

## TEXAS OFFICES

AUSTIN REGION  
3305 Northland Drive, Suite 310  
Austin, Texas 78731  
P (512) 249-7960 F (512) 249-1661  
austin@adl.org  
RENEE LAFAIR  
Regional Director  
ROBYN SPERLING  
Chair, Regional Board  
JARED LINDAUER  
ADAM NAGORSKI  
Co-Chairs, Civil Rights Committee

NORTH TEXAS/OKLAHOMA REGION  
12800 Hillcrest Road, Suite 219  
Dallas, Texas 75230  
P (972) 960-0342 - F (972) 960-0591  
dallas@adl.org  
ROBERTA S. CLARK  
Regional Director  
JEFFREY S. LEVINGER  
Chair, Regional Board  
BRAD ALTMAN  
HOWARD SHAPIRO  
Co-Chairs, Civil Rights Committee

SOUTHWEST REGION  
4635 Southwest Freeway, Suite 400  
Houston, Texas 77027  
P (713) 627-3490 - F (713) 627-2011  
houston@adl.org  
MARTIN B. COMINSKY  
Regional Director  
IAN SCHARFMAN  
Chair, Regional Board  
MARK TRACHTENBERG  
Chair, Civil Rights Committee  
PHYLLIS COHEN  
Chair, Government Affairs

JEAN & JERRY MOORE  
SOUTHWEST AREA COUNSEL  
CHERYL R. DRAZIN

OFFICERS OF THE  
NATIONAL COMMISSION  
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National Chair  
ABRAHAM H. FOXMAN  
National Director



August 12, 2015

U.S. District Judge Robert L. Pitman  
501 W. 5th Street, Suite 5300  
Austin, Texas 78701

**Re: Perales Serna, et al. v. Texas Department of State Health Services, Vital Statistics Unit, et al., Civil Action No. 15-cv-00446-RP**

### **Letter Brief of *Amicus Curiae* Anti-Defamation League In Opposition to Defendant's Motion to Dismiss**

Dear Judge Pitman:

Pursuant to the Court's inherent authority, please accept this *amicus curiae* letter brief in this matter. Our motion for leave to file as *amicus curiae* is attached and is simultaneously filed herewith.

We write in opposition to Defendant's motion to dismiss. We believe this case raises important constitutional issues that are appropriately before this federal Court.

#### **Interest of the *Amicus Curiae***

The Anti-Defamation League ("ADL") was organized in 1913 to fight anti-Semitism and all forms of bigotry and to defend democratic ideals. Throughout its history ADL has sought, as its founding charter prescribes, "to secure justice and fair treatment to all" and "to put an end forever to unjust and unfair discrimination against the ridicule of any sect." ADL remains vitally committed to protecting the civil rights of all persons and assuring that every individual receives equal treatment under the law regardless of his or her race, religion, ethnicity, national origin, or other immutable characteristic. As an organization with a long and proud tradition of defending civil liberties for all, ADL has in recent years taken a lead role in exposing the virulent anti-immigrant and xenophobic rhetoric that has risen to the surface as part of the national debate over immigration.

## Legal Argument

### **I. The Fourteenth Amendment Grants Citizenship to Children Born in the United States Regardless of Their Parents' Citizenship or Immigration Status**

The Fourteenth Amendment to the U.S. Constitution states that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state in which they reside.” U.S. Const. amend. XIV, § 1. Section 301(a) of the Immigration and Nationality Act similarly codifies that “a person born in the United States, and subject to the jurisdiction thereof,” is a national and citizen of the United States at birth. 8 U.S.C. §1401(a). It is long-settled law that “the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens.” *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898). The right, commonly referred to as “birthright citizenship,” extends equally to all persons born in the United States, regardless of their parents’ citizenship or immigration status.

The adoption of the Fourteenth Amendment expressly overturned the infamous *Dred Scott* decision, widely regarded as among “our most shameful failures to discharge our duty of defending constitutional civil liberties against the popular hue and cry that would have us abridge them.” *United States v. Zapata-Ibarra*, 223 F.3d 281, 282 (5<sup>th</sup> Cir. 2000). In *Dred Scott*, the Supreme Court held that “a negro, whose ancestors were imported into this country and sold as slaves [sic]” was “not intended to be included, under the word ‘citizens’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.” *Dred Scott v. Sandford*, 60 U.S. 393, 403, 404 (1857). One reason *Dred Scott* has been so reviled in the history books is that it created an underclass of people born in the United States but unable to gain full and equal access to the rights to

“Life, Liberty and the pursuit of Happiness” boldly set forth as a guarantee in the Declaration of Independence. The Declaration of Independence para. 2 (U.S. 1776).

In adopting the Fourteenth Amendment, Congress intended to repudiate the reprehensible *Dred Scott* decision. *See, e.g., Wong Kim Ark*, 169 U.S. at 676 (holding that “its main purpose doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes, which had been denied in the opinion delivered by Chief Justice Taney in *Dred Scott v. Sandford*, and to put it beyond doubt that all blacks, as well as whites, born or naturalized within the jurisdiction of the United States, are citizens of the United States”). *See also, The Slaughter-House Cases*, 83 U.S. 36, 73 (1873) (finding that the Fourteenth Amendment “overturns the *Dred Scott* decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States”). The Fourteenth Amendment, and the cases that have interpreted it for more than a century, make clear that state laws cannot abrogate or infringe on the right to citizenship guaranteed by the U.S. Constitution. As the Supreme Court has recognized, the Fourteenth Amendment makes persons’ “citizenship dependent on the place of their birth, or the fact of their adoption, and not upon the constitution or laws of any State.” *Wong Kim Ark*, 169 U.S. at 677 (internal citations omitted). It follows, then, that “States have not now, if they ever had, any power to restrict their citizenship to any classes or persons.” *Id.* at 678 (internal citations omitted).

Although Texas’ laws and policies have not expressly denied citizenship to Plaintiffs, the state is effectively denying them many of the rights and privileges of citizenship by refusing to issue birth certificates to citizens whose parents cannot provide certain specific documentation.

The Equal Protection Clause of the Fourteenth Amendment “directs that ‘all persons similarly circumstanced shall be treated alike.’” *Plyler v. Doe*, 475 U.S. 202, 216 (1982) (quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)). Texas’ practice of refusing to issue such birth certificates threatens to create an underclass of citizens who cannot enjoy the full privileges of citizenship or “the equal protection of the laws,” as guaranteed by the Fourteenth Amendment. U.S. Const. amend. XIV, § 1.

## **II. Texas’ Decision to Withhold Birth Certificates From Children Born in the State Effectively Creates a Second Class Citizenry**

The practical implication of Texas’ policy not to issue birth certificates to certain children born in Texas hospitals is effectively state sanctioned discrimination. A birth certificate is considered to be a fundamental proof of both identity and age and serves as a prerequisite for obtaining the rights and privileges of citizenship. Consequently, the State’s decision not to issue certain birth certificates is tantamount to it prohibiting these children from engaging in civic life and becoming fully productive members of society.

The state’s refusal to issue birth certificates to Plaintiffs may inflict long-lasting and far-reaching harms beyond the immediate injuries pled in Plaintiffs’ complaint. An inability to access a birth certificate may, among other things, prevent Plaintiffs from enrolling in school, registering to vote, obtaining a social security card and driver’s license, applying for a marriage license, procuring a passport, receiving health benefits, and enlisting in the military. . *See* Replace Your Vital Records, <https://www.usa.gov/replace-vital-documents> (stating that “your birth certificate is the most important document you’ll need to prove your legal identity and age”). In the near future, the inability to present a birth certificate will hamper these children’s ability to obtain educational services.

Education, when viewed as a civil right, is a great equalizer and allows for children to create both better lives for themselves and a better and more prosperous state. Quality education enables children to “absorb the fundamental values necessary to the maintenance of a democratic political system;” to “lead economically productive lives to the benefit of us all;” and to overcome “barriers presenting unreasonable obstacles to advancement on the basis of individual merit.” *Plyler*, 457 U.S. at 221, 222. In short, “education has a fundamental role in maintaining the fabric of our society.” *Id.* at 221. As a leading civil rights organization dedicated to combating hatred, bigotry and discrimination, ADL has been a long-time advocate for equal access to education, which the inability to obtain a birth certificate endangers.

As the children age into adulthood, the inability to obtain a birth certificate will have far-reaching consequences, including barring Plaintiffs from exercising the fundamental right to vote. Last week, a Fifth Circuit panel explained how Senate Bill 983, passed during the 2015 legislative session, eliminated the required fee for obtaining a copy of the Texas birth certificate. *Veasy v. Abbott*, No. 14-41127 (5<sup>th</sup> Cir. August 5, 2015) *Id.* at p.7. The court explained that the fee was problematic because a birth certificate was a prerequisite document for obtaining an Election Identification Card (EIC), which is a required form for voter identification. *Id.* at pp. 2-4. Voting is a fundamental freedom and voting rights are a cornerstone of our democracy. *See, e.g., Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (finding that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction”). Texas’ decision not to issue birth certificates essentially disenfranchises these children from ever being able to participate in the American electoral system.

Equally practical, preventing these children from obtaining a social security card and a driver's license effectively takes them out of the workforce and, therefore, limits Texas's tax base. To obtain a social security number, a person must "submit documentary evidence that the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity." Evidence Requirements, 20 C.F.R. §422.107 (2015). Without a birth certificate or other forms of identity for which a birth certificate is a prerequisite for acquisition, Plaintiffs will be unable to acquire a social security number that allows them to work in the United States, forcing them either not to work or to work in an underground economy, thereby depleting the U.S. tax base. Similarly, the inability to obtain a driver's license effectively bars citizens from entering the workforce in a meaningful way. It either forces them into jobs that can be done via public transportation (if it exists in their community) or to drive illegally, which creates its own safety issues for all Texas drivers.

Similarly, lack of a birth certificate inhibits one's ability to obtain a marriage license. In order to obtain a marriage license in Texas, a person must submit proof of identity and age, which may be impossible absent a birth certificate. The Marriage Relationship, Proof of Identity and Age, Tex. Fam. Code §2.005 (2014). Earlier this summer, on the anniversary date of the Supreme Court decisions in *United States v. Windsor* and *Lawrence v. Texas*, the United States Supreme Court opined about the significant role that marriage plays in American society. *Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015) /No. 14-556 (U.S. June 26, 2015). Justice Kennedy wrote for the Court that "[t]he centrality of marriage to the human condition makes it unsurprising that the institution has existed for millennia and across civilizations. Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies

together. Confucius taught that marriage lies at the foundation of government. 2  
Li Chi: Book of Rites 266 (C. Chai & W. Chai eds., J. Legge transl. 1967). This  
wisdom was echoed centuries later and half a world away by Cicero, who wrote, ‘The  
first bond of society is marriage; next, children; and then the family.’” See De Officiis  
57 (W. Miller transl. 1913). *Id.* at p. 3. By refusing to issue a birth certificate, the  
Department of Vital Statistics is effectively preventing these children from ever being  
able to enter the social construct of marriage.

Enrolling in school, registering to vote, acquiring a social security card and  
driver’s license, and obtaining a marriage license are illustrative examples of the rights  
and privileges that may be impossible for Plaintiffs to enjoy without a birth certificate.  
In refusing to issue birth certificates to Plaintiffs, the state may also be depriving them  
of other rights and privileges, including but not limited to accessing healthcare,  
obtaining a passport, and enlisting in the armed services.

### **III. Conclusion**

As part of its civil rights work, and in recognition of America’s prolific history  
as a nation of immigrants, ADL has promoted fair and humane immigration policies  
for over a century. ADL devotes resources to monitoring the anti-immigrant  
movement, specifically focusing on the hateful rhetoric of these groups. While the  
children in question are not immigrants, the climate of bias and hostility in the broader  
society against immigrants, particularly Latino immigrants, must be acknowledged  
here. Texas’ decision to not accept the *matricula* from parents, without providing or  
accepting other obtainable forms of identification for these individuals, is tantamount  
to punishing children for the alleged sins of their parents. As the Supreme Court has  
recognized, “[Visiting] . . . . condemnation on the head of an infant is illogical and

unjust. Moreover, imposing disabilities on the ... child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the ... child is an ineffectual — as well as unjust — way of deterring the parent.” *Plyler*, 457 U.S. at 220 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)).

Texas’ argument, that local registrars will no longer accept the *matricula* as a form of identification is based on an allegation that the government does not view *matriculas* as secure forms of identification. On its face, this argument underscores the importance and necessity for secure forms of identification. Birth certificates are considered to be fundamental proof of both age and identity. Texas simultaneously underscores how important it will be for these children to have birth certificates, but at the same time refuses to issue them. This raises the question as to what the goal of the policy truly might be.

For the foregoing reasons we urge this Court to deny Defendant’s motion to dismiss.

Respectfully submitted and DATED this 12<sup>th</sup> day of August, 2015.

/s Cheryl R. Drazin  
Cheryl R. Drazin  
Texas State Bar No. 24027826  
Anti- Defamation League  
Steve Freeman  
New York State Bar No. 1735265  
Lauren Jones  
New York State Bar No. 4908885  
Cheryl R. Drazin  
Texas State Bar No. 24027826  
605 Third Avenue  
New York, New York 10158  
Telephone: (212)  
sfreeman@adl.org  
ljones@adl.org  
cdrazin@adl.org

Cheryl R. Drazin  
Jean & Jerry Moore  
Southwest Area Civil  
Rights Counsel  
On behalf of the three  
Texas offices located in  
Austin, Dallas and Houston