

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

HILDA GONZALEZ GARZA AND
ROSBELL BARRERA,
Plaintiffs,

V.

CIVIL ACTION NO. 7:18-CV-00046

STARR COUNTY, TEXAS;
OMAR ESCOBAR, in his official capacity
as District Attorney for the 229th Judicial
District; VICTOR CANALES JR.,
in his official capacity as County Attorney
for Starr County; ELOY VERA, in his
official capacity as County Judge for
Starr County; JAIME ALVAREZ, in his
official capacity as Starr County
Commissioner for Precinct 1; RAUL PEÑA,
III, in his official capacity as Starr County
Commissioner for Precinct 2; ELOY GARZA,
in his official capacity as Starr County
Commissioner for Precinct 3; RUBEN D.
SAENZ, in his official capacity for Starr
County Commissioner for Precinct 4;
RENE “ORTA” FUENTES, in his official
capacity as Sheriff for Starr County.

Defendants.

DEFENDANTS' MOTION FOR MORE DEFINITE STATEMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COME NOW, Defendants, STARR COUNTY, TEXAS; OMAR ESCOBAR, in his official capacity as District Attorney for the 229th Judicial District; VICTOR CANALES JR., in his official capacity as County Attorney for Starr County; ELOY VERA, in his official capacity as County Judge for Starr County; JAIME ALVAREZ, in his official capacity as Starr County Commissioner for Precinct 1; RAUL PEÑA, III, in his official capacity as Starr County Commissioner for Precinct 2; ELOY GARZA, in his official capacity as Starr County Commissioner for Precinct 3; RUBEN D. SAENZ, in his official capacity for Starr County Commissioner for Precinct 4; RENE “ORTA” FUENTES, in his official capacity as Sheriff for Starr County, and file this their Motion for More

Definite Statement concerning Plaintiffs' Second Amended Complaint (Doc. 29) and would respectfully show unto this Honorable Court the following:

I.

Pursuant to Federal Rule of Civil Procedure 12(e), "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed by which is so vague or ambiguous that the party cannot reasonably prepare a response." "[A] 'bare bones' allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury, does not provide adequate notice." *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164 (5th Cir. 1999) (citations omitted).

II.

Generally, Plaintiffs take issue with the permitting process to use certain County facilities and the express prohibition to use others. *See generally* (Doc. 29). Plaintiffs allege the permitting process abridges their freedom of speech and their right to peaceably assemble. *See* (Doc. 29 at pp.23-24). Plaintiffs also allege that the permitting process is in violation of Section 61.003 of the Texas Election Code and constitutes *ultra vires* activity. *See* (Doc. 29 at pp.25-26). However, having reviewed Plaintiffs' Complaint, Defendants are unable to identify what acts constitute the violation of the Texas Election Code and/or *ultra vires* activity, and hereby move for a more definite statement.

Pursuant to Section 61.003 of the Texas Election Code, electioneering may be subject to "reasonable regulations concerning the time, place, and manner." "Electioneering" is defined as "posting, use, or distribution of political signs or literature." The Starr County Building and Property Use Policy [herein after "Use Policy"] enacted on April 9, 2018 does not concern electioneering and makes no reference to electioneering. Nothing in the Use Policy would indicate that it is a regulation of electioneering activities. The Use Policy consists of content-neutral regulations of general applicability. Therefore, Defendants hereby request that Plaintiffs identify the regulation or section contained in the Use Policy that allegedly constitutes a violation of Section 61.003 of the Texas

Election Code.

Likewise, Plaintiffs have failed to identify the act giving rise to an *ultra vires* claim and specify the individual Defendant(s) alleged to have committed such act. Plaintiffs generally allege that enacting the Use Policy is an *ultra vires* act, but it is too general a statement to provide Defendants with notice. To assert an *ultra vires* claim, a suit must not complain of a government officer's exercise of discretion, but of "*either an officer's failure to perform a ministerial act or an officer's exercise of [] limited discretion without reference to or in conflict with the constraints of the law.*" *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 163 (Tex. 2016) (emphasis in original). Therefore, Defendants hereby request that Plaintiffs identify the ministerial act(s) or exercise of limited discretion which is allegedly *ultra vires*, and who committed the alleged *ultra vires* act(s).

III.

WHEREFORE, PREMISES CONSIDERED, Defendants, STARR COUNTY, TEXAS; OMAR ESCOBAR, in his official capacity as District Attorney for the 229th Judicial District; VICTOR CANALES JR., in his official capacity as County Attorney for Starr County; ELOY VERA, in his official capacity as County Judge for Starr County; JAIME ALVAREZ, in his official capacity as Starr County Commissioner for Precinct 1; RAUL PEÑA, III, in his official capacity as Starr County Commissioner for Precinct 2; ELOY GARZA, in his official capacity as Starr County Commissioner for Precinct 3; RUBEN D. SAENZ, in his official capacity for Starr County Commissioner for Precinct 4; RENE "ORTA" FUENTES, in his official capacity as Sheriff for Starr County, pray that the Court grant their Motion, order Plaintiffs to provide a more definite statement concerning their Texas Election Code claim and *ultra vires* claim, and grant such other and further relief, at law or in equity, to which Defendants may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Ysmael D. Fonseca
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RENE “ORTA” FUENTES, in his official
capacity as Sheriff for Starr County

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Via CM/ECF

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