



Written by [Warren Mass](#) on August 28, 2015

Mexican Government Files Brief in Case Demanding Birth Certificates for Anchor Babies

On August 24, the government of Mexico filed an *amicus curiae* brief in the U.S. District Court for the Western District of Texas (Austin Division) in support of a lawsuit filed against the Texas Department of State Health Services by a group of illegal aliens represented by several nonprofit civil rights organizations alleging that the state has violated the 14th Amendment's Equal Protection Clause by rejecting their applications to obtain birth certificates for their U.S.-born children.



The original plaintiffs in the case, Maria Isabel Perales Serna and a group of other aliens who entered the United States illegally, on their own behalf and on behalf of their U.S.-born children, were represented by the Texas Civil Rights Project and Texas Rio Grande Legal Aid, Inc., which filed the suit against the Texas state agency on May 26. In the lawsuit (*Maria Isabel Perales Serna et al. v. Texas Department of State Health Services et al.*) the plaintiffs complained that "scores of women from Mexico and Central America have been denied birth certificates for their Texas born children." Consequently, says the complaint: "This leaves the child with no birth certificate, and mother and child with no official proof of the parent-child relationship."

The plaintiffs complained Texas officials reject *Matrículas Consular* identification cards issued by Mexican consulates to their citizens living abroad as acceptable forms of identification to obtain birth certificates for their Texas-born sons and daughters, based upon the immigration status of the plaintiff parents. They further alleged that the lack of a birth certificate is causing them serious harm. They also contended that the state of Texas' actions "violate the Equal Protection Clause of the Fourteenth Amendment, as well as the Supremacy Clause."

The argument that the 14th Amendment automatically grants citizenship to babies born in the United States to illegal alien mothers (so-called "anchor babies"), while currently accepted by the Obama administration's officials, has been disputed by many constitutional scholars. Several presidential candidates, most vocally Donald Trump, have called for an end to birthright citizenship for babies born to mothers who are in the country illegally.

On July 22, Texas Department of State Health Services Commissioner Kirk Cole and State Registrar Geraldine Harris filed a motion asking U.S. District Court Judge Robert Pitman to dismiss the lawsuit, stating: "Under the Eleventh Amendment to the Constitution, the Court lacks jurisdiction over all claims against DSHS." Quoting the case *Tex. Natural Res. Conservation Comm'n v. IT- Davy*, Cole and Harris noted: "Under state sovereign immunity, 'the State and its agencies are generally immune from suit unless the State gives its consent to be sued.' "

The motion to dismiss was submitted to the federal court by Texas Attorney General Ken Paxton and members of his team.



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The next chapter in this unfolding story occurred on August 24, when the Mexican government filed its *amicus curiae* brief. In outlining what its interests in the case are, the brief stated: "Mexico is responsible under international and domestic law to protect its nationals wherever they may be residing."

The "anchor babies," whom Mexico and the plaintiffs complain are being denied birth certificates, therefore, are obviously Mexican nationals in whom Mexico has interests and a responsibility to protect.

Yet, further along in the brief, we read the following argument:

Mexico fears the creation in Texas of a vulnerable citizenry: undocumented citizens of the United States. The Texas Department of Vital Statistics refuses to provide birth certificates to U.S. citizen children when their parents are unable to present U.S. government-issued identification, even when those parents present other highly reliable identity documents. In refusing to issue birth certificates to U.S. citizens, the State of Texas harms these individual U.S. citizens in violation of the U.S. Constitution and international law.

Are the babies Mexican nationals, in whom Mexico has an interest, or U.S. citizens? They cannot be both. If they are U.S. citizens, then whether or not Texas issues them birth certificates is between them (or those representing them) and Texas, and is none of the Mexican government's business. If they are Mexican citizens, on the other hand, then the Mexican government should ask their parents to bring them home to Mexico.

We noted earlier the plaintiffs' complaint that "scores of women from Mexico and Central America have been denied birth certificates for their Texas born children." Consequently, "This leaves the child with no birth certificate, and mother and child with no official proof of the parent-child relationship."

In considering if the plaintiffs in *Serna v. Texas* have a legitimate grievance, it might be interesting to see how the United States handles birth certificates for children born abroad to U.S. citizen parents. A notice on the State Department's website provides this advice:

A child born abroad to a U.S. citizen parent or parents may acquire U.S. citizenship at birth if certain statutory requirements are met. The child's parents should contact the nearest U.S. embassy or consulate to apply for a Consular Report of Birth Abroad of a Citizen of the United States of America (CRBA) to document that the child is a U.S. citizen. If the U.S. embassy or consulate determines that the child acquired U.S. citizenship at birth, a consular officer will approve the CRBA application and the Department of State will issue a CRBA, also called a Form FS-240, in the child's name. According to U.S. law, a CRBA is proof of U.S. citizenship and may be used to obtain a U.S. passport and register for school, among other purposes.

If the Mexican government really wants to help the babies born to its nationals residing illegally in the United States obtain birth certificates and establish proof of parent-child relationships, why doesn't it follow the same procedure the United States does for its citizens giving birth abroad, and issue a Consular Report of Birth Abroad of a Citizen of Mexico?

This would be much more helpful to everyone concerned than expecting Texas to issue birth certificates based on the Mexican *Matrículas Consular* identification cards. It would also avoid interference in the internal operations of a sovereign U.S. state.

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