IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LAURA NANCY CASTRO, et al.	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. B-09-208**
	§	
MICHAEL T. FREEMAN, et al.	§	
	§	
Defendants.	§	

ORDER

BE IT REMEMBERED, that on April 26, 2011, the Court considered Defendants' Amended Motion to Dismiss Causes of Action Seeking Declaratory and Injunctive Relief Relating to Delay in Adjudication of Passport Applications and Motion to Dismiss Claims of Laura and Yuliana Castro for Relief under 8 U.S.C. § 1503(a), Dkt. No. 141, Defendants' Partial Motion to Dismiss Habeas Corpus Causes of Action, Dkt. No. 142, Defendants' Amended Partially Opposed Motion to Sever Parties and Claims, Dkt. No. 120, Plaintiffs' Amended Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission, Dkt. No. 135, and Plaintiffs' First Motion for Class Certification and Brief in Support, Dkt. Nos. 156, 157.

On September 13, 2010, Plaintiffs filed their Third Amended Petition for Writ of Habeas Corpus, Dkt. No. 102. The petition, by ten individuals, includes a number of distinct complaints including habeas claims, requests for declaratory and injunctive relief, requests for declaration of citizenship, and claims of violations of the Federal Torts Claims Act ("FTCA") and causes of action under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *Id.* Plaintiffs make allegations of a class action but have not yet filed their Motion for Class Certification as discovery regarding numerosity is ongoing. *See* Dkt. No. 114.

On January 14, 2011, Defendants filed their Amended Motion to Sever the actions raised in the complaint into (1) separate causes of action for each request for declaration of citizenship under 8 U.S.C. § 1503; (2) a separate cause of action for the FTCA and *Bivens* claims; (3) a separate cause

of action for class action claims against the Department of State ("DOS"); and (4) a separate cause of action for class action claims against the Department of Homeland Security ("DHS").

On February 12, 2011, Plaintiffs filed their Amended Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission, Dkt. No. 135. Plaintiffs assert that Defendants' responses are insufficient, that their own requests do not call for purely legal conclusions and that Defendants have not made reasonable inquiries in order to admit or deny, or have failed to either admit or deny, the requests. *Id.*

On March 7, 2011, Defendants filed their Amended Motion to Dismiss Causes of Action Seeking Declaratory and Injunctive Relief Relating to Delay in Adjudication of Passport Applications and Motion to Dismiss Claims of Laura Castro ("Laura") and Yuliana Castro ("Yuliana") for Relief under 8 U.S.C. § 1503(a), Dkt. No. 141. Defendants assert that Laura's Yuliana's, Rodrigo Sampayo's ("Sampayo") and Jessica Garcia's ("Garcia") claims seeking declaratory and injunctive relief relating to the delay in adjudication of their passport applications are moot because the Government has since adjudicated those applications. *Id.* Defendants further argue that Laura and Yuliana's claims for declaration of citizenship under 8 U.S.C. § 1503(a) are moot because they have received United States passports. *Id.* Laura, Yuliana, Sampayo, and Garcia agree that their claims relating to the delay in the adjudication of their passport applications are moot and therefore agree to those claims being dismissed. Dkt. No. 145. However, Laura and Yuliana contest the motion to dismiss their claims for declaration of citizenship under 8 U.S.C. § 1503(a). *Id.*

On March 7, 2011, Defendants also filed their Partial Motion to Dismiss Habeas Corpus Causes of Action, Dkt. No. 142. Defendants allege that the Court does not have jurisdiction to consider the habeas claims brought by Trinidad Muraira de Castro ("Castro") and Sampayo. *Id.*

I. Background

A. Laura Castro, Yuliana Castro, Trinidad Muraira de Castro, and C.A.G.

Laura, Yuliana, Castro, and C.A.G.'s ("C.A.G.") claims stem from their attempt to enter the United States on August 24, 2009. Castro, a Mexican citizen, is the mother of Laura and Yuliana, who were born in Brownsville, Texas, in 1980 and 1984, respectively, with the assistance of a midwife, Trinidad Saldivar. C.A.G. is the daughter of Yuliana and has a Texas birth certificate.

Laura applied for a U.S. passport and received it on January 30, 2008. Yuliana applied for a U.S. passport in January 2009 and DOS requested additional evidence of her birth on July 30, 2009. On August 24, 2009, Laura, Yuliana, Castro, and C.A.G. applied for admission at a port of entry in Brownsville, Texas. Laura presented her U.S. passport, Yuliana presented her Texas birth certificate, Texas ID, receipt for her U.S. Passport, and C.A.G.'s Texas birth certificate, and Castro presented her laser visa. All four were detained and questioned by Officer Eliseo Cabrera ("Cabrera") "for about ten hours" eventually resulting in Castro signing a document stating she had falsely filed Laura's and Yuliana's births in Texas and that they were in fact born in Mexico. Dkt. No. 102 at 8-9. Laura and Yuliana were determined to have withdrawn their applications for entry and Castro was found to be inadmissible for fraud and all their documents were confiscated. *Id.* At the time this action was originally filed, Laura, Yuliana and Castro were at a port of entry in Brownsville, Texas, and unable to enter the United States.

Since that time, however, Laura's U.S. passport has been returned to her and Yuliana has received a U.S. passport. Laura and Yuliana both assert that they continue to be hesitant to cross the border for fear that they will be detained and their documents confiscated. Furthermore, Laura and Yuliana assert that their claim for declaration of United States citizenship is not moot because Defendants refuse to admit in Plaintiffs' requests for admission that Laura and Yuliana are United States citizens.[1] Castro argues she is still in custody for habeas purposes because she is permanently barred from the United States based on DHS's determination that she had committed fraud in procuring immigration benefits.

In the Third Amended Complaint, Laura and Yuliana seek declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding the procedures used by

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[1] In their amended responses to Plaintiffs' First Requests for Admission, Dkt. No. 115 at 4, Defendants state:

Request for Admission No. 1: Admit that Laura Castro was born in the State of Texas.

Response to Request for Admission No. 1: Defendants admit that Laura Castro provided enough evidence showing that she was born in Texas to meet her burden of proving that she is a United States citizen in support of her U.S. passport application.

Request for Admission No. 2: Admit that Yuliana Castro was born in the State of Texas.

Response to Request for Admission No. 2: Defendants admit that Yuliana Castro provided enough evidence showing that she was born in Texas to meet her burden of proving that she is a United States citizen in support of her U.S. passport application.

DHS in denying their entry with facially valid documents; (2) regarding procedures used by DHS to obtain "confessions" from parents of individuals with facially valid documents; (3) regarding procedures, and the lack of a hearing, used by DHS and DOS in denying, revoking and/or confiscating documents; and (4) regarding the lack of guidelines of DHS and DOS in adjudicating claims of citizenship by people with facially valid documents. Laura and Yuliana seek declarations of United States citizenship under 8 U.S.C. § 1503(a). Laura, Yuliana, and Castro assert claims against DHS and Cabrera under the FTCA and *Bivens*. Castro requests review of the cancellation of her laser visa and the finding that she committed fraud under habeas corpus jurisdiction.

B. Rodrigo Sampayo

Sampayo has a Texas birth certificate issued about eight months after he was born, stating that he was born in Brownsville, Texas, in 1949 to a midwife, Belen Lopez. The midwife and both of Sampayo's parents are deceased. Sampayo was raised in Mexico City and had a Mexican birth certificate issued when he was about five years old. Sampayo claims he learned of his Texas birth certificate after his parents had passed away. In 2009, Sampayo applied for a United States passport. On June 24, 2009, DOS requested further documentation of his birth. On September 17, 2009, Sampayo applied for entry at a port of entry in Brownsville, Texas, and presented his Texas birth certificate, Texas driver's license, and the receipt for his U.S. passport. Sampayo was detained and questioned by Cabrera for approximately six hours and his attorney was denied access to see him. Dkt. 102 at 13. Sampayo eventually signed a document stating he was born in Mexico, his documents were confiscated and it was determined that he had withdrawn his application for admission. *Id.* On March 1, 2010, DOS denied Sampayo's passport application asserting that he had "admitted freely" to being born in Mexico. *Id.* On May 7, 2010, DOS refused to reconsider the denial.

At the time this action was originally filed, Sampayo was at the Gateway Bridge in Brownsville, Texas, but unable to enter the United States. Sampayo asserts that he is in custody for habeas corpus purposes because he cannot travel between Mexico and the United States and this inhibits his ability to work. In the Third Amended Complaint, Sampayo seeks declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding the procedures used by DHS in denying his entry with facially valid documents; (2) regarding

procedures, and the lack of a hearing, used by DHS and DOS in denying, revoking and/or confiscating documents; and (3) regarding the lack of guidelines of DHS and DOS in adjudicating claims of citizenship by people with facially valid documents. Sampayo also seeks a declaration of United States citizenship under 8 U.S.C. § 1503(a). Sampayo has claims against DHS and Cabrera under the FTCA and *Bivens*. Sampayo requests review of the actions of DHS "in rejecting his application to enter the U.S., and confiscating his documents" without a due process hearing under habeas corpus jurisdiction. *Id.* at 27. Defendants urge that Sampayo has not "attempted to enter the United States and been denied entry." Dkt. No. 142 at 2.

C. Jessica Garcia and Ana Alanis

Ana Alanis ("Alanis") is the mother of Garcia. Garcia has a Texas birth certificate issued two weeks after her birth and signed by a midwife, Trinidad Saldivar. Garcia also has a Mexican birth certificate issued seven weeks after her birth and stating she was born in Mexico. In May 2009 Garcia applied for a U.S. passport. DOS requested further evidence of her birth. On October 31, 2009, Garcia applied for entry at a port of entry in Brownsville, Texas, and presented her Texas ID, her Texas birth certificate, and the receipt for her passport application. Garcia was detained and questioned by Cabrera. Alanis came to the port of entry to attempt to explain the reason her daughter had two birth certificates. Neither Garcia nor Alanis ever stated Garcia was born in Mexico. A Notice to Appear ("NTA") was issued to Garcia and she and Alanis returned to Mexico. The NTA was never filed and therefore Garcia was not provided with a hearing to contest her citizenship status. On June 24, 2010, DOS denied Garcia's application for a U.S. passport.

Garcia asserts she lost her employment, health benefits, and defaulted on financial obligations because DHS refused to admit her into the United States. In the third amended petition, Garcia seeks declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding the procedures used by DHS in denying her entry with facially valid documents; (2) regarding procedures used by DHS to obtain "confessions" from parents of individuals with facially valid documents; (3) regarding procedures, and the lack of a hearing, used by DHS and DOS in denying, revoking and/or confiscating documents; and (4) regarding the lack of guidelines of DHS and DOS of adjudicating claims of citizenship by people with facially valid documents. Alanis seeks declaratory and injunctive relief regarding procedures used by DHS to obtain "confessions" from

parents of individuals with facially valid documents and that she did not commit fraud in registering her child as being born in the United States. Garcia also seeks a declaration of United States citizenship under 8 U.S.C. § 1503(a). Garcia and Alanis assert claims against DHS and Cabrera under the FTCA and *Bivens*.

D. Alicia Ruiz

Alicia Ruiz ("Ruiz") alleges she was born in Mercedes, Texas, in 1933. Ruiz's birth was not immediately registered, but she was baptized in Mercedes when she was nine months old and her baptismal certificate states she was born in Texas. When she was ten, Ruiz's parents, who at some time after her baptismal had moved to Mexcio, registered her as having been born in Mexico. Ruiz has applied for a U.S. Passport three times but her application has been rejected each time.

Ruiz alleges she has been denied due process by DOS in rejecting her application despite evidence that she was born in Texas. In the Third Amended Complaint, Ruiz seeks declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding procedures, and the lack of a hearing, used by DOS in denying documents; and (2) regarding the lack of guidelines of DOS in adjudicating claims of citizenship by people with facially valid documents. Ruiz further seeks a declaration of United States citizenship under 8 U.S.C. § 1503(a).

E. Maria Reyes

Maria Reyes ("Reyes") alleges she was born in Creedmore, Texas, in 1931, but her family repatriated to Mexico when she was five months old. Reyes was baptized in Lampazos, Mexico, and her baptismal certificate states she was born in the United States. The next day, her parents registered her birth in Mexico stating she was born in Anahuac, Mexico. In 1975, Reyes obtained a delayed Texas birth certificate. In 2006, Reyes applied for a U.S. passport but the application was denied. In 2007, her application for a copy of her Texas birth certificate was denied but she requested a hearing where an Administrative Law Judge ("ALJ") found that she had been born in Texas. In 2008, Reyes again applied for a U.S. passport but her application was again denied.

In the Third Amended Complaint, Reyes seeks declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding procedures, and the lack of a hearing, used by DOS in denying documents; and (2) regarding the lack of guidelines of DOS in adjudicating

claims of citizenship by people with facially valid documents. Reyes further seeks a declaration of United States citizenship under 8 U.S.C. § 1503(a).

F. Jenifer Itzel Gonzalez

Jenifer Itzel Gonzalez ("Gonzalez") has a Texas birth certificate filed two days after her birth and showing birth in Port Isabel, Texas, with the aid of a midwife, Maria Martinez. Gonzalez also has a Mexican birth certificate filed two weeks after her birth and showing birth in Mexico. On June 8, 2007, Gonzalez applied for a U.S. passport and DOS requested additional documentation on two occasions before denying her application on March 25, 2010.

In the Third Amended Complaint, Gonzalez seeks declaratory and injunctive relief on the basis of violations of due process and equal protection (1) regarding procedures, and the lack of a hearing, used by DOS in denying documents; and (2) regarding the lack of guidelines of DOS in adjudicating claims of citizenship by people with facially valid documents. Gonzalez further seeks a declaration of United States citizenship under 8 U.S.C. § 1503(a).

II. Defendants' Motion to Dismiss Declaratory and Injunctive Relief

In Defendants' Amended Motion to Dismiss Causes of Action Seeking Declaratory and Injunctive Relief Relating to Delay in Adjudication of Passport Applications and Motion to Dismiss Claims of Laura and Yuliana Castro for Relief Under 8 U.S.C. § 1503(a), Defendants assert that the Court lacks jurisdiction to hear these causes of action because they are moot. Dkt. No. 141. Plaintiffs agree that their claims relating to the delay in the adjudication of their respective passport applications are moot since those applications have been adjudicated. Dkt. No. 145.

Defendants allege that the Court lacks subject matter jurisdiction as to Laura and Yuliana's claims for relief under 8 U.S.C. § 1503(a) because Laura's passport has been returned to her and Yuliana has been issued a passport. Defendants argue that neither Laura nor Yuliana have been denied a right or privilege as a United States national by DOS or DHS because DOS has issued their passports and DHS has not denied their entry. Defendants further assert that Laura and Yuliana's counsel represented to the Court that they would dismiss these claims in exchange for the Government placing Laura and Yuliana into removal proceedings to allow them to adjudicate their citizenship claims. Removal proceedings were not initiated, or were terminated, because Laura and Yuliana were issued passports.

Laura and Yuliana respond that because they were never able to adjudicate their citizenship, they continue to have fears of crossing the border and being detained. In support of their assertion that their need for a declaration of citizenship is not moot, Laura and Yuliana point to Defendants' responses to their first set of requests for admission because Defendants do not admit that Laura and Yuliana were born in Texas. Laura and Yuliana further assert that they have been denied a right or privilege as United States nationals because they are unable to immigrate their mother as an immediate relative because she was found to have committed fraud based on the Government's assertion that Laura and Yuliana's Texas birth certificates were fraudulently filed.

Defendants reply that neither DOS nor DHS has denied a "right or privilege" to Laura or Yuliana. Dkt. No. 152. Defendants argue that they have not denied Laura or Yuliana's right to apply for immediate relative status on behalf of their mother, Castro, on the basis that Laura and Yuliana are not U.S. citizens or on any other basis because no application has been made. Defendants reiterate that since DOS has issued passports to Laura and Yuliana, there is no jurisdictional basis for their claims under 8 U.S.C. § 1503(a). Lastly, Defendants point out that any individual in possession of a U.S. passport may have their passport revoked. Defendants argue that an unsubstantiated fear of that revocation does not establish jurisdiction.

Rule 12(b)(1) allows a court to dismiss a lawsuit where the pleader proves that the court "lacks jurisdiction over the subject matter." FED. R. CIV. P. 12(b)(1). Essentially, Plaintiffs bear the burden of establishing that this Court has subject matter jurisdiction over the various claims they raised. *See Ramming v. U.S.*, 281 F.3d 158, 161 (5th Cir. 2001). "Ultimately, a motion to dismiss for lack of subject matter jurisdiction should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle plaintiff to relief." *Id.* (citing *Home Builders Ass'n of Miss., Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998)). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc.*, 143 F.3d at 1010 (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)).

The Court finds that Laura and Yuliana have not met their burden of proving this Court's subject matter jurisdiction. The Court finds that Laura and Yuliana have not been denied a right or

privilege by DOS or DHS on the ground that they are not nationals of the United States. *See* 8 U.S.C. § 1503(a). To the contrary, both have been issued passports, which is evidence of citizenship and shows that they have proven to DOS by a preponderance of the evidence that they are United States citizens. Dkt. No. 152 at 2. As to Laura and Yuliana's concerns that they may face difficulties in the future, the Court follows the reasoning of the another district court in *Manning v. Rice*, No. 4:06-CV-464, 2008 WL 2008712, at *3 (E.D.Tex. 2008):

> The Court cannot and will not issue such speculative and advisory relief. If Plaintiff's passport is not renewed, and if she has exhausted her administrative remedies as to the denial of that renewal, then she – at that time – will have been denied a right or privilege to which she believes she is entitled and a district court should – at that time – have jurisdiction over her claims. Now is simply not that time.

Furthermore, the Court rejects Laura and Yuliana's arguments that they have been denied a right or privilege because they are unable to immigrate their mother as an immediate relative. Under 8 U.S.C. § 1154, "any citizen of the United States claiming that an alien is entitled . . . to an immediate relative status under section 1151(b)(2)(A)(i) of this title may file a petition with the Attorney General for such classification." Laura and Yuliana have not presented evidence that they have filed any petition on behalf of their mother or that any petition has been rejected because Laura and Yuliana are not United States citizens.

Therefore, the Court finds that it lacks subject matter jurisdiction under 8 U.S.C. § 1503(a) to determine Laura and Yuliana's citizenship claims. The Court **GRANTS** Defendants' Amended Motion to Dismiss Causes of Action Seeking Declaratory and Injunctive Relief Relating to Delay in Adjudication of Passport Applications and Motion to Dismiss Claims of Laura and Yuliana Castro for Relief Under 8 U.S.C. § 1503(a), Dkt. No. 141, in its entirety.

III. Defendants' Partial Motion to Dismiss Habeas Corpus Causes of Action

In Defendants' Partial Motion to Dismiss Habeas Corpus Causes of Action, Defendants assert that the Court lacks jurisdiction over the two habeas corpus causes of action brought by Sampayo and Castro. Defendants argue that neither Sampayo nor Castro are "in custody" within the meaning of 28 U.S.C. § 2241 and therefore the Court lacks jurisdiction over their habeas claims. Defendants argue that neither Sampayo nor Castro have shown restraint on their liberty that is not shared by the public generally.

Sampayo and Castro respond that they are "in custody" because they are unable to enter the United States and because their liberty interests in their family relationships and right to employment were restricted by Defendants' actions. They assert they were at a port of entry in Brownsville, Texas, and unable to enter the United States when this action was originally filed and therefore they were in custody at the time the action was filed, the point at time in which custody is determined for purposes of habeas corpus. Furthermore, Sampayo argues that, as a United States citizen, he has a liberty interest in not having his documents confiscated and in having a hearing to adjudicate his citizenship. Sampayo argues that by refusing to admit him or to provide him a hearing without mandatory detention, Defendants have restricted his liberty in a manner not shared by the public generally. Sampayo further argues that Defendants' refusal to provide him with a hearing to adjudicate his citizenship claim has interfered with his ability to conduct cross-border transactions, a restriction not shared by the public generally. Castro argues that she is in custody because her liberty interest in entering the United States and being with her family has been restricted by Defendants. She argues that this is a restraint not shared by the public generally because parents of other U.S. citizens with laser visas who have not falsely registered their children as born in Mexico, who have not signed false "confessions," and who have not been subjected to a finding of fraud are not barred from obtaining "immediate relative" status as the parent of an adult U.S. citizen.

Defendants reply that Sampayo and Castro were not in custody for habeas purposes when the Amended Petition was filed and they are not currently in custody. Dkt. No. 153. Defendants argue that the issue of Sampayo's citizenship is a legal issue and, unlike his other allegations of fact, are not required to be accepted as true by the Court under a Rule 12(b)(1) analysis. Defendants also argue that Sampayo has not alleged sufficient restraint because he has not alleged specific injury to his business and therefore his claims of suffering are "purely speculative." Dkt. No. 153 at 6. Defendants argue that Castro has also asserted only speculative restrictions since a petition for immediate relative status has not yet been filed on her behalf.

"The writ of habeas corpus functions to grant relief from unlawful custody or imprisonment. Absent custody by the authority against whom relief is sought, jurisdiction usually will not lie to grant the requested writ." *Prieto v. Gluch*, 913 F.2d 1159, 1162-63 (6th Cir. 1990) (quoting *Campillo v. Sullivan*, 853 F.2d 593, 595 (8th Cir. 1988)). "[H]abeas is not available to review

questions unrelated to the cause of detention." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). Section 2241 requires that a petitioner be "in custody" at the time he files his habeas petition for "the habeas court to have jurisdiction." *Pack v. Yusuff*, 218 F.3d 448, 454 n. 5 (5th Cir. 2000).

The "in custody" language of the habeas statute does not require a litigant to be in physical custody. However, it requires that a litigant establish some additional restriction on his liberty. *See Hensley v. Municipal Court, San Jose Milpitas Judicial Dist.*, 411 U.S. 345, 351 (1973) (holding that a petitioner released on his own recognizance pending execution of sentence was in custody within the meaning of 28 U.S.C. §§ 2241(c)(3) and 2254(a)); *Jones v. Cunningham*, 371 U.S. 236, 240 (1963) (the custody requirement for habeas purposes is satisfied when the petitioner is still subject to severe and immediate restraints on his liberty that are not shared by the public in general). The kind of custody that will suffice is judged by a very liberal standard, and any restraint on a petitioner's liberty because of his conviction that is over and above what the state imposes on the public generally will suffice. *Jones v. Cunningham*, 371 U.S. 236, 240 (1963). Whether the restraint of liberty is total, as in solitary confinement; partial, as in case of commitment to honor camp; or minimal, as in case of probation is only a matter of degree, and habeas corpus is available to test legality of such restraint. *Petition of Engle*, 218 F. Supp. 251, 252 (S.D. Ohio 1963), *aff'd* 332 F.2d 88 (6th Cir. 1964), *cert. denied*, 379 U.S. 903 (1964). Although the concept of custody has been considerably attenuated by the recent decisions, it has not lost all meaning. Some form of at least potential physical restraint must be present. Neither economic duress nor psychological restraint is enough. *Furey v. Hyland*, 395 F.Supp. 1356, 1360-61 (D.N.J. 1975), *aff'd* 532 F.2d 746 (3d Circ. 1976) (holding the potential loss of a medical license, damage to reputation, and the inability to resume public office are not custody in the absence if recognized restraints on liberty); *U.S. ex rel. Pitts v. Rundle*, 325 F.Supp. 480, 482 (E.D. Pa. 1971).

The Court does not interpret *Jones* to say that all aliens seeking entry into the United States are in United States custody. Rather, the Court follows the Seventh Circuit's interpretation in *Samirah v. O'Connell*, 335 F.3d 545, 550 (7th Cir. 2003) and concludes that "an alien abroad who seeks entry into the United States must, at the very least, suffer some unique restraint that would, in

light of historical precedent, constitute custody for the purposes of habeas jurisdiction." The Seventh Circuit further explained:

> We further note that Jones himself was a United States citizen, and that not one of the four cases the *Jones* Court cited for the proposition that it had "repeatedly held that habeas corpus is available to an alien seeking entry into the United States, although in those cases each alien was free to go anywhere else in the world" proves analogous to [petitioner's] situation or supports the proposition that there may be habeas jurisdiction over an alien abroad merely because he was refused entry. *See Jones*, 371 U.S. at 239, 83 S.Ct. 373 (citing *Brownell v. Shung*, 352 U.S. 180, 183, 77 S.Ct. 252, 1 L.Ed.2d 225 (1956); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 73 S.Ct. 625, 97 L.Ed. 956 (1953); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 70 S.Ct. 309, 94 L.Ed. 317 (1950); *United States v. Jung Ah Lung*, 124 U.S. 621, 626, 8 S.Ct. 663, 31 L.Ed. 591 (1888)). In *Brownell*, the alien brought a declaratory action under the Administrative Procedure Act in order to challenge an order of deportation; he did not bring a habeas action. *Brownell*, 352 U.S. at 182-86, 77 S.Ct. 252. In *Mezei*, the alien was detained by the government, and effectively imprisoned on Ellis Island, because the United States had permanently excluded him on security grounds and no other country was willing to accept him. *Mezei*, 345 U.S. at 207, 73 S.Ct. 625. In *Knauff*, a case in which the Court did not discuss jurisdiction, the alien was likewise "detained at Ellis Island." *Id.* at 539, 70 S.Ct. 309. In *Jung Ah Lung*, the alien was detained by the master of a steamship under color of federal law (the Chinese Restriction Act), and was therefore considered to be in federal custody for purposes of habeas jurisdiction. *Jung Ah Lung*, 124 U.S. at 626, 8 S.Ct. 663. None of these cases even remotely supports the idea that an alien abroad who is denied entry is, for that reason alone, in United States custody.

Castro's claim for habeas relief must be denied. She has no right to be granted entry into the United States. *See United States v. Lopez-Vasquez*, 227 F.3d 476, 484 (5th Cir. 2000) ("An alien 'seeking admission to this country may not do so under any claim of right.'"). Castro argues that she is permanently barred from immigrating to the United States and will be unable to be admitted as an immediate relative because Defendants have asserted that she committed fraud in registering her daughters as U.S. citizens despite the fact that Defendants have since determined that her daughters have proven by a preponderance of the evidence that they are U.S. citizens. However, there is no evidence that anyone has filed a petition on Castro's behalf for immediate relative status or that such a petition has been denied. Therefore, the Court cannot conclude that Castro is unable to enter this country. Even if someone did file a petition for immediate relative status and that petition was

denied, it is not clear this Court would have jurisdiction to review the denial. *See Shaughnessy v. United States*, 345 U.S. 206 (1953) ("'Our cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'").

Furthermore, Castro has failed to present evidence that she is "in custody in violation of the Constitution or laws or treaties of the United States." 18 U.S.C. 2241(c). She argues that the right to participate in family relationships is a sufficient liberty interest the restraint of which qualifies as "custody" for habeas purposes. While an inability to interact with one's family may rise to the level of custody for habeas purposes, her family may visit her in Mexico. Castro argues that in determining whether her liberty is sufficiently restrained, the Court must compare her situation with other parents of U.S. citizens who have not committed fraud. However, she cites no legal authority for this specific comparison. Supreme Court precedent holds that custody may exist where an individual's liberty is restrained in a manner "not shared by the public generally." *Jones*, 371 U.S. at 240. Her inability to enter the United States to visit her family, while certainly a hardship, is one most definitely shared by many aliens. *Samirah,* 335 F.3d at 549-550, n. 4; *see also, e.g., El-Hadad v. United States*, 377 F.Supp.2d 42 (D.D.C. 2005).

Sampayo's claim for habeas relief must also be denied. To the extent Sampayo asserts that he is "in custody" for habeas purposes based on his inability to enter the United States to conduct his business, the Court finds that his claim does not rise to the level of "custody" for habeas purposes. Sampayo's inability to enter the United States to conduct business is certainly a hardship, but it is also certainly one shared by many people who would like to enter the United States for business purposes but for one reason or another are denied entry.

Sampayo's claim differs from Castro's claim in that the Third Amended Petition alleges facts sufficient to support a claim that Sampayo is a United States citizen. On that basis, Sampayo argues that denying his entry into the United States places him "in custody" for habeas purposes since U.S. citizens have a liberty interest in entering the U.S. and other U.S. citizens are not so restrained. In determining a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the Court "is required merely to look to the sufficiency of the allegations in the complaint because they are presumed to be true." *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981). Assuming

Plaintiff's allegations of jurisdictional fact to be true, including that he is a United States citizen, the Court concludes that the denial of his entry qualifies as "custody" for habeas purposes.

However, the relief sought by Sampayo is available through another adequate remedy at law. "'[E]ven where a habeas court has the power to issue the writ,' the question remains 'whether . . . that power ought to be exercised.'" *Timms v. Johns*, 627 F.3d 525, 530 (4 Cir. 2010) (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)); *see Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994); *Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir.1993). Sampayo is seeking a declaration of U.S. citizenship. Title 8, United States Code, Section 1503 provides avenues for individuals inside and outside the United States to seek declarations by federal courts regarding their citizenship. There is no need for these avenues to be bypassed through the use of habeas corpus proceedings. Therefore, the Court **GRANTS** Defendants'Partial Motion to Dismiss Habeas Corpus Causes of Action, Dkt. No. 142, in its entirety.

IV. Defendants' Amended Partially Opposed Motion to Sever Parties and Claims

In Defendants' Amended Partially Opposed Motion to Sever Parties and Claims, Dkt. No. 120, Defendants argue that Plaintiffs have failed to meet the test for permissive joinder under Rule 20(a). Defendants argue that the individual claims under 8 U.S.C. § 1503(a) of Sampayo, Garcia, Ruiz, Reyes, and Gonzalez should be severed into individual actions because each will be based on completely different evidence and require individualized hearings with different witnesses. Defendants assert that Laura, Yuliana, Castro, Garcia, Alanis, and Sampayo's claims for money damages under the FTCA and *Bivens* should be severed. Plaintiffs agree that these claims should be severed because they seek to have those claims tried to a jury. Defendants argue that the Court should sever Plaintiffs claims against DHS and DOS into separate actions because DHS and DOS are distinct agencies governed by different statutes and regulations and different witnesses will be required. Furthermore, Defendants argue that hearing all these claims together would be prejudicial to both sides.

Plaintiffs respond that, while they agree the claims under the FTCA and *Bivens* should be severed, the remaining claims, all claims under 8 U.S.C. § 1503 and the claims for declaratory and injunctive relief against DOS and DHS, should remain joined. Plaintiffs assert that the 8 U.S.C. § 1503 claims are interrelated because the Government does not consider the issuance of passports to

settle the question of an individual's citizenship. Plaintiffs assert that the claims against DOS and DHS are intertwined, arise out of the same series of transactions, and involve common questions of law regarding sufficiency for due process purposes.

Defendants reply that since Defendants' conduct is not at issue under 8 U.S.C. § 1503, due process does not tie those claims to the class action claims asserted against DOS and DHS. Dkt. No. 138. Defendants reiterate that DOS adjudicates passports and DHS processes applicants for entry into the United States under different statutory and regulatory frameworks. Because there is no overlapping regulation or policy, Defendants argue that there is no common transaction or occurrence. Furthermore, Defendants argue that there is no joint relief sought from both DOS and DHS and therefore severing the two class actions would not limit Plaintiffs' potential relief.

"Under Rules 20 and 21, the district court has the discretion to sever an action if it is misjoined or might otherwise cause delay or prejudice." *Applewhite v. Reichhold Chemicals, Inc.*, 67 F.3d 571, 574 (5th Cir. 1995). Federal Rule of Civil Procedure 20(a) provides for permissive joinder if two requirements are met: (1) the claims arise out of the same transaction, occurrence, or series of transactions or occurrences; and (2) questions of law or fact common to all plaintiffs will arise. Fed. R. Civ. P. 20(a). To determine whether the factual situation constitutes a "transaction, occurrence or series of transactions or occurrences," the district courts in the Fifth Circuit have used the "logical relationship" analysis. *Hanley v. First Investors Corp.*, 151 F.R.D. 76, 79 (E.D. Tex. 1993). A "logical relationship" exists if there is some nucleas of operative facts or law. *Id.*

"Under the Rules, the impulse is towards entertaining the broadest possible scope of action consistent with fairness of the parties; joinder of claims, parties and remedies is strongly encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). However, Rule 21 provides that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." Fed. R. Civ. P. 21. Furthermore, even if the permissive joinder test is satisfied, "district courts have the discretion to refuse joinder in the interest of avoiding prejudice and delay, ensuring judicial economy, or safeguarding principles of fundamental fairness." *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521 (5th Cir. 2010); *U.S. v. O'Neil*, 709 F.2d 361, 369 (5th Cir. 1983) (finding that severance under Rule 21 is not limited to only curing misjoinder of parties).

First, the Court notes that the parties are in agreement as to the severance of Plaintiffs *Bivens* and FTCA claims into one separate cause of action. Second, the Court finds that the claims for declaration of citizenship under 8 U.S.C. § 1503 of Sampayo, Garcia, Ruiz, Reyes, and Gonzalez should be severed into five individual causes of action. Plaintiffs' individual § 1503 claims do not meet the permissive joinder requirements of Rule 21. Sampayo, Garcia, Ruiz, Reyes, and Gonzalez were each denied U.S. passports by DOS. However, these claims did not "arise out of the same transaction, occurrence, or series of transactions or occurrences." FED. R. CIV. P. 21(a). Plaintiffs applied for their respective passports on different dates and based on different evidence. DOS denied their respective applications based on the unique circumstances of their births and the evidence surrounding their births. There are no common questions of law or fact other than the "mere fact that all Plaintiffs' claims arise under the same general law" and this is insufficient for Rule 21 purposes. *Coughlin v. Rogers*, 130 F.3d 1348, 1349 (9th Cir. 1997).

Furthermore, concerns of prejudice and fundamental fairness compel the Court to sever the § 1503 claims from all other claims. First, the § 1503 claims are only against DOS. Second, in order to determine the individual's citizenship, the Court must hold separate hearings with different evidence and witnesses. The Court understands that its ruling on Plaintiffs' class action claims against DOS and DHS for violating their due process rights could potentially require DOS to re-examine the application for U.S. passports of Sampayo, Garcia, Ruiz, Reyes, and Gonzalez. However, it could take several years for a ruling on their class action claims and even if the ruling were in their favor, there is no guarantee DOS will find these individuals to be U.S. citizens eligible for U.S. passports. Meanwhile, Sampayo, Garcia, Ruiz, Reyes, and Gonzalez will continue in limbo unable to leave and return to the United States.

The Court finds that Plaintiffs' claims against DOS and DHS for violation of due process rights should not be severed from one another. Plaintiffs allege that DOS and DHS violated Plaintiffs' due process rights in similar ways and, at times, in conjunction with one another. While DOS and DHS may have different statutes and regulations governing their conduct, the Court finds that "a nucleus of operative facts . . . exist[ ] as to each [Plaintiff's] claim against each Defendant to satisfy the 'logical relationship' test . . . for proper joinder." *Coll v. Abaco Operating LLC*, 2009 WL 2857821, at *3 (E.D. Tex. 2009) (citing *Hanley*, 151 F.R.D. at 79). In addition, the Court notes

that joinder is encouraged, *United Mine Workers of Am.*, 383 U.S. at 724, and the remedies sought by Plaintiffs overlap. These claims differ from the § 1503 claims in that they involve a series of transactions and occurrences with similar facts and similar legal inquiries. In addition, there is a "common right to relief" arising out of the series of occurrences in Plaintiffs' complaint. Given the allegations in the Third Amended Complaint, the factual and legal bases of Plaintiffs class action claims overlap, although there may be some separate evidence and witnesses for or against one Defendant. Furthermore, the Court finds that the principles of "avoiding prejudice and delay, ensuring judicial economy, or safeguarding principles of fundamental fairness" weigh in favor of proceeding with these claims as joined. *See Acevedo*, 600 F.3d at 521.

V. Plaintiffs' Amended Motion to Determine the Sufficiency of Defendants' Responses

Plaintiffs served Requests for Admission with fifty-two (52) separate requests on Defendants. Defendants provided responses to those requests which Plaintiffs deemed insufficient. Plaintiffs filed their first Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission on December 31, 2010. However, after communication among counsel, Defendants provided amended responses. Plaintiffs found those to be insufficient and filed their Amended Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission, Dkt. No. 135. At issue in this motion are: (1) requests numbers 1 and 2 regarding the citizenship of Laura and Yuliana; (2) requests numbers 17-23 ("Group I") which generally seek admissions regarding the number of cases in which Cabrera was involved where applicants for entry with facially valid U.S. Passports or Texas birth certificates showing birth with the aid of a midwife were detained, interrogated, and signed documents withdrawing their applications for admission; (3) requests numbers 24-28 ("Group II") seeking the same information regarding cases in which Cabrera was not involved; (4) requests numbers 29-35 ("Group III") seeking the number of cases in which Cabrera was involved where applicants for entry with facially valid U.S. passports, or Texas birth certificates showing birth with the aid of a midwife had their documents, such as passports and drivers' licenses, confiscated and were not offered a due process hearing; 4) requests numbers 36-40 ("Group IV") seeking the same information regarding cases in which Cabrera was not involved; (5) requests numbers 16 and 44-49 seeking information on the legal position of Defendants; and (6) requests numbers 50-52 ("Group V") seeking to establish a floor to

the number of passport applications which have been denied since 2004 where the applicant provided a Texas birth certificate signed by a midwife.

On February 12, 2011, Plaintiffs filed their Amended Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission pursuant to Rule 36(a)(6) of the Federal Rules of Civil Procedure. Dkt. No. 135. Plaintiffs argue that Defendants' responses to requests numbers 1 and 2 are insufficient because Defendants do not clearly admit or deny the requests. Plaintiffs assert that Defendants' objections to requests numbers 16 and 44-49 are unjustified because Plaintiffs' requests do not call for purely legal conclusions but instead request an application of law to fact. *Id.* at 5-7. Plaintiffs assert that Defendants have not produced evidence that they made a reasonable inquiry in their attempt to respond to requests in Groups I, II, III, IV, and V. *Id.* at 7-10. Plaintiffs claim that their requests for admission are not vague or overbroad and that Defendants cannot rely on blanket generalizations to avoid providing admissions or denials. *Id.* at 10-12. Last, Plaintiffs assert that their requests are within the permissible scope of discovery set out in Federal Rule of Civil Procedure 26(b)(1).

Defendants respond that Plaintiffs have not provided any evidence that Defendants failed to sufficiently respond to their requests for admission. Dkt. No. 114 at 2. Defendants state that they specifically denied each of Plaintiffs' requests, including those within groups I, II, III, IV, and V, except for requests numbers 44-49, which Defendants claim call for legal conclusions. *Id.* at 3-4. Defendants assert that Plaintiffs requests generally seek to elicit facts and information rather than narrow the material facts at issue. *Id.* at 4-5. Defendants claim that they are unable to provide more specific information regarding many of Plaintiffs' requests because the respective Defendants' departments do not keep the sought statistical information in the regular course of business. Finally, Defendants request the Court sustain Defendants' objections to requests numbers 44-49 because they seek admissions to pure legal conclusions.

Plaintiffs reply that Defendants have failed to either admit or deny many of the requests for admission, including requests numbers 1 and 2. Dkt. No. 148 at 2. Plaintiffs further argue that Defendants' claims that they are unable to provide the information sought are baseless. *Id.* at 5-6. Plaintiffs argue that the requests for admission are properly used to gather information about issues that can or cannot be eliminated from the case, specifically numerosity for purposes of class

certification. *Id.* at 6-7. Last, Plaintiffs argue that requests 44-49 seek for Defendants to provide their opinion on the application of law to certain facts, not to provide pure legal conclusions. *Id.* at 8-10.

Federal Rule of Civil Procedure 36 allows parties to request admissions regarding the truth of any matters within the scope of Rule 26(b)(1), including ultimate facts, as well as applications of law to fact, or opinions about either. Fed. R. Civ. P. 36; *see also In re Carney*, 258 F.3d 415, 419 (5th Cir. 2001). The scope of Rule 36 "allows litigants to winnow down issues prior to trial and thus focus their energy and resources on disputed matters." *In re Carney*, 258 F.3d at 419. However, Rule 36 does not provide for requests for admission regarding pure legal conclusions. *Id.* (citing *Playboy Enterprises, Inc. v. Welles*, 60 F.Supp.2d 1050, 1057 (S.D.Cal. 1999) ("Requests for admissions cannot be used to compel an admission of a conclusion of law.").

In responding to requests for admission, a party must "specifically deny [them] or state in detail why the answering party cannot truthfully admit or deny." Fed. R. Civ. P. 36(a)(4). A party challenging a discovery request as being overly broad and unduly burdensome bears the burden of showing why discovery should be denied. *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). "Where the party served with an admission does not have, and could not obtain by reasonable inquiry, the information on whether the matter contained in the request was true or not, there exist 'other good reasons for the failure to admit.'" *Martin v. Mabus*, 734 F.Supp. 1216, 1224 (S.D.Miss. 1990). "Such reasonable inquiry includes an investigation and inquiry of employees, agents, and others 'who conceivably, but in realistic terms, may have information which may lead to or furnish the necessary and appropriate response." *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 44 (D. Conn. 2004).

First, the Court **DENIES AS MOOT** Plaintiffs' Motion as to Defendants' objections to Requests for Admissions Nos. 1 and 2 based on the above rulings. Second, the Court **DENIES** Plaintiffs' Motion as to Defendants' objections to Requests for Admission Nos. 16 and 44 - 49 and finds that those requests call for legal conclusions. Therefore, the Court finds Defendants provided a specific admission or denial of each request to which they were required to respond.

Plaintiffs argue Defendants failed to provide evidence of a "reasonable inquiry" into Requests for Admission Nos. 17 - 40, each addressing questions of numerosity. Defendants responded that

they do not keep statistics on the specific issues raised by Plaintiffs - for instance, when DOS or DHS denies a passport or entry to a person with a Texas birth certificate that shows birth with a midwife - and therefore are unable to admit the requests. Defendants argue that the only way they could be sure they could admit these requests would be to check every passport denial or entry denial since September 7, 2004, and look for a Texas birth certificate signed by a midwife and further determine if that was the sole or principal reason for the denial. Defendants argue this is unduly burdensome. Plaintiffs reply that Defendants would only need to check as many passport denials and entry denial records as needed to get to the requested numbers. Further, Plaintiffs argue that Defendants could ask Cabrera as they allege he keeps a notebook with this information.

The purpose of Requests for Admission Nos. 17 - 40 are to establish numerosity for class certification. Class certification is governed by Federal Rule of Civil Procedure 23(a) which requires Plaintiffs to show (1) the class is so numerous that joinder of all members is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality"); and (4) the representative parties will fairly and adequately protect the interests of the class ("adequacy"). The Court notes that for purposes of numerosity, there is no "magic number" that Plaintiffs must reach in order to meet the requirements for class certification. *See Henry v. Cash Today, Inc.*, 199 F.R.D. 566, 569 (S.D. Tex. 2000) (citing *Watson v. Shell Oil Co.*, 979 F.2d 1014, 1022 (5th Cir. 1992)). Courts should consider all the circumstances of the suit; the plaintiffs need only show that the class is so large that joinder of all plaintiffs is impracticable. *Id.* Plaintiffs are permitted to reasonably approximate the size of the class to satisfy their burden. *Id.* (citing *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981)). The Fifth Circuit has held that "a number of factors other than the actual or estimated number of purported class members may be relevant to the 'numerosity' question" including "the geographcial dispersion of the class, the ease with which class members may be identified, the nature of the action, and the size of each plaintiff's claim." *Zeidman v. J. Ray McDermott & Co., Inc.*, 651 F.2d 1030, 1038 (5th Cir. 1981).

The Court finds that while Plaintiffs' Requests for Admission Nos. 17 - 40 were proper and Defendants must answer them to the extent that they can, the actual number is not paramount to a finding of numerosity for class certification purposes. The Court finds that Defendants have

presented evidence to support their claim that they made a "reasonable inquiry" into the requests sought by Plaintiffs and are unable to provide the information without undue burden and therefore **DENIES** Plaintiffs Motion as to Requests for Admissions Nos. 17 - 40. On the other hand, the Court cautions Defendants that if Cabrera's notebook exists or any other information comes to light that allows them to conduct reasonable searches into this question, they must supplement the discovery as required. FED. R. CIV. P. 26.

VI. Plaintiffs' First Motion for Class Certification

On April 18, 2011, Plaintiffs filed their First Motion for Class Certification requesting the Court certify two class actions: (1) a class action for persons whose passports were revoked based on allegations related to non-nationality; and (2) a class action for persons whose passport applications were denied based on failure to prove U.S. nationality. Based on the holdings of the Court in this Order, the Court finds Plaintiffs' First Motion for Class Certification is **MOOT**. The Court **GRANTS** Plaintiffs leave to re-file the portions of this motion that are not in conflict with this Order in the appropriate case number.

VII. Conclusion

Based on the foregoing, the Court **ORDERS** the following:

1. Defendants' Amended Motion to Dismiss Causes of Action Seeking Declaratory and Injunctive Relief Relating to Delay in Adjudication of Passport Applications and Motion to Dismiss Claims of Laura and Yuliana Castro for Relief Under 8 U.S.C. § 1503(a), Dkt. No. 141, is **GRANTED** in its entirety. Plaintiffs Laura Castro's, Yuliana Castro's, Rodrigo Sampayo's and Jessica Garcia's claims for unreasonable delay in the adjudication of their passports are **DISMISSED**. Plaintiffs Laura Castro's and Yuliana Castro's claims for declaratory relief under 8 U.S.C. § 1503 are **DISMISSED**.
2. Defendants' Partial Motion to Dismiss Habeas Corpus Causes of Action, Dkt. No. 142, is **GRANTED** and Plaintiffs Trinidad Muraira de Castro's and Rodrigo Sampayo's claims under 28 U.S.C. § 2241 are **DISMISSED**.
3. Defendants' Amended Partially Opposed Motion to Sever Parties and Claims, Dkt. No. 120, is **GRANTED IN PART** and **DENIED IN PART**. The Court **ORDERS**

Plaintiffs Rodrigo Sampayo's, Jessica Garcia's, Alicia Ruiz's, Maria Reyes's, and Jenifer Gonzalez's individual claims under 8 U.S.C. § 1503 **SEVERED** from the above-captioned case and **ORDERS** the District Clerk to assign each Plaintiff their own cause number. The Court **ORDERS** Plaintiffs Laura Castro, Yuliana Castro, Trinidad Muraira de Castro, C.A.G., Rodrigo Sampayo, Jessica Garcia, and Ana Alanis's claims under *Bivens* and the Federal Torts Claims Act **SEVERED** into one separate cause and **ORDERS** the District Clerk to assign it a new cause number. The Court **ORDERS** the remaining claims, class action claims for violations of due process against Defendants, to proceed in the above-captioned cause number.

4. Plaintiffs' Amended Motion to Determine the Sufficiency of Defendants' Responses to Plaintiffs' First Set of Requests for Admission pursuant to Rule 36(a)(6) of the Federal Rules of Civil Procedure, Dkt. No. 135, is **DENIED**.

5. Plaintiffs' First Motion for Class Certification, Dkt. Nos. 156, 157, is **DENIED AS MOOT**. The Court **GRANTS** Plaintiffs leave to re-file the appropriate portions of the motion in the appropriate cause number.

DONE at Brownsville, Texas, on April 26, 2011.

Hilda G. Tagle
United States District Judge