

and for Entry of a Protective Order, Dkt. No. 195, Plaintiffs' Response to Defendant State Department's Opposed Motion to Quash Depositions and for Entry of a Protective Order, Dkt. No. 198, and Defendant's Reply in Support of Department of State's Opposed Motion to Quash Depositions and for Entry of a Protective Order, Dkt. No. 200. For the reasons discussed below, Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 194, is **GRANTED IN PART AND DENIED IN PART**, Plaintiffs[] Unopposed Motion to [sic] an Extension of Time, to and Including June 4, 2012, in which to File Their Opposition to Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 196, is **GRANTED**, Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint, Dkt. No. 206, is **GRANTED IN PART AND DENIED IN PART**, and Department of State's Opposed Motion to Quash Depositions and for Entry of a Protective Order, Dkt. No. 195, is **DENIED**.

As a matter of housekeeping, the Court **TERMINATES** Plaintiffs Trinidad Muraira de Castro, Ana Alanis, and Ervey Lorenzo Santos as named plaintiffs, and Jenifer Itzel Gonzalez as both a named plaintiff and potential class member, for the sake of clarification of this Court's previous Orders and for the convenience of the parties.

Having considered the unopposed Stipulation of Dismissal of all Claims by Jenifer Itzel Gonzalez With Prejudice Pursuant to 41(a)(1)(ii), Dkt. No. 193, the Court **TERMINATES** Plaintiff Jenifer Itzel Gonzalez. Although an order by this Court terminating Jenifer Itzel Gonzalez is unnecessary under Federal Rule of Civil Procedure 41(a)(1)(ii), the Court so **ORDERS** for the purpose of clarification and convenience of the parties.

Additionally, the Court **TERMINATES** Plaintiffs Trinidad Muraira de Castro, Ana Alanis, and Ervey Lorenzo Santos. In its Order of November 22, 2011, the Court dismissed Plaintiffs' second, third, fourth, fifth, sixth, and eighth causes of action. Dkt. No. 190. Only Plaintiffs' first and seventh causes of action remain. *Id.* Plaintiffs Trinidad Muraira de Castro, Ana Alanis, and Ervey Lorenzo Santos are not asserting

either or both of the first or seventh causes of action, and are therefore **TERMINATED**.¹ Thus, Plaintiffs Jessica Garcia, Luis Montemayor, Ana Luisa Guerrero, Alicia Ruiz, and Maria Reyes remain in this case asserting Plaintiffs' first cause of action individually and on behalf of a proposed class, and Plaintiffs Laura Castro, Yuliana Castro, and Jessica Garcia remain in this case asserting Plaintiffs' seventh cause of action individually and on behalf of a proposed class.

I. Background

A. Laura Nancy Castro and Yuliana Trinidad Castro

Laura Nancy Castro ("Laura") and Yuliana Trinidad Castro ("Yuliana"), assert claims stemming from their attempt to enter the United States on August 24, 2009. Their mother ("Castro") is a Mexican citizen. Laura and Yuliana were born in Brownsville, Texas in 1980 and 1984, respectively, with the assistance of a midwife, Trinidad Saldivar. Dkt. No. 167 at 12; Dkt. No. 191 at 4. Shortly after each of their births, Plaintiffs were registered in Brownsville, Texas as having been born there. *Id.* Plaintiffs allege that when Laura was about four years old, Castro registered Laura's and Yuliana's births in Mexico, stating that they were born in Matamoros, Mexico, so that they could attend school there. Dkt. No. 167 at 12; Dkt. No. 191 at 4.

Laura applied for a U.S. passport and received it on January 30, 2008. Dkt. No. 167 at 13; Dkt. No. 191 at 5. Yuliana applied for a U.S. passport in January 2009 and DOS requested additional evidence of her birth. *Id.* On August 24, 2009, Laura, Yuliana, Castro, and Yuliana's infant C.A.G. applied for admission at a port of entry in Brownsville, Texas. *Id.* Laura presented her United States passport; Yuliana presented her Texas birth certificate, Texas ID, and receipt for her United States

¹ This termination is only as to Trinidad Muraira de Castro, Ana Alanis, and Ervey Lorenzo Santos as named Plaintiffs. Should a class later be certified and should they fall within it, this Order should not be construed as precluding their participation as unnamed class members.

Passport; Yuliana as Next Friend of C.A.G. presented C.A.G.'s Texas birth certificate; and Castro presented her laser visa. *Id.* After being detained and questioned by Officer Eliseo Cabrera ("Cabrera") "for about ten hours," Plaintiffs allege that Castro signed a document stating she had falsely registered the births of Laura and Yuliana in Texas, when they were in fact born in Mexico. Dkt. No. 167 at 13. Laura and Yuliana were determined to have withdrawn their applications for entry, Castro was found to be inadmissible for fraud, and all of their documents were confiscated. *Id.* Dkt. No. 191 at 5.

On April 5, 2010, Laura's passport was revoked under 22 C.F.R. § 51.62(a)(2). Dkt. No. 167 at 14-15; Dkt. No. 191 at 6. Laura requested a hearing, which was scheduled in Washington, D.C., but the hearing was canceled and her passport was returned to her. Dkt. No. 167 at 15; Dkt. No. 191 at 6. Yuliana also received her passport and removal proceedings against her were terminated. *Id.* Laura and Yuliana assert that they continue to be hesitant to cross the border for fear that they will be detained and their documents confiscated. Dkt. No. 167 at 15.

B. Jessica Garcia

Jessica Garcia ("Garcia") alleges that she was born in Brownsville, Texas in 1987, with the assistance of midwife Trinidad Saldivar. *Id.*, at 19. Garcia alleges that Trinidad Saldivar registered her birth in Brownsville as having occurred there two and a half weeks after her birth. *Id.* Garcia also has a Mexican birth certificate issued seven weeks after her birth and stating she was born in Matamoros, Mexico. Dkt. No. 167 at 19; Dkt. No. 191 at 9. In May 2009, Garcia applied for a U.S. passport. Dkt. No. 167 at 20; Dkt. No. 191 at 9. 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. Dkt. No. 167 at 20; Dkt. No. 191 at 10. Garcia was detained and questioned by Officer Cabrera. *Id.* Garcia's mother came to the port of entry, and Plaintiffs allege she attempted to explain the

reason her daughter had two birth certificates. *Id.* Plaintiffs allege that neither Garcia nor her mother ever stated Garcia was born in Mexico. Dkt. No. 167 at 21. A Notice to Appear (“NTA”) was issued to Garcia and she and her mother returned to Mexico. *Id.*; Dkt. No. 191 at 10. The NTA was never filed, and therefore Garcia was not provided with a hearing. *Id.* On June 24, 2010, DOS denied Garcia’s application for a U.S. passport on the grounds that she had not proven by a preponderance of the evidence that she is a United States citizen. *Id.* Garcia received her United States passport on July 25, 2012. *See Garcia v. Clinton*, No. 1:11-cv-83 (S.D. Tex.) Dkt. No. 188 at 8.

C. Maria Reyes

Maria Reyes (“Reyes”) alleges she was born in Creedmore, Texas, in 1931, but she alleges that her family repatriated to Mexico when she was five months old. Dkt. No. 167 at 26. On April 21, 1932, Reyes alleges she was baptized in Lampazos, N.L., Mexico. *Id.* Her baptismal certificate states she was born in “Cremord, Tex.” *Id.*; Dkt. No. 191 at 14. The next day, her parents registered her birth in Mexico stating she was born in Anahuac, Mexico. *Id.* In 1975, Reyes obtained a delayed Texas birth certificate. *Id.* In 2006, Reyes applied for a United States passport, and the application was denied. Dkt. No. 167 at 26-27; Dkt. No. 191 at 14. In 2007, her application for a copy of her Texas birth certificate was denied. Dkt. No. 167 at 27; Dkt. No. 191 at 14. Following this denial, Reyes alleges she requested a hearing where an Administrative Law Judge (“ALJ”) found that she had been born in Texas. Dkt. No. 167 at 27. Thereafter, in 2008, Reyes applied for a United States passport but her application was again denied on the grounds that she had not proven by a preponderance of the evidence that she is a United States citizen. Dkt. No. 167 at 27; Dkt. No. 191 at 15. Reyes filed a now separate cause of action under 8 U.S.C. § 1503(a). *Reyes v. Clinton*, No. 1:11-cv-85 (S.D. Tex.). On or about April 20, 2012, DOS determined that Reyes was able to prove by a preponderance of the evidence that she

is a United States citizen. Dkt. No. 194 at 5. On May 8, 2012, DOS issued Reyes a United States passport. Dkt. No. 219, Att. 1 at 1; Dkt. No. 220, at 1, 3. The parties stipulated to the dismissal of her individual action and the case was closed. *Reyes*, No. 1:11-cv-85 Dkt. Nos. 166 and 167.

D. Alicia Ruiz

Alicia Ruiz ("Ruiz") alleges she was born in Mercedes, Texas, in 1933. Dkt. No. 167 at 25. Ruiz's birth was not immediately registered, but she was baptized in Mercedes, Texas when she was nine months old and her baptismal certificate states she was born in Relampago Ranch, Texas. *Id.*; Dkt. No. 191 at 13. When she was ten, Ruiz's parents, who at some time after her baptismal had moved to Mexico, registered her birth in Mexico as having been born in Mexico. *Id.* Ruiz's marriage certificate shows she was born in Mexico, but at least one of her children's birth certificates show Ruiz was born in the United States. *Id.* Ruiz has applied for a United States passport three times but her application has been denied each time. *Id.*

Ruiz filed a now separate cause of action under 8 U.S.C. § 1503(a). *Ruiz v. Clinton*, No. 1:11-cv-84 (S.D. Tex.). On October 1, 2012, this Court heard that case and found by a preponderance of the evidence that Ruiz is a United States citizen. *Ruiz*, No. 1:11-cv-84 Dkt. Nos. 188 and 189.

E. Ana Luisa Guerrero

Ana Luisa Guerrero ("Guerrero") alleges she was born in Brownsville, Texas, in July 1977, with the assistance of a midwife, Victoria Grimaldo. Dkt. No. 167 at 23. Her birth was registered in Brownsville, Texas one month later. *Id.*, at 23-24; Dkt. No. 191 at 12. Guerrero's mother registered her birth in Mexico as having been born in Mexico one month earlier, in June 1977. *Id.*, at 24; Dkt. No. 191 at 12. In December 1977, Guerrero was baptized in Mexico and the baptismal certificate reflects the information found in her Mexican birth certificate. Dkt. No. 167 at 24. In 2006,

Guerrero petitioned a Mexican court to correct her Mexican birth certificate to reflect her United States date and place of birth, and the petition was granted in January 2007. *Id.* Thereafter, Guerrero applied for and later received a United States passport. *Id.*; Dkt. No. 191 at 12.

In 2008, Guerrero filed an I-130 petition, seeking to obtain immigration documents for her Mexican-national husband. *Id.* As part of the petition process, Guerrero and her husband interviewed with the Department of Homeland Security ("DHS"). *Id.* In January 2009, DHS requested further documentation of Guerrero's birth in the United States which she provided. *Id.* In December 2009, Guerrero and her parents interviewed with DHS. *Id.* A few days later, DOS notified Guerrero that her passport had been revoked. *Id.*, at 24-25; Dkt. No. 191 at 13-14.

Guerrero filed a separate, individual cause of action under 8 U.S.C. § 1503(a). *Guerrero v. Clinton*, No. B-11-cv-16 (S.D. Tex.). On March 15, 2012 the parties agreed to settle the case and DOS agreed to issue a United States passport to Guerrero. Dkt. No. 194 at 6. On March 5, 2012, DOS issued Guerrero a United States passport. Dkt. No. 219, Att. 1 at 1.; Dkt. No. 220 at 1, 2. The parties stipulated to the dismissal of Guerrero's individual action and the case was closed. *Guerrero*, No. 1:11-cv-16 Dkt. Nos. 43, 45.

F. Luiz Montemayor

Luis Montemayor ("Montemayor") claims he was born in Mercy Hospital in Brownsville, Texas, in 1967. Dkt. No. 167 at 22; Dkt. No. 191 at 11. He alleges that his birth certificate was signed and dated the day of his birth during Hurricane Beulah but was not filed for over ten years, allegedly as a result of the hurricane. Dkt. No. 167 at 22. About one month after his birth, he was registered in Mexico as having been born in Mexico. *Id.*; Dkt. No. 191 at 11. In 2007, Montemayor obtained a United States passport and, in 2009, a passport card. *Id.* In January 2011, he received a letter from the Department of State ("DOS") revoking his passport and passport card.

Id. Montemayor alleges that this letter stated that he had failed to provide additional evidence of his birth in Texas as requested and threatened criminal prosecution if he continued to use these documents. Dkt. No. 167 at 22-23. Montemayor alleges that he did not receive any such request from DOS and therefore had no opportunity to provide additional evidence of his birth. Dkt. No. 167 at 23.

Montemayor filed a separate, individual action under 8 U.S.C. § 1503(a) challenging the revocation of his passport. *Montemayor v. Clinton*, No. 1:11-cv-109 (S.D. Tex.). In September 2011, DOS issued a United States passport to Montemayor. Dkt. No. 194 at 5, *see also Montemayor*, No 1:11-cv-109, Dkt. No. 12 at 2. The parties then stipulated to the dismissal of Montemayor's individual action and the case was closed. *Montemayor*, No 1:11-cv-109, Dkt. Nos. 12 and 13.

II. Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint

Plaintiffs' first cause of action alleges that

Defendant Secretary of State improperly applies the 'preponderance of the evidence' standard, both in adjudicating U.S. passport applications and in determining whether to revoke previously issued U.S. passports. Such action deprives Plaintiffs of the full enjoyment of the rights and privileges of U.S. citizenship to which they are entitled by virtue of birth within the United States.

Dkt. No. 167 at 35. Plaintiffs continue, stating that "Defendant Clinton's actions violate Plaintiffs' rights under the Fifth and Fourteenth Amendments, the Administrative Procedures [sic] Act, the Mandamus Act, and entitle Plaintiffs to relief under the Declaratory Judgment Act." *Id.* This Court's Order of November 22, 2011 found that the Administrative Procedure Act ("APA") does not provide the Court with jurisdiction over Plaintiffs' first cause of action. Dkt. No. 190 at 10.

As remedy for their first cause of action, Plaintiffs request² that the Court

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Plaintiffs request twenty-one separate forms of relief in their Fourth Amended Class

3) Declare that the actions, practices and determinations challenged herein violate federal law, including but not limited to the Constitution, Immigration and Nationality Act, and the Administrative Procedures [sic] Act, and issue an appropriate order for injunctive and declaratory relief to remedy these violations and prevent future violations;

...
8) Declare that applicants for United States passports are entitled to fair and transparent application of the preponderance of the evidence standard, in accordance with Fifth Circuit precedent, including, if a passport application is denied, or a previously issued passport is revoked, a discussion of the evidence presented, and the reasons it does not meet the preponderance test;

...
18) Enjoin Defendant Department of State from denying a passport application, or revoking a previously issued passport, without issuing a written decision which includes a discussion of the evidence presented, and how application of the preponderance of the evidence test results in the action taken;

Dkt. No. 197 at 7 (quoting Dkt. No 167 at 40, 41, and 43).

A. Parties' Arguments

On May 8, 2012, Defendants filed Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 194. In their motion, Defendants argue that the Court lacks subject matter jurisdiction. *Id.* Specifically, Defendants argue that Plaintiffs' first cause of action is moot with regard to those Plaintiffs who have received United States passports, and that no Plaintiff has

Action Complaint for Declaratory and Injunctive Relief, but do not specify the exact relief that corresponds to each cause of action. Dkt. No. 167 at 40-45. Having reviewed the causes of action remaining in the case as to the named Plaintiffs and the requested relief, the Court finds that the relief requested in Plaintiffs' Complaint to be more expansive than excerpted in Plaintiffs' response to Defendants' motion to dismiss the first cause of action. For the ease of analysis the Court generalizes the relief requested as to this cause of action to be declaratory and injunctive relief speaking to DOS's application of the preponderance of the evidence test. However, the Court makes no finding and issues no opinion as to the availability or propriety of each specific form of relief sought.

standing to seek injunctive relief against DOS, because they have not demonstrated that they have suffered an “injury in fact,” or met the redressability requirement of the standing doctrine. *Id.*, at 7-13.

On May 26, 2012, Plaintiffs filed Plaintiffs[] Unopposed Motion to [sic] an Extension of Time, to and Including June 4, 2012, in Which to File Their Opposition to Defendants’ Motion to Dismiss Cause of Action One in Plaintiffs’ Fourth Amended Complaint, Dkt. No. 196. The Court **GRANTS** this motion, and deems Plaintiffs’ response to Defendants’ motion to dismiss Plaintiffs’ first cause of action to be timely filed.

On June 4, 2012, Plaintiffs filed Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Cause of Action One in Plaintiffs’ Fourth Amended Complaint, Dkt. No. 197. In their response, Plaintiffs challenge Defendants’ assertions that the Court lacks subject matter jurisdiction. *Id.* Specifically, Plaintiffs argue that the “voluntary act” exception to the mootness doctrine applies, saving the claims of those Plaintiffs who have received United States passports, that Plaintiffs’ first cause of action is not moot as to any Plaintiff, and that all Plaintiffs have standing because they can meet each of the three elements of standing. *Id.*, at 2-20.

On June 25, 2012, Defendants filed their Reply in Support of Defendants’ Motion to Dismiss Cause of Action One in Plaintiffs’ Fourth Amended Complaint, Dkt. No. 201. In their reply, Defendants argue that the “voluntary act” exception to the mootness doctrine does not apply, that the “capable of repetition yet evading review” exception to the mootness doctrine does not apply, that Plaintiffs who have been issued United States passports have received all relief to which they are entitled rendering their claims moot, and challenge Plaintiffs’ arguments that they meet all elements required to have standing. *Id.*, at 2-9.

B. Standard of Review

Federal Rule of Civil Procedure 12(b)(1) allows a court to dismiss a lawsuit where the pleader proves that the Court lacks subject matter jurisdiction. FED. R. CIV. P. 12(b)(1). Plaintiffs bear the burden of establishing that this Court has subject matter jurisdiction over the claims they raise. *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam) (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). “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)).

In determining whether a federal court has subject matter jurisdiction, a court may consider “(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Ramming*, 281 F.3d at 161 (citing *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996)).

Defendants’ challenges to the Court’s subject matter jurisdiction are factual in that the Defendants “challenge[] the facts on which jurisdiction depends,” and thus the Court may consider “matters outside of the pleadings, such as affidavits and testimony.” *Oaxaca v. Roscoe*, 641 F.2d 386, 391 (5th Cir. 1981) (citing *Menchaca*, 613 F.2d at 511). Just as in reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), when reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), “a court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff.” *Cushenberry v. United States Auto. Ass’n*, No. 12-160-BAJ-SCR, 2012 U.S. Dist. LEXIS 81438, at *3 (M.D. La.

June 8, 2012) (citing *Sonnier v. State Farm Mutual Auto Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996)).

C. Legal Analysis

The jurisdiction of federal courts is limited by the Constitution's "case or controversy" requirement. U.S. CONST. ART. III, § 2. The doctrines of mootness, ripeness, standing, and political question reflect this requirement. See *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Some have described the doctrine of mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980) (citing Monaghan, *Constitutional Adjudication: The Who and When*, 82 Yale L. J. 1363, 1384 (1973)). To have standing, a plaintiff must have suffered an injury in fact, the injury must be fairly traceable to the defendant's conduct and it must be likely that the injury will be redressed by a favorable court decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Thus, should an event transpire during the course of the case that prevents a plaintiff from having standing, the case is rendered moot, and the federal court must dismiss the case for want of jurisdiction.

The Court notes that of the five Plaintiffs asserting this cause of action on behalf of a proposed class, all have either been issued a United States passport, or have been successful in their individual actions under 8 U.S.C. § 1503. Having reviewed Defendants' motion, Plaintiffs' response, and Defendants' reply, the Court finds it helpful to separate the five named Plaintiffs into the following groups: those Plaintiffs who have been issued a United States passport following the denial of their earlier application (Garcia and Reyes), Ruiz who has been successful in her individual action under 8 U.S.C. § 1503(a), and those Plaintiffs whose previously issued United States passports were revoked and reissued (Guerrero and Montemayor).

1. Plaintiffs' First Cause of Action is Moot as to Those Plaintiffs Who Have Received United States Passports Following the Earlier Denial of Their Passport Applications

DOS's actions in issuing United States passports to Garcia and Reyes have ended the controversy between the parties, and therefore mooted these Plaintiffs' claims under the first cause of action in the Fourth Amended Complaint. Garcia and Reyes have received United States passports, and are no longer deprived of that benefit of United States citizenship; they have received a beneficial result from the application of the preponderance of the evidence test and therefore the injunctive relief they seek cannot provide them any relief. The possibility that DOS might revoke their passports, or that they will obtain an unfavorable result of the application of the preponderance of the evidence test to future passport applications or renewals, is too speculative to support subject matter jurisdiction. Further, neither the "capable of repetition, yet evading review," exception, nor the exception preventing a defendant's voluntary act from mooting a case applies.

The exception for acts that are "capable of repetition, yet evading review" applies where "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). In the instant case, neither of the prongs is satisfied. First, the challenged action, here the improper application of the preponderance of the evidence standard to applications for United States passports, is not "in its duration too short to be fully litigated prior to cessation or expiration." The first prong is not satisfied because Congress has provided individuals dissatisfied with DOS's application of the preponderance of the evidence test in adjudicating their passport applications with recourse through the judicial system. See 8 U.S.C. § 1503. Plaintiffs correctly note that this is not the sort of direct agency review afforded by the APA, and continue, urging "this Court, or the Fifth Circuit on appeal" to find that the availability of an

action under 8 U.S.C. § 1503 does not preclude APA review under 5 U.S.C. § 704. This Court refuses to so find, and agrees with other courts in this district that 8 U.S.C. § 1503 is an adequate remedy to challenge DOS's actions when it denies an application for a United States passport. *See e.g., Sanchez v. Clinton*, Civil Action No. H-11-2084, 2012 U.S. Dist. LEXIS 8074, at * 12 (S.D. Tex. Jan. 24, 2012), *Garza v. Clinton*, Civil Action No. H-10-0049, 2010 U.S. Dist. LEXIS 137093, at * 9 (S.D. Tex. Dec. 29, 2010), *Tavera v. Harley-Bell*, Civil Action No. 09-cv-0299, 2010 U.S. Dist. LEXIS 32980, at * 9-10 (S.D. Tex. March 31, 2010); *Nelson v. Clinton*, Civil Action No. H-10-0058, 2010 U.S. Dist. LEXIS 134862, at * 27-28 (S.D. Tex. Dec. 21, 2010).

Second, the Court finds that there is not a “reasonable expectation” that Plaintiffs Garcia and Reyes “will be subject to the same action,” an improper application of the preponderance of the evidence test, again. Plaintiffs have not argued that they will ever seek to renew or reapply for a United States passport in the future, and only express concern that their passports may be revoked in the future. Dkt. No. 197 at 7-11. In fact, Plaintiffs do not address Defendants’ arguments that the “capable of repetition, yet evading review” exception does not apply, except to note in a footnote that they do not invoke the exception “which theory Defendants attempt to preemptively rebut.” Dkt. No. 197 at 11, n.11. The Court finds any suggestion that Garcia and Reyes may in the future face an improper application of the preponderance of the evidence test to be insufficient to establish a reasonable expectation of such. The Court adopts the reasoning of another district court in *Manning v. Rice*:

The Court cannot and will not issue such speculative and advisory relief. If Plaintiffs 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.

4:06-CV-464, 2008 WL 2008712, at *3 (E.D. Tex. 2008). Accordingly, the “capable of repetition, yet evading review” exception does not save Garcia’s and Reyes’s claims under the first cause of action from mootness.

Similarly, the Court finds the exception to the mootness doctrine preventing a defendant's voluntary act from mootng a case inapplicable to the instant case. The test "for determining whether a case has been mooted by a defendant's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrated Phosphate Export Assn., Inc.*, 393 U.S. 199, 203 (1968)). The "heavy burden of persuading' the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." *Id.* When a defendant is a governmental entity, "courts are justified in treating a voluntary governmental cessation of possibly wrongful conduct with some solicitude, mootng cases that might have been allowed to proceed had the defendant not been a public entity." *Sossamon v. Lone Star State of Texas*, 560 F.3d 316, 325 (5th Cir. 2009) *aff'd* by ___ U.S. ___, 131 S. Ct. 1651 (2011) (citations omitted). "[G]overnment actors in their sovereign capacity and in the exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties. Without evidence to the contrary, we assume that formally announced changes to official governmental policy are not mere litigation posturing." *Id.*, at 325. Plaintiffs do not address the application of the "voluntary act" exception to those Plaintiffs whose passports have been issued following an earlier denial of their passport applications, but instead, focus on the application of the exception in situations involving revocations of previously existing passports. Dkt. No. 197 at 2-3. The Court begins its analysis of this exception as applied to Garcia and Reyes by noting that because DOS is a governmental entity, it is afforded the presumption of good faith that its change in the results of the application of the preponderance of the evidence test to Garcia and Reyes was not mere litigation posturing. As Defendants stated in their motion to dismiss and as the Declaration of Jonathan M. Rolbin, Dkt. No. 217, Att. 1 echoes, but for a finding of new evidence that controverts Garcia's or Reyes's United States citizenship, "DOS's determination that

the individuals who are already in possession of a U.S. passport have met their burden of demonstrating U.S. citizenship by a preponderance of the evidence remains unchanged.” Dkt. No. 194 at 8; Declaration of Jonathan M. Rolbin, Dkt. No. 217, Att. 1 at 2-3. The Court finds that decisions to issue Garcia’s and Reyes’s passports were the result of the application of the preponderance of the evidence test to the evidence of their citizenship at each instance; although their applications were initially denied, the evidence used in DOS’s second application of the test changed, and Garcia and Reyes have received a favorable result.

Considering Defendants’ motion and Rolbin’s affidavit testimony, as permitted in factual jurisdictional attacks, and affording the Government the presumption of good faith, the Court finds that it is clear that the allegedly wrongful conduct of an improper application of the preponderance of the evidence test, to the extent it ever occurred, is not reasonably expected to recur as to Garcia and Reyes. Other than direct the Court’s attention to pending cases or anecdotal accounts of encounters with DOS, Plaintiffs are unable to do more than speculate that their passports will be revoked in the future. As noted above, should Garcia’s or Reyes’s concerns as to future applications or renewals materialize, they may at that time proceed with actions under 8 U.S.C. § 1503. Accordingly, the “voluntary act” exception does not save Garcia’s or Reyes’s claims. Therefore, the Court finds Garcia’s and Reyes’s claims under Plaintiffs’ first cause of action are **MOOT**, and their claims under the first cause of action are **DISMISSED** for want of subject matter jurisdiction.

2. Plaintiffs’ First Cause of Action is Moot as to Plaintiff Ruiz, Who Was Successful in Her Individual Action Under 8 U.S.C. § 1503(a)

Ruiz successfully completed her individual action under 8 U.S.C. § 1503(a) on October 1, 2012, when she appeared before this Court at a bench trial and the Court found that she had established by a preponderance of the evidence that she is a United States citizen. *Ruiz*, Dkt. No. 188. Accordingly, she no longer suffers any deprivation

of the rights and privileges of United States citizenship, as alleged in the first cause of action and will not benefit from the relief Plaintiffs seek. As Ruiz initiated the action under 8 U.S.C. § 1503, there is no act by Defendants to trigger the “voluntary act” exception to the mootness doctrine. Additionally, the “capable of repetition, yet evading review” exception does not apply because her individual action under 8 U.S.C. § 1503 demonstrates the impossibility of establishing the first prong of the test. With regard to the second prong, it cannot reasonably be expected that DOS will improperly apply the preponderance of the evidence test in evaluating the evidence of her citizenship given that there is a court order finding her to have met her burden of so proving. To that effect, the declaratory relief that flowed from that trial remedies any past injury, and should prevent any future injury. Therefore, the Court finds that Ruiz’s claims under the Plaintiffs’ first cause of action in their fourth amended Complaint are **MOOT**, and her claims under the first cause of action are **DISMISSED** for want of subject matter jurisdiction.

3. Plaintiffs’ First Cause of Action is Not Moot as to Those Plaintiffs Whose Passports Were Revoked and Later Reissued

DOS’s most recent actions in issuing United States passports to Guerrero and Montemayor fail to end the controversy between the parties. Accordingly, the Court finds that Guerrero and Montemayor have standing to seek an injunction, and that their claims under the first cause of action in the fourth amended complaint are not moot.

Defendants move to dismiss Plaintiffs’ first cause of action on the grounds that none of the Plaintiffs has standing to assert this cause of action. Dkt. No. 194 at 9-13. Specifically, Defendants argue that Plaintiffs’ alleged injuries “are ‘conjectural’ or ‘hypothetical,’ not ‘actual or imminent.’ [sic] and therefore do not satisfy the standing requirement under *Lujan*.” *Id.*, at 10. Defendants base their argument on the injury in fact analysis in *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983), in which the United States Supreme Court held that a plaintiff did not have standing to seek an

injunction against the use of choke holds by police officers because he could not demonstrate a likelihood that he would suffer the same injury in the future. *Id.* Plaintiffs argue that each individual Plaintiff meets each of the three elements of standing. *Id.*, at 12-16. However, much of their analysis rests on the misperception that standing, including its element of redressability, is to be determined at the advent of the lawsuit only. *Id.* Therefore, much of Plaintiffs' argument speaks more to Defendants' mootness allegations. In their reply, Defendants largely reiterate their arguments challenging the ability of Plaintiffs to demonstrate injury in fact and redressability. Dkt. No. 201 at 6-9.

The Court focuses its standing analysis on the injury in fact analysis of Guerrero's and Montemayor's claims and finds Defendants' arguments that Plaintiffs lack standing to seek an injunction unconvincing in light of this Circuit's binding precedent. In *Hernandez*, the Fifth Circuit considered the application of *Lyons* to a case in which the INS challenged a plaintiff's standing with regard to injunctive relief after he was admitted to the United States following exclusion. *Hernandez*, 913 F.2d 230. *Hernandez*, a United States citizen, was not permitted to reenter the United States for 46 days, despite having presented facially valid documentation of his United States citizenship at the port of entry. *Id.*, at 232-233. Although he was eventually permitted entry, he sued INS and several INS officers individually. *Id.*, at 233. All of his claims were eventually dismissed, but the district court issued an injunction "requiring that the INS follow certain minimal procedures when an applicant for entry into the United States presents documentary evidence which, if accepted as authentic, would conclusively establish the applicant's United States citizenship." *Id.*, at 233. On appeal, INS challenged the plaintiff's standing as to this injunction in light of *Lyons*. *Id.*, at 233. Specifically, INS argued that "Hernandez lacks standing because he has not shown that there is a reasonable likelihood that he will again suffer the alleged deprivation of Fifth Amendment due process that gave rise to this suit." *Id.* INS continued, arguing that any injury he suffered was not redressable by the

requested relief, and the “capable of repetition yet evading review” exception did not save his case from being moot. *Id.*, at 233-234 (internal citations omitted).

After discussing *Lyons*, the Fifth Circuit distinguished *Hernandez*, and found that the plaintiff had standing. *Id.*, at 234. The court stated:

We find a critical factual distinction between *Lyons* and the instant case which dictate a different result. *Hernandez* (unlike *Lyons*) was engaged in an activity protected by the Constitution. *Kent v. Dulles*, 357 U.S. 116, 126-27, 78 S. Ct. 1113, 1118, 2 L. Ed. 2d 1204 (1958); *Worthy v. United States*, 328 F.2d 386, 392 (5th Cir.1964). Although at present *Hernandez* is safely inside the United States, he is a United States citizen and is entitled to travel to and from Mexico without deprivation of his Fifth Amendment due process rights. We think there is at the very least a reasonable expectation that *Hernandez* will exercise his right to travel. See *Honig [v. Doe]*, 484 U.S. [305] at 318 & n. 6, 108 S. Ct. [592] at 601-02 & n. 6. Indeed, *Hernandez* testified that he would like to return to Mexico, but did not ‘want to run the risk of something like this happening again.’

The *Honig* Court observed that for purposes of assessing the likelihood that a defendant will re-inflict a given injury, courts

have been unwilling to assume that the party seeking relief will repeat the type of *misconduct* that would once again place him or her at risk of that injury. See *Los Angeles v. Lyons*, 461 U.S. 95, 105-106, 103 S. Ct. 1660, 1666-1667, 75 L. Ed. 2d 675 (1983) (no threat that party seeking injunction barring police use of choke-holds would be stopped again for traffic violation or other offense, or would resist arrest if stopped); *Murphy v. Hunt*, *supra*, 455 U.S., at 484, 102 S. Ct., at 1184 (no reason to believe that party challenging denial of pre-trial bail “will once again be in a position to demand bail”); *O’Shea v. Littleton*, 414 U.S. 488, 497, 94 S. Ct. 669, 676, 38 L. Ed. 2d 674 (1974) (unlikely that parties challenging discriminatory bond-setting, sentencing, and jury-fee practices would again violate valid criminal laws).

484 U.S. at 320, 108 S. Ct. at 602 (emphasis supplied). No such reluctance, however, is warranted here. The injury alleged to have been inflicted did not result from an individual’s disobedience of official instructions and *Hernandez* was not engaged in any form of misconduct;

on the contrary, he was exercising a fundamental Constitutional right.

Id., at 234-235 (footnote omitted).

Similarly, Guerrero and Montemayor were not engaging in unlawful conduct when they suffered their alleged injury, but instead were merely holding a United States passport issued by DOS. Because DOS has reissued their passports, Guerrero and Montemayor have been restored to the same position they were in when their injury first occurred. Without reaching the merits of Plaintiffs' contentions that the DOS in fact improperly applies the preponderance of the evidence test, or reaching any decision about the nature of the right, privilege, or condition of holding a United States passport, the Court finds that Plaintiffs have demonstrated that they are likely to suffer the same injury again, especially given the nature of DOS's unilateral decisions to review evidence of a passport holder's citizenship, discussed in detail below. See Declaration of Jonathan Rolbin, Dkt. No. 217, Att. 1 at 3.

Accordingly, the Court finds that Guerrero and Montemayor have pled injury that is sufficiently personal and actual to meet the injury requirement of standing. Taking Plaintiffs' allegations of improper application of the preponderance of the evidence standard as true for purposes of the instant motion, Plaintiffs suffered the revocation of their United States passport as a result of Defendants' actions. The Court finds this injury sufficient, and also finds that this injury is sufficiently traceable to the Defendants.

The Court now turns to Defendants' arguments that Guerrero's and Montemayor's claims under the Plaintiffs' first cause of action have become moot, and finds that the "voluntary act" exception prevents these claims from becoming moot. As noted above, the test for the "voluntary act" exception provides that "[a] case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc.* 528 U.S. at 189 (quoting *Concentrated Phosphate Export Assn., Inc.*, 393 U.S. at 203). Even with the presumption of good faith afforded to government defendants, DOS has not met its

“heavy burden of persuading” the Court that the allegedly improper application of the preponderance of the evidence test in DOS’s decision to revoke existing passports “cannot reasonably be expected to start up again.”

Defendants retain nearly plenary review of a passport holder’s citizenship once a passport has been issued.³ Guerrero and Montemayor have once suffered the

³In a similar case in which this Court considered a substantially identical declaration by Jonathan M. Rolbin, this Court noted:

The distinction between a revocation and a denial and subsequent issuance should not be overlooked. The critical difference rests on the Court’s finding that in cases involving revocations of passports, there appears to be ongoing review of the evidence of a holder’s status.

In the Court’s order of September 12, 2012, the Court ordered Defendants to answer three questions. Dkt. No. 174 at 2-3. The first of these questions asked “[w]hat are the criteria for determining whether DOS will reevaluate a decision to issue a passport made on the grounds that the individual has met his burden of proof of United States citizenship under 22 C.F.R. § 51.40?” *Id.*, at 2. In response, Rolbin stated, “DOS reevaluates the decision to issue a passport when it subsequently learns of new evidence that was not before it at the time of passport issuance and sufficiently contradicts the individual’s claim to U.S. citizenship, or that presents another ground to reevaluate the decision to issue a passport.” Dkt. No. 178, Declaration of Jonathan M. Rolbin at 2, p. 2. The Court reads this statement to say that, once DOS issues a passport, the decision to so issue the passport is left semi-open, subject to DOS revoking the passport in the future on the basis of new evidence controverting the holder’s citizenship. However, in cases in which an individual’s passport application is denied, such decision is final unless the applicant re-engages DOS and provides new evidence in support of her citizenship. *Id.*, at 2, p. 4 (“In addition to reevaluations that occur in the context of litigation, DOS also reevaluates an individual’s application in other situations. For example, at any time following a denial, an applicant may always submit a new application, and may include any evidence not previously provided. Any application, even one previously denied, is always re-adjudicated in full based on the evidence presented and available at the time of that application.”). Thus, the distinction between a revocation of an existing passport and an issuance on a previously denied passport application is the scope of DOS’s ability to continue to evaluate evidence of an applicant’s or holder’s citizenship; in the former DOS retains plenary authority to conduct

revocation of their passports following DOS's finding that they had established by a preponderance of the evidence that they were United States citizens upon first issuance of their passports. Defendants fail to carry their burden of establishing that they will not again revoke Guerrero's or Montemayor's passports on the basis of an allegedly improper application of the preponderance of the evidence test. Where the possibility of a wrongful revocation was purely speculative as to Garcia and Reyes, Guerrero and Montemayor have pled sufficient facts and allegations, taken as true for the purposes of the instant motion, that render their concerns more than mere conjecture. Since DOS has allegedly improperly revoked Guerrero's and Montemayor's passports on the basis of an allegedly improper application of the preponderance of the evidence standard, Defendants bear the burden to demonstrate that its issuance of their passports makes it clear that such improper application of the test and revocation cannot reasonably be expected to recur. Accordingly, the Court reiterates its finding above that Plaintiffs have demonstrated that they are likely to suffer the same injury again, especially given the nature of DOS's unilateral decisions to review evidence of

almost rolling review of the evidence of a holder's citizenship (as appeared in *Guerrero*), whereas in the latter, DOS engages in episodic review of evidence of an applicant's citizenship. This distinction is crucial to the voluntary act exception analysis in that episodic review does not permit DOS to return to previous conduct; there is no ongoing evaluation. However, in the cases involving revocation, once a revocation has occurred, as in *Guerrero*, the issuance of passport following revocation is a return to the semi-open status in which a holder's status is constantly under review. At that point, DOS's conduct in its evaluation is being "returned to" and, unless the Defendant can demonstrate with absolute clarity that a return to any allegedly wrongful analysis of the evidence of a holder's citizenship cannot reasonably be expected to recur, such voluntary act of issuing a passport to an individual whose passport was previously revoked does not moot a case.

Garcia, Dkt. No. 188 at 12-14.

The Court adopts its earlier reasoning and finds the difference between a revocation and an issuance after earlier denial dispositive of the "voluntary act" analysis.

a passport holder's citizenship. Accordingly, the Court finds that should Guerrero and Montemayor prevail on the merits, their injury is redressable by an injunction that speaks to DOS's application of the preponderance of the evidence standard. Finding that Guerrero and Montemayor each have standing to assert their claims under the first cause of action and that their claims have not become moot, the Court **DENIES** Defendants' motion to dismiss as to them.

III. Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint

In Plaintiffs' seventh cause of action, Plaintiffs

complain of a pattern or practice of employing unlawful tactics at ports of entry when questioning U.S. citizen claimants about their citizenship claim. Defendants' interrogation tactics are cruel, inhumane and degrading because, among other things, persons are denied access to counsel, and subjected to lengthy periods of detention and interrogation, and deprivation of food, water and access to bathroom facilities.

Dkt. No. 167 at 38-39. Plaintiffs continue, stating that "[s]uch actions violate the Citizenship Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, P.20, 1465 U.N.T.S 85 at 42 U.S.C. § 2000dd-0." *Id.*, at 39.

As remedy for their cause of action, Plaintiffs request⁴ that the Court

11) Declare that in adjudicating an application for a U.S. passport, the fact that a birth certificate was not promptly filed in the U.S., or reflects

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The Court again notes that Plaintiffs request twenty-one separate forms of relief in their Fourth Amended Class Action Complaint for Declaratory and Injunctive Relief, but do not specify the exact relief that corresponds to each cause of action. Dkt. No. 167 at 40-45. For the ease of analysis the Court generalizes the relief requested as to this cause of action to be declaratory and injunctive relief speaking to the treatment of individuals claiming United States citizenship when seeking to enter the United States at a port of entry. However, the Court makes no finding and issues no opinion as to the availability or propriety of each specific form of relief sought.

delivery by a midwife or under other non-traditional circumstances, can be considered in deciding whether to request additional evidence of the person's birth in the U.S., but that such facts do not constitute evidence that the individual was not born in the U.S. for purposes of applying the preponderance of the evidence test.

12) Declare that applicants for entry into the United States who hold facially valid documents reflecting United States citizenship are entitled to fair procedures in determining whether they will be allowed to enter, or placed in proceedings under 8 U.S.C. § 1229, including but not limited to the right to be represented by counsel, and to be free from interrogation tactics which violate the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 3, S. Treaty Doc. No. 100-20, p.20, 1465 U.N.T.S. 85 and 42 U.S.C. § 2000dd-0.

...

19) Issue an injunction limiting the interrogation tactics DHS and DOS officers at ports of entry may utilize in cases of where the officer questions the U.S. citizen claimant, or their parents, about birth within the United States. Specifically, Plaintiffs request an injunction which:

- establishes their right to counsel in such encounters;
- sets a limit of no more than two hours that they may be detained and interrogated;
- prohibits using threats, including but not limited to threatened detention, or criminal prosecution, as a means of obtaining a "confession" of alienage or fraudulent registration, or withdrawal of an application for entry as a United States citizen;
- prohibits the use of lies as a means of obtaining such a "confession" or withdrawal of an application for entry as a United States citizen;
- guarantees humane conditions during such encounters; and
- mandates that persons with facially valid documents showing United States citizenship not be subjected to expedited removal and, if put in removal proceedings under 8 U.S.C. § 1229, and if hearings as to their right to enter or to possess any documents which were seized cannot be conducted within 72 hours, and absent clear indications that the person is a flight risk, and/or a threat to the community or national security, s/he will be given a multiple entry document, as "nationality unknown," and have all confiscated documents returned;
- mandates that the parents of applicants for entry with facially valid documents showing birth in the United States not be subjected to expedited removal or other sanctions on the grounds that they allegedly committed fraud in registering their children

as born in the U.S., and that any evidence developed during or as a result of such an encounter not be used against them for any purpose, unless and until such time as the citizenship of the applicant has been finally determined; and

- requires DHS and DOS to provide adequate training and supervision with respect to the treatment of U.S. citizenship claimants, and their parents, at the ports of entry.

Id., at 41-42, 43-44.

In this Court's order of November 22, 2011, the Court noted that "[t]o the extent Plaintiffs are invoking the UNCAT and the DTA, the Court finds that the Court does not have jurisdiction over these claims because these laws do not provide for private causes of action." Dkt. No. 190 at 14. Further, the Court found that Laura had standing to assert the seventh cause of action. *Id.*, at 15.

A. Parties' Arguments

On July 5, 2012, Defendant United States Customs and Border Protection ("CBP") filed Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint, Dkt. No. 206. In its motion, CBP argues that the Court lacks jurisdiction over the seventh cause of action because neither Garcia, Yuliana, or Laura have standing to assert it. Dkt. No. 206 at 6-9. Specifically, CBP argues that neither Garcia nor Yuliana have standing because when they attempted to enter the United States they did not present United States passports, were therefore processed as aliens seeking entry to the United States, and as such, were not entitled to any due process rights that they claim were violated. *Id.* With regard to Laura, CBP takes issue with this Court's earlier ruling that Laura has standing to assert the seventh cause of action, *see* Dkt. No. 190 at 14-15, resting largely on *City of Los Angeles v. Lyons* for the conclusion that her concerns of future harm are speculative and she is therefore without standing to seek an injunction. Dkt. No. 206 at 7, n. 3.

Defendant additionally moves for judgment on the pleadings with regard to the Plaintiffs' seventh cause of action. *Id.*, at 9-13. Specifically, CBP argues that Yuliana

and Garcia have failed to state a claim upon which relief can be granted because they were not entitled to due process protections when they sought entry into the United States allegedly as aliens. *Id.*, at 9. As to Laura, CBP argues that her claims do not state a claim for relief, because CBP has the authority to stop and question individuals as to their right to enter the country, even when claiming United States citizenship and showing a United States passport, because the amount of time she claims to have been detained is insufficient to establish a violation of due process, because the use of compulsive questioning is not in itself a constitutional violation, because her claims that she and her family were treated inhumanely are conclusory, and because her claims that she was denied access to counsel fail because there is no due process right to counsel in civil questioning. *Id.*, at 10-13.

On July 24, 2012, Plaintiffs filed Plaintiffs' Opposition to Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint (Docket #206), Dkt. No. 207. In their response, Plaintiffs argue that each of the three Plaintiffs asserting the seventh cause of action has standing to do so. Dkt. No. 207 at 1-6. Specifically, Plaintiffs note the Court's previous ruling that Laura has standing to assert this cause of action and argue that there is "no material difference between her situation and the situations of Plaintiffs Yuliana Castro and Jessica Garcia." Dkt. No. 207 at 3. Further, Plaintiffs argue that the Constitution and its protections do apply at the border, extending to United States citizens and non-citizens alike to protect against mistreatment by United States officials. *Id.*, at 3-5.

Plaintiffs additionally argue that they have stated a claim upon which relief may be granted. Specifically, they argue that the Constitution's due process protections applied to each of the three of them at the border, notwithstanding whether or not they had a United States passport at the time they sought entry. Dkt. No. 207 at 6. Further, they argue that Defendants' behavior toward them during their detentions states a claim upon which relief may be granted for a violation of due process. *Id.*, at 6-9.

On July 25, 2012, Plaintiffs filed Plaintiffs' Amended Opposition to Defendants'

Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint (Docket #206). Dkt. No. 208. The only change in this document from Plaintiffs' Opposition to Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint (Docket #206), Dkt. No. 207, was in the first full paragraph on page numbered 9, in which Plaintiffs articulate the specifics about the injunction they seek. Additionally, on July 26, 2012, Plaintiffs filed sealed Exhibit "G" in Support of Plaintiffs' Amended Opposition to Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint (Docket #206). Dkt. No. 209.

On August 1, 2012, Defendant filed its Reply in Support of Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs' Fourth Amended Complaint. Dkt. No. 210. In its reply, CBP again argues that Yuliana and Garcia were attempting to enter the United States as aliens due to their failure to comply with the Western Hemisphere Travel Initiative's ("WHTI") requirement that United States citizens present United States passports for entry into the United States, even from Mexico. Dkt. No. 210 at 2-4. Accordingly, CBP argues, Plaintiffs' seventh cause of action should be dismissed with regard to them. *Id.*, at 4. Additionally, CBP again argues that Laura has failed to state a due process violation in the Fourth Amended Complaint, and that the attachment to Plaintiffs' Response of Plaintiffs' earlier statements, previously Docket No. 2, are not properly before the Court. *Id.*, at 4-6.

B. Standards of Review

1. Motions Filed Under Federal Rule of Civil Procedure 12(b)(1)

The recitation of the applicable standard of review in evaluating a motion filed under Federal Rule of Civil Procedure 12(b)(1) provided *infra* at 10-11 is incorporated by reference.

2. Motions Filed Under Federal Rule of Civil Procedure 12(c)

Federal Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” FED. R. CIV. P. 12(c). The applicable standard of review in evaluating a motion filed under Federal Rule of Civil Procedure 12(c) is the same as that applicable to a motion filed under 12(b)(6). *Chauvin v. State Farm Fire & Cas. Co.*, 495 F.3d 232, 237 (5th Cir. 2007).

“A motion to dismiss under Rule 12(b)(6) is not appropriate unless the plaintiff’s pleadings on their face show, beyond a doubt, that the plaintiff cannot prove any set of facts sufficient to entitle him to relief.” *Motient Corp. v. Dondero*, 529 F.3d 532, 535 (5th Cir. 2008). When reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), Fifth Circuit law dictates that a district court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *See Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996).

For a complaint to be sufficient, “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “A complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570). A court, in evaluating a plaintiff’s complaint in light of a defendant’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) may “begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.*, at 679. Then the court may determine whether the plaintiff’s well-pleaded facts allow the court to infer the plausibility of misconduct.” *See Id.* “Factual allegations must be enough to raise a right to relief above a speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555 (internal citations omitted). “A claim has facial plausibility

when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

Although the Court must construe the factual allegations in favor of the Plaintiff, the Court must not “look beyond the face of the pleadings to determine whether relief should be granted based on the alleged facts.” *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). “In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings, including attachments thereto.” *Collins*, 224 F.3d at 498; See FED. R. CIV. P. 12(b)(6).

C. Legal Analysis

The WHTI, the Department of Homeland Security’s implementation of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub.L. No. 108-458, § 7209, 118 Stat. 3638, 3823-24 (2004), provides that all citizens must present a United States passport, United States passport card, Enhanced Driver’s License, or Trusted Traveler Program Card as of June 1, 2009 to gain entry into the United States. Further, it is unlawful “for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless he bears a valid United States passport.” 8 U.S.C. § 1185(b).

The Court finds that Laura, Yuliana, and Garcia have adequately pled facts that support their assertions that they are United States citizens. These facts are taken as true for the purposes of the instant motion. However, when Garcia and Yuliana applied for entry to the United States, each presented a Texas birth certificate, Texas ID, and receipt for a United States passport application.⁵ Dkt. No. 208 at 2.

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Although Garcia and Yuliana may have presented facially valid documents evidencing United States citizenship, these documents did not comply with the WHTI and were therefore insufficient for entry into the United States as a citizen. In light of the implementation of the WHTI, *Hernandez* can no longer stand for the proposition that the presentation of facially valid documents evidencing United States citizenship is

Regardless of their intent as to their status in applying for entry into the United States, their failure to comply with the WHTI, as well as other applicable statutes and regulations, caused them to be classified and inspected as aliens seeking admission into the United States.

The Court reads Plaintiffs' seventh cause of action in their Fourth Amended Complaint in the light most favorable to them as asserting violations of the Fifth Amendment's Due Process Clause and the Fourteenth Amendment's Citizenship Clause for denial of access to counsel, for failure to consider Yuliana and Garcia for application of waivers to the passport requirement, for the length of the detentions of Yuliana, Laura, and Garcia through secondary inspection, and for the use of inhumane interrogation tactics. For the ease of analysis the Court separates its discussion of each of these alleged violations, first addressing Defendant's standing arguments and then, if necessary, addressing Defendant's arguments that Plaintiffs have failed to state a claim upon which relief may be granted.

1. Plaintiffs Allege They Were Denied Access to Counsel in Violation of the Constitution

The Court finds that all three Plaintiffs have standing to assert a claim that they were unconstitutionally denied access to counsel during their detentions through secondary inspection. As stated above, standing requires that a plaintiff have suffered an injury in fact, that the injury must be fairly traceable to the defendant's conduct and it must be likely that the injury will be redressed by a favorable court decision. *Lujan*, 504 U.S. at 560-561. To demonstrate "injury in fact," Plaintiffs must establish "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical." *Id.*, at 560.

Plaintiffs allege they were denied access to counsel during their detentions.

sufficient for entry into the United States. However, the Court sees no reason to question the continued validity of the remainder of the holding in *Hernandez*.

Without addressing the merits, the Court finds that if there is truth to this assertion, they have suffered an actual and personal injury. Further, this injury is traceable to the Defendant in that Defendant is the entity that caused the allegedly unlawful deprivation of access to counsel.. Finally, the requested injunction would redress this injury, and each of these three Plaintiffs could benefit from it. Accordingly, Laura, Yuliana, and Garcia each have standing to assert this claim under the first cause of action.

The Court turns to Defendant's arguments that Plaintiffs have failed to state a claim upon which relief may be granted. The Court finds that Plaintiffs were at no point entitled to counsel during the events at issue. Defendant argues that the questioning at issue "related to [their] admissibility into the United States, and was therefore civil in nature, and no due process right to counsel attached during [their] questioning." Dkt. No. 13, n5. More to the point, 8 C.F.R. 292.5(b) expressly provides that "nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." Although at least Yuliana and Garcia were inspected as aliens despite claiming United States citizenship, and notwithstanding the criminal nature of 8 U.S.C. § 1185(b), at no time does any party allege that they were the subject of any criminal investigation. Further, they do not fall under any of the exceptions to the classification of an "applicant for admission" under 8 U.S.C. § 1101(a)(13)(C)(iii). Thus, they were not entitled to counsel during their respective detentions through secondary inspection. Accordingly, Plaintiffs have not stated a claim upon which relief may be granted, and thus Defendant's motion is **GRANTED** and this claim is **DISMISSED WITH PREJUDICE**.

2. Yuliana and Garcia Were Not Considered for Waivers to the Passport Requirement

As to the claims that Plaintiffs were entitled to be considered for waivers to the passport requirement, the Court finds that Laura does not have standing to assert this claim because she presented a passport when she applied for entry, and thus she did not suffer an injury or denial of consideration for a waiver.

Yuliana and Garcia have been issued passports. Thus, notwithstanding any injury that they may have suffered when they were not considered for application of the waiver provisions, Yuliana and Garcia cannot benefit from an injunction from this Court addressing these provisions. Even if the Court were to grant the requested injunction including the application of the waiver provision, there is no reason to believe that Yuliana or Garcia will ever find themselves in this situation again. Even if they exercise their right to travel in the future, there is no reason to believe they will seek to do so without presenting their passport, in violation of federal law. Accordingly, their claims regarding the application of the waiver provisions are moot, thereby defeating their standing as to this claim.

Because none of the three Plaintiffs asserting the seventh cause of action have standing to assert the claim that they should have been considered for the waiver provision, Defendant's motion to dismiss is **GRANTED** and this claim is **DISMISSED** for want of subject matter jurisdiction. This ruling shall have no bearing on any potential class members should the Plaintiffs seek class certification

3. Length of Detentions through Secondary Inspection

Plaintiffs have alleged that they suffered due process violations the ten hour detention through secondary inspection of Laura and Yuliana, and the unstated duration of Garcia's detention through secondary inspection. Dkt. No. 167 at 13, 19-22. Taking the Plaintiffs' pleaded facts as true, they suffered actual, personal injuries in being detained through secondary inspection. This injury is unquestionably traceable to Defendant. Finally, *Lyons* and *Hernandez* taken together demonstrate that the

Plaintiffs can benefit from the injunction they seek because they note that they have continued to travel to Mexico and are thus likely to attempt to exercise their right to travel in the future. Accordingly, each Plaintiff has standing to assert a violation arising from the length of her respective detention through secondary inspection.

However, the Court finds that Plaintiffs have failed to state a claim upon which relief may be granted as to the lengths of time Plaintiffs allege to have been detained in secondary inspection. Citizens and non-citizens alike may be detained for inspection at the border when seeking entry without violating the Constitution. *See U.S. v. Garcia*, 616 F.2d 210, 211 (5th Cir. 1980). Further, the Fifth Circuit has upheld an injunction applicable to a different port of entry in which it held that detentions of up to 24 hours for the purposes of determining an individual's citizenship was acceptable. *Hernandez*, 913 F.2d at 239. Accordingly, Plaintiffs' detentions for ten hours and an unspecified duration are insufficient to state a claim for a due process violation. Thus the Defendant's motion to dismiss is **GRANTED**, and the claim that the lengths of Plaintiffs detentions violated the Constitution is **DISMISSED WITH PREJUDICE**.

4. Inhumane Interrogation Tactics

Defendants have challenged Plaintiffs assertions regarding inhumane treatment, arguing that Plaintiff's complaint states no more than conclusory allegations, unsupported by facts. Dkt. No. 206 at 11. Plaintiffs' seventh cause of action states, in relevant part, "Defendants' interrogation tactics are cruel, inhumane and degrading because, among other things, persons are denied access to counsel, and subjected to lengthy periods of detention and interrogation, and deprivation of food, water and access to bathroom facilities." Dkt. No. 167 at 39.

The Court finds that this allegation is not an unsupported legal conclusion; instead, Plaintiffs state the legal conclusion that Defendant's practices at the border are inhumane, and support that conclusion by alleging the facts that Defendants deny individuals access to counsel, subject individuals to long detentions and interrogations, and deprive individuals of food, water, and bathroom facilities. *Id.* As noted above,

Plaintiffs were not entitled to counsel during their secondary inspection. Additionally, the lengths of Plaintiffs detentions and interrogations do not state a claim upon which relief can be granted for a violation of due process. Although Plaintiffs fail to give any specifics as to the occurrences of the denial of food, water, and bathroom facilities with regard to Laura, Yuliana, or Garcia, the Court finds that Plaintiffs have just barely pushed their allegations of inhumane interrogation tactics over the “facial plausibility” threshold, and that the Court may draw a reasonable inference that the Defendant is liable for the alleged misconduct.⁶ See *Iqbal*, 556 U.S. at 677-678.

The Court finds that Laura, Yuliana, and Garcia each have standing to assert the claim that they were unconstitutionally subjected to inhumane interrogation tactics. Without looking to the merits, if their allegations that they were denied food, water, and access to bathroom facilities are true, they have actually and personally suffered an injury which is fairly traceable to the Defendant, and is capable of redress by the injunction they seek.

The Fifth Circuit has held that “whatever due process rights excludable aliens may be denied by virtue of their status, they are entitled under the due process clauses of the fifth and fourteenth amendments to be free of gross physical abuse at the hands of state or federal officials.” *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987). Because Plaintiffs claim that the mistreatment they allegedly suffered was at the hands of federal officers, the Fifth Amendment provides the protection. Thus,

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The Court notes that it is limited to consideration of the contents of the pleadings and attachments or incorporations by reference in the complaint. See *Collins v. Morgan Stanley Dean Witter*, 244 F.3d 496, 498-499 (5th Cir. 2000). The Court does not consider the attachments to Plaintiffs’ response to Defendant’s motion to dismiss. Although these attachments were included earlier in the record as attachments to the Plaintiffs’ first complaint, they were not attached to the live complaint, nor were they incorporated by reference or cited in the live complaint. Further, the Court declines to convert the instant motion to dismiss under Rule 12(c) into a motion for summary judgment under Rule 56, given the lack of notice.

notwithstanding the fact that at least two of the Plaintiffs were inspected as aliens, they were all still entitled to these constitutional protections.

As the Supreme Court has explained,

when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e. g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.

Deshaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 200 (1989) (citations omitted). Other courts have found that the right to urinate and/or defecate is a fundamental right protected by the due process clause. *Glaspy v. Malicoat*, 134 F.Supp.2d 890, 895 (W. MI. 2001) (citing *West v. Dallas Police Dept.*, No. Civ. A. 3-95 CV-1347P, 1997 U.S. Dist. LEXIS 23900, at *20, 1997 WL 452727 (N.D. Tex. July 31, 1997) (finding that "an individual's ability to urinate or defecate in reasonable privacy is clearly established as a right which affords Fourteenth Amendment protection.")). The Court adopts this reasoning and these findings, and finds that because Plaintiffs' liberty was restricted during secondary inspection, Defendant had a responsibility to provide for or facilitate Plaintiffs' providing for their basic human needs. Accordingly, their statements that they were denied food, water, and access to bathroom facilities state a claim upon which relief may be granted, and Defendant's motion to dismiss is **DENIED** as to this claim.

IV. Department of State's Opposed Motion to Quash Depositions and For Entry of a Protective Order

A. Parties' Arguments

On May 14, 2012, DOS filed Department of State's Opposed Motion to Quash Depositions and For Entry of a Protective Order, Dkt. No. 195. In this motion, Defendant argues that Plaintiffs have served three deposition notices on DOS seeking to depose Jonathan Rolbin, Director of Legal Affairs and Law Enforcement Liaison,

Bureau of Consular Affairs/Passport Services, Department of State, as well as, pursuant to Federal Rule of Civil Procedure 30(b)(6), officers from the Houston Passport Agency and the Charleston Passport Center. Dkt. No. 195 at 1. Defendant argues that the information Plaintiffs seek through these depositions is overly broad. *Id.*, at 1-2. Specifically, Defendants argue that Plaintiffs should not be permitted to seek information unrelated to those Plaintiffs who have standing to assert the remaining causes of action. *Id.*, at 6-7. Further, Defendants argue that Plaintiffs should not be allowed to seek information regarding any potential classes “unless and until a class is certified.” *Id.*, at 8-9. As a remedy, Defendant requests that the three depositions be quashed and the Court enter a protective order limiting the scope of permissible discovery. *Id.*, at 9-10.

On June 4, 2012, Plaintiffs filed Plaintiffs’ Response to Defendant State Department’s Opposed Motion to Quash Depositions and for Entry of a Protective Order, Dkt. No. 198. In their response, Plaintiffs argue that the scope of discovery is broad, and that all of their requested discovery relates to the remaining claims and those of potential future classes. Dkt. No. 198 at 2-7. Specifically, Plaintiffs argue that a degree of discovery into the merits of the case must be permitted so as to afford Plaintiffs the opportunity to define the scope of any proposed class. *Id.*, at 5-7.

On June 25, 2012, Defendant filed its Reply in Support of Department of State’s Opposed Motion to Quash Depositions and for Entry of a Protective Order, Dkt. No. 200. In its reply, Defendant reiterates its arguments that the discovery sought is overly broad and burdensome. Dkt. No. 200 at 2-6. Defendant argues that Plaintiffs’ requested depositions will seek information unrelated to the claims of any Plaintiff with standing, and that Plaintiffs have failed to demonstrate how any of the information sought will help establish any of the requirements for class certification under Federal Rule of Civil Procedure 23. *Id.*

B. Standard of Review

Federal Rule of Civil Procedure 26(b)(1) states that the scope of discovery provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” FED. R. CIV. P. 26(b)(1). Further, “[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” The “trial court enjoys wide discretion in determining the scope and effect of discovery.” *Sanders v. Shell Oil Co.*, 678 F.2d 614, 618 (5th Cir. 1982) (citation omitted). The scope of discovery has been construed broadly, however, it is not without limits. *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 350-352 (1978). “[I]t is proper to deny discovery of matter that is relevant only to claims or defenses that have been stricken, or to events that occurred before an applicable limitations period, unless the information sought is otherwise relevant to issues in the case.” *Id.*, at 352.

The Court must limit discovery when it finds that 1) “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;” 2) “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or” 3) “the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.” Fed. R. Civ. P. 26(b)(2)(C)(i),(ii),(iii).

C. Legal Analysis

Defendant DOS argues that “allowing the broad discovery sought by Plaintiffs will result in undue burden or expense to DOS, while providing minimal value to those Plaintiffs with ripe claims.” Dkt. No. 195 at 7. However, Defendant does not elaborate on this burden. In fact, all of the information sought by Plaintiffs relates directly to the first cause of action, specifically the evidence considered, the weight afforded particular types of evidence, and the source of evidence, in Defendant’s application of

the preponderance of the evidence test to the evidence of an applicant's or passport holder's citizenship. *See* Dkt. No. 195, Ex. 1. at 3, 7-9, 12-14.

Plaintiffs, as masters of their complaint, are entitled to fashion the scope of any proposed class. Plaintiffs have filed two motions for class certification, Dkt. Nos. 156 and 171, however, the Court has not reached the merits of Plaintiffs' arguments because each motion was denied as moot. Dkt. Nos. 158, 190. No motion for class certification is currently pending. Federal Rule of Civil Procedure 23 does not provide a specific time limit as to when a party must move and the Court must rule on certification of a class. *See* FED. R. CIV. P. 23(c)(1)(A). Notwithstanding the fact that the case was initially filed more than three years ago, Plaintiffs may still seek to certify a class based on the remaining claims and causes of action in the instant case. Thus, Plaintiffs are entitled to the discovery they seek. *See Pittman v. E. I. Du Pont de Nemours & Co.*, 552 F.2d 149, 150 (5th Cir. 1977) ("[A] certain amount of discovery is essential in order to determine the class action issue and the proper scope of a class action. The plaintiff is entitled to some leeway in attempting to define the proper parameters of his proposed class."). Further, the Court finds none of the situations under Federal Rule of Civil Procedure 26(b)(2)(C) applicable. Accordingly, Department of State's Opposed Motion to Quash Depositions and For Entry of a Protective Order, Dkt. No. 195, is **DENIED**.

V. Conclusion

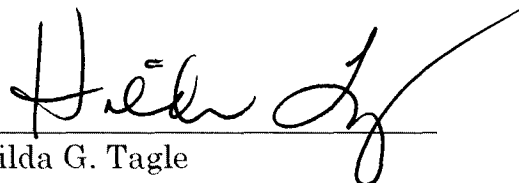
1. Plaintiffs Trinidad Muraira de Castro, Ana Alanis, Ervey Lorenzo Santos are **TERMINATED** as named plaintiffs, and Jenifer Itzel Gonzalez is **TERMINATED** as both a named plaintiff and potential class member.
2. Plaintiffs[] Unopposed Motion to [sic] an Extension of Time, to and Including June 4, 2012, in Which to File Their Opposition to Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 196, is **GRANTED**, and the Court **GRANTS** deems Plaintiffs' Opposition to

Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 197, to be timely filed.

3. Defendants' Motion to Dismiss Cause of Action One in Plaintiffs' Fourth Amended Complaint, Dkt. No. 194, is **GRANTED IN PART AND DENIED IN PART**. This motion is **GRANTED** as to Plaintiffs Garcia and Reyes, because DOS's actions in issuing United States passports to Garcia and Reyes have ended the controversy between the parties, and therefore mooted these Plaintiffs' claims under the first cause of action in the fourth amended complaint. This motion is **GRANTED** as to Plaintiff Ruiz, because her individual action under 8 U.S.C. § 1503(a) resulted in a determination that she has proved by a preponderance of the evidence that she is a United States citizen, thus her claims have become moot. This motion is **DENIED** as to Plaintiffs Guerrero and Montemayor, because they each have standing to assert the first cause of action and DOS's reissuance of their passports following its earlier revocation does not moot their claims.
4. Defendants' Motion to Dismiss Seventh Cause of Action in Plaintiffs's Fourth Amended Complaint, Dkt. No. 206: is **GRANTED IN PART AND DENIED IN PART**. This motion is **GRANTED** as to Laura's, Yuliana's, and Garcia's claim that they were denied access to counsel because they have failed to state a claim upon which relief may be granted. This motion is **GRANTED** as to Garcia's and Yuliana's claim that they were denied due process when they were not considered for a waiver to the passport requirement because they have been issued passports and this claim is now moot. This motion is **GRANTED** as to Laura's, Yuliana's, and Garcia's claims that the lengths of their detentions violated due process because they have failed to state a claim upon which relief may be granted, and this motion is **DENIED** as to Laura's, Yuliana's, and Garcia's claim that they were subjected to inhumane interrogation tactics in violation of due process.

5. Department of State's Opposed Motion to Quash Depositions and For Entry of a Protective Order, Dkt. No. 195, is **DENIED**.
6. The Court **RESETS** the deadlines in this case as follows:
Discovery as to class certification must be completed by February 5, 2013.
Plaintiffs must submit a motion for class certification⁷, if at all, by March 7, 2013.
Discovery must be completed by March 7, 2013.
Dispositive motions must be filed by April 8, 2013.
Joint Pretrial Order is due by June 11, 2013.
Docket Call and Final Pretrial Conference will be June 25, 2013 at 1:30 p.m.

DONE at Brownsville, Texas, on December 7, 2012.



Hilda G. Tagle
United States District Judge

⁷
Should Plaintiffs seek to file a motion in which they seek class certification, the Court will employ the relation-back doctrine. *See Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975). Accordingly, the rulings of this Court as to any and all of the eight causes of action in the live Complaint are limited as to those named individuals who advanced those causes of action. *See Cruz v. Hauck*, 627 F.2d 710, 717-719 (5th Cir. 1980).