

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NIL GOVIND DAS, SAED GULED,
STEFFANI MOWAT, ROSARIO
JUAREZ ALEGRIA, VICTOR
ESCOBEDO, and JORGE ROSILLO
ZARAGOZA,
on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

BERT BRANTLEY, in his official
capacity as Commissioner of the
Georgia Department of Driver
Services,

Defendant.

Civil Action No.

COMPLAINT—CLASS ACTION

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

1. This action challenges a policy of the Georgia Department of Driver Services (“DDS”) which discriminatorily denies ~~driv~~ licenses to certain non-citizens living in Georgia on the basis of their ~~age~~ and which usurps the federal government’s exclusive authority to determine immigration status and to classify non-citizens’ immigration status.

2. DDS policy dictates that non-citizens who have ~~en~~ lawful status within the meaning of the federal REAL ID Act and ~~ed~~ federal employment authorization based on their pending applications ~~and~~ just status to lawful permanent resident—but who are unable to demonstrate ~~st~~ continuous past authorized presence in the United States—are categorically ine

exclusive authority to make immigration status classifications. The individually named Plaintiffs bring this action on behalf of themselves and a class of all others similarly situated to obtain preliminary and permanent injunctive relief and a declaration that DDS' policy violates the Fourth Amendment and is preempted by federal law.

4. DDS' policy is subjecting thousands of Georgians, including Plaintiffs and members of the proposed class, to irreparable harm by depriving them of the vital ability to drive. DDS policy sharply curtails the ability of Plaintiffs and class members to drive their children to school and medical appointments, to attend religious services, to seek and maintain employment, to establish and run small businesses, and to otherwise participate in the life of the communities in which they seek permanent residence.

5. If the individuals affected by this policy do drive, they are subject to criminal prosecution for driving without a Georgia license. Penalties range from a minimum of a \$500 fine and from two days to up to a year imprisonment for the first offense, with penalties rising to a maximum of five years in prison and a \$5,000 fine for the fourth (or subsequent to the third) offense. See Ga. Code Ann. §§ 40-5-20(a), 40-5-121(a). A conviction for driving without a Georgia license

max 5 years in prison, up to 1 year imprisonment, or a fine of \$500 to \$5,000, depending on the offense.

121(b)(1), and could negatively impact future efforts to obtain immigration relief. See, e.g. 8 U.S.C. § 1182(a)(2)(B) (making inadmissible certain aliens convicted of multiple offenses).

6. Plaintiffs and members of the proposed class will continue to suffer serious and irreparable harm if DDS' policy is not enjoined.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the United States Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 because this action seeks to redress the deprivation, under Colorado law, of Plaintiffs' and class members' civil rights and to secure equitable relief for the violation of those rights.

8. Plaintiffs seek declaratory, injunctive and other appropriate relief, pursuant to 28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure 23, 57, and 65; and 42 U.S.C. § 1983.

9. Venue is proper under 28 U.S.C. § 1391(b) and Local Rule 3.1.

Plaintiffs applied for driver's licenses are located within this Division, and all such offices are located within this District. DDS is refusing to issue driver's licenses to Plaintiffs pursuant to a policy that was generated and is administered by DDS' headquarters in Conyers, Georgia, which is located within this District and this Division. Ga. Comp. R. & Regs. R. 375-1-1-.01(2).

PARTIES

Plaintiffs

10. Plaintiff Nil Govind Das was born in India and is not a U.S. citizen. He currently resides in Atlanta, Georgia.

11. Das has filed a form I-485 application for adjustment of status to lawful permanent resident based on his marriage to a U.S. citizen. That application is pending with United States Citizenship and Immigration Services ("USCIS"). USCIS granted Das work authorization and issued him

his presence in the United States was continuously authorized prior to filing his application for adjustment of status.

12. DDS had granted Das a driver's license in previous years based on his pending application for adjustment of status. In February 2016, however, DDS denied his application to renew his driver's license. Following a new DDS policy, DDS staff informed Das that he is not eligible for a license because they believe he lacked lawful immigration status before applying for adjustment of status to lawful permanent resident. DDS staff further informed Das he is ineligible for a driver's license until his application to adjust status is granted.

13. As a result of DDS' decision to deny him a license, Das has experienced significant disruption to his ability to seek and maintain employment, especially because he is no longer able to work in his previous capacity as an Uber driver. Das is also unable to volunteer at his temple and must depend on his spouse, who has a license, for basic transportation needs such as going to work and shopping for groceries.

14. Plaintiff Saed Guled was born in Somalia and is a citizen of Canada. He is not a U.S. citizen. Guled resides in Stone Mountain, Georgia.

15. Guled has filed a form I-485 application to adjust status to lawful permanent resident based on his marriage to a U.S.

and supervise projects has been substantially curta

23. In February 2016, DDS denied Juarez Alegria's application to renew her driver's license. When Juarez Alegria told DDS, in response to a question, that she had entered the United States without authorization, DDS staff told her that she would not be eligible for a driver's license until she got her green card, also known as a permanent residency card. Without a driver's license, it is very difficult for Alegria Juarez to commute to her job at a carpet factory, where she works an early morning shift, and to transport her children to their appointments and activities.

24. Plaintiff Victor Escobedo was born in Mexico and is not a U.S. citizen. Escobedo currently resides in Kennesaw, Ga.

25. Escobedo has filed a Form EOIR 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. That application is currently pending with the Immigration Court in Atlanta.

26. USCIS granted Escobedo work authorization and issued an EAD showing his federal classification as non-citizen with an application to cancel removal and adjust status to permanent residency pursuant to 8 C.F.R. § 274a.12(c)(10). The EAD authorizes him to work in the United States until September 15, 2016 and is eligible for renewal while his application for cancellation of removal and adjustment of status is pending. Escobedo cannot

prove that his presence in the United States was continuously authorized prior to his applying for adjustment of status.

27. DDS had previously granted Escobedo a driver's license based on his pending application for cancellation of removal and adjustment of status. In February 2016, however, DDS denied Escobedo's application to renew his driver's license. At that time, DDS staff told Escobedo that he is ineligible for a license because DDS believes he lacks legal status in the United States. DDS staff also told Escobedo that he will not be eligible for a license until his application to adjust status is approved.

28. Without a driver's license, it is impossible for Escobedo to both comply with the law and do his job as a handyman, which requires him to drive long distances throughout Georgia and to other states to work in customers' homes and businesses. Escobedo's income supports his wife and three U.S. citizen children.

29. Plaintiff Jorge Rosillo Zaragozas was born in Mexico and is not a U.S. citizen. Rosillo Zaragoza currently resides in Forest Park, Georgia.

30. Rosillo Zaragoza has filed a Form EOIR 42B Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent

Residents. That application is currently pending ~~with~~ the Immigration Court in Atlanta.

31. USCIS granted Rosillo Zaragoza work authorization ~~and~~ issued him an EAD showing his federal classification as non-~~citizen~~ with an application to cancel removal and adjust status to permanent ~~resident~~ pursuant to 8 C.F.R. § 274a.12(c)(10). The EAD authorizes him to work ~~in~~ the United States until November 25, 2016 and is eligible for renewal ~~while~~ his application for cancellation of removal and adjustment of status is

Zaragoza also needs a license to drive his blind dog home from work and

of Naturalization,” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,” U.S. Const. art. I, § 8, cl. 3.

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period of authorized stay. However, he may later acquire lawful permanent resident status by a means approved by Congress—for example, through marriage to a U.S. citizen. See 8 U.S.C. § 1255 (2016). Another person might enter the United States without authorization from the federal government, but later become eligible to cancel removal proceedings instituted against her by the federal government and adjust status to lawful permanent resident—for example, based on a showing that her United States citizen spouse would suffer exceptional and extremely unusual hardship if she were removed from the United States. See 8 U.S.C. § 1229b(b) (2016).

39. With the federal REAL ID Act, Congress set standards for the issuance of state driver's licenses that federal agencies will accept for official purposes, such as accessing federal facilities and boarding federally regulated aircraft. Pub. L. No. 109-13, § 201(3), 119 Stat. 213 (codified at 49 U.S.C. § 30301 note).

40. The REAL ID Act provides that the Secretary of Homeland Security shall determine whether a state is meeting the requirements of the REAL ID Act based on certifications made by the state to the Secretary of Homeland Security. Pub. L. No. 109-13, § 202(a)(2). A state may receive federal grant money to assist it in complying with the Act. Id. § 204(a).

41. Georgia, along with at least 21 other states and District of Columbia, has agreed to comply with REAL ID, thereby ensuring that its residents may use their Georgia driver's licenses to enter federal facilities and board commercial domestic flights.²

42. To issue a REAL ID-compliant driver's license to an applicant, a state must require documentary evidence that the applicant has "lawful status," as defined by the REAL ID Act, § 202(c)(2)(B).

43. The REAL ID Act establishes nine categories of persons who have "lawful status," as required to receive a REAL ID-compliant driver's license: (1) citizens or nationals of the United States; (2) persons lawfully admitted for permanent or temporary residence in the United States; (3) aliens with conditional permanent resident status in the United States; (4) persons who have an approved application for asylum in the United States or who entered into the United States in refugee status; (5) aliens with a valid, unexpired immigrant visa or nonimmigrant visa status for entry into the United States; (6) aliens with a pending application for asylum in the United States; (7) persons with a pending or approved application for temporary protected status in the United States; (8) aliens with

² Press Release, Gov. Nathan Deal, Office of the Governor, Homeland Security Determines Georgia Compliant with Real ID (Dec. 2012), <https://gov.georgia.gov/press-releases/2012-12-21/homeland-security-determines-georgia-compliant-real-id>.

approved deferred action status; and (9) aliens with a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States. Pub. L. No. 109-13, § 202(c)(2)(B), 119 Stat. 2313 (codified at 49 U.S.C. § 30301 note); 6 C.F.R. § 37.3 (2016).

44. A person who is not a U.S. citizen and is physically present in the United States may be eligible to adjust status to lawful permanent resident based on specific criteria, such as her marriage to a U.S. citizen or her status as an asylee, refugee, or a victim of certain crimes. This application is accomplished by filing USCIS Form I-485, titled "Application to Register for Permanent Residence or Adjust Status."

45. A person who has filed an I-485 application to adjust status to lawful permanent resident may apply for USCIS authorization to work lawfully in the United States. 8 C.F.R. § 274a.12(c)(9) (2016). USCIS grants work authorization, it issues that person an Employment Authorization Document

46. A non-citizen who is in removal proceedings in Immigration Court, has been physically present in the United States for at least ten years, can show good moral character during his residence, and has a U.S. citizen or lawful permanent resident parent, child or spouse who does not suffer exceptional and extremely unusual harm if the non-citizen were removed may also apply to adjust status to lawful permanent resident. See 8 U.S.C. § 1229b(b) (2016). To accomplish this, the non-citizen must file a Form IIR-42B application for cancellation of removal and to adjust status before an immigration judge.

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who has applied for cancellation of removal and adjustment of status, USCIS issues that person an EAD. The EAD is coded to show the recipient is in category (c)(10) (shorthand for 8 C.F.R. § 274a)(20)), a category comprised of people with pending EOIR-42B applications to cancel removal and adjust status

51. An applicant can demonstrate that he has a pending

under federal immigration law” or “[v]erification of lawful presence as provided by Code Section 40-5-21.2.Ga. Code Ann. § 40-5-21.1(a).

55. Under Georgia law, a temporary license issued by ~~DDS~~ “valid only during the period of time of the applicant’s authorized stay in the United States or five years, whichever occurs first.” Ga. Code Ann. § 40-5-21.1(a).

56. DDS does not uniformly treat people who are deemed

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clerk refused to issue him a driver's license, but then gave Das a letter saying that his application would be reviewed by the DDS Office of Investigative Services ("OIS"), and that he should call that office after three business days.

65. About one week later, Das called OIS. Investigator Slater at OIS asked Das when and how he had entered the United States, and he asked Das to send his I-94 form and a copy of his application for residency to OIS. Das then emailed Investigator Slater various documents, including copies of his Indian passport, his R-1 visa, his I-94 form reflecting admission into the United States

67. Around March 3, 2016, Das received a letter from SD~~SD~~ saying that his previous driver's license had been cancelled.

68. On or about March 22, 2016, Das visited OIS in ~~person~~ and gave the following documents to a clerk: (1) a copy of his ~~current~~ I-797C reflecting receipt of his application to adjust status to lawful permanent resident; (2) a printout of his Case Status from the USCIS website⁸ reflecting that the last action by USCIS on his pending application to adjust status was an ~~interview~~ interview with USCIS in March 2012; (3) a copy of his current EAD; (4) a copy of his Social Security card; and (5) two documents with his name and home address.

69. A few days later, Das called OIS and asked to ~~see~~ speak to an investigator

ineligible for a driver's license if he cannot prove continuous authorized presence in the United States prior to filing an application to adjust status.

72. As a result of DDS' decision to cancel Das's license, Das risks losing his job as a night clerk at a gas station because of transportation difficulties related to not having a driver's license.

73. As a result of DDS' decision to cancel Das's license, Das has also lost income. Das worked as an Uber driver for approximately three months until his driver's license expired. Without his license, Das has lost this extra income on which his family relied.

74. DDS' decision to cancel Das's license has also interfered with his religious practice. Before DDS canceled Das's license, he regularly volunteered at a Hindu temple in Atlanta, cooking and serving meals for the community. This

77. Guled is married to a U.S. citizen. Guled and his wife have four U.S. citizen children, all under ten years old.

78. In October 2012, Guled applied to USCIS to adjust his status to lawful permanent resident based on his marriage. His application for adjustment of status is pending.

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82. Several days later, when Guled called OIS, a clerk told him to submit to that office all the documents that he had submitted to USCIS when he applied to adjust status to lawful permanent resident.

83. Guled went to the OIS office in Conyers, Georgia and presented the documents that he had submitted to USCIS when he applied to adjust status to lawful permanent resident. An OIS employee made a copy of these documents.

84. In or around late February 2016, Investigator Brook from OIS called Guled and said she needed proof of the date when he entered the United States. Guled returned to OIS and showed Investigator Brook his passport and a document he received from Customs and Border Protection when he entered the United States from Canada in 2006. Investigator Brook asked him when he got married. When Guled told her, Investigator Brook said he had overstayed his "visa." She said she would review Guled's application and call him back.

85. When Investigator Brooks called Guled, she said he would not be eligible for a driver's license until he receives a green card.

86. In late February 2016, Guled received a letter from DDS saying that his license had been cancelled, effective as of February 16, 2016.

87. On March 9, 2016, Guled went to the DDS OIS office in Conyers and gave the following documents to Investigator McClain because Investigator

Brooks was not in the office: (1) a copy of his Form I-797C, reflecting USCIS' receipt of his application to adjust status to lawful permanent resident; (2) a printout of his Case Status from USCIS, which reflected that the last action that USCIS took on his pending application to adjust status was to schedule an interview for August 8, 2013; (3) a copy of his EAD; (4) a copy of his Social Security card; and (5) two documents showing his name and residential address. Investigator McClain told Guled to call her back in several days.

88. Several days later, Guled called OIS and asked to speak to Investigator McClain. He was told that Investigator McClain was not in the office that day, but that he should call back the following week and speak to Investigator Brooks.

89. Guled called OIS and left a message for Investigator Brooks. Guled has not heard back from Investigator Brooks since.

90. The office of Georgia Representative Henry C. "Hank" Johnson, Jr. sent an inquiry to DDS about Guled, after Guled complained to Rep. Johnson's office. On March 28, 2016, DDS responded by email to Rep. Johnson's office: "Investigative Services has spoken with this customer and informed the customer that the information provided did not show lawful status."

91. Guled currently lacks a valid Georgia driver's license.

92. Guled meets all the eligibility requirements for Georgia driver's

being reviewed by the OIS, and that she should call that office after three business days.

100. Soon after, Mowat called OIS and spoke to an investigator. The investigator told her to send additional documents to that office. Mowat mailed OIS a copy of her Social Security card, a copy of her IAD, several forms that she received from USCIS, two documents with her name and home address, a copy of her Canadian passport, and a copy of her Ontario driver's license.

101. Soon after Mowat sent these documents, Investigator Davis from OIS called Mowat and asked her when she had last been in the U.S. and what visa she had applied for. Mowat asked Investigator Davis for her immigration lawyer, Edivette Lopez-Benn, and gave her Ms. Lopez-Benn's phone number.

102. Investigator Davis and Ms. Lopez-Benn spoke soon after, in early February 2016. Investigator Davis asked Ms. Lopez-Benn to send the I-94 Arrival/Departure Record issued to Mowat when she arrived in the United States, as well as the receipts that USCIS issued to Mowat for her immigration petition related to the domestic violence she had suffered, her I-485 application to adjust status to lawful permanent resident. Ms. Lopez-Benn faxed these documents to Investigator Davis.

103. Later in the month of February 2016, Investigator ~~AVD~~ told Ms. Lopez-Benn that Mowat would not qualify for a license unless she 79

113. Juarez Alegria has an EAD from USCIS which allows her to work in the United States from February 3, 2016 to February 2, 2017. Juarez Alegria's EAD reflects that she is in category (c)(9), indicating that she has a pending I-485 application for adjustment of status.

114. Shortly after she received her U visa in March 2016, Juarez Alegria applied for and was granted a four year driver's license from DDS. That license will expire on April 29, 2016.

115. In late February 2016, Juarez Alegria went to the DDS office in Calhoun to renew her Georgia driver's license. DDS representative did not renew her license, instead giving Juarez Alegria a letter that said that her application would need to be reviewed by OIS and she should call OIS to follow up.

116.

nothing that her immigration attorney could do ~~until~~ until Juarez Alegria got her green card, she could not get a license.

118. About two weeks later, Juarez Alegria went to ~~the~~ DDS office in Dalton, Georgia to again apply to renew her license. ~~She~~ She brought her Social Security card, her old EAD, her new EAD, passport, and expiring driver's license. A DDS representative informed Juarez Alegria that ~~DDS~~ DDS would not give her a driver's license until she obtained her green card.

119. Juarez Alegria meets all the eligibility requirements for a Georgia driver's license. Juarez Alegria would be granted ~~Georgia~~ Georgia driver's license if not for DDS' unlawful policy of determining that a ~~person~~ person with a pending application to adjust status is ineligible for a driver's license if she cannot prove continuous authorized presence in the United States prior to ~~her~~ her application to adjust status.

120. The imminent expiration of her driver's license ~~is~~ is significant problems for Juarez Alegria. The carpet factory ~~where~~ where she works to support herself and her two children is located about 15 miles ~~from~~ from home. Public transportation is not available for this commute.

121. Without a driver's license, Juarez Alegria cannot ~~not~~ fully transport her children to and from appointments and school ~~activities~~ activities, drive to medical

appointments and the grocery store, and run other errands essential to her family life.

122. Plaintiff Victor Escobedo lives in Kennesaw, Georgia. He works as a handyman and does remodeling work throughout Georgia and in other states.

123. Escobedo is a Mexican citizen. He has lived in the United States since 1990.

124. In 2008, Escobedo was arrested for driving with an expired license. He was subsequently referred to immigration authorities, who asserted that he was here without legal authorization and instituted removal proceedings against him. Escobedo filed a Form EOIR 42B Application for Consideration of Removal and Adjustment of Status for Certain Nonpermanent Residents in October 2008. Escobedo's EOIR 42B application is still pending.

125. Since he filed his EOIR 42B application, Escobedo has received several one-year EADs from USCIS. Escobedo now has an EAD from USCIS which allows him to work in the United States from September 16, 2015 to September 15, 2016. Escobedo's EAD reflects that he is in category (c)(10), indicating that he has a pending application for consideration of removal and adjustment of status.

126. Escobedo has received Georgia driver's licenses in previous years. His most recent Georgia driver's license expired July 2014. Escobedo obtained that license from DDS after presenting his EAD, Social Security card, and documents showing his Georgia residency.

127. On or around February 2, 2016, Escobedo applied for driver's license at the DDS office in Kennesaw. He presented his EAD, passport, Social Security card, and documents showing his Georgia residency. A DDS clerk refused to issue a license, instead giving Escobedo a paper that stated that his application needed to be reviewed by OIS, and that he should return to the office.

128. Soon after, Escobedo called OIS and spoke to Investigator Heard. Investigator Heard asked him to fax or bring to OIS the immigration documents that Escobedo has. Escobedo then brought the following documents to OIS: his EAD, his Social Security card, his Mexican passport, and several documents that he had received from USCIS, including the Form I-797 reflecting receipt by USCIS of his application for cancellation of removal and adjustment of status. A woman at OIS made copies of these documents.

129. Soon after, Investigator Heard called Escobedo and said that he was reviewing Escobedo's documents.

130. On or around February 15, 2016, Escobedo went to the DDS office in Cartersville, Georgia to again attempt to renew his license. He was given a paper notifying him that his license had been suspended, that he should call OIS.

131. Escobedo called OIS and spoke to Investigator Heard. Investigator Heard told Escobedo that he is not eligible for a driver's license because — according to DDS — he does not have lawful status in the United States. Investigator Heard said Escobedo will not be eligible for a driver's license until he receives his green card.

132. Escobedo received in the mail a letter from DDS stating him that his driver's license has been cancelled as of February 15, 2016.

133. Escobedo currently lacks a valid Georgia driver's license.

134. Escobedo meets all the eligibility requirements for a Georgia driver's license. Escobedo would be granted a Georgia driver's license if not for DDS' unlawful policy of determining that a person with a pending application for cancellation of removal and adjustment of status is not eligible for a driver's license if he cannot prove continuous authorized presence in the United States prior to filing an application for cancellation of removal and adjustment of status.

135. Escobedo's work requires him to drive. He is self-employed and performs work at his customers' homes and businesses throughout Georgia and in

other states, including Alabama, Tennessee and Florida his work involves painting, roofing, and pressure washing, among other things, and he needs to drive a

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not for DDS' unlawful policy of determining that a person with a pending application for cancelation of removal and adjustme

149. On or about March 27, 2016, Rosillo Zaragoza received summons for driving without a valid Georgia license, in violation of Ga. Code Ann. § 40-5-20. Rosillo Zaragoza paid a \$550 fine, which is approximately one week's income for him. He is scheduled to appear in court on this charge in May 2016.

CLASS ACTION ALLEGATIONS

150. Plaintiffs bring this action on behalf of themselves and all those similarly situated pursuant to Federal Rules of Procedure 23(a), 23(b)(1)(A) and 23(b)(2).

153. Questions of law and fact are common to the class, including (1) whether Defendant's policy violates the Equal Protection Clause by discriminating between groups of non-citizens whom federal law treats as having "lawful status" for the purpose of establishing eligibility for driver's licenses; and (2) whether Defendant's policy is preempted because it directs state officials to make immigration classifications independent from those recognized by the federal government and inconsistent with federal law.

154. Plaintiffs' claims are typical of the claims of the class. Defendant has a policy of refusing to issue driver's licenses to people with pending applications for adjustment of status when such individuals are unable to show to DDS' satisfaction that they had authorized presence for periods in which they were physically present in the United States. This policy applies with equal force to all members of the proposed class.

155. Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. Plaintiffs, like members of the proposed class, cannot obtain driver's licenses as a result of Defendant's unlawful policy and seek to have that policy declared unlawful so that Plaintiffs and class members will receive the driver's licenses for which they are

eligible under federal and state law.

156. Plaintiffs are also fairly and adequately represented by their counsel. The Southern Poverty Law Center specializes in civil rights litigation and has substantial expertise in class action litigation and litigation to vindicate the civil rights of immigrants. The Law Offices of Justin Whaney, LLC specializes in immigration law, and has substantial experience representing individual non-citizens in challenging DDS' refusal to issue driver's licenses.

157. Under state law, if any person believes that DDS is wrongfully refusing to grant her a driver's license, she has a right to seek review of that decision in the superior court for the County in which she resides. See Ga. Code Ann. § 40-5-66(a). Prosecution of separate actions by aggrieved class members within various jurisdictions throughout Georgia creates a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendant in the future.

158. Defendant has acted and will act on grounds generally applicable to the class in creating and implementing the uniform policy of denying driver's licenses to people with pending applications for adjustment of status as a result of DDS' determination that such individuals cannot demonstrate continuous authorized presence prior to filing for adjustment of status. Therefore, final relief

declaring this policy unlawful and enjoining its enforcement is appropriate with respect to the class as a whole.

CAUSES OF ACTION

COUNT ONE

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE;

42 U.S.C. § 1983

159. The foregoing allegations are repeated and incorporated as though fully set forth herein.

160. Plaintiffs assert a claim pursuant to 42 U.S.C. § 1983 for violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

161. The Fourteenth Amendment to the United States Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

162. Defendant has and enforces a policy of denying driver's licenses to non-citizens who have currently pending applications for adjustment of status where such persons cannot prove to DDS that the type of their past presence in the United States was authorized.

163. During all relevant times, including in the promulgation and enforcement of this policy, Defendant has acted in violation of state law.

164. Defendant's policy impermissibly discriminates against Plaintiffs and class members — all of whom are currently authorized by the federal government to stay and work in the United States — on the basis of their alienage.

165. Defendant's policy impermissibly discriminates between Plaintiffs and other categories of non-citizens, such as deferred action recipients, who are issued driver's licenses in Georgia even if they are unable to prove prior continuous authorized presence.

166. Defendant's policy also impermissibly discriminates between non-citizens who are classified identically under federal law.

167. Defendant's policy denies Plaintiffs and class members equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

COUNT TWO

CLAIM FOR EQUITABLE RELIEF TO ENFORCE THE SUPREMACY CLAUSE AND ENJOIN STATE ACTION PREEMPTED BY FEDERAL IMMIGRATION LAW

168. The foregoing allegations are repeated and incorporated as though

- c. Appoint counsel as class counsel pursuant to Rule 23(e);
- d. Declare that DDS' policy of refusing to issue driver's licenses to people currently classified by the federal government according to 8 C.F.R. § 274a.12(c)(9) or (c)(10), based on DDS' determination that such persons cannot prove continuous prior authorized presence, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;
- e. Declare that DDS' policy of refusing to issue driver's licenses to people classified by the federal government according to 8 C.F.R. § 274a.12(c)(9) or (c)(10), based on DDS' determination that such persons cannot prove continuous prior authorized presence, violates the Supremacy Clause of the United States Constitution, which is preempted by federal law;
- f. Issue a preliminary injunction, later to be made permanent.

g. Issue a preliminary injunction, later to be made permanent, enjoining

Justin W. Chaney (GA Bar No. 120681)
Law Offices of Justin W. Chaney, LLC
1801 Peachtree St. NW, Suite 110
Atlanta, GA 30309
Tel: (404) 475-1616
Fax: (678) 686-8473
jchaney@lawchaney.com