



them because qualifying for employment, housing assistance and other services that would improve their lives almost always requires identification, usually in the form of an official card displaying a name and photograph (a “photo ID”). But solving the problem is a challenge because they generally cannot obtain a photo-ID without a birth certificate and they generally cannot obtain a birth certificate without a photo-ID. They are caught in a cruel Catch-22 trap.

2. Legal services agencies seek to help people in such circumstances to acquire copies of their birth certificates (without cost to themselves) through the services of licensed attorneys following a well-established protocol. The lawyers meet personally with the client, obtain authorization to proceed on the client’s behalf, gather the biographical information required by the certificate issuer, complete the application form, supply copies of their own photo-ID and law license, provide a law office address to which the certificate can be sent, pay the fee, file the application, receive the certificate when issued and deliver it to the client (the “Attorney Protocol”).

3. As a means of securing birth certificates for people without documentary proof of identity or address, the Attorney Protocol is acceptable to every birth certificate-issuing authority known to Plaintiffs, except one: New York City. Unlike New York State, New Jersey, Pennsylvania, Delaware, Maryland, Washington, DC, and other jurisdictions, New York City refuses to issue birth certificates requested through the Attorney Protocol unless the application includes a current, government-issued photo-ID or two proofs of address for the client (the “NYC Policy”).

4. For homeless people who have no photo-ID and no proof of address, the NYC Policy stands as an insurmountable obstacle to obtaining *their own birth certificates*. And in so doing, the NYC Policy produces a cascade of terrible consequences: the inability to acquire a

photo-ID and the loss of benefits for which a photo-ID is required – including, for example, employment, housing, medical treatment and banking services. Thus, the NYC Policy locks certain homeless people into a life on the streets or in shelters.

5. This action challenges the NYC Policy as an unjustified infringement of rights guaranteed by the United States Constitution.

### **Parties**

6. Plaintiff Homeless Advocacy Project (“HAP”), is a 501(c)(3) non-profit organization located at 1429 Walnut Street, Philadelphia, PA 19102. The mission of HAP is to provide free civil legal services to homeless individuals and families residing in Philadelphia shelters and to advocate for change in the broader systems affecting homeless people.

7. HAP engages in direct outreach to the homeless community by conducting more than 125 annual legal clinics at 25 shelters, soup kitchens, transitional housing facilities and overnight cafes located throughout Philadelphia. At these clinics, HAP staff attorneys, together with volunteer legal professionals working under their supervision, meet and interview prospective clients, assess their legal needs, and where indicated, provide comprehensive legal assistance in 50 different civil legal matters, including but not limited to: access to emergency shelter, medical care, behavioral health and substance abuse treatment, and other supportive services; problems involving client eligibility for and participation in income maintenance programs including fast-track cases for Social Security and veterans disability benefits; replacing lost or stolen identity-establishing documents; eviction and other landlord/tenant matters; debtor/creditor disputes; and family law.

8. The overarching goal of HAP is to increase its clients’ stability and functioning. For example, helping a homeless person obtain identifying documents like a birth certificate and

a Social Security card is the first step toward helping him secure state-issued photo-ID, which will allow him to apply for job-training, subsidized housing, drug and alcohol treatment, medical insurance, and a bank account.

9. In 2015, HAP's 13-member staff and 350 volunteer attorneys helped 3,496 clients, providing free legal services valued at over \$7.2 million. Since HAP's founding in 1990, the agency has served over 42,810 homeless individuals and families, providing services valued at \$64 million. See [www.homelessadvocacyproject.org](http://www.homelessadvocacyproject.org).

10. Plaintiff Anthony Green is a Bronx-born 57 year-old man who resides in and around Philadelphia. He is homeless, has lived on the street and stays with friends when possible.

11. Plaintiff John Kagian is a Brooklyn-born 56 year-old man who has been homeless. He has lived on the street and, until recently, resided at a homeless shelter called Our Brother's House, located at 605 South 15<sup>th</sup> Street, Philadelphia, PA 19102. Due to his alleged involvement in an altercation while he was homeless, he was arrested and is now in jail, awaiting trial.

12. Defendant The City of New York is a municipal corporation located at 100 Church Street, New York, NY 10007.

13. Defendant New York City Department of Health and Mental Hygiene (the "Department") is an agency of the government of The City of New York and is located at 125 Worth Street, New York, NY 10013.

14. Defendant Mary Travis Bassett (the "Commissioner") is the Commissioner of the Department and is sued solely in that official capacity.

### **Jurisdiction and Venue**

15. Because this matter arises under the due process clause of the U.S. Constitution, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

16. Because the Defendants' location lies within the boundaries of the Southern District of New York, this Court is the proper venue for this action pursuant to 28 U.S.C. § 1391.

### **Underlying Facts**

#### **A. New York City Regulation of Birth Certificate Copies**

17. New York State has delegated to New York City the responsibility to issue birth certificates and copies of birth certificates for births that occur in its five boroughs.

18. Defendant Commissioner regulates the issuance of birth certificates and birth certificate copies, pursuant to the New York City Health Code ("Health Code").

19. Health Code Article 207 sets forth "General Vital Statistics Provisions." Section 207.11 addresses "Inspection of vital records or data; transcripts."

20. Health Code Section 207.11 states, at paragraph (a): "inspection of vital records or data filed with the Department pursuant to this Title may be made and transcripts of records may be obtained pursuant to the provisions of §3.25 of this Code and §17-169 of the Administrative Code, respectively." Accordingly, Administrative Code § 17-169 governs issuance of "transcripts of records," such as birth certificate copies.

21. NYC Administrative Code § 17-169 is entitled, "Certified copies of records of birth, fetal death, and death; certificates of birth." Section 17-169 states, in pertinent part:

a. Upon request the department shall issue a certified copy of the birth record or a certification of birth under the following conditions:

1. A certified copy of the record of birth shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if eighteen years of age or more, or by a parent or to the legal representative of the person to whom the record of birth relates or **by an attorney of law authorized in writing by the person if of the age of eighteen years or over to whom the record of birth relates**. The department may issue a certified copy of a birth record for official use upon the request of a department, agency, or officer of any state government or subdivision thereof or the United States government.

(emphasis added).

B. Application Process for NYC Birth Certificate Copies

22. The Department's website sets forth the process for applying for a copy of a birth certificate. The relevant information is found at the following internet address:

<https://www1.nyc.gov/site/doh/services/birth-certificates.page>.

23. The Department accepts applications submitted online, in person, and by mail.

24. All applicants must submit a completed Birth Certificate Application form (which must be notarized if mailed).

25. If an in-person applicant presents a current and signed government-, employer- or school-issued photo-ID, the Department processes the application on the spot and presents the certificate by hand to the applicant. Absent such a photo ID, the in-person applicant may show "proof of address," which the Department defines as two documents, such as recent utility bills, that state the applicant's name and current address; and the Department will mail the certificate to the address shown. The specific instructions are as follows:

**Identification (ID) Requirements to get a Birth Certificate for you or your child.**

**Category 1: Identity documents.** If you order in person you can leave with your short form certificate in most cases, unless you require a long form certificate.

Provide any of the following, if it includes your photo, your signature and is unexpired:

- Driver's License or non-driver's ID from any state or U.S. territory
- Public benefit card
- U.S. or foreign passport
- U.S. certificate of naturalization
- Military ID card
- Employee ID with photo, verifiable employer and recent pay stub
- MTA reduced-fare Metro Card
- Student ID and current transcript from accredited and verifiable institution
- Inmate photo ID with release papers

**Category 2: Proof of address.** If you do not have any of the above, you may provide proof of address as described below. Your certificate will be mailed to address on documents provided.

Two different documents dated within the past 60 days, if they show your name and address:

Utility bills (online bills can be downloaded from your provider)

Letter from a government agency

C. Attorney Requests for Birth Certificates

26. The Department also accepts birth certificate requests from attorneys, on behalf of NYC-born clients.

27. Pursuant to NYC Administrative Code § 17-169(a)(1), the Department *is required* to issue birth certificates to an attorney making an authorized birth certificate request for a client's birth certificate.

28. The Department sets forth the following requirements for attorney requests:

Only entitled parties [defined to include, among others, the subject of the birth certificate and/or his or her parents] and their attorneys may submit orders for NYC birth certificates. . . . Attorneys should follow these instructions when submitting orders in person or by mail. If you experience any problems when attempting to submit an order in-person, please ask for a supervisor.

### **Required for All Certificates**

A letter from the attorney on letterhead with the following:

A completed birth (PDF) certificate application signed by the attorney.

An original letter from the entitled party authorizing the attorney to act on his or her behalf.

A copy of the entitled party's valid, unexpired, government-issued photo identification.

All applicable fees.

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Proof you are a licensed attorney. This can be printed out from online databases. For example:

- New York
- New Jersey
- Connecticut
- Pennsylvania

29. In practice, if an authorized attorney submits a birth certificate application along with a photo-ID for the client, getting the certificate is relatively simple. In contrast, if the client does not have a photo-ID, the attorney cannot obtain the certificate without submitting two types of “proof of address,” *i.e.*, recent utility bills or similar documents showing the client’s name and address – documents that most homeless people simply do not have.



D. HAP's General Involvement in Procuring Birth Certificates

30. HAP routinely assists homeless individuals to obtain their birth certificates, without cost to the individuals. In 2015, HAP's efforts resulted in securing birth certificates for 1,091 clients (approximately 30 percent of those who sought HAP services).

31. Many homeless people now living in the Philadelphia area were born in New York City. Thus, HAP and its volunteer lawyers have often helped clients to acquire their birth certificates from New York City. But, because of the NYC Policy at issue in this suit, procuring certificates for those clients has been much more difficult than procuring them for clients born elsewhere. Indeed, the NYC Policy has made obtaining birth certificates for the two individual Plaintiffs impossible. And they are hardly the first – and, unless the NYC Policy is changed, will not be the last – to suffer that fate.

E. Anthony Green's Application

32. Anthony Green was born in the Bronx, New York, on March 14, 1959. He moved to Philadelphia when he was about five years old.

33. Until approximately nine years ago, Mr. Green had photo-ID, a copy of his birth certificate and his social security card.

34. All of that identification was lost when a fire destroyed the house where he lived.

35. As a result of the fire, Mr. Green became homeless.

36. Since the fire, Mr. Green has not been able to obtain a photo-ID because he does not have his birth certificate.

37. Mr. Green does not have a mailing address and he does not receive bills or correspondence at any particular address. Thus, Mr. Green also lacks documentation showing both his name and a mailing address.

38. On October 14, 2015, Mr. Green engaged HAP and its volunteer attorney, David DeFlece, to try to obtain his birth certificate. Mr. Green met with Mr. DeFlece and provided him with the biographical information requested on the NYC birth certificate application form.

39. On November 11, 2015, Attorney DeFlece submitted to the Department a notarized and completed application for a copy of Mr. Green's birth certificate (the "Green Application").

40. The Green Application recited the following five pieces of biographical information, as required by the Department's instructions in order to locate a valid birth record:

- a. Mr. Green's full name;
- b. his mother's name (including her maiden surname);
- c. his father's full name;
- d. the date of Mr. Green's birth;
- e. the hospital or borough in which the birth occurred.

41. The letter that Attorney DeFlece transmitted to the Department with the Green Application stated that Mr. Green was "street homeless" and, thus, did not possess any "identifying information that NYC would otherwise request."

42. The Green Application included, as required by the Department, a signed and notarized statement in which Mr. Green authorized Attorney DeFlece to submit the application on Mr. Green's behalf, and authorized the Department to release the birth certificate to Attorney

DeFlece by mailing it to DeFlece at his law firm address. Also included were a general release, copies of DeFlece's own photo-ID and attorney's license and the \$15 fee.

43. On November 19, 2015, the Department informed Attorney DeFlece that it had located a birth record for Mr. Green, confirming each piece of the biographical information provided on the application. However, the Department indicated that it would not release the birth certificate unless Mr. Green could provide three alternative identity verification documents from the Department's list.

44. On November 20 and December 2, 2015, the Department repeated that, since Mr. Green did not have government-issued photo-ID, it would not issue Mr. Green's birth certificate without three alternative identity documents – which he did not and does not have.

45. Mr. Green now finds himself in a Catch-22 situation: He cannot acquire a photo-ID without his birth certificate and (since he has no proof of address) he cannot obtain his birth certificate without a photo-ID. In these circumstances, he is unable to get a permanent job, cannot travel, cannot make a living, and, consequently, cannot find his own place to live.

#### F. John Kagian's Application

46. John Kagian was born on July 2, 1959, in Brooklyn, New York.

47. Mr. Kagian is a college graduate and earned a master's degree from George Washington University and a law degree from Temple University.

48. Mr. Kagian has been living in Philadelphia since August 1991.

49. Partly as a result of serious health issues, Mr. Kagian became homeless around the spring of 2005.

50. Prior to becoming homeless, Mr. Kagian had a valid Pennsylvania driver's license. The license expired and was subsequently lost or stolen.

51. Mr. Kagian previously used his U.S. passport for identification, but his passport was stolen while he was living on the street.

52. Mr. Kagian also lost his birth certificate.

53. On October 29, 2014, Mr. Kagian engaged HAP and its volunteer attorney, Dennis Morrow, to help him obtain a copy of his birth certificate from New York City.

54. Mr. Kagian met with Mr. Morrow and provided him with the biographical information required on the NYC birth certificate application form.

55. On April 20, 2015, Attorney Morrow submitted to the Department a notarized and completed application for a copy of Mr. Kagian's birth certificate (the "Kagian Application").

56. The Kagian Application recited the following five pieces of biographical information, as required by the Department's instructions, in order to locate a valid birth record:

- a. Mr. Kagian's full name;
- b. his mother's name (including her maiden surname);
- c. his father's full name;
- d. the date of Mr. Kagian's birth;
- e. the name and location of the hospital where the birth occurred.

57. The cover letter for the Kagian application recited that, although Mr. Kagian did not possess any photo-ID, the application included three pieces of mail addressed to Mr. Kagian at his then-current residence.

58. Included with the Kagian Application, as required by the Department, was a signed and notarized affidavit authorizing Mr. Morrow to file the application on Mr. Kagian's behalf and authorizing the Department to release the birth certificate to Attorney Morrow by

mailing it to his law office address. Also included were a copy of Attorney Morrow's photo-ID and attorney license, and the requisite fee for two copies of the birth certificate.

59. After receiving no response for nearly six months, Attorney Morrow resubmitted the birth certificate application on November 3, 2015.

60. The Department has refused to issue Mr. Kagian's birth certificate.<sup>1</sup>

61. Without his birth certificate, Mr. Kagian cannot obtain the photo-ID necessary to seek employment that would allow him to support himself and live on his own. Indeed, the social service agency working with Mr. Kagian informed him that, due to his lack of photo-ID, it could not move him out of a shelter and into transitional or permanent housing. A short time later, Mr. Kagian was allegedly involved in an altercation, charged with crimes and incarcerated pending trial.

#### G. Harm to Plaintiffs from Defendants' Actions

62. As a result of the NYC Policy, and Defendants' consequent refusal to issue birth certificates, Plaintiffs have suffered harm, including irreparable harm, and will continue to do so.

63. Plaintiffs Green and Kagian are unable to acquire official photo-ID without first obtaining their birth certificates. Thus, absent the relief sought herein, Plaintiffs Green and Kagian will continue to be deprived of the fundamental right to their birth certificates and to benefits that flow from the possession of a birth certificate, including freedom of movement, opportunities for employment and access to certain social services.

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<sup>1</sup> In November 2015, the Department informed Attorney Morrow that its records indicated Mr. Kagian was deceased. Attorney Morrow immediately told the Department that its information was incorrect and, to resolve the issue, promptly sent the Department several documents, including a note from Mr. Kagian's cardiologist confirming that he was "alive and well."

64. Consistent with its overall mission, HAP has expended and continues to expend substantial resources pursuing birth certificates on behalf of NYC-born clients. HAP's staff and volunteer attorneys spend substantially more time and effort assisting those clients (as opposed to clients born elsewhere) to obtain their birth certificates because of the extra documentation that is required by the NYC Policy. HAP's staff and volunteer attorneys also spend substantial time and effort assisting NYC-born clients who are refused birth certificates (because they cannot supply the extra documentation) in trying to overcome the difficult obstacles to obtaining social benefits and services without a birth certificate. If not for the NYC Policy challenged in this suit, HAP's staff and volunteer attorneys would not need to expend extra resources on the birth-certificate process and could devote those resources to other aspects of HAP's mission to aid people who are homeless.

65. Because birth certificates are essential documents for homeless people, HAP will continue to expend substantial resources pursuing birth certificates for NYC-born clients. Therefore, HAP will continue to suffer the harm described above so long as the NYC Policy remains in effect.

**COUNT I**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS**  
**FOURTEENTH AMENDMENT**

66. Plaintiffs incorporate herein paragraphs 1 through 65, above.

67. Plaintiffs bring this count under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.

68. At all relevant times, Defendants have acted knowingly, intentionally, in their official capacities, under color of state law, and in a way that constitutes a pattern or practice.

69. The U.S. Constitution establishes a property and/or liberty interest in obtaining one's birth certificate, as well as social, economic and other benefits for which a birth certificate is a necessary prerequisite.

70. Defendants' NYC Policy and their refusal, pursuant to the Policy, to issue birth certificates to Plaintiffs Green, Kagian and others constitutes a substantial infringement upon that interest.

71. Defendants' infringement violates the substantive due process component of the Fourteenth Amendment to the U.S. Constitution because it is not narrowly tailored to serve a compelling governmental interest, is not rationally related to a legitimate governmental interest, and is not otherwise sufficiently justified.

72. Defendants' unconstitutional actions have caused and continue to cause harm, including irreparable harm, to Plaintiffs.

73. Plaintiffs are therefore entitled to declaratory and injunctive relief.

74. Plaintiffs invoke their right to trial by jury on all issues so triable.

**COUNT II**  
**VIOLATION OF PROCEDURAL DUE PROCESS**  
**FOURTEENTH AMENDMENT**

75. Plaintiffs incorporate herein paragraphs 1 through 74, above.

76. Plaintiffs bring this Count under 42 U.S.C. § 1983 and 28 U.S.C. § 2201.

77. At all relevant times, Defendants have acted knowingly, intentionally, in their official capacities, under color of state law, and in a way that constitutes a pattern or practice.

78. The U.S. Constitution establishes a property and/or liberty right to obtain one's birth certificate, as well as social, economic and other benefits for which a birth certificate is a necessary prerequisite.

79. Defendants' NYC Policy and their refusal, pursuant to the Policy, to issue birth certificates to Plaintiffs Green, Kagian and others constitutes a deprivation of that right.

80. Defendants' deprivation of the right violates the procedural due process component of the Fourteenth Amendment to the U.S. Constitution because Defendants failed to follow procedures that ensured fundamental fairness, properly balanced the interests and burdens of the Plaintiffs and the government, or otherwise satisfied constitutional standards.

81. Defendants' unconstitutional actions have caused and continue to cause harm, including irreparable harm, to Plaintiffs.

82. Plaintiffs are therefore entitled to declaratory and injunctive relief.

83. Plaintiffs invoke their right to trial by jury on all issues so triable.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- (a) Declare that the NYC Policy and Defendants' refusal, in accordance with the Policy, to issue birth certificates violate the due process clause of the Fourteenth Amendment to the United States Constitution;
- (b) Enjoin Defendants from denying birth certificates on the basis of the NYC Policy and, in particular, from denying birth certificates to Plaintiffs Green and Kagian;
- (c) Award Plaintiffs attorneys' fees, costs and all other just and proper relief.

Dated: September 23, 2016

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