

NO. \_\_\_\_\_

OCTAVIA GONZALEZ, DULCE  
HERNANDEZ, AMALIA GUEDEA-  
NELSON, LAURA GUZMAN, SJM, NLT,  
LAURA CAMPA, *LA UNION DEL  
PUEBLO ENTERO*, and *PROYECTO JUAN  
DIEGO*,

Relators/Plaintiffs,

V.

THOMAS SEUHS, in his official capacity as  
the Executive Commissioner of the Texas  
Health and Human Services Commission,  
and the TEXAS HEALTH AND HUMAN  
SERVICES COMMISSION,

Respondents/Defendants.

§ IN THE \_\_\_\_\_ DISTRICT COURT  
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§ TRAVIS COUNTY, TEXAS

**PLAINTIFFS’ ORIGINAL PETITION FOR MANDAMUS, INJUNCTION  
AND REQUEST FOR EMERGENCY RELIEF**

**INTRODUCTION**

This action arises out of the failure of Executive Commissioner Thomas Seuhs and the Texas Health and Human Services Commission (hereinafter referred to as Defendants, or “HHSC”) to make eligibility decisions on applications for food stamps, now called Supplemental Nutrition Assistance Program (“SNAP”), within the time periods required by state law, thus denying individual Plaintiffs and tens of thousands of other Texans access to food, the most basic of human needs.<sup>1</sup> Plaintiffs seek mandamus, injunctive and emergency relief in accordance with state law.

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<sup>1</sup> For convenience, Relators/Plaintiffs and Respondents/Defendants will be referred to as Plaintiffs and Defendants respectively.

## I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 2 of Rule 190 of the Texas Rules of Civil Procedure.

## II. PARTIES

2. Plaintiffs OCTAVIA GONZALEZ, DULCE HERNANDEZ, AMALIA GUEDEA-NELSON, LAURA GUZMAN, SJM, NLT, and LAURA CAMPA, are residents of the State of Texas who have applied for SNAP assistance from the Texas Health and Human Services Commission, and who are still awaiting a decision on their applications beyond the time allowed by state law.<sup>2</sup>

3. Plaintiff *La Union del Pueblo Entero* (“LUPE”) is a charitable, non-profit Texas corporation whose members have applied for SNAP assistance from HHSC and are awaiting a decision beyond the time allowed by state law. The dispute LUPE has with HHSC is germane to its organizational purpose, and neither the claims asserted nor the relief requested by LUPE require the participation of the individual members in this suit.

4. Plaintiff *Proyecto Juan Diego* is a charitable, non-profit Texas corporation that provides social and educational services to *colonia* residents in Cameron County, Texas. Many of its members receive SNAP benefits from Defendants, and many have confronted the same problems of delay that are the gravamen of this civil action.

5. Plaintiffs LUPE and *Proyecto Juan Diego* as organizations have also been harmed by HHSC’s failure to administer a state agency that can make eligibility decisions on

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<sup>2</sup> Plaintiffs described as SJM and NLT are victims of family violence and fled their attackers. These two Plaintiffs do not wish to publicly disclose their full names in this document for fear that this could assist their attackers to determine their new locations. Plaintiffs identified themselves fully to Defendants in a separate document.

applications for SNAP assistance within the time allowed by state law. The harm to the organizations is in the form of costs incurred, redirection of efforts, and/or harm to their missions and purposes.

6. Defendant THOMAS SEUHS is the Executive Commissioner of the Texas Health and Human Services Commission (“HHSC”), and he is sued only in his official capacity. The Executive Commissioner can be served at the HHSC offices located in the Brown-Heatly Building, 4900 N. Lamar Blvd., Austin, Texas 78751-2316.

7. The TEXAS HEALTH AND HUMAN SERVICES COMMISSION is an agency of state government that oversees the operations of the health and human services system, provides administrative oversight of Texas health and human services programs, including the Supplemental Nutrition Assistance Program, and provides direct administration of some programs.

### **III. JURISDICTION AND VENUE**

8. This Court has jurisdiction under Sections 24.007, 24.008 and 24.011 of the Texas Government Code. Venue is proper under Section 15.014 of the Texas Civil Practice and Remedies Code.

### **IV. FACTS**

9. Approximately three million Texans receive food assistance under SNAP, with an average food benefit of \$313 per case per month.<sup>3</sup>

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<sup>3</sup> HHSC, *Data Report for the H.B. 3575 Eligibility System Legislative Oversight Committee*, Sept. 2009 at 6, 32 (attached in Exhibit 1). HHSC reported 2.8 million SNAP recipients were contained in 1,099,139 open cases in

10. HHSC reports that enrollment in SNAP has increased recently because of disasters along the Texas coast and the continuing worsening of the Texas economy.<sup>4</sup>

11. Children younger than 18 years of age comprise 55 percent of the recipients of SNAP in Texas.<sup>5</sup> Children under the age of 5 comprise 20 percent of the recipients of SNAP in Texas.<sup>6</sup>

12. The federal government provides most of the funding for SNAP and has various administrative requirements, but HHSC develops and administers the program and directs the provision of benefits to eligible households. 1 TAC § 372.6(b) (2009).

13. HHSC no longer issues “food stamps” but distributes food assistance benefits using “The Lone Star Card” which allows a recipient to purchase eligible food items from authorized stores who draw funds from the recipient’s benefit account similar to a debit card.

14. The framework for the HHSC food stamp program is found in Chapter 33 of the Texas Human Resources Code and in Title 1, Part 15, Chapter 372 of the Texas Administrative Code.

15. The Texas Human Resources Code instructs HHSC to “establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them.” Tex. Hum. Res. Code § 33.002(c).

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August 2009. A case is a designated group of people certified to receive food assistance. HHSC reported there were 2.9 million SNAP recipients in September 2009.

<sup>4</sup> HHSC, *Data Report for the H.B. 3575 Eligibility System Legislative Oversight Committee*, Sept. 2009 at 6 (attached in Exhibit 1).

<sup>5</sup> Id. at 32 (attached in Exhibit 1). (HHSC reported of the 2,802,706 recipients of SNAP in August 2009, 1,554,006 were under age 18.)

<sup>6</sup> Id. at 32 (attached in Exhibit 1). (HHSC reported of the 2,802,706 recipients of SNAP in August 2009, 550,732 were under age five.)

16. State law requires HHSC to make an eligibility decision (initial certification or denial) on SNAP applications within 30 days. 1 TAC §§ 372.904(b), 372.3(e) (2009).<sup>7</sup>

17. State law requires HHSC to make a recertification decision on a SNAP renewal application before the certification period expires so long as the applicant completes the renewal application by the 15th day of the last certification month. If the applicant completes the renewal application after the 15th day of the last certification month, HHSC must make a decision by the end of the following month. 1 TAC § 372.3(e) (2009).

18. In direct contravention of these unambiguous mandates of state law, Defendant Seuhs administers HHSC in such a manner that almost one-half of the initial applicants for food stamp assistance do not receive a determination within the 30 days required by law, with consequences that more fully appear from the narratives of the individual Plaintiffs stated below.

***Plaintiff Octavia Gonzalez***

19. Plaintiff OCTAVIA GONZALEZ, a resident of Bexar County Texas, is the mother of a four-month-old baby boy named Damien. Plaintiff Gonzalez also lives with her seventy-nine year old father, Ruben Gonzalez, who has Alzheimer's, and her sixteen-year-old brother Carlos Gonzalez, who has epilepsy.

20. Plaintiff Gonzalez applied in person at the HHSC office on Pleasanton Road in San Antonio on September 16, 2009. On that day, she arrived at Defendant's office at 11:00 a.m. and finally received assistance from Defendant's staff at 5:00 p.m. She completed an

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<sup>7</sup> HHSC's policy manual mirrors the state law deadline: "By the 30th day after the file date: deny or certify an application; and ensure that a certified applicant has an opportunity to participate..." HHSC, Texas Works Handbook, B-112 Deadlines, Rev. 09-1, effective Jan. 1, 2009. <http://www.dads.state.tx.us/handbooks/TexasWorks/B/100/100.htm#secB-112>

application for food stamps and was given a notice of a face-to-face interview to be held on November 19, 2009. She was told by the caseworker that she needed to provide HHSC information regarding her household's income including a statement of her father's Supplemental Security Income (SSI) benefits, proof of Medicaid coverage for her son and brother, a utility bill, Social Security cards for all members of the household, and valid identification for the adults of the household.

21. Plaintiff Gonzalez went to the HHSC office for her face-to-face interview on November 19, 2009, more than 64 days after she submitted application. She hand delivered the documents requested to the caseworker. She completed the formal interview with the caseworker and was instructed to wait at the office for finger imaging and photographs of Plaintiff Gonzalez and her father. She and her father complied. Plaintiff was then given the Lone Star Card, an electronic benefits transfer (EBT) card. Plaintiff was told that Defendant would credit SNAP benefits for the months of September, October and November of 2009, to the card within two weeks. She was also told she would receive continuing benefits each month beginning in December 2009. Plaintiff asked if she would receive a "paper" confirming what food stamp benefits she would be eligible to receive. Defendant told her she would receive a letter confirming food stamp benefits for her household.

22. After Thanksgiving in late November 2009, Plaintiff Gonzalez went to Defendant's office to inquire as to the status of her case because the balance on the Lone Star Card that Plaintiff Gonzalez received was still zero. Gonzalez attempted to activate her Lone Star Card as instructed by a caseworker; however, no food stamp benefits had been credited to her card. Plaintiff was told that her caseworker was on vacation and that he had until November 30, 2009, or 75 days after Plaintiff Gonzalez submitted her application, to complete work on her

case. She was told that she should have food stamp benefits credited to her Lone Star Card by December 3, 2009. To date, more than 90 days since Plaintiff Gonzalez filed her application, no food stamp benefits have been credited to her Lone Star Card.

23. Prior to having her son, Plaintiff worked for a grocery store chain. She stopped working when she was approximately seven months pregnant because her job became too difficult to continue in her condition. Plaintiff is now seeking to return to the same employer because she left the employment on good terms.

***Plaintiff Dulce Hernandez***

24. Plaintiff Dulce Hernandez, a resident of Bexar County, is the mother two young daughters: Emily, who is two years old, and Mia, who is three years old. Her husband Felix Perez works as a painter when he is able to find work; however, due to current economic conditions and the seasonal nature of his profession, he is only able to work sporadically.

25. Hernandez first applied for and received food stamps in 2007, after the birth of her second child. Although she was working at the time, she simply was not making enough money to support her young family. At the time, Plaintiff Hernandez was working at a fast food restaurant, but the wages of \$5.80 an hour were not enough to pay for the gas that was required to get to work. Plaintiff Hernandez is now a stay-at-home mother.

26. In the last week of April 2009, Plaintiff Hernandez received notice from HHSC that it was time for her to go through the food stamp recertification process. The last month of certification for Plaintiff Hernandez' household was April 2009, yet she did not receive notice of recertification until after April 15, 2009. The household last received food stamps in April 2009. Plaintiff Hernandez completed an application for food stamps and delivered it to the document

drop box at Defendant's Pleasanton Road Office in San Antonio, Texas no later than May 8, 2009.

27. Plaintiff Hernandez received a letter in late May of 2009, notifying her that she was scheduled for a telephone interview on the afternoon of June 29, 2009. Plaintiff waited for the telephone call but never received one. On the same day, Plaintiff Hernandez repeatedly attempted to call Defendant's office when she did not receive the telephone call; however, she was never able to leave a message or speak to anyone at the office. Plaintiff continued to try to contact HHSC by telephone but was never able to leave a message or speak to anyone due to the inadequacies of Defendant's telephone system.

28. Plaintiff Hernandez received another Appointment Notice dated August 3, 2009, scheduling a telephone interview at 3:00 p.m. on August 13, 2009. Before the August 13, 2009, interview was held, Plaintiff Hernandez received another Appointment Notice dated August 27, 2009. The August 27, 2009 Appointment Notice scheduled a telephone interview for August 27, 2009.

29. Plaintiff Hernandez received the telephone call and completed her interview on August 27, 2009, at least 111 days after her application was filed. The caseworker questioned Hernandez about her husband's income and told her that HHSC would send an employment verification form for her husband's employer to complete.

30. Plaintiff Hernandez waited to receive the employment verification form as promised. After not receiving the form for several days, Hernandez requested her husband's employer to prepare a statement regarding his earnings. The employer delivered the statement to the HHSC office on Pleasanton Road in San Antonio on September 2, 2009.



31. Hernandez returned to the HHSC office on September 4, 2009, to confirm that the employment verification statement had been received. The caseworker told Hernandez that it was not in her file. Hernandez immediately gave the caseworker another copy of the employment and wage verification statement and obtained a receipt from HHSC for the documents.

32. Plaintiff Hernandez repeatedly called the HHSC office after September 2, 2009, but was never able to talk to anyone or leave a message. She went to the office in person and waited to see a case worker; however, she left three hours later after only two other people had been called off the waiting list.

33. Plaintiff Hernandez again waited for an answer regarding whether she was eligible for continued food stamp benefits but did not receive a decision on her application. On November 13, 2009, Plaintiff Hernandez went to the HHSC office and was told yet again by a caseworker that HHSC did not have her husband's employment verification in her file. Hernandez once again immediately gave the caseworker her husband's employment verification and obtained another receipt for the document, also dated November 13, 2009.

34. As of the date of filing this suit, the Hernandez family has not received food stamps for 221 days. This is at least the third time that she has been terminated from the food stamp program while waiting for Defendant to complete the recertification process.

35. Hernandez and her family have fallen behind on their bills and on their rent payments. This has caused the family to pay late fees. Plaintiff Hernandez and her husband try to feed their daughters healthy food such as fruits and vegetables but are unable to provide them adequate nutrition on a regular basis.

*Amalia Gueda-Nelson*

36. Fifty-six-year-old Plaintiff AMALIA GUEDEA-NELSON resides in Bexar County, Texas and is a victim of the current economic downturn. Beginning in November 2008, Ms. Guedea-Nelson was employed earning minimum wage in a telephone call center for approximately 40 hours per week. As economic conditions worsened, the call center reduced her hours to 20 per week. The income she earned was insufficient to pay her rent and medical bills, and she lost her apartment. She moved in with friends and tried to stay current on her car payments, so that she could get to work, but the cost of gas was expensive compared to the small amount she earned from working 20 hours per week. On June 23, 2009, she had to quit her job because the costs of commuting made her continued employment untenable.

37. Prior to leaving her job, sometime before June 6, 2009, Plaintiff Guedea-Nelson went to a HHSC office in San Antonio and obtained an application for food stamps. She returned the application on July 6, 2009, along with a copy of her latest bank statement, Social Security card, birth certificate, and Texas identification.

38. Plaintiff Guedea-Nelson received a letter from HHSC, dated July 16, 2009, stating that her appointment for a telephone interview regarding her application was scheduled for October 9, 2009, 95 days after her application was filed, or more than three times the period allowed by law. On October 9, 2009, starting at 8 a.m. as directed by the letter, Ms. Guedea-Nelson awaited a telephone call from HHSC. No one from HHSC's office called her that day, or any other day since. Ms. Guedea-Nelson made numerous attempts to call HHSC's staff between July and October but never succeeded in reaching a live staff member.

39. Meanwhile, Ms. Guedea-Nelson has persevered: she enrolled in a paralegal program at Palo Alto College and in an associates degree program at San Antonio College, as the beneficiary of a grant that allows her to attend school. She works through a college work-study program but continues to need nutrition assistance. She only earns \$127 every two weeks on her work-study program, and there have been many days since she filed her application for food stamps that she has gone without adequate nutrition. As of the date of filing this petition, it has been 162 days since HHSC received her application for food stamps.

***Plaintiff Laura Guzman***

40. Plaintiff LAURA GUZMAN, a resident of Bexar County, Texas, is the mother of four sons and a two-year-old daughter named Vanessa. She lives with her boyfriend, Michael Hernandez, who is the father of all of the children. Vanessa has been diagnosed as being developmentally delayed and receives speech, physical and occupational therapy twice weekly.

41. Plaintiff Guzman works as a home health care provider for 18 hours each week, and has done so since January 2007. Plaintiff earns \$7.55 an hour. Plaintiff Guzman's boyfriend, Mr. Hernandez, works in a warehouse driving a forklift and loading trucks. Mr. Hernandez is employed full-time and earns \$9.00 per hour. Neither Plaintiff Guzman nor Mr. Hernandez has health insurance.

42. HHSC notified Plaintiff Guzman during the first week of September that it was time for her to file a recertification application. Plaintiff Guzman completed the application and returned it to HHSC by United States mail before September 15, 2009. She included check stubs for both Mr. Hernandez and herself, a bank statement for Mr. Hernandez, and a utility bill to establish her place of residence.

43. Plaintiff Guzman received an Appointment Notice from Defendant that scheduled a telephone interview for a date in the middle of September. She did not, however, receive a telephone call on the date scheduled. Guzman attempted to call Defendant's office but never was able to speak to anyone at HHSC. The next week, Plaintiff went to the office to inquire why she had not received a telephone call for the formal interview previously scheduled. An HHSC employee took the Appointment Notice from Plaintiff and checked it against the scheduled interview appointments for the previous week. The HHSC employee told Plaintiff Guzman that the Appointment Notice was incorrect and that no interview had been on the schedule for her in the previous week. The HHSC employee did not return the Appointment Notice to Plaintiff Guzman. Defendant told Plaintiff Guzman that a telephone interview would be scheduled for October and that she would receive the notice in the mail. Plaintiff Guzman never received such a notice from Defendant.

44. Plaintiff Guzman last received food stamps on or about September 6, 2009.

45. Plaintiff Guzman repeatedly called Defendant in October of 2009, sometimes up to ten times a day, in her attempt to gain information about the status of her case. She did speak to an HHSC employee by telephone one time in October 2009. In that conversation, the employee told Plaintiff to wait until November 6, 2009, and at that time to check the balance on her Lone Star Card to see if SNAP benefits were credited to her account.

46. On November 6, 2009, Plaintiff Guzman did check the balance on the Lone Star Card that was issued to her. There was a 90 cent balance on the card.

47. Plaintiff Guzman continued to call Defendant throughout November 2009, and left voice mail messages; however, she never received a response from Defendant.

48. Plaintiff Guzman again checked the balance on her Lone Star card after December 6, 2009, and there still was a 90 cent balance on the card.

49. On December 9, 2009, Plaintiff Guzman returned to the HHSC office and spoke with her caseworker, Lydia Castaneda. Caseworker Castaneda told Guzman that her application had been lost. Caseworker Castaneda asked Plaintiff Guzman if she had called to complain about the processing of her application. Caseworker Castaneda told Plaintiff Guzman that if she had previously called to complain, the application was probably pulled out of her file. Giving no other explanation, the caseworker did not find the application and documents which were submitted before September 15, 2009. At this point, more than 85 days has passed since Plaintiff Guzman submitted her recertification application.

50. On December 9, 2009, caseworker Castaneda gave Plaintiff a new application, instructed her to complete it, but to leave the date of the application blank. She further instructed Plaintiff Guzman to return the application with check stubs for Plaintiff Guzman and her boyfriend, as well as proof of her homeowner's insurance for her home. Plaintiff Guzman followed the caseworker's instructions and returned all of the requested documents to the caseworker in person on December 11, 2009. The caseworker told her that she should have SNAP benefits credited to her Lone Star Card by the end of the day on December 11, 2009. To date, the balance on Plaintiff Guzman's Lone Star Card is 90 cents. Plaintiff has continued to try to contact HHSC by telephone but has not received an answer to her voicemails since December 11, 2009.

51. Plaintiff Guzman's household is comprised of four sons that are sixteen, thirteen, ten and seven years old, as well as her boyfriend, two-year-old daughter and herself. Without the

food stamp benefits that Guzman is eligible to receive under the laws of the State of Texas, the household has had to budget and stretch its limited food supply. Plaintiff Guzman's extended family has attempted to help the household by buying some groceries for the family; however, even with the two salaries and this help, the family's food supply is severely limited.

***Plaintiff SJM***

52. Plaintiff SJM, a resident of Bexar County, is the mother of three school-age adolescents, two sons and a daughter. Ms. SJM works at an HEB grocery store in San Antonio for approximately 32 hours a week but earns insufficient money to support the needs of her children. She was a victim of spousal abuse and fled her husband to protect herself and her family. On or about June 15, 2009, Plaintiff SJM mailed a completed food stamp application to an HHSC office in San Antonio.

53. On June 19, 2009, Plaintiff SJM received a letter scheduling a telephone interview with a HHSC case worker on September 1, 2009, at least 75 days after her application had been filed. Plaintiff SJM received the telephone call on the designated day and was interviewed by a case worker. The case worker requested that Plaintiff SJM produce her most recent bank statement, proof of her residence, and a letter confirming non-payment of child support to HHSC's San Antonio office. She was also instructed to go to the office to furnish her fingerprints.

54. On the same day as her interview, Plaintiff SJM delivered the requested documents to the HHSC office. She also submitted her fingerprints to HHSC on that date. She received a receipt from HHSC acknowledging that she had delivered the documents.

55. On September 11, 2009, 85 days after her original application was filed, a case worker called SJM and told her that he would make a decision on her application within 30 days.

56. Plaintiff SJM has repeatedly called HHSC to inquire about the status of her application; she is generally unable to reach a live employee by telephone. As of the date of filing this petition, it has been 182 days since SJM filed her application for food stamps and no determination has been made of her family's eligibility for benefits. Plaintiff SJM budgets her small income as best she can. Without food stamps to supplement her meager budget, she must rely on school feeding programs for a substantial part of her children's nutrition. However, her family has gone six months without adequate nutrition since her food stamp application was filed, and during the holiday break from December 19, 2009 until January 5, 2010, her budget will be stretched even further when her children will not be able to eat at least one of their daily meals at school.

***Plaintiff NLT***

57. Plaintiff NLT is a victim of spousal abuse who fled New Mexico to protect herself and her three children: a ten-year-old son, a four-year-old son and a three-year-old daughter.

58. Plaintiff NLT and her three children live in one room of the home of a family friend in Amarillo, Texas. She has no source of income whatsoever.

59. Plaintiff's ten-year-old and four-year-old sons eat breakfast and lunch at school. When the school is on the holiday season break beginning next week until early January, those two boys will not have a steady source of food.

60. Until July 2009, when Plaintiff NLT left New Mexico, she worked at a part-time, minimum wage job at a cleaners. Before leaving New Mexico, in July 2009, Plaintiff applied for and received food stamps.

61. Plaintiff NLT has applied for work in Amarillo but finds it difficult to schedule work with a three-year-old and without adequate childcare. She has received no job offers. Plaintiff intends to enroll in a community college and apply for a Pell grant so that she can become more employable and receive childcare assistance. She is also applying to live in a shelter for battered women.

62. When Plaintiff NLT arrived in Texas, she contacted the HHSC office regarding continued food stamps. HHSC informed Plaintiff that she needed to cancel her existing New Mexico nutrition assistance in order to apply for SNAP benefits in Texas.

63. Even though she has no income and should qualify for emergency assistance, Plaintiff NLT was told by a case worker that she could not qualify for emergency assistance because she was receiving SNAP benefits through the New Mexico program.

64. Plaintiff followed the case worker's instructions and cancelled her New Mexico food assistance on October 12, 2009. (She received a notice from the New Mexico Human Services Department acknowledging cancellation of her benefits at her request, effective November 30, 2009.)

65. Assisted by a social worker at her son's school, NLT filed her application for food stamp benefits in Texas on October 12, 2009. Plaintiff NLT has been informed by HHSC that she will not have a telephone interview until January 4, 2010, which is 84 days after she submitted her application. She was informed by the case worker that after her telephone



interview, if approved, she would not receive assistance until three weeks after the decision. As of the date of filing this petition, Plaintiff NLT has been waiting 65 days for HHSC to make a decision on her application for nutrition benefits for her family.

66. Plaintiff NLT and her family are in a state of extreme distress. She has no income and does not know how she will feed her family until HHSC makes a decision on her application. Currently, she is going from church to church, asking for assistance. She is hoping to receive a Christmas meal as charity.

***Plaintiff Laura Campa***

67. Plaintiff Laura Campa, a resident of Bexar County, is the mother of a five-month-old daughter, Trissa. They live with Trissa's father, Antonio Gomez, who is unable to work due to injuries he suffered in a car accident several years ago. The young family survives on Gomez's SSI benefits and Campa's limited earnings as a home health care provider.

68. Campa first applied for food stamps in 2008, while she was pregnant with Trissa and unemployed. She began receiving food stamps in January 2009. By letter dated May 28, 2009, Plaintiff Campa received notice from TxHHSC that she needed to go through the recertification process for her food stamps to continue beyond June 2009. She promptly submitted her application for recertification before June 15, 2009, at the drop box at Defendant's Pleasanton Road office in San Antonio, Texas.

69. Plaintiff Campa received an Appointment Notice dated May 28, 2009, notifying her that she was to have a recertification interview on July 8, 2009. Campa started calling the TxHHSC office a week before the scheduled interview. She wanted to make sure they had her correct phone number and could easily reach her for the interview. She tried several times to

reach her caseworker but never could. Sometimes she was able to leave a message but often the caseworker's mailbox was full and not accepting messages. Campa never heard back from her caseworker. When she was finally able to reach someone at the office, she was told that she was not scheduled for an interview on July 8, 2009, and she was told to go to the office in person. She did not receive a call from Defendant on July 8, 2009. Meanwhile, her food stamps were discontinued; she last received food stamps in June of 2009.

70. Within a week after the scheduled date for her interview, Campa, now very pregnant, did go in person to Defendant's office. She arrived at 4:50 p.m., however, and the doors to the office were already locked. A few days later, on July 13, 2009, Campa had a cesarean section and gave birth to her daughter. After the delivery, Campa continued to call the food stamp office but was still not able to reach anyone.

71. On July 15, 2009, Plaintiff Campa received a letter stating that there had been a delay in the processing of her application. The letter requested that she submit the four most recent check stubs verifying income for the household. Campa provided Defendant with the requested information on the stated deadline of July 27, 2009, and received a receipt confirming that she had delivered them to Defendant's office. She did not hear anything further from Defendant. Campa still continued to call Defendant's office but was never able to reach her caseworker or anyone else.

72. By letter dated October 1, 2009, Plaintiff received notice that she was scheduled for a telephone interview on October 8, 2009. However, she did not receive a telephone call from a case worker on the scheduled date. By that time, it had been four months since the family

last received food stamps and over two months since they had heard from the food stamp office concerning the recertification process.

73. On October 9, 2009, Plaintiff Campa called the HHSC office and the person she spoke to confirmed that HHSC sent an Appointment Notice scheduling a telephone interview on October 8, 2009. The representative of HHSC told her that HHSC records showed that nobody from HHSC called her for the appointment.

74. On October 12, 2009, Campa went in person to the office; there, she was told she would receive a telephone interview the next day. She was not called on that day either. Plaintiff Campa continued to try to call the caseworker and left voicemail messages but did not receive a return call from HHSC.

75. On October 28, 2009, Campa finally reached someone named “Monica” by telephone at the HHSC office; that person said she would give Campa’s caseworker a handwritten message to call Campa. A day later Campa left one more message for her caseworker. That was the last time Campa was able to get through to a live person on the HHSC telephone system. Since then, she still calls but never gets through. Campa has still not received a callback or any mail from Defendant and she is still without food stamps six months after she filed her recertification application with Defendant.

***Plaintiff La Union del Pueblo Unido***

76. Plaintiff *La Union del Pueblo Entero* (“LUPE”) is a charitable, nonprofit membership corporation with its headquarters in San Juan, Texas. LUPE maintains a membership in the Rio Grande Valley of about 5,200 low and moderate-income community members, and has organized campaigns around housing, *colonias*, living conditions, education

and various other issues. Many of these members qualify for, and have applied for, SNAP assistance.

77. Many of LUPE's member families have experienced lapses in their SNAP benefits, despite their ongoing eligibility, because of delays in processing of recertification applications. Also, members who are first-time applicants have complained that their applications have taken several months to process.

78. LUPE as an organization has also suffered harm from the delays in the processing of SNAP applications. LUPE's campaigns are based on priorities agreed upon by its membership at monthly "First Friday" meetings. LUPE organizers have had to devote time and resources that would otherwise go towards a priority campaign to assist members complaining of delays in the receipt of their food stamps benefits. LUPE's membership is also less able to focus on other, more long-term organizing goals when faced with such a fundamental crisis as lack of adequate food and nutrition for its members.

***Plaintiff Proyecto Juan Diego***

79. Plaintiff *Proyecto Juan Diego* is a charitable, nonprofit corporation located in Cameron County, Texas. Its mission is to care for and improve educational, social and health services for the families living in the Cameron Park *colonia* in Cameron County in the Rio Grande Valley. Delays in the processing of food stamp applications and recertifications leave families without adequate food for months at a time. Diabetes is prevalent among Cameron Park families, and promoting adequate nutrition is one of the cornerstones of *Proyecto Juan Diego's* campaign to improve the health of this population. Delays in SNAP application processing have frustrated *Proyecto Juan Diego's* efforts to improve the health of Cameron Park families.

### *HHSC's Failure to Comply with State Law*

80. The experience of Plaintiffs is not isolated. In November 2009, HHSC made timely eligibility decisions on only 57.5 percent of the initial applications and only 71.6 percent of renewal applications.<sup>8</sup>

81. HHSC's non-compliance with state law means Plaintiffs and thousands of other Texans, mostly children, who had the right to receive basic nutrition benefits, went hungry, and thousands more, who should have been able to continue receiving food assistance were cut off, through no fault of their own, pending a recertification decision by HHSC.

82. Defendant Seuhs has taken some actions to improve the time it takes to issue eligibility decisions and is considering others; however, Defendant, or his predecessors in office, created additional hurdles that prolong the process, and has so far failed to engage in enough measures to enable the agency to make eligibility determinations in a manner that conforms with state law. The last time HHSC reached the laudable goal of making at least 95 percent of its initial determinations in a timely manner was September 2005.<sup>9</sup>

83. Defendant Seuhs has the executive authority to eliminate, at least as an emergency measure, several eligibility screening requirements that impose unnecessary delays in the application process. Defendant has failed to exercise that authority.

84. For example, HHSC created an "asset test" which requires applicants to disclose property ownership. While this test might prevent some arguably undeserving applicants from

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<sup>8</sup> [http://www.hhsc.state.tx.us/research/TimelinessFMT/112009\\_SNAP.xls](http://www.hhsc.state.tx.us/research/TimelinessFMT/112009_SNAP.xls) , for prior months see HHSC, *Eligibility Services Weekly Progress Report*, November 5, 2009 at 5 (attached in Exhibit 2).

<sup>9</sup> *Id.*

receiving assistance, the data reveals that a tiny percentage is denied because of the test. In October 2009, only 348 of 79,806 initial applications for SNAP made in October 2009 were denied because of the asset test (99.56 percent of those that applied were still eligible after applying the asset test).<sup>10</sup>

85. Similarly, HHSC demands that applicants submit their fingerprints to the agency, a requirement that further delays the application process and often imposes serious burdens on recipients who must make a special trip to the local HHSC office to be fingerprinted.<sup>11</sup> Defendant Seuchs can waive that requirement until the application backlog is reduced to tolerable levels.

86. While Defendant clings to bureaucratic hurdles that undeniably slow down the eligibility determination process, he violates state law in denying food assistance to tens of thousands who are eligible and who need help. Defendant even refuses to suspend the enforcement of this rule temporarily until its determination rate improves.

87. Defendant employs thousands of caseworkers across the state to administer the food stamp program. But HHSC has not kept staffing at adequate levels to meet performance requirements. From 1995 through 2002, an HHSC case worker managed an average caseload of 350-450 recipients of food stamps, with the lowest number being 367 and the highest 442. In 2003, HHSC unsuccessfully attempted to privatize eligibility determinations and other functions

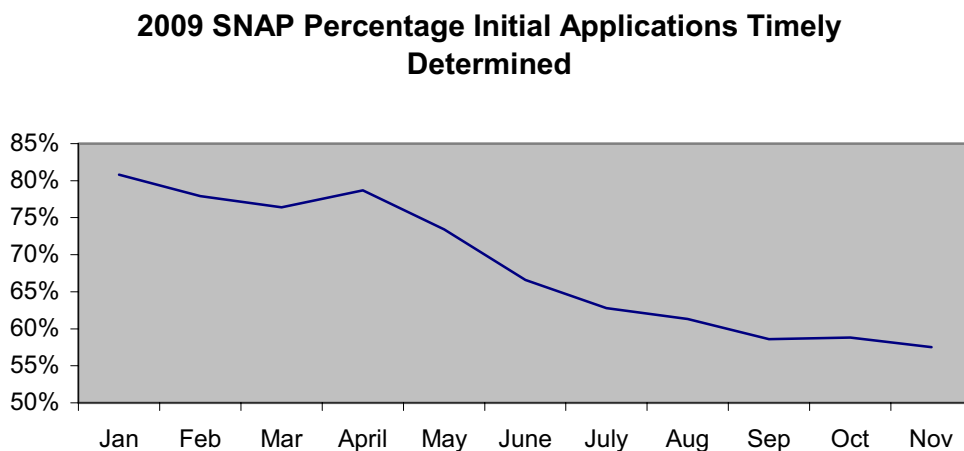
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<sup>10</sup> HHSC, *Eligibility Services Weekly Progress Report*, November 5, 2009 at 11a, 35 (attached in Exhibit 2).

<sup>11</sup> Tex. Human Res. Code Title § 31.0325 requires HHSC to adopt a "program" using electronic imaging. There is no statutory requirement that all applicants submit to electronic imaging, and HHSC can modify such a program on an emergency basis.

of HHSC, resulting in a massive loss of experienced caseworkers. HHSC has not taken enough action to rectify the problem.

88. Eligibility determinations in 2009 demonstrate a growing problem with delays. In January initial SNAP determinations were timely made 80.8 percent of time, and recertifications were timely made 89.6 percent of the time.<sup>12</sup> November 2009 SNAP data shows the timely initial determination rate plummeting to just 57.5 percent, and recertifications dropping to 71.6 percent, as indicated in the following chart.<sup>13</sup>



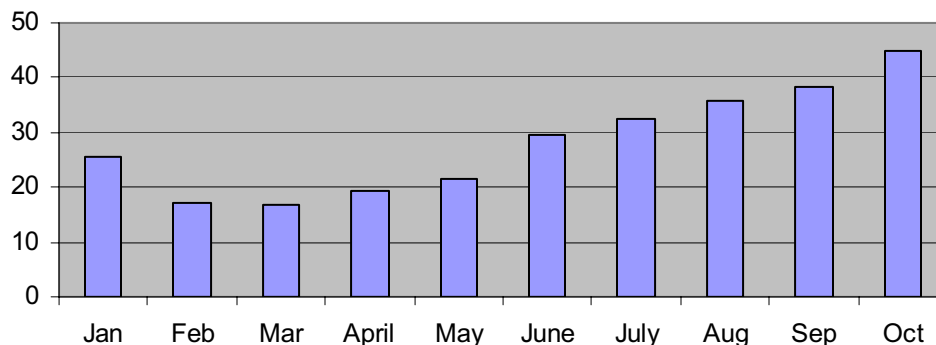
Source: HHSC, *Eligibility Services Weekly Progress Report*, November 5, 2009 at 5 (attached in Exhibit 2), with November 2009 data from [http://www.hhsc.state.tx.us/research/TimelinessFMT/112009\\_SNAP.xls](http://www.hhsc.state.tx.us/research/TimelinessFMT/112009_SNAP.xls)

89. The number of determinations considered seriously delinquent (over 60 days) has shown a similar pattern this year with over 44.9 percent of the initial application decisions seriously delinquent in October 2009.

<sup>12</sup> HHSC, *Eligibility Services Weekly Progress Report*, November 5, 2009 at 5 (attached in Exhibit 2).

<sup>13</sup> [http://www.hhsc.state.tx.us/research/TimelinessFMT/112009\\_SNAP.xls](http://www.hhsc.state.tx.us/research/TimelinessFMT/112009_SNAP.xls)

### 2009 SNAP Initial Application Percentage Seriously Delinquent (>60 Days)



Source: HHSC, *Eligibility Services Weekly Progress Report*, November 5, 2009 at 11a (attached in Exhibit 2).

### *Emergency Powers of HHSC*

90. The Texas Legislature gave Defendant authority to act quickly in an emergency. Section 2001.034 of the Texas Government Code enables Defendant to adopt an emergency rule if there is “an imminent peril to the public health ... or welfare.”

91. HHSC exercised its emergency powers after Hurricane Ike struck the Texas coastline in 2008.<sup>14</sup>

92. An emergency still exists for hundreds of thousands of Texans. In 2008, 17 million U.S. households (14.6 percent of all households) were food insecure at some time during the year. Nationally, approximately 4.6 percent of households are considered to have very low food security. That is, they were, at times, uncertain of having, or unable to acquire, enough food for all household members because they had insufficient money and other resources for

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<sup>14</sup> [http://www.hhs.state.tx.us/news/release/091908\\_HurricaneIke\\_FoodStamps.shtml](http://www.hhs.state.tx.us/news/release/091908_HurricaneIke_FoodStamps.shtml)



food. During the same period of time, 4 million Texans (16.3% of the population) were food insecure, with 5.7 percent of Texans considered to have very low food security.<sup>15</sup>

93. Moreover, in an effort to be sensitive to the plight of case workers, HHSC has eliminated mandatory overtime during the holidays. Unfortunately during this same period, schools will be closed – schools that have been feeding poor children breakfast and lunch. Plaintiffs and other Texans who are eligible but are being denied nutrition benefits are doubly jeopardized during the holiday season.

94. Rather than declare an emergency, temporarily suspend bureaucratic hurdles, grant seemingly eligible applicants food assistance pending a final certification, or take other actions to dramatically improve the timeliness of SNAP decisions, Defendants are considering smaller, incremental steps while eligible Texans go hungry in violation of state law for the foreseeable future.

## V. CAUSES OF ACTION

### A. Mandamus

95. Section 24.011 of the Texas Government Code gives this Court authority to issue a writ of mandamus when a governmental official fails to perform a non-discretionary duty.

96. The Texas Human Resources Code instructs Defendant to “establish policies and rules that will ensure the widest and most efficient distribution of the commodities and food stamps to those eligible to receive them.” Tex. Hum. Res. Code § 33.002(c).

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<sup>15</sup> Nord, Mark, Margaret Andrews, and Steven Carlson. Household Food Security in the United States, 2008. ERR-83, U.S. Dept. of Agriculture, Econ. Res. Serv. November 2009. <http://www.ers.usda.gov/Publications/ERR83/ERR83b.pdf>

97. HHSC enacted 1 Texas Administrative Code § 372.904(b) and 372.3(e), which establishes a non-discretionary duty for HHSC to make a decision on a SNAP application within 30 days, and to make a decision on a renewal application before the certification period expires.

98. A regulation that has been properly enacted is as binding as a statute enacted by the Texas Legislature. *Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999); *Tex. Mutual Ins. Co. v. Apollo*, 2009 Tex. App. LEXIS 8315 (Tex. App.—Austin, Oct. 29, 2009, no pet. h.) (“We construe administrative rules in the same manner as statutes since they have the force and effect of statutes”).

99. Plaintiffs demanded that Defendants comply with state law, and Defendants failed to do so. Letter as attached Exhibits 3 and 4.

100. Counsel for Plaintiffs also requested an in person meeting with Defendant Seuhs which was denied.

101. Plaintiffs request this Court to issue a writ of mandamus commanding Defendants to comply with state law and order such other temporary and permanent relief as appropriate to enable Defendants to comply with state law.

102. Without temporary and permanent relief, Plaintiffs will suffer immediate injury without an adequate remedy at law.

## **B. Injunction**

103. Article I, Section 19 of the Texas Constitution provides that no person shall be deprived of property or privileges "except by due course of law." Tex. Const. art. I, § 19.

104. Whether to award food assistance is not discretionary, but a property interest protected by the Texas Constitution. If a person meets the criteria, which is a function of their income and family size and other factors, that person qualifies for food assistance and must be awarded benefits.

105. The failure of Defendant Seuhs to administer HHSC in a manner that reaches a decision on SNAP applications and renewals in the time and manner required by law deprives Plaintiffs of their right to due course of law under the Constitution of the State of Texas.

106. Plaintiffs request the Court to issue a temporary, and upon final hearing, a permanent injunction to enjoin Defendant from violating their rights to due course of law.

107. Without temporary and permanent relief, Plaintiffs will suffer immediate injury without an adequate remedy at law.

108. Plaintiffs base their suit solely and exclusively on state law. HHSC was created by the State of Texas, not the United States. Plaintiffs filed this suit in a Texas state court to address a problem hundreds of thousands of Texans have with this creature of the state.

## **VII. RELIEF SOUGHT**

109. Plaintiffs request this Court to:

- a. issue a writ of mandamus to Defendants compelling them to perform their non-discretionary duty to determine the pending applications of each of the individual Plaintiffs herein;

- b. issue a writ of mandamus to Defendants to comply with state law and issue such other temporary relief as appropriate to enable Defendants to comply with state law;
- c. temporarily and permanently enjoin Defendants from violating the Plaintiffs' rights to due course of law; and
- d. award Plaintiffs other just and equitable relief to which they may be entitled.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.



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# **Data Report for the H.B. 3575 Eligibility System Legislative Oversight Committee**



**Health and Human Services Commission**

**September 2009**

Exhibit 1

- During the last 12 months, a little more than 87% of TANF applications received were processed in a timely fashion, while 96% of TANF renewals were processed timely.

### **Food Stamps**

- In August, there were 2,802,706 recipients receiving Food Stamp benefits.
- Since September, Food Stamps enrollment has increased by more than 208,000 clients. Most of this growth is due to the tropical storms and hurricanes affecting the Texas coast, and to the continuing worsening of the Texas economy.
- Of the 2.8 million Food Stamp recipients, 1.6 million were children under age 18.
- The 2.8 million recipients are contained within 1,099,139 cases.
- The average monthly benefit per case is \$313.
- During the last 12 months, about 74% of Food Stamp applications received were processed in a timely fashion, while about 84% of Food Stamp redeterminations were processed timely.
- As was observed with Medicaid, Food Stamp timeliness is being impacted by increased workloads.

### **Administrative Processes**

- During the month of December 2008, there were 7,700 eligibility determination staff. This represents a net increase of 872 staff or an increase of a little more than 12% since September.
- Of these, 6,682 were determining eligibility for Texas Works programs, while 1,018 worked on Medicaid programs.
- Comparing July 2009 staffing levels with those of September 2008, there are 669 more staff determining eligibility for Texas Works programs, and 203 more staff working Medicaid program cases.
- The average turnover rate for eligibility workers so far in FY 2009 is 16.8%, which is down from 22.2% in both 2007 and 2008.
- The average turnover for supervisors was 9.2%, which is up from 6.1% in 2008 and 8.2% in 2007, but markedly reduced from 23.5% in 2006.
- In 2004, only 4% of eligibility workers had less than 3 years experience. In 2008, 35% of eligibility works have less than 3 years experience.
- In 2004 about 81% of eligibility workers had 5 years or more experience; in 2008 61% of workers had similar level of experience.
- Beginning in October 2008, offices in Region 7 converted to TIERS according to a published conversion schedule that was completed in February 2009. Prior to the new conversions, cases within the TIERS pilot area accounted for 24.4% of

**SNAP Cases and Recipients Statewide by Month**

	Number of Cases	Number of Recipients	Recipients: Ages < 5	Recipients: Ages 5 - 17	Recipients: Ages 18 - 59	Recipients: Ages 60 - 64	Recipients: Ages 65 +	Total FS Payments	Avg Pymt / Case
Jan-07	912,635	2,336,599	475,230	846,106	816,794	40,768	157,701	\$213,178,318	\$234
Feb-07	908,870	2,328,218	473,261	843,768	812,455	40,861	157,873	\$211,498,037	\$233
Mar-07	898,452	2,298,425	468,786	831,863	798,977	40,794	158,005	\$208,845,736	\$233
Apr-07	894,871	2,288,013	467,737	827,383	793,459	40,914	158,520	\$208,057,476	\$233
May-07	904,866	2,314,248	475,716	835,879	802,540	41,259	158,854	\$210,828,283	\$233
Jun-07	901,798	2,302,345	473,741	830,031	798,543	41,148	158,882	\$209,799,209	\$233
Jul-07	901,103	2,300,358	473,870	829,861	797,068	41,033	158,526	\$209,860,958	\$233
Aug-07	914,531	2,335,082	480,062	844,826	809,402	41,510	159,282	\$213,448,327	\$234
Sep-07	919,322	2,345,570	481,633	849,820	812,679	41,877	159,561	\$214,560,492	\$234
Oct-07	912,102	2,322,073	474,975	843,187	802,543	41,940	159,428	\$224,139,409	\$246
Nov-07	927,903	2,363,431	483,600	860,023	816,333	42,843	160,632	\$229,990,914	\$248
Dec-07	924,125	2,354,116	482,702	857,231	811,677	42,930	159,576	\$227,824,854	\$247
Jan-08	917,840	2,339,753	479,260	852,865	805,160	43,028	159,440	\$224,535,714	\$245
Feb-08	916,901	2,338,403	477,814	853,459	804,623	43,067	159,440	\$223,640,107	\$244
Mar-08	908,570	2,316,066	473,785	845,206	795,256	42,976	158,843	\$221,390,230	\$244
Apr-08	922,994	2,355,925	483,376	859,041	809,614	43,571	160,323	\$225,457,169	\$244
May-08	917,444	2,339,701	481,193	851,326	803,908	43,362	159,912	\$224,316,820	\$245
Jun-08	920,330	2,349,213	485,324	852,649	807,460	43,389	160,391	\$225,066,892	\$245
Jul-08	955,253	2,448,917	507,102	889,463	845,914	44,285	162,153	\$234,431,620	\$245
Aug-08	985,056	2,525,420	522,741	918,238	876,558	45,011	162,872	\$240,900,034	\$245
Sep-08	1,012,208	2,594,992	536,091	944,831	904,816	45,701	163,553	\$246,917,439	\$244
Oct-08	1,034,942	2,651,370	543,129	967,860	930,012	46,655	163,714	\$281,391,648	\$272
Nov-08	1,228,343	3,184,607	617,924	1,152,332	1,174,718	57,950	181,683	\$345,969,625	\$282
Dec-08	1,128,385	2,931,244	593,948	1,075,593	1,045,314	50,515	165,874	\$313,870,842	\$278
Jan-09	1,130,535	2,934,624	591,429	1,081,820	1,044,482	51,262	165,631	\$311,592,465	\$276
Feb-09	1,091,169	2,820,412	563,227	1,037,768	1,000,555	52,988	165,874	\$298,085,542	\$273
Mar-09	1,075,086	2,775,599	552,569	1,018,279	982,680	55,743	166,328	\$293,563,921	\$273
Apr-09	1,092,799	2,814,340	558,516	1,030,051	998,456	58,440	168,877	\$343,783,630	\$315
May-09	1,084,903	2,780,350	551,588	1,009,732	990,933	58,739	169,358	\$345,172,265	\$318
Jun-09	1,073,187	2,738,231	543,713	985,571	981,068	58,467	169,412	\$339,232,245	\$316
Jul-09	1,098,796	2,805,150	555,751	1,005,762	1,013,126	59,352	171,159	\$345,498,387	\$314
Aug-09	1,099,139	2,802,706	550,732	1,003,274	1,018,465	59,284	170,951	\$343,923,553	\$313

Data Source: Monthly SNAP client level cutoff file

Prepared by Texas Works Reporting Team // Strategic Decision Support // Texas Health & Human Services Commission

Case = designated group of people certified to receive the benefit (can be more than one person).

Recipients = the individuals receiving the benefit.

Average Payment / Case = average dollar benefit available to the case (shared by the recipients on that case).

The SNAP cutoff file contains SAVER + TIERS cases/recipients certified for benefits as of cutoff in the month preceding the Benefit Month. Ci undercount recipients and cases with respect to end-of-month counts. Historically, active cases, cases on hold, & cases automatically denied b response to their redetermination notice was not received by cutoff have been included in case counts as proxy for end-of-month counts. The n these denials are subsequently certified after cutoff; their inclusion in the case/recipient count is appropriate.





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# **Health and Human Services Commission**

## **Eligibility Services Weekly Progress Report**

**November 5, 2009**

**Exhibit 2**

## Historical SNAP Timeliness

2004 - 2006	Applications % Timely	Recertifications % Timely
Jan-04	97.3%	97.6%
Feb-04	97.5%	97.7%
Mar-04	97.7%	97.7%
Apr-04	97.5%	98.0%
May-04	97.3%	98.1%
Jun-04	97.1%	97.5%
Jul-04	96.8%	98.4%
Aug-04	97.0%	98.2%
Sep-04	97.0%	98.3%
Oct-04	96.3%	98.3%
Nov-04	96.8%	97.6%
Dec-04	96.4%	97.5%
Jan-05	96.0%	98.1%
Feb-05	97.0%	98.2%
Mar-05	97.2%	98.2%
Apr-05	97.2%	98.5%
May-05	96.7%	98.2%
Jun-05	96.6%	98.1%
Jul-05	95.6%	98.2%
Aug-05	95.0%	97.4%
Sep-05	95.7%	96.3%
Oct-05	93.5%	97.3%
Nov-05	93.1%	97.5%
Dec-05	94.6%	94.6%
Jan-06	93.8%	94.7%
Feb-06	94.2%	96.5%
Mar-06	92.4%	95.3%
Apr-06	92.1%	95.3%
May-06	90.1%	92.2%
Jun-06	86.7%	91.2%
Jul-06	82.4%	90.3%
Aug-06	83.1%	90.1%
Sep-06	80.4%	91.4%
Oct-06	81.1%	91.1%
Nov-06	83.8%	93.2%
Dec-06	83.9%	91.7%

2007 - 2009	Applications % Timely	Recertifications % Timely
Jan-07	84.6%	91.7%
Feb-07	86.5%	92.6%
Mar-07	89.6%	93.4%
Apr-07	91.8%	95.2%
May-07	93.1%	96.0%
Jun-07	92.5%	96.2%
Jul-07	92.4%	95.7%
Aug-07	91.1%	95.7%
Sep-07	87.9%	96.1%
Oct-07	85.9%	94.8%
Nov-07	85.6%	95.6%
Dec-07	84.4%	94.7%
Jan-08	83.1%	93.9%
Feb-08	82.4%	94.2%
Mar-08	82.9%	93.4%
Apr-08	84.6%	94.3%
May-08	86.2%	92.9%
Jun-08	87.8%	93.1%
Jul-08	89.3%	94.3%
Aug-08	89.3%	95.6%
Sep-08	90.4%	95.3%
Oct-08	60.8%	93.2%
Nov-08	55.1%	92.5%
Dec-08	80.8%	88.4%
Jan-09	80.8%	89.6%
Feb-09	77.9%	83.6%
Mar-09	76.4%	80.1%
Apr-09	78.7%	85.0%
May-09	73.4%	78.5%
Jun-09	66.6%	65.6%
Jul-09	62.8%	65.3%
Aug-09	61.3%	64.6%
Sep-09	58.6%	68.9%
Oct-09	58.8%	70.1%

**Eligibility Services Monitoring Report**  
**Statewide - September 2009**

<b>TIMELINESS</b>	<b>Nov-08</b>	<b>Dec-08</b>	<b>Jan-09</b>	<b>Feb-09</b>	<b>Mar-09</b>	<b>Apr-09</b>	<b>May-09</b>	<b>Jun-09</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>
SNAP Applications	55.1%	80.8%	80.8%	77.9%	76.4%	78.7%	73.4%	66.6%	62.8%	61.3%	58.6%	58.8%
SNAP Expedited Apps (State)	27.9%	80.6%	85.5%	82.6%	80.2%	78.4%	76.7%	77.1%	76.3%	75.1%	77.2%	75.0%
SNAP Expedited Apps (Fed)									88.8%	88.5%	89.4%	87.0%
SNAP Recertifications	92.5%	88.4%	89.6%	83.6%	80.1%	85.0%	78.5%	65.6%	65.3%	64.6%	68.9%	70.1%
TX Wrks Medicaid Applications	81.3%	79.1%	77.7%	74.0%	81.6%	83.7%	84.5%	79.8%	78.4%	76.0%	81.0%	

SNAP application timeliness standard is 95% processed within 30 days; Medicaid application timeliness is 95% processed within 45 days. Federal standard for expedited applications is 7 days; the state standard is within one business day.

<b>PRODUCTIVITY</b>	<b>Nov-08</b>	<b>Dec-08</b>	<b>Jan-09</b>	<b>Feb-09</b>	<b>Mar-09</b>	<b>Apr-09</b>	<b>May-09</b>	<b>Jun-09</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>
Total Cases Disposed			663,187	635,552	802,912	653,805	597,978	747,264	626,626	779,183	554,362	
Cases Disposed / Day			31,580	33,450	34,909	31,134	28,475	28,741	29,839	29,969	32,610	
Cases Disposed / Worker			155	146	183	148	136	168	142	177	124	
Cases Disposed / Worker / Day			7.4	7.7	8.0	7.1	6.5	6.5	6.7	6.8	7.3	

Includes SNAP, TX Works Medicaid and TANF applications and recertifications

<b>SNAP ACTIVITY</b>	<b>Nov-08</b>	<b>Dec-08</b>	<b>Jan-09</b>	<b>Feb-09</b>	<b>Mar-09</b>	<b>Apr-09</b>	<b>May-09</b>	<b>Jun-09</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>
Applications Received	80,232	54,711	56,379	54,000	67,663	54,859	52,150	66,378	58,175	81,101	47,110	79,806
Number Pending	37,829	30,283	26,137	30,551	34,081	35,212	37,216	40,126	46,033	57,416	59,608	65,051
% Delinquent	41.0%	38.8%	41.6%	31.2%	34.2%	37.3%	47.9%	56.0%	56.7%	59.1%	63.4%	64.7%
% Delinquent > 60 Days	10.3%	25.7%	25.6%	17.3%	16.7%	19.5%	21.7%	29.6%	32.5%	35.7%	38.4%	44.9%

SAVERR Cases only

<b>MEDICAID ACTIVITY</b>	<b>Nov-08</b>	<b>Dec-08</b>	<b>Jan-09</b>	<b>Feb-09</b>	<b>Mar-09</b>	<b>Apr-09</b>	<b>May-09</b>	<b>Jun-09</b>	<b>Jul-09</b>	<b>Aug-09</b>	<b>Sep-09</b>	<b>Oct-09</b>
Applications Received	50,883	54,262	60,254	60,394	69,523	59,514	55,123	63,782	58,813	75,480	48,804	75,759
Number Pending	52,009	52,798	56,379	62,966	68,166	70,761	70,702	70,434	75,973	87,354	89,724	99,015
% Delinquent	20.8%	19.5%	2.6%	20.2%	23.2%	24.9%	32.3%	40.7%	41.7%	43.3%	45.7%	49.5%
% Delinquent > 90 Days	6.2%	7.3%	8.1%	7.2%	8.0%	8.6%	10.9%	12.4%	14.1%	18.8%	20.3%	24.5%

SAVERR TX Works Medicaid Cases only

The months reported reflect cut-off month. Some cutoff months (e.g., September 2009) have fewer workdays, thus fewer applications are received and fewer cases are disposed.

**Exhibit 2**

## Policy Options Recommended by Others that Would Require Statutory Changes

Policy Options Requiring Statutory Changes	Considerations
<p><b>1. 12 month Certifications for Children's Medicaid</b></p> <ul style="list-style-type: none"> <li>• Modify Children's Medicaid policy to assign a 12 month certification period.</li> <li>• An estimated caseload of 1.1 million cases would be renewed annually instead of every 6 months.</li> <li>• Saves processing time for clerks and advisors, and savings in printing and mailing costs.</li> <li>• Would increase Medicaid caseloads and client services costs.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduces workload</li> <li>• Reduces administrative costs</li> <li>• Increases in client services costs significantly outweigh administrative savings</li> </ul>
<p><b>2. Suspending/Eliminating Finger Imaging</b></p> <ul style="list-style-type: none"> <li>• Finger imaging is a federal option to prevent duplicate participation that is established under state statute.</li> <li>• Primary benefit of the finger imaging program is that it serves as a deterrent to receiving duplicate benefits.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited staff time savings</li> <li>• Limited investigations result from finger imaging</li> <li>• Fraud prevention may be negatively impacted</li> <li>• The deterrent impact of finger imaging is difficult to quantify</li> </ul>
<p><b>3. Elimination/Suspension of Asset Tests for SNAP and Medicaid</b></p> <ul style="list-style-type: none"> <li>• Asset test is not required under federal law. State law and appropriations have established legislative intent for the application of an asset test in similar programs.</li> <li>• There are few denials for exceeding asset limits. Currently, 348 SNAP applications per month are denied due to resources, and 140 recertifications per month are denied for resources.</li> <li>• As a subset of this recommendation, some have recommended maintaining an asset limit but not applying it to vehicles.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduces workload</li> <li>• Currently few cases are denied for exceeding asset limit</li> <li>• Application of an asset test directs benefits to the most needy clients</li> </ul>



LAW OFFICE OF  
**TEXAS RIOGRANDE LEGAL AID, INC.**

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December 11, 2009

URGENT

BY HAND DELIVERY  
AND EMAIL

Mr. Thomas Suehs  
Executive Commissioner  
Texas Health and Human Services Commission  
Brown-Heatly Building  
4900 N. Lamar Blvd.  
Austin, Texas 78751-2316

Dear Mr. Suehs:

We write regarding the intolerable delays encountered by applicants in obtaining essential benefits under the Supplemental Nutrition Assistance Program ("SNAP"). We are aware of some of the activities that the Texas Health and Human Services Commission ("HHSC") has taken to address the problem, and the sacrifices made by HHSC workers to assist as many people as possible. Since we have large numbers of clients who have been waiting much longer than the mandated 30 days for agency actions on their food stamp applications, we requested a meeting to discuss the problem and to propose solutions with you and your counsel personally. However, your counsel felt it somehow too risky to meet in person since the federal suit relating to this issue was dismissed, but still on appeal. He suggested we write you. Thus, this letter is our request that you comply with state law regarding the timely determination of food stamp eligibility, as explained more fully below.

As you know, Texas has the highest number of residents eligible for food stamps in the nation and ranks at the bottom of indicators that measure effectiveness and efficiency in the delivery of those benefits. Texas law requires that applications for food stamps be determined by your agency in no more than 30 days from the date the application is filed. The most recent HHSC statistics on noncompliance with that statutory standard are appalling. In October 2009, your own report states that on a statewide basis the agency has failed to comply with the mandatory deadlines 41.2% of the time for new applications and 29.9% for applicants continuing in the program (recertification). In two regions, the noncompliance rate is greater than 50%: 64.6% in the Gulf Coast, including Houston; and 55.6% in the Dallas-Fort Worth metroplex. See <http://www.hhsc.state.tx.us/research/FMTtimeliness.html>

We understand Commissioner that you have inherited a program plagued by problems you did not create. From reports we have seen, it appears that you have been trying to address these delays. But unfortunately, Texas continues to let thousands of men, women and children go without food in violation of our laws. While change takes time, deserving Texans struggling

through the current economic crisis should not be forced to wait any longer. You have failed to use your emergency powers as Executive Commissioner to make changes to this program to improve timeliness, including the waiver of asset tests and fingerprinting. This is a particularly crucial time to invoke your emergency powers; children will be out of school for the next few weeks, and school lunch programs will be unavailable to meet their essential nutritional needs.

On behalf of food stamps applicants, as well as multiple organizations that fight poverty, we are requesting that you begin complying with two deadlines: (1) the 30-day deadline for initial determination of food stamp benefits; and (2) ensuring recertifications are made timely to allow for continuation of existing food stamp benefits to eligible applicants. If HHSC does not comply with deadlines for application and recertification, we intend to ask a state court to order such compliance in accordance with the law.

In human terms, HHSC's non-compliance with the law means that thousands of people who have the right to receive assistance for food, did not receive that assistance, and thousands more, who should have been able to continue in the food stamps program, were cut off. Thus, we demand that HHSC cure its non-compliance with the mandatory 30-day determination and recertification deadlines in state law, and ensure that the program operates in compliance with our laws. Again, we welcome an opportunity to meet with you to discuss the situation more fully in hopes that additional litigation can be avoided, minimized, or settled quickly. On behalf of those Texans who should never go to bed hungry in the United States of America, we make this demand. As Texans, we know that most anything is possible for this state to accomplish if it truly wants it accomplished. Feeding our families must be at the top of the list.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

A handwritten signature in black ink, appearing to read "David G. Hall". The signature is fluid and cursive, with the first name "David" being the most prominent part.

David G. Hall  
Executive Director



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December 16, 2009

URGENT

BY EMAIL

Mr. Thomas Seuhs  
Executive Commissioner  
Texas Health and Human Services Commission  
Brown-Heatly Building  
4900 N. Lamar Blvd.  
Austin, Texas 78751-2316

Dear Mr. Suehs:

We wish to supplement our previous letter of December 11, 2009 with the following individual applicants for SNAP that have been pending with HHSC beyond the time periods mandated by Texas law.

Brister, Diana  
Campa, Laura  
Gonzalez, Octavia  
Guedea-Nelson, Amalia  
Guzman, Laura  
Hernandez, Dulce

names in original

On behalf of our clients, we request that you make a determination on these applications. Unless you make a determination regarding these applications by Noon, December 17, 2009, and inform us of that determination, we intend to seek emergency relief from the appropriate court. I can be reached directly at 512-374-2725, and by email at [rdoggett@trla.org](mailto:rdoggett@trla.org).

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

ROBERT W. DOGGETT  
Staff Attorney

Exhibit 4