

Texas violates 14th amendment in denying birth certificates

By Jim George, Oct. 22, 2015



Photo by Bob Daemrich

There will be no quick remedy for the problems faced by the Texas-born children of undocumented immigrants who can't obtain birth certificates. On Oct. 16, Judge Robert Pitman, Federal District Judge in the Western District of Texas, denied the families' request for an emergency order that would force the state of Texas to help these children obtain this most basic, and essential, document. While acknowledging the families' evidence raised "grave concerns" about the treatment of these young citizens, Judge Pitman wrote in his decision that a fuller hearing was needed. Now, the case will go to trial.

A birth certificate is the foundational document that all U.S.-born citizens must have to enjoy the benefits of citizenship. And the 14th Amendment to the Constitution declares, "No State shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States."

What the families had sought, specifically, was an emergency order to force the Texas Department of State Health Services to remove its recent and ill-conceived barriers to issuing birth records to these young citizens. Over the past two years, the state began demanding new forms of identification for the children of non-citizens — raising

the proof bar higher than any other state in the nation. The central question in the case, *Perales Serna, et al. v. Texas Department of State Health Services, et al.*, is this: What type of identification is needed for a parent or relative to obtain a birth certificate? But there has been little attention given to a more important question: What about Texas' obligation to make sure all children who are born in this state have a birth certificate issued shortly after birth?

In our *amicus curiae* brief supporting the plaintiffs and filed on behalf of the Texas Appleseed Foundation, the issue is outlined: “Under the Texas Department of State Health Service’s new scheme, a child-citizen’s right to obtain a birth certificate — and the benefits that come with irrefutable proof of citizenship – impermissibly depends on the immigration status of the child’s parent, *not* on the child’s citizenship or whether the child was, in fact, born in the United States. The department will provide a birth certificate to a child-citizen whose parents are either U.S. citizens or can produce a foreign passport containing an unexpired visa. The department, however, will *not* provide a birth certificate to a child-citizen whose parents are not U.S. citizens and cannot produce a foreign passport with an unexpired visa – *even though the child was born in the United States and is indisputably a citizen*. This impermissibly punishes the children for the perceived failings of their parents.”

The 14th Amendment was added to the Constitution on July 9, 1868, to make sure that people who had been born slaves were entitled to all the benefits of being citizens. Texas put up barriers to the former slave-citizens when it came to voting, getting an education, and in general, having the same rights as white citizens. Today, 147 years later, the State of Texas’ treatment of these new child-citizens is not much different. The Department of State Health Services is condemning these citizens to second-rate status until they turn 18, at which time — if the documentation exists and the department complies — they may be able to obtain a birth certificate and start enjoying the full benefits of citizenship that every other U.S.-born citizen takes for granted, from birth.

This is not a difficult case. The plain language of the 14th Amendment makes it clear.

Disclosure: Jim George has donated to and done legal work for The Texas Tribune.



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