

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

MARIA ISABEL PERALES SERNA, ET AL.,

Plaintiffs,

V.

TEXAS DEPARTMENT OF STATE
HEALTH SERVICES, VITAL STATISTICS,
UNIT, ET AL.,

Defendants.

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1-15-CV-446 RP

ORDER

Before the Court is Plaintiffs’ Motion for Live Testimony by Remote Means at Hearing on Preliminary Injunction, filed September 10, 2015 (Clerk’s Dkt. #48). By way of the motion, Plaintiffs request the Court to permit live testimony by videoconference at the hearing on their motion for preliminary injunction set for October 2, 2015.

Ordinarily, “witnesses’ testimony must be taken in open court.” FED. R. CIV. P. 43(a). However, testimony may be provided “by contemporaneous transmission from a different location” on a showing of “good cause in compelling circumstances.” *Id.* Plaintiffs maintain good cause and compelling circumstances are present in this case because Plaintiffs cannot travel to Austin because they lack the documentation necessary to travel through Border Patrol checkpoints.

Without specifically opining as to whether that circumstance meets the standard under Rule 43, the Court notes Plaintiffs have not addressed the specific need for live testimony at the preliminary injunction hearing. At the preliminary injunction stage, a district court is permitted to rely on otherwise inadmissible evidence, including hearsay evidence, and thus can accept evidence in the form of deposition transcripts and affidavits. *Sierra Club, Lone Star Chapter v. F.D.I.C.*, 992 F.2d 545, 551 (5th Cir. 1993). In light of the challenges facing Plaintiffs in attending the hearing, and the potential difficulties in accommodating their request to appear via teleconference, the Court

finds additional information regarding the need for live testimony would be helpful.

Accordingly, Plaintiffs are directed to file a supplement to their motion addressing the necessity for the taking of live testimony at the hearing on their motion for preliminary injunction **on or before September 17, 2015**. Any response Defendants choose to file to Plaintiffs' motion is due **on or before September 21, 2015**.

SIGNED on September 14, 2015.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a long horizontal flourish extending to the right.

ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE