

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE, TEXAS**

<b>JUAN CARLOS GARZA, and</b>	)
<b>YOLANDA N. LOPEZ-SALDIVAR</b>	)
<b>PETITIONERS/ PLAINTIFFS</b>	)
<b>v.</b>	)
	)
<b>JANIE BENNETT, FOD,</b>	)
<b>PORT ISABEL DETENTION CENTER,</b>	)
<b>NORMA LIMON, HARLINGEN FIELD OFFICE DIRECTOR,</b>	)
<b>USCIS</b>	)
<b>REX TILLERSON, U.S. SECRETARY OF STATE,</b>	)
<b>ELLAIN DUKE, ACTING SECRETARY,</b>	)
<b>DEPARTMENT OF HOMELAND SECURITY</b>	)
<b>JEFF SESIONS, U.S. ATTORNEY GENERAL, and</b>	)
<b>UNITED STATES OF AMERICA,</b>	)
<b>RESPONDENTS/ DEFENDANTS</b>	)

**WRIT OF HABEAS CORPUS, REQUEST FOR TEMPORARY  
RESTRAINING ORDER  
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**JUAN CARLOS GARZA**, ("Mr. **GARZA**"), files this Petition for a Writ of Habeas Corpus, and requests a Temporary Restraining Order that he be immediately released from custody. Mr. Garza and , and his wife, **YOLANDA N. LOPEZ-SALDIVAR** (Ms. Lopez), also seek a declaration that he is a U.S. citizen, under 8 U.S.C. §1503, denial of rights and privileges as U.S. Citizen, with 28 U.S.C. §2201. Plaintiffs also sue under 28 U.S.C. §1331, with the Administrative Procedure and Declaratory Judgment Acts, in order to obtain injunctive and declaratory relief, and the return of documents confiscated from Mr.

Garza when he was detained.

At the moment this action is being filed, Petitioner **JUAN CARLOS GARZA** is detained at the Port Isabel Detention Center, in Los Fresnos, Texas, because Respondents claim that he is not a U.S. citizen. Respondents confiscated his documents, including his valid and unexpired U.S. Passport, his Texas Birth Certificate, his Texas Driver's License, and all his personal belongings. When he applied for entry into the United States he had in his possession a valid and unexpired U.S. Passport.

### **I. JURISDICTION AND VENUE**

1. Jurisdiction over the case at bar is laid under 28 U.S.C. §2241 (habeas corpus); 1331 (federal question), with §2201 et seq. (The Declaratory Judgment Act), and the Administrative Procedure Act, 5 U.S.C. §702 et seq, and 8 U.S.C. §1503(a) (denial of rights and privileges as a U.S. citizen).
2. JUAN CARLOS GARZA was born on May \_\_, 1983, in Mission, Texas,. He was delivered by Maria Zamora, a midwife - who is not on the publicly available list of "suspicious" midwives. At the time the petition is being filed, Mr. GARZA is detained at the Port Isabel Detention Center, in Los Fresnos, Texas, within the jurisdiction of this court, as a result of the abusive and unconstitutional acts of Respondents/Defendants. On information and belief, he alleges that no Notice to Appear, ("NTA), has been file with the Department of Homeland Security.
3. JUAN CARLOS GARZA's, unexpired U.S. Passport was lifted on August 7, 2017 by CBP agents at the "Hidalgo" Port of Entry, who denied him entry into the U.S., in violation of *Worthy v. U.S.*, 328 F.2d 386 (5th Cir. 1964) (U.S. citizens have a fundamental right to re-enter the U.S.), *Omolo v. Gonzales*, 452 F.3d 404

(5th Cir. 2006) (before applying a provision of law that applies only to *aliens*, it must be determined, as fact, that the person is an *alien*, and *Matter of Fuentes-Martinez*, 21 I&N Dec. 893,898-9 (BIA 1997):

The Immigration and Nationality Act applies only to noncitizens. The Service has no jurisdiction over the respondent, who is a citizen, either to detain him or to seek to deport him, and we do not have jurisdiction either to find him deportable or to order him deported. . As to the filing of this petition petitioner has not received a letter from DOS officially revoking his passport nor an NTA has been filed with the immigration court in Los Fresnos, Texas.

4. On information and belief, because of actions of unknown agents from USCIS, who interviewed **YOLANDA N. LOPEZ-SALDIVAR** on March 10, 2017 on her pending application to adjust status through her husband, and who despite the fact that he had a facially valid, unexpired U.S. Passport, and contrary to *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984) (holding that unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship), was instructed to submit a copy of his baptismal certificate to USCIS. Mr. Garza complied that same day. Nonetheless, CBP, at the Hidalgo Port of Entry (POE), lifted his Passport, detained him, when he last tried to enter the U.S., and sent him to the immigration detention center at Los Fresnos, Texas, where he is currently detained.

## II. THE BACKGROUND

5. In September,2016. JUAN CARLOS GARZA filed a visa petition for his wife, Yolanda Lopez-Saldivar, who simultaneously filed an application for

adjustment of status. On March 10, 2017 they appeared for an interview in Harlingen, Texas and despite showing his a valid and unexpired U.S. Passport the USCIS agent who interviewed them required that he provide a copy of his Baptismal certificate. He did so the same day. Said petition and application have been pending for five months.

6. On August 7, 2017 when he attempted to cross back into the U.S. through the Hidalgo Port of Entry after having gone to Reynosa for a day with his minor child, he was detained for almost 24 hours during which time he was harshly questioned him about his place of birth, and told that he was born in Mexico, in an attempt to force him into falsely “admitting” that he was not born in Texas. He refused to do so.

7. On August 7, 2017 around 1:30 PM Yolanda Lopez-Saldivar received a call from her husband, telling her that they had just confiscated his US Passport, and were taking him to Los Fresnos Detention Center. He asked her to please ask his cousin, Yendi Mariel Trevino to come to the Port of Entry to pick up his son and his car.

8. That day around 2:19 p.m., Yendi Mariel Trevino arrived to the Hidalgo Port of entry to see her cousin. When she arrived she tried to show the CBP agent documents that proved that her cousin was U.S. citizen. CBP refused to review or accept them. She informed them that she had his apostille birth certificate from Austin, Texas. The CBP officer rudely replied that they did not accept that kind of paperwork because they were government documents and for them they were not valid. The CBP Officer *stated that from now on that's what they were going to be doing these in all cases.* She was told that they will be taking to Los Fresnos

Detention Center. She asked, when will they take him? The CBP officer responded that it would not be that day because they had too much work, and that she will know when he arrived because he would be allowed to make two calls and he would call them.

9. On August 8, 2017 he was taken to the Los Fresnos Detention Center. On August 9, 2017 he called his cousin to tell her he was at the detention center. He provided her with alien number A212-996-718. He told his cousin that they were questioning his Texas Birth Certificate. He sounded stressed and he began to cry.

10. Jaime Diez, Mr. GARZA's attorney, before filing the instant petition called the clerk at the EOIR who verified her record and informed him that no NTA had been filed in his case. Deportation Officer Carlos Cisneros, informed him that they intended to detain while they determined whether he was actually born in Texas.

11. On information and belief, Juan Carlos Garza, alleges that he was detained because CIS advised the State Department that his birth certificate reflected birth with a midwife, and in turn, DOS requested CBP to detain and interrogate him about his citizenship the next time he attempted to enter the U.S. from Mexico.

### III. THE PARTIES

12. Petitioner **JUAN CARLOS GARZA** is a U.S. Citizen by virtue of his birth on May \_\_\_, 1983 in Mission, Texas. He is currently detained at the Port Isabel Detention Center. His wife, **YOLANDA LOPEZ-SALDIVAR**, is a native and citizen of Mexico, whose application for adjustment of status is pending through him.

13. Jane Bennett is the officer in charge of the Port Isabel Detention Center, and the immediate custodian of Juan Carlos Garza. Norma Limon is the USCIS Harlingen Field Office Director. The Hon. Rex Tillerson is the duly appointed and confirmed Secretary of State of the United States. The Hon. Elaine Duke is the acting Secretary of Homeland Security for the United States. The Hon. Jeff Sessions is the duly appointed and confirmed Attorney General of the United States. The United States is also a named Defendant. All Defendants are sued in their official capacities only.

#### IV. THE FACTS

14. JUAN CARLOS GARZA was born on May \_\_, 1983 in Mission, Texas with the assistance of Maria Zamora, a midwife, whose name does not appear on the only publicly available list of “suspicious” midwives. His birth was registered five months after he was born. (See Exhibit 1)

15. JUAN CARLOS GARZA is the second of the four children of Maria Olga Gamboa, and Rogelio Garza, both of whom are Mexican Citizens by birth. When Mr. GARZA was born, his parents were residing in Reynosa, Tamaulipas, Mexico. Both had border crossing cards that allowed them to cross into the U.S. His mother used her BCC to cross prior to his birth. At the time, his father worked at an auto parts business he owns. At the time of his birth, Mr. Garza’s mother had been staying with her brother, Rafael Garza Sanchez, and his wife, Olga Saenz de Garza in McAllen, Texas. Her plan was for him to be born in Texas.

16. JUAN CARLOS GARZA’s three siblings were all born in Reynosa, Tamaulipas, Mexico. His oldest brother, Rogelio GARZA-Gamboa, was born on May \_\_, 1981; Luis Gabriel GARZA-Gamboa was born on July \_\_, 1986 and

Martha Alicia GARZA-Gamboa, was born on February \_\_\_, 1990.

17. After JUAN CARLOS GARZA's birth, as his mother prepared to take him home to Mexico, the midwife told her to return, so that she could register him and give her his Texas Birth Certificate. However, his mother was afraid she would get in trouble for having had a baby in Texas, so she did not go back to see the midwife right away. It was not until October, 1983 that she went back to see the midwife to get his birth certificate. His birth certificate was issued on October 21, 1983.

18. When JUAN CARLOS GARZA was two months old his parents registered him in Mexico as if he had been born in Reynosa, Tamaulipas, Mexico when he was not. His parents registered him as having been born in Mexico because they thought he would need a Mexican birth certificate to go to school in Mexico. (See Exhibit 3)

19. When JUAN CARLOS GARZA was three months old, he was baptized in Mexico, also reflecting birth in Mexico. That certificate was later amended to reflect his true place of birth. (See Exhibit 4)

20. JUAN CARLOS GARZA grew up in Reynosa, Tamaulipas, where he went to school up until College. He has an engineering degree from a University from Reynosa, Tamaulipas, Mexico.

21. On February 12, 2007 JUAN CARLOS GARZA requested a Texas Birth Certificate, which was issued by the County of Hidalgo. (See Exhibit 5)

22. JUAN CARLOS GARZA applied for a U.S. Passport in 2007 and after responding to a request for evidence from the Department of State, his passport

was issued in 2008. (See Exhibit 6)

23. On June 13, 2008 JUAN CARLOS GARZA applied with the Texas Department of State Health Services (TDSHS) for his Texas Birth Certificate. His request was denied. As reason therefor, the office of Vital Statistics stated: "V.S. has received a Mexican Birth Record stating that the above named subject (Juan Carlos Garza) was born in Reynosa, Tamaulipas, Mexico." It appears that said addendum was placed upon request of Texas Department of Health on June 27, 1985.

24. JUAN CARLOS GARZA requested an administrative hearing with the TDSHS. (See Exhibit 7) On of about July 18, 2008, he received notice from the TDSHS for a hearing on August 7, 2008. (See Exhibit 8)

25. On August 7, 2008 a hearing was held by the TDSHS regarding the denial of JUAN CARLOS GARZA's birth certificate. On August 12, 2008 the hearing examiner that conducted the hearing, and heard the testimony of Maria Olga Gamboa and Rogelio Garza, mother and father of JUAN CARLOS GARZA, and Olga Saenz, who resides in McAllen, at that time and testified that at the time JUAN CARLOS GARZA was born his mother was staying with her in McAllen and that she was present at the time she went into labor and gave birth to him. The hearing officer found that the evidence conflicting with the Texas Certificate of Birth was rebutted and the accuracy of the Texas record supported by the evidence, ordered that the addendum be lifted and a certified copy of his Texas birth certificate be issued. As part of the documents presented to the hearing examiner was the medical card of Juan Carlos Gamboa, with an entry on July 20,

1983, stating that he was born in Mission, Texas with a midwife. (See Exhibit 9)

26. In 2008, after JUAN CARLOS GARZA Texas Birth Certificate was issued he had his birth certificate in Mexico judicially corrected in order to show that he was born in Texas. He then obtained his CURP Card. (See exhibit 10)

27. In 2016, JUAN CARLOS GARZA married Yolanda Nohemi Lopez, a Mexican Citizen, in Hidalgo, County. (See Exhibit 11). Together, they have two USC children: (1) Juan Carlos Garza, born in 2006 in the City of Hidalgo; and (2) Karla Nohemi Garza, born in 2015 in Edinburg, Texas (See Exhibit 12)

28. On September 28, 2016 JUAN CARLOS GARZA filed a visa petition for his wife, and Yolanda Nohemi Lopez filed an application to adjust status through him. On March 10, 2017 she had an interview on her pending application to adjust status at the USCIS office in Harlingen, Texas. At that interview he appeared with his wife. (See Exhibit 13).

29. As to the date of this filing of this suite USCIS web-cite reflects that the visa petition filed by him and his wife's application for adjustment of status remain pending and no decision has been made on them. (See Exhibit 14)

30. On information and belief, Petitioner alleges that his detention is not only in violation of Due Process, but is contrary to mandatory policies of DHS, prohibiting detention of individuals with *prima facie* documentation of U.S. citizenship, unless they are either threat to the community, or likely to abscond. Petitioner fits neither of these criteria. He resides in McAllen, Texas, and has stable employment. Said detention is also in violation of his fundamental right to re-enter the U.S., under *Worthy*, and contrary to *Omolo*, holding that his

citizenship must be determined before statutes applicable only to *aliens* are applied, and *Matter of Fuentes-Martinez*, noting that the Immigration and Nationality Act applies only to noncitizens

31. On information and belief, he alleges that the reason he was detained and subjected to lengthy and interrogation was that the Department of State hoped that CBP could “break” his will, and extract a (false) confession that he was born in Mexico, as has been done in other cases. *See, e.g., Gonzalez v. Freeman*, 1:13-cv-41 (S.D.Tx), Hon. Hilda G. Tagle, presiding.

## V. CAUSES OF ACTION

### A. HABEAS CORPUS

32. Mr. GARZA hereby incorporates by reference the allegations of paragraphs 1 through 31, above.

33. JUAN CARLOS GARZA asserts that the refusal of CBP to allow him to enter the U.S, and his detention at the Port Isabel Detention Center, violate the laws and Constitution of the United States. If an order of expedited removal was issued, he seeks review and rescission of the order. His current detention violates his

... fundamental right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective States, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the States to forbid and punish violations of this fundamental right.’ *United States v. Wheeler*, 254 U.S. 281, 293, 41 S.Ct. 133, 134, 65 L.Ed. 270, *Cf. Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 21 L.Ed. 394.

*Worthy v. United States*, 328 F.2d 386,392 (5th Cir. 1964). *See also, Hernandez v. Cremer*, 913 F.2d 230,237 (5th Cir. 1990), *quoting Worthy*, *supra*, “the right of

a United States citizen to enter the country is a right ‘which the fundamental law has conferred upon him,’” and holding that a person with facially valid documents showing U.S. citizenship is entitled to fair procedures in determining whether they will be placed in immigration proceedings.

### **B. DECLARATORY JUDGMENT**

34. Mr. GARZA and YOLANDA NOHEMI LOPEZ hereby incorporate by reference the allegations of paragraphs 1 through 33, above.

35. By virtue of the actions of Defendants, Mr. GARZA’S passport has been constructively revoked, as DOS did not provide him with an opportunity to address any concerns they may have regarding his birth in Texas, and instead requested that CBP detain and interrogate him. This denial and detention deny him the right of a U.S. citizen “peacefully to dwell” in McAllen, Texas, under *Worthy, supra*.

36. YOLANDA NOHEMI LOPEZ’ application for adjustment of status depends on the citizenship of her husband, and she is adversely affected by the constructive revocation of his passport.

37. Mr. GARZA and YOLANDA NOHEMI LOPEZ therefore seek a declaration that he is a U.S. citizen, under 8 U.S.C. §1503(a), with 28 U.S.C. §2201.

### **C. DECLARATORY JUDGMENT AND CORRESPONDING INJUNCTIVE RELIEF**

38. Mr. GARZA hereby incorporates by reference the allegations of paragraphs 1 through 37, above.

39. On information and belief, Mr. Garza alleges that it is now the policy of CBP

to interrogate and detain any person seeking entry with a valid U.S. passport, if they have received word from the Department of State that said person may in fact be an alien. Said policy violates 22 U.S.C. §2705, the Fifth Amendment of the U.S. Constitution, and binding authority from both the Fifth Circuit and the Supreme Court of the United States.

40. Mr. GARZA seeks a declaration that the CBP Officers at the Port of Entry violated his rights under the Fifth Amendment of the U.S. Constitution by detaining and interrogating him at the request of the Department of State, and by confiscating his lawfully issued documents, without giving him an opportunity, before or after, to contest their right to do so. He also requests a temporary restraining order, and preliminary injunction, ordering that he be released from the Custody of DHS, and that his documents be returned, and a permanent injunction, enjoining Defendants from detaining and interrogating a person with facially valid documents showing U.S. citizenship, absent a showing that the person presents a danger to the community, and/or a significant risk of flight.

41. Mr. GARZA also seeks an injunction, mandating that Defendants request the State of Texas to remove any "flag" they may have placed on his birth record as a result of Defendants' actions; that Defendants take steps to remove from the DHS and DOS computer systems all lookouts and other indications that he is not a United States citizen, and remove any information from the DHS or DOS computer systems indicating that his parents committed fraud in registering him as born in Texas.

#### **V. PRAYER FOR RELIEF**

JUAN CARLOS urges the Court to issue Temporary Restraining Order, and/or a

Writ of Habeas Corpus, ordering DHS to forthwith release him from custody, on the grounds that he has presented facially valid documents showing United States citizenship, and is neither a danger to the community, nor a significant flight risk.

Plaintiff also urges the Court to issue a Declaratory Judgment, declaring JUAN CARLOS GARZA to be a U.S. citizen.

Plaintiff also urges that the Court declare that the afore-mentioned policy of CBP with respect to certain persons seeking entry as a U.S. citizen, is unconstitutional, and that the acts of Defendants in detaining and interrogating him, and in confiscating lawfully issued documents violated JUAN CARLOS GARZA's constitutional rights, and to issue corresponding injunctive relief, requiring that they return the documents they refrain from such actions in the future, and return the documents they confiscated; that they take steps to remove from the DHS and DOS computer systems all lookouts and other indications that he is not a United States citizen, and remove any information from the DHS or DOS computer systems that his parents committed fraud in registering him as having been born in Texas; and to request the State of Texas to ignore any information that they have given them regarding the validity of his Texas Birth Certificate.

Finally, it is also urged that the Court require Defendants to pay Plaintiffs' costs, and reasonable attorneys fees, and grant such other and further relief as the Court may consider appropriate.

Respectfully Submitted,

s/ Jaime M Diez  
Attorney at Law  
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s/ Lisa S. Brodyaga  
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VERIFICATION OF COUNSEL

I, Jaime M. Diez, hereby certify that I am familiar with the facts as stated above, and that they are true and correct to the best of my knowledge and belief.

s/ Jaime M Diez