

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

Perales Serna, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	Civil Action 1:15-cv-00446-RP
	§	
	§	
Texas Department of State Health Services, Vital Statistics Unit, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**AMICUS CURIAE BRIEF OF  
TEXAS APPLESEED FOUNDATION IN SUPPORT OF  
PLAINTIFFS’ APPLICATION FOR PRELIMINARY INJUNCTION**

TO THE HONORABLE ROBERT PITMAN:

Plaintiffs’ Application for Preliminary Injunction and the Amicus Curiae Brief of the United Mexican States provide compellingly detailed factual and legal arguments supporting the Plaintiffs’ claims. This case, however, is even simpler than the briefing suggests: the plain language of Section 1 of the Fourteenth Amendment alone provides a clear roadmap for a ruling in the Plaintiffs’ favor.

**I.**

The Fourteenth Amendment was ratified by the required number of states and became part of the Constitution of the United States on July 20, 1868. Section 1 has two sentences. The first sentence confirms that the plaintiff children are full United States citizens. The second sentence confirms that the plaintiff children cannot be denied their full and equal rights as United States citizens, and that their parents cannot be denied

their right to obtain for their citizen children, on equal terms with other parents of citizen children, the foundational document of U.S. citizenship: a birth certificate.

A.

The first sentence of the Fourteenth Amendment provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.

U.S. Const. amend. XIV § 1.

More than a century ago, in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the Supreme Court unequivocally held that the clear rule of birthright citizenship applies in the United States. The petitioner, Wong Kim Ark, was born in San Francisco to Chinese parents who were subjects of the Emperor of China. His parents returned to China, but he stayed in San Francisco. After travelling to China to visit his family, he was denied reentry to the United States under the Chinese Exclusion Act. He sued. The Supreme Court held that the plain language of the first sentence of the 14<sup>th</sup> Amendment means exactly what it says: “All persons born ... in the United States... are citizens of the United States ... .” The Court found “nothing to countenance the theory that a general rule of citizenship by blood or descent has displaced in this country the fundamental rule of citizenship by birth within its sovereignty.” 169 U.S.at 674. By enacting the Fourteenth Amendment, “the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms.” *Id.* at 675. Simply put, “it is only necessary that [a person] should be born or naturalized in the United States to be a citizen of the Union.” *Id.* at 677.

The plaintiff children are United States citizens because they were born here.

**B.**

As citizens, the plaintiff children are entitled to enjoy every right, privilege and immunity enjoyed by every other U.S. citizen. However, because they are children, they cannot fully exercise those rights on their own. In particular, they cannot obtain for themselves a birth certificate – the state-issued document that proves birth within the United States, and therefore citizenship. As the record shows, a birth certificate is the foundational document needed to obtain other forms of identification and to secure benefits available to other citizens. To deny a child his or her birth certificate is to deny that child full citizenship.

The second sentence of the Fourteenth Amendment addresses – and answers – this dilemma. The first clause protects the rights of the plaintiff children directly:

No State shall make or enforce any law which shall abridge the privileges or immunities of *a citizen* of the United States;

U.S. Const. amend. XIV § 1 (emphasis added). The plaintiff children, as citizens, have all the same privileges and immunities as other U.S. citizens. This includes the right to obtain a birth certificate free of burdens not imposed on other citizen children. By imposing an often-insurmountable burden, based on the immigration status of their parents, that is not imposed on other citizens, the State of Texas is denying the plaintiff children the privileges guaranteed to them by the Fourteenth Amendment.

The second clause protects both the plaintiff children and their parents' rights to act on their behalf. It reads:

... nor shall any State deprive *any person* of life, liberty or property, without due process of law, nor deny to *any person* within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV § 1 (emphasis added). The second clause applies to *any person*, not just *citizens*. The record clearly shows that Texas is not guaranteeing either the plaintiff children or their parents due process of law or equal protection of the laws.

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.<sup>1</sup>

The Court need not read past Section 1 of the Fourteenth Amendment to conclude that the Department's scheme abridges the privileges and immunities of the plaintiff children and denies them due process and equal protection of the law. because the

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<sup>1</sup> *E.g.*, *Levy v. Louisiana*, 391 U.S. 68 (1968) (denying illegitimate children wrongful death benefits violates equal protection); *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164 (1972) (denying illegitimate children worker's compensation death benefits violates equal protection because "no child is responsible for his birth, and penalizing the ... child is an ineffectual – as well as unjust – way of deterring the parent"). *Cf. United States v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675, 2694 (2013) (federal law refusing to recognize state-authorized marriages "humiliates tens of thousands of children now being raised by same-sex couples").

Fourteenth Amended prohibits a state from punishing children for the perceived transgressions of their parents.

Likewise, the Department's scheme impermissibly conditions the ability of a parent to obtain a birth certificate for a U.S. citizen-child on the parent's immigration status – *not on whether the child is a citizen*. The Department will provide a birth certificate to the parent of a U.S. citizen if the parent is a citizen or has an unexpired visa. But Texas will deny a birth certificate to the parent of a U.S. citizen if the parent cannot produce an unexpired visa – *even though the child is a citizen*. Again, under the plain language of Section 1 of the Fourteenth Amendment, this denies the plaintiff parents of U.S. citizens – who are “persons” under the Constitution, even if they are not citizens – due process and equal protection of the law. They are denied what other parents are permitted – the right and ability to obtain for their children the foundational document of their citizenship, their birth certificates.

The Supreme Court in *Plyler v. Doe*, 457 U.S. 202 (1982), held that Texas had no substantial state interest in denying a public education to children who are *not* citizens or legal residents of the United States. Given the holdings in *Plyler* and *Wong Kim Ark*, Texas cannot claim that it has a substantial interest in denying a public education or other rights, privileges and immunities to citizens based on the immigration status of their parents. The plaintiff parents have a right equal to the right of every other parent of a U.S. citizen to be good parents, but the Department's new policy is denying them that right. And if not their parents, who will protect the plaintiff children's rights? The Department offers no solution to the dilemma its policy inflicts on these underage U.S.

citizens. Rather, the Department is condemning these citizens to second-rate status until they turn eighteen, 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.

## II.

This is not a difficult case. The plain language of Section 1 of the Fourteenth Amendment dictates the result by, in turn, protecting (1) the right of the plaintiff children, as citizens of the United States, to obtain birth certificates on equal terms with other U.S. citizens, and (2) the right of their parents, as persons entitled to due process and equal protection, to obtain birth certificates on their children's behalf on equal terms with other parents of U.S. citizens. Amicus Texas Appleseed Foundation therefore urges this Court to grant the preliminary injunction the Plaintiffs seek.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 22, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF electronic filing system, which will send notification of such filing to the following:

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