of these findings, it is urged that the Court:

- 1) Assume jurisdiction over the instant case;
- 2) Issue a declaratory judgments, as requested above;
- 3) Issue preliminary and permanent injunctions, as requested above,
- 5) Issue a declaratory judgment, declaring and adjudging Petitioners Laura Nancy Castro and Yuliana Trinidad Castro to be United States citizens, and
- 6) Issue an award of attorneys fees, and such other and further relief as the Court may deem just and appropriate.

Respectfully Submitted,

s/

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CERTIFICATE OF CONSULTATION

Counsel has spoken with Victor Rodriguez, AUSA, who stated that he was tied up on September 9 and 10, but would be available for a hearing on Petitioners' application for a temporary restraining order on September 8 and 11, 2009.

S/ Lisa S. Brodyaga

VERIFICATION OF PETITIONER LAURA NANCY CASTRO

I, LAURA NANCY CASTRO, certify that I am a Petitioner herein, and that the facts as stated above, including the fact that I am presently at the Port of Entry at the Old Bridge in Brownsville, Texas, and intend to wait here until my attorney informs me that the petition has been filed, are true and correct to the best of my knowledge and belief. I further certify that I understand my obligations as a named plaintiff in a class action, and that I undertake to represent all others similarly situated to the best of my ability.

Laura Nancy Castro
LAURA NANCY CASTRO

VERIFICATION OF PETITIONER YULIANA TRINIDAD CASTRO

I, YULIANA TRINIDAD CASTRO, certify that I am a Petitioner herein, and that the facts as stated above, including the fact that I am presently at the Port of Entry at the Old Bridge in Brownsville, Texas, and intend to wait here until my attorney informs me that the petition has been filed, are true and correct to the best of my knowledge and belief. I further certify that I understand my obligations as a named plaintiff in a class action, and that I undertake to represent all others similarly situated to the best of my ability.

Yuliana Castro
YULIANA TRINIDAD CASTRO

VERIFICATION OF PETITIONER TRINIDAD MURAIRA DE CASTRO

I, TRINIDAD MURAIRA DE CASTRO, certify that I am a Petitioner herein, and that the facts as stated above, including the fact that I am presently at the Port of Entry at the Old Bridge in Brownsville, Texas, and intend to wait here until my attorney informs me that the petition has been filed, are true and correct to the best of my knowledge and belief. I further certify that I understand my obligations as a named plaintiff in a class action, and that I undertake to represent all others similarly situated to the best of my ability.

Trinidad Muraira de Castro
TRINIDAD MURAIRA DE CASTRO

VERIFICATION OF COUNSEL

I, Lisa S. Brodyaga, hereby certify that I am familiar with the Plaintiffs' cases, and that the facts as stated above are true and correct to the best of my knowledge and belief.

s/ Lisa S. Brodyaga

CERTIFICATE OF SERVICE

I certify that copies of the above, with Exhibit A and sealed Exhibit B, were served electronically on Victor Rodriguez, AUSA, on September 7, 2009.

s/ Lisa S. Brodyaga