

NOTICE OF PROPOSED SETTLEMENT AGREEMENT AND HEARING IN A CLASS ACTION

Castelano, et al. v. Clinton, et al., Civil Action No. CA M-08057 in the United States District Court for the Southern District of Texas

TO: All persons (1) who applied in the United States for a passport between April 8, 2003 and the Effective Date of Settlement; (2) whose birth certificate was registered or filed in Texas by a midwife or other birth attendant; and (3) who received a letter from the State Department stating that their passport application was “filed without further action,” “abandoned,” or “closed,” OR who were not issued a decision on an application filed prior to September 15, 2008.

You are hereby notified that a hearing has been scheduled for August 14, 2009, at 10:00 a.m., before the Honorable Randy Crane of the U.S. District Court for the Southern District of Texas, 1701 West Business Hwy 83, 9th Floor, McAllen, Texas for consideration of a proposed settlement of the claims that have been brought on your behalf in this lawsuit.

THE PURPOSE OF THIS NOTICE:

This notice has three purposes: 1) to tell you about the proposed settlement and the fairness hearing; 2) to tell you how to obtain more information, including a copy of the full proposed settlement agreement; and 3) to explain how you may object to the proposed settlement if you disagree with it.

THE BASIS FOR THIS CASE:

A class action lawsuit alleged that the State Department was improperly processing the passport applications of persons whose births were assisted by midwives or birth attendants in Texas and along the U.S./Mexico border. Over the years, a large number of midwives and birth attendants filed birth certificates in Texas for people who were not born in the United States. However, the lawsuit asserted that this fact did not justify the State Department’s practices for processing these applications. The State Department denied the allegations in the lawsuit and asserted many defenses. The class action lawsuit was settled in June 2009. The settlement is not an admission of wrongdoing or an indication that any law was violated.

The parties have reached a tentative settlement that the Court has preliminarily approved. The settlement is not an admission of wrongdoing or an indication that any law was violated.

A DESCRIPTION OF THE PROPOSED SETTLEMENT:

The following description is only a summary of the key points in the proposed settlement agreement. Information on how to obtain a copy of the full, proposed agreement is provided after this summary.

Those who qualify as class members:

- 1) They filed an application for a passport in the United States between April 8, 2003 and the Effective Date of Settlement; AND
- 2) Their birth certificate was filed or registered in Texas by a midwife or birth attendant; AND
- 3) One of the following is true:
 - (a) they received a letter from the State Department saying that the application was "filed without further action," "abandoned" or "closed"; OR
 - (b) a decision was not issued on their application and the application was filed prior to September 15, 2008.

Those who do not qualify as class members:

Even if they meet the factors above to qualify, persons will not qualify for the settlement if any of the following apply:

- (a) They have been issued a passport;
- (b) They were sent a letter by the State Department denying their application;
- (c) They have a pending application which was filed on or after September 15, 2008;
- (d) They filed or re-filed their application in another country;
- (e) They lost an action for a declaration of US nationality;
- (f) Their application was classified as "filed without further action" or "abandoned" or "closed" based upon one of several reasons set forth under the passport regulations for supporting denial of a passport (such as being the subject of an outstanding federal, state, or local felony warrant for arrest, or failure to pay a repatriation loan to the United States). For a complete list of all such reasons see federal regulation 22 C.F.R. §§ 51.60 and 51.61; or
- (g) Their application was rejected because of:
 - No photographs or bad photographs;
 - No signature or a bad signature;
 - No payment of fees or the failure to pay the proper amount of fees;
 - No identification or use of improper identification;
 - An incomplete application form;
 - They did not apply in person;
 - Their birth certificate was filed more than one year after their birth.

THE SUMMARY OF THE TERMS:

Those who qualify as class members may re-apply without paying the passport application fee (currently \$75), as long as they complete the claim submission process within the proper deadlines. They may also avoid paying the \$25 passport execution fee if they re-apply at a Passport Agency/Center or at one of the five temporary mobile units the State Department will provide in southern Texas.

In addition, the State Department will revise and reinforce its standards for maintaining and using a list of midwives and birth attendants convicted or suspected of engaging in birth certificate fraud in the passport application review process.

The State Department will no longer send "filed without further action" letters or designate applications as "abandoned" or otherwise closed. As part of the new procedures, class members passport applications will either be approved and a passport issued, or denied by the Department, unless withdrawn in writing by the class member.

The State Department will improve its procedures for communicating with class members when requesting additional information, and in those instances where an application is being denied.

The State Department will provide additional training to its personnel to explain, communicate, and reinforce adherence to the appropriate standards and policies for reviewing passport applications.

The State Department will establish a review process so that class member re-applications will be initially reviewed by a senior-level employee specially trained by the Department. In those instances where a passport is not issued at this stage, a three-member panel made up of senior-level employees will then review the entire application and make the decision to issue a passport or deny the application.

Finally, class members who are denied passports will have an additional sixty (60) days to respond to the specific reasons for the denial of their application. The three-member panel will review any such responses and additional information before making a final decision.

You do not need to file a lawsuit to be a Class Member. You are a Class Member if you meet the three criteria described above and none of the exclusions applies. As a Class Member you are also bound by the settlement and waive certain rights. Any class member who previously filed a lawsuit under 8 U.S.C. § 1503 may choose either to re-apply or continue with the lawsuit. If they choose to re-apply, then the lawsuit will be stayed, or dismissed if so ordered by the court, pending completion of re-adjudication. If you re-apply, you will still have an opportunity to bring your own lawsuit if your passport re-application is denied.

The agreement further provides that, in consideration of the other provisions in the agreement, class members release all defendants from all "settled claims." For a complete description of the terms, releases and "settled claims," you should obtain a full copy of the proposed settlement agreement. Defendants do not admit any wrongdoing, fault, or liability. The settlement agreement cannot be used against defendants as evidence of any presumption, concession, or admission of any liability, negligence, fault, or wrongdoing in future actions.

The agreement provides for and resolves all claims by Class Counsel for an award of attorneys' fees and costs.

FOR FURTHER INFORMATION:

THIS IS A SUMMARY OF THE PROPOSED AGREEMENT. TO UNDERSTAND IT FULLY, YOU SHOULD READ THE ENTIRE AGREEMENT. Copies of the proposed settlement may be obtained from: 1) The State Department's website (www.travel.state.gov/passport); or 2) the ACLU of Texas (www.aclutx.org)

PROCEDURES FOR AGREEMENT OR OBJECTION:

IF YOU AGREE with the proposed settlement, you do not need to do anything at this time. If you wish to attend, you may be present at the public hearing on the proposed settlement as stated above.

IF YOU DISAGREE with the proposed settlement, you have a right to object to it and to the dismissal of the remaining claims in the lawsuit. Your objections will be considered by the Court as it reviews the settlement ONLY IF you follow these procedures:

1. Objections must be filed in writing by mail with the Clerk of the United States District Court for the Southern District of Texas, 1701 West Business Hwy 83, 9th Floor, McAllen, Texas 78501. CONTACT CLASS COUNSEL, NOT THE COURT, REGARDING THE FAIRNESS HEARING.

ALL OBJECTIONS MUST CONTAIN THE FOLLOWING INFORMATION:

- a. Name, address, and telephone number of the person filing the objection.
 - b. A statement of the reasons for the objection.
 - c. A statement that copies of the objections have also been sent to the attorneys listed at the end of this notice.
2. You must send copies of your objections to all attorneys listed at the end of this notice.
3. The deadline for receipt of written objections by the Court and the attorneys listed below is August 7, 2009. Objections filed by mail must be postmarked on or before August 4, 2009 to be considered timely. Objections filed or mailed after the above date will not be considered. Class members who fail to lodge objections on or before August 7, 2009, will not be permitted to testify at the settlement hearing.
4. No later than August 12, 2009, the attorneys for plaintiffs and defendants shall file and serve responses, if any, to objections they timely receive from persons opposed to the proposed settlement.

ATTORNEYS' NAMES AND ADDRESSES FOR PLAINTIFFS AND DEFENDANTS:

For Plaintiffs:

Castelano Class Settlement
c/o Lisa Graybill, Esq.
American Civil Liberties Union,
Foundation of Texas
P.O. Box 12905
Austin, TX 78711

For Defendants:

Jonathan M. Rolbin, Trial Attorney
Office of Immigration Litigation
District Court Section
U.S. Department of Justice
Civil Division
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044