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DEPUTY

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

MONTANA IMMIGRANT JUSTICE ALLIANCE, MEA-MFT, and ALISHA BLAIR, Plaintiffs, v. GOVERNOR BRIAN SCHWEITZER, in his official capacity, ATTORNEY GENERAL STEVE BULLOCK, in his official capacity, MONTANA BOARD OF REGENTS OF HIGHER EDUCATION, COMMISSIONER OF HIGHER EDUCATION CLAYTON CHRISTIAN, in his official capacity, and the STATE OF MONTANA, Defendants.	No.: BDV 2012-1042 **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs by and through their attorneys Morrison, Motl and Sherwood, P.L.L.P., and Border Crossing Law Firm, P.C., and for their complaint in the above captioned matter allege as follows:

I. PARTIES

1. Plaintiff Montana Immigrant Justice Alliance ("MIJA") is a non-profit organization registered with the State of Montana, working to advance immigrant rights throughout the state. Its principal place of business is in Helena, Montana.

2. Plaintiff MEA-MFT is a labor association, organized under the laws of the state of Montana, with its principal place of business in Helena, Montana. MEA-MFT represents some 18,000 public and private sector employees across Montana.

3. Plaintiff Alisha Blair is a 22 year-old resident of Missoula, Montana who automatically acquired U.S. citizenship at birth. She was born in Lethbridge, Alberta, Canada and has been residing in Montana since she was one year old. Her U.S. citizenship was transmitted to her at birth through her U.S. citizen father by operation of federal law. [*See Affidavit of Alisha Blair,* **Exhibit 1**].

4. Defendant Governor Brian Schweitzer is the chief executive officer of the state of Montana, possessing the full powers of supervision, approval, direction and appointment over all departments of the state of Montana except for the offices of lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction. Governor Schweitzer is charged with formulating and administering the policies of the executive branch of the state government and with ensuring the laws of the state of Montana are faithfully executed.

5. Attorney General Steve Bullock is the head of the Montana Department of Justice.

6. The Montana Board of Regents of Higher Education is the governing body that has general control and supervision of all units of the Montana University System.

7. Clayton Christian is the Commissioner of Higher Education and has administrative control of the resident student financial assistance program under Title 20, chapter 26, MCA.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction of this proceeding under Article VII, § 4 of the Montana Constitution and § 3-5-302, MCA.

9. This Court is the proper venue for this action pursuant to §§ 25-2-125 and 126, MCA.

10. Plaintiffs seek declaratory judgment and appropriate relief pursuant to the Montana Uniform Declaratory Judgments Act, § 27-8-101, *et seq.*, MCA.

III. FACTUAL ALLEGATIONS

11. In the 2011 legislative session, the Montana legislature considered House Bill No. 638. A copy of HB 638 is attached hereto as **Exhibit 2**. HB 638 was not passed into law through submission to the Governor but instead was passed by the legislature as a referendum. HB 638 was designated as Legislative Referendum 121 (LR 121).

12. LR 121 appeared on the November 2012 ballot, and was adopted by the voters on November 6, 2012.

13. Now that LR 121 has passed, HB 638 is to be codified in Title 1, chapter 1, part 4, MCA. HB 638 will be referred to herein as "the Act."

14. The Act has an effective date of January 1, 2013.

15. The Act is intended to apply to the provision of various state services, as defined in Section 1(6)(c) of the Act.

16. Section 1(6)(c) of the Act defines "state services" as payments of money, the grant of a state license or permit, or the provision of another valuable item or service under the following programs and provisions of law:

i. employment with a state agency;

ii. qualification as a student in a university system for the purpose of public education, as provided in § 20-25-502, MCA;

iii. student financial assistance, as provided for in Title 20, chapter 26, MCA;

iv. the issuance of a state license or permit to practice a trade or occupation described in Title 37, MCA;

v. unemployment insurance benefits, as provided in Title 39, chapter 51, MCA;

vi. vocational rehabilitation, as provided for in Title 53, chapter 7, MCA;

vii. services for victims of crime, as provided in Title 53, chapter 9, MCA;

viii. services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4, MCA; and

ix. grants, as provided in Title 90, MCA.

17. Section 1(1) of the Act states that "to the extent allowed by federal law and the Montana Constitution and notwithstanding any other state law, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section." Section 4 of the Act states that "[a]n agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status."

18. "Illegal alien" is defined in Section 1(6)(b) of the Act as "an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States."

19. Section 3 of the Act requires a state agency to notify appropriate personnel in Immigration and Customs Enforcement ("ICE") under the United States Department of Homeland Security ("DHS"), or its successor, of any "illegal alien" applying for a state service.

20. Section 2 of the Act describes how a state agency is to determine whether or not an applicant for a state service is an "illegal alien." Section 2 states that a state agency may use the Systematic Alien Verification for Entitlements program ("SAVE"), or any other lawful method of making the determination.

21. The SAVE program is operated by U.S. Citizenship and Immigration Services ("USCIS"), within DHS. SAVE provides benefit-granting agencies with certain U.S. immigration status information to assist agencies in making benefit eligibility determinations.

22. To utilize the SAVE program, each agency within the state's government must enter into a separate Memorandum of Agreement ("MOA") with DHS, which also governs the permissible uses of the SAVE program. A sample MOA provided by DHS to other agencies that have used the SAVE program is attached hereto as **Exhibit 3**.

23. The Act applies to all state agencies, all divisions of the Montana University System, the Resident Student Financial Assistance Program, all the licensing boards and agencies referenced in Title 37, MCA, and housed under the Montana Department of Labor and Industry, the Unemployment Insurance Division, the Montana Department of Health and Human Services, the Office of Victims Services, and the Montana Department of Commerce. The implementation of the Act with reference to use of the SAVE program would require separate MOAs for each "User Agency" seeking to utilize the SAVE program.

24. The Montana University System falls within the jurisdiction and control of Defendant Montana Board of Regents of Higher Education.

25. The Resident Student Financial Assistance Program falls within the jurisdiction and control of the Commissioner of Higher Education.

26. The Montana Department of Labor and Industry, the Unemployment Insurance Division, the Montana Department of Health and Human Services, and the Montana Department of Commerce fall within the jurisdiction and control of Governor Brian Schweitzer.

27. The Office of Victims Services falls within the jurisdiction and control of Attorney General Steve Bullock.

28. The SAVE program is an electronic, fee-based system, charging between $.50 and $2.00 for each search in the system.

29. Verification through the SAVE program can include three verification steps. First, an agency submits an electronic query to USCIS using documents provided by the applicant. If SAVE cannot immediately confirm immigration status, then a secondary verification is conducted electronically, requiring additional information from the applicant. This secondary verification generally takes 3-5 federal working days. If a third verification is required, the agency must submit a completed form and photocopies of the applicant's documents, by mail, to a designated USCIS field office. A response at this stage generally takes 10-20 federal working days.

30. The MOA with DHS requires that each agency complete secondary or third verification procedures as prompted by the SAVE system to prevent improper denial of benefits.

31. The SAVE program is used to verify documentation regarding naturalized U.S. citizens, U.S. citizens born abroad who derived citizenship from U.S. citizen parentage and who have chosen to acquire an optional DHS certificate of citizenship, as well as the immigration

status of certain defined categories of noncitizens. [*See Letter from USCIS Director Alejandro Mayorkas to Florida Secretary of State Ken Detzner* (June 12, 2012), **Exhibit 4**].

32. The SAVE program does not contain any information on native-born U.S. citizens, or most individuals who entered the country without inspection. SAVE can only verify information contained in immigrations records. Therefore, it only includes information on individuals who have applied for or received certain immigration benefits through interaction with relevant agencies within the U.S. government.

33. The SAVE program relies exclusively on DHS records and does not include a comprehensive and definitive listing of all U.S. citizens, including those born in the United States. [*See* **Exhibit 4.**] There is no federal database that is available to the State of Montana for benefit eligibility determinations that would provide a comprehensive listing of all U.S. citizens.

34. States are prohibited from using the SAVE program to conclude that an individual is in violation of U.S. immigration law, and the SAVE program is not designed to identify individuals who do not possess lawful status. According to Howard McMillan, Chief of SAVE's Verification Division: "SAVE may not be used to conclude that an applicant for benefits is in violation of immigration law, and a SAVE response is not a verification by a Federal agency of such a violation. Simply stated, a SAVE response is relevant only to a benefit eligibility determination; none of SAVE's status responses affirmatively verify that an applicant is not lawfully present in the United States." [*See Letter from Chief of USCIS Verification Division Howard McMillan to Tom Betlach, Director Arizona Health Care Cost Containment System* (August 4, 2010), **Exhibit 5**].

35. The information gleaned from the SAVE program is not intended by the federal government to be utilized in initiating deportation or removal proceedings.

IV. DECLARATORY JUDGMENT COUNT ONE: UNCONSTITUTIONAL INFRINGEMENT OF THE RIGHT TO PRIVACY

36. Plaintiffs re-incorporate paragraphs 1-35, as though set forth in full hereunder.

37. Article II, Section 3 of the Montana Constitution guarantees to all persons the inalienable rights of "pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways."

38. The application for and use of state services as defined in Section 1(6)(c) of the Act by persons in Montana implicates these fundamental rights.

39. Article II, Section 10 of the Montana Constitution states that the "right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

40. Sections 2, 3, and 4 of the Act, when taken together, constitute an inquiry into the citizenship or immigration status of any person who applies for or uses any of the state services listed in Section 6(c) of the Act. Section 2 of the Act expressly directs state agencies to make a determination as to the citizenship or immigration status of any person applying for the state services listed in Section 1(6). Pursuant to Section 3, this inquiry is made in conjunction with a directive to initiate enforcement action with DHS if services are denied because U.S. citizenship or "legal alien" status could not be confirmed.

41. The United States Supreme Court has recognized that governmental inquiry into the citizenship or immigration status of an individual implicates the protections of the Fourth Amendment to the United States Constitution. *See. e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 884, 95 S.Ct. 2574, 45 L. Ed. 2d 607 (1975).

42. The Freedom of Information Act ("FOIA") protects against disclosure of "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). This provision has been consistently held to apply to citizenship and immigration status, and to prevent disclosure of this information. *See e.g., U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982); *Hemenway v. Hughes*, 601 F. Supp. 1002, 1006 (D.D.C. 1985).

43. Article II, Section 10 of the Montana Constitution provides even greater privacy protections than recognized by the federal courts under the Fourth Amendment to the United States Constitution. *State v. Bullock*, 272 Mont. 361, 901 P.2d 61 (1995).

44. A person's citizenship or immigration status, along with information and data used to verify such status, are privacy interests that are protected under Article II, Section 10 of the Montana Constitution.

45. Article II of the Montana Constitution does not require a person to provide documentary proof of their citizenship in order to exercise or enjoy any of the fundamental rights enumerated therein.

46. It is estimated that roughly 7% of the population of the United States do not have readily available proof of citizenship. [*See "Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification,"* Brennan Center for Justice at NYU School of Law, **Exhibit 6**].

47. Section 4 of the Act expressly requires applicants for state services to demonstrate that they are a United States citizen or "legal alien." If the applicant cannot meet this proof, Sections 2-3 of the Act confer unregulated discretion upon the State to classify the applicant as

an "illegal alien" per Section 1(6)(b), and requires state agencies to notify personnel in DHS that the applicant is an "illegal alien."

48. Sections 2-4 of the Act infringe upon the right to privacy in Article II, Section 10 by requiring the State to inquire into the citizenship or immigration status of all applicants for state services in Section 1(6) of the Act, absent any particularized suspicion, in conjunction with a directive to initiate enforcement action with DHS if services are denied because the State determines that U.S. citizenship or "legal alien" status could not be confirmed.

49. The enforcement mechanisms in Section 2-4 of this Act are unconstitutional because they are not justified by, nor do they further, a compelling state interest. These enforcement mechanisms not only infringe on the fundamental rights of Article II, Section 10, but those of Article II, Section 3 as well.

50. Plaintiffs seek a declaration under the Uniform Declaratory Judgment Act, Title 27, chapter 8, MCA, that the Act infringes upon the right to privacy and that the State cannot demonstrate a compelling state interest justifying the infringement.

51. A dispute and actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of the Act. Plaintiffs contend that the Act is unconstitutional on its face and cannot be enforced or implemented.

52. Plaintiffs desire a judicial declaration that the Act is unconstitutional on its face under Article II, Section 3 and Article II, Section 10 of the Montana Constitution.

V. DECLARATORY JUDGMENT COUNT TWO: VIOLATION OF DUE PROCESS

53. Plaintiffs reincorporate paragraphs 1-52, as though set forth in full hereunder.

54. Article II, Section 17 of the Montana Constitution provides that no person shall be deprived of life, liberty or property without due process of law.

55. The Due Process Clause requires a right to notice and hearing prior to deprivation of life, liberty or property, and bars arbitrary governmental actions.

56. Article II, Section 3 of the Montana Constitution guarantees all persons the fundamental rights to pursue life's basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health and happiness in all lawful ways.

57. Section 1(6)(c)(i) of the Act requires an inquiry into and determination of citizenship or immigration status of any person applying for employment with a state agency prior to employment.

58. The pursuit of employment with a state agency implicates an applicant's fundamental rights in Article II, Section 3 of the Montana Constitution.

59. Section 1(6)(c)(ii) requires an inquiry into and determination of citizenship status of any person applying for qualification to attend public institutions of higher learning in Montana.

60. The pursuit of education with the Montana university system implicates an applicant's fundamental rights in Article II, Section 3 of the Montana Constitution.

61. Section 1(6)(iii) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for resident student financial assistance, as provided for in Title 20, chapter 26, MCA.

62. The application for student financial assistance, in pursuit of educational opportunity and goals, implicates the applicant's fundamental rights under Article II, Section 3 of the Montana Constitution.

63. Section 1(6)(c)(iv) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for a state license or permit to practice any of the trades or professions listed in Title 37, MCA. These trades or professions include the following:

i. Medical professionals of numerous classes (including, but not limited to, general doctors, specialists, pharmacists, physical therapists, acupuncturists, nurses, chiropractors, radiologists, speech pathologists, dentists, psychiatrists, occupational therapists, dieticians, nutritionists, midwifes, and denturists);

ii. Veterinarians, morticians, barbers, and outfitters;

iii. Marriage and family therapists, counselors, social workers, addiction counselors, and therapists;

iv. Accountants, real estate agents, and real estate appraisers, and

v. Lawyers, architects, engineers, electricians, plumbers, and various contractors.

64. Under Section 37-1-101, MCA, *et seq.*, the issuance of these licenses or permits to practice a trade or profession listed in Title 37, MCA, are governed by different licensing boards.

65. The pursuit of a license or permit for any of the trades and occupations enumerated in Title 37, MCA, implicates the applicant's fundamental rights under Article II, Section 3 of the Montana Constitution.

66. Section 1(6)(c)(v) of the Act requires an inquiry into and determination of citizenship or immigration status of any person applying for unemployment benefits.

67. All persons who have been lawfully employed and earned wages subject to the provisions of Title 39, chapter 51, are entitled to unemployment insurance benefits if they meet the requirements of Title 39, chapter 51.

68. The application for unemployment insurance benefits implicates an applicant's fundamental rights in Article II, Section 3 of the Montana Constitution. Title 39, chapter 51 provides that economic insecurity because of unemployment is a serious menace to the health, morals, and welfare of the people of this state.

69. Section 1(6)(vi) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for vocational rehabilitation, as provided for in Title 53, chapter 7, MCA.

70. "Vocational rehabilitation" is provided to individuals with certain disabilities to help them become independent and productive or employable. Section 53-7-101(11), MCA. "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, follow-up services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person. Section 53-7-101(12), MCA.

71. The application for services involving vocational rehabilitation implicates an applicant's fundamental rights in Article II, Section 3 of the Montana Constitution.

72. Section 1(6)(vii) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for services for victims of crime, as provided in Title 53, chapter 9, MCA.

73. Title 53, chapter 9, MCA is referred to as "The Crime Victims Compensation Act of Montana," and creates a scheme to the "help innocent crime victims with crime-related medical expenses." This includes "lost wages and medical and funeral expenses incurred as the result of personal injury crimes. These crimes include homicide, rape, domestic violence, stalking, assault, child sexual and physical abuse, and drunk driving." [*See* https://doj.mt.gov/victims/crime-victim-compensation (last accessed December 6, 2012).]

74. The application for services for a victim of crime implicates an applicant's fundamental rights under Article II, Section 3 of the Montana Constitution.

75. Section 1(6)(viii) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4, MCA.

76. Title 53, chapter 19, part 3, MCA provides for "a program to make specialized telecommunications equipment and services available to persons with disabilities" to assist those who "have physical disabilities and are unable to use traditional telecommunications equipment and services without assistance." Section 53-19-301, MCA.

77. Title 53, chapter 19, part 4, MCA provides for newborn hearing screenings "to provide early detection of hearing loss in newborn infants as soon after birth as possible to enable children, their families, and primary health care providers to obtain any necessary multidisciplinary evaluation, audiologic assessment, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late identification of hearing loss." Section 53-19-401, MCA.

78. The newborn hearing screening program is implemented by the Department of Public Health and Human Services "to ensure newborn hearing screening tests are completed before discharge from a hospital or no later than 1 month after birth." Section 53-19-402, MCA.

79. The application for services described in paragraphs 76-78, implicates an applicant's fundamental rights under Article II, Section 3 of the Montana Constitution.

80. Section 1(6)(c)(x) of the Act requires an inquiry into and determination of the citizenship or immigration status of any person applying for a grant, as provided in Title 90, MCA. This title relates to "Planning, Research, and Development" in fifteen different areas, including: Development Coordination, including Planning and Economic Development; Resource Development and Reclamation; Research and Commercialization; Energy Development and Conservation; Agriculture Development; Indian Affairs Planning and Coordination; and others.

81. The ability to participate in these programs implicates an applicant's fundamental rights in Article II, Section 3 of the Montana Constitution.

82. It is estimated that roughly 7% of the population of the United States do not have readily available proof of citizenship. [*See* **Exhibit 6**.]

83. Article II of the Montana Constitution does not require a person to provide documentary proof of their citizenship in order to exercise or enjoy any of the fundamental rights enumerated therein.

84. Under the Fourteenth Amendment to the U.S. Constitution, "all persons born or naturalized in the United States . . . are citizens of the United States." However, federal laws provide other ways that an individual may acquire U.S. citizenship apart from being born in the

United States or through naturalization. *See, e.g.*, INA §§ 320, 322; former INA § 201(g)-(i), 321 (still in effect for individuals who acquired citizenship during effective dates); 7 FAM 1130.

85. Individuals who were not born in the United States may automatically acquire citizenship by operation of law, and are not required by federal law to obtain any proof of their citizenship. This includes certain individuals who were born outside the United States to one or more U.S. citizen parents, and certain individuals who obtained citizenship by derivation when a parent naturalized to become a U.S. citizen. "A child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. No application is filed, no hearing is conducted, and no certificate is issued when such citizenship is acquired." *Matter of Fuentes-Martinez*, 21 I&N Dec. 893 (BIA 1997).

86. An individual who has automatically acquired citizenship by operation of law may pursue a certificate of citizenship, but is not required to do so. *See* 8 U.S.C. § 1452.

87. Due to the complexities of federal immigration law and the facts and circumstances of an individual's life and arrival into the United States, an individual can be a lawful United States citizen, and a resident of Montana, but lack documentary proof of their citizenship. Further, proof of the citizenship of such persons may involve factual determinations and the application of federal law. [*See e.g.. U.S. v. Breyer*, 841 F. Supp. 679, 684 (E.D. Pa. 1994); *Affidavit of Chris Chambers*, **Exhibit 7**; *Affidavit of Alisha Blair*, **Exhibit 1**.]

88. Proof of citizenship of such persons may not be established by use of the SAVE program, because such persons will have no information in this system, but may require additional factual and legal determinations to conclude whether the individual is a citizen of the United States and whether that person has unlawfully entered or remains unlawfully in the United States, per the definition of "illegal alien" in Section 1(6)(b) of the Act.

89. The Act confers unregulated discretion on the various state agencies and divisions of the State of Montana, and the offices of the Governor, Attorney General, and Commissioner of Higher Education, to make a determination that an applicant for any of the state services described in Section 1(6)(c) of the Act is an "illegal alien" and then requires the various state agencies and departments to turn this information over to DHS and deny the application.

90. The Act provides no opportunity for notice and hearing, or other methods to satisfy procedural or substantive due process, in the event a state agency determines an applicant is an "illegal alien" per section 6(b) of the Act, and denies the applicant any of the services or benefits described in the of the Act.

91. Under the Act an applicant may be a lawfully present citizen and be denied his or her fundamental rights under Article II, Section 3 of the Montana Constitution without due process of law. Such denial constitutes a denial of a protected liberty interest.

92. A dispute and actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of the Act. Plaintiffs contend that the Act is unconstitutional on its face, or on an as-applied basis, and cannot be enforced or implemented.

93. Plaintiffs seek a declaration under the Uniform Declaratory Judgment Act, Title 27, chapter 8, MCA, that the Act violates Article II, Sections 3 and 17 of the Montana Constitution, either facially or on an as-applied basis, and must be stricken.

VI. DECLARATORY JUDGMENT COUNT THREE: VIOLATION OF EQUAL PROTECTION, ARTICLE II, SECTION 4 OF THE MONTANA CONSTITUTION

94. Plaintiffs re-incorporate paragraphs 1-93, as though set forth in full hereunder.

95. Article II, Section 4 of the Montana Constitution states as follows: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

96. Article II of the Montana Constitution does not require a person to provide documentary proof of their citizenship in order to exercise or enjoy any of the fundamental rights enumerated therein.

97. The Act creates at least two similarly-situated classes of individuals and subjects them to disparate treatment.

98. One class consists of persons who are United States citizens, lawfully present in Montana, and have readily-available proof of their citizenship status.

99. The second class consists of persons who are United States citizens, lawfully present in Montana, who do not have readily-available proof of their citizenship status, or for whom proof of their citizenship status may involve factual determinations and the application of federal law. [*Affidavit of Blair,* **Exhibit 1**; *Affidavit of Chambers*, **Exhibit 7**.]

100. Both classes are similarly situated as lawful U.S. and Montana citizens entitled to the exercise of their fundamental rights under the law.

101. The Act impermissibly burdens this second class, serving as a barrier to the exercise of the fundamental rights of the members of this class, and does so without providing for procedural due process in the event a determination is made that the applicant is disqualified from receiving state services pursuant to Sections 2-4 of the Act, or otherwise classified as an "illegal alien."

102. The Act is not narrowly tailored to serve a compelling state interest, and is unconstitutional under Article II, Section 4 of the Montana Constitution.

103. Further, the disparate treatment of these two similarly situated classes is not reasonable and the state's interest in the classification does not outweigh value of the rights of the individuals in class number two. The Act is unconstitutional under Article II, Section 4 on this ground as well.

104. The classification of these two similarly situated classes also fails to serve a legitimate objective and such objective is not rationally related to the classification used by the Legislature. The Act is unconstitutional under Article II, Section 4 on this ground as well.

105. A dispute and actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of the Act. Plaintiffs contend that the Act is unconstitutional on its face, or on an as-applied basis, and cannot be enforced or implemented.

106. Plaintiffs seek a declaration under the Uniform Declaratory Judgment Act, Title 27, chapter 8, MCA, that the Act violates Article II, Section 4 on equal protection grounds, either facially or on an as-applied basis, and must be stricken.

VII. DECLARATORY JUDGMENT COUNT FOUR: FEDERAL PREEMPTION

107. Plaintiffs re-incorporate paragraphs 1-106, as though set forth in full hereunder.

108. The Supremacy Clause of the U.S. Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2.

109. Pursuant to the Supremacy Clause, federal law preempts a state or local regulation when (1) Congress expressly preempts state law; (2) Congressional intent to preempt may be

inferred from the existence of a pervasive federal regulatory scheme; or (3) state law conflicts with federal law or its purposes.

110. The Constitution affords the federal government the power to "establish a uniform Rule 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.

111. Congress has exercised its authority to make laws governing immigration and the status of aliens within the United States by enacting the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.*, and other laws regulating immigration. Congress has assigned to DHS, Department of Justice ("DOJ"), and Department of State ("DOS"), along with other federal agencies, the task of enforcing and administering these immigration-related laws.

112. As part of its immigration power, the federal government has exclusive authority to establish the terms and conditions for entry and continued presence in the United States, and to regulate the status of aliens within the boundaries of the United States. In other words, the federal government alone has the power to enact and to enforce regulations concerning which noncitizens to admit, exclude, remove or allow to remain in the United States.

113. Under federal law, both DHS and DOJ may, for humanitarian or other reasons, decline to exercise certain immigration penalties. Indeed, these agencies may grant an immigration benefit to an alien who entered unlawfully, is unlawfully present, or is removable, and can adjust that alien's immigration status to become a legal permanent resident (i.e. a "green card" holder), if the alien meets certain conditions. *See, e.g.*, 8 U.S.C. § 1158 (providing asylum eligibility for aliens, regardless of manner of admission, who have a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion); 8 U.S.C. § 1254a (providing temporary protected status for otherwise eligible

nationals of a foreign state that the Secretary of Homeland Security has specially designated as undergoing ongoing armed conflict, a natural disaster, or another extraordinary circumstance); 8 U.S.C. § 1227(a)(1)(E)(iii) (providing discretion to waive ground of deportability "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest" for aliens who are otherwise deportable for encouraging unlawful entry of an immediate family member); 8 U.S.C. § 1229b (granting the Attorney General discretion to cancel removal for certain aliens); former INA § 245(i) (allowing the beneficiary of a qualifying petition to apply to adjust status notwithstanding the fact that s/he entered without inspection, and still in effect for "grandfathered" aliens).

114. In the exercise of discretion, the administering federal agencies may also decide, among other things, to not to pursue removal of the alien if deferred federal enforcement furthers some other goal of the immigration system. *See* 8 U.S.C. § 1229c. For instance, on June 15, 2012, Secretary of Homeland Security Janet Napolitano announced a policy to permit certain noncitizens who entered the country illegally to lawfully remain in the United States through the Deferred Action for Childhood Arrivals ("DACA") program. [See www.uscis.gov/childhoodarrivals (last accessed December 6, 2012).]

115. The federal government has exclusive authority to classify noncitizens within this framework of laws regulating immigration. The states may not create their own distinct classifications of immigrants that differ from the classifications created by federal law. "The States enjoy no power with respect to the classification of aliens." *Plyler v. Doe*, 457 U.S. 202, 225, 102 S.Ct. 2382, 2399, 72 L.Ed.2d 786 (1982) (*citing Hines v. Davidowitz*, 312 U.S. 52, 61 S.Ct. 399, 85 L.Ed. 581 (1941)).

116. Section 6(b) of the Act defines an "illegal alien" as "an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States." This definition is preempted by federal law because it purports to create a classification of noncitizens that does not exist under federal laws.

117. The term "illegal alien" is not defined in the Immigration and Nationality Act ("INA") or other federal laws regulating immigration.

118. The definition in Section 6(b), read together with Section 1, would require a state agency to deny state services to any individual who unlawfully entered *or* remains unlawfully in the United States.

119. As described above in paragraphs 116-118, this classification of noncitizens conflicts with federal laws because there are numerous categories of noncitizens who unlawfully *entered* the United States, but do not unlawfully *remain* in the United States.

120. The Act may not intrude upon the framework of immigration regulations administered by the federal government and create a separate classification of noncitizens who are entitled to disparate rights and privileges. When a state agency utilizes the definition of "illegal alien" in Section 6(b) to grant or deny services, it impermissibly classifies the immigration status of applicants for services in a manner that conflicts with federal law.

121. A dispute and actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of the Act. Plaintiffs contend that the Act is pre-empted by federal law and cannot be enforced or implemented.

122. Plaintiffs seek a declaration under the Uniform Declaratory Judgment Act, Title 27, chapter 8, MCA, that the Act is preempted by the Supremacy Clause of the United States Constitution and cannot be enforced.

VIII. DECLARATORY JUDGMENT COUNT FIVE: VIOLATION OF EQUAL PROTECTION, ARTICLE II, SECTION 4 OF THE MONTANA CONSTITUTION

123. Plaintiffs re-incorporate paragraphs 1-122, as though set forth in full hereunder.

124. Article II, Section 4 of the Montana Constitution states as follows: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws."

125. Every time a state agency utilizes the definition of "illegal alien" in Section 6(b) to grant or deny services, it impermissibly discriminates among groups of lawfully residing noncitizens, by denying state services to noncitizens who unlawfully *entered* the United States, but do not unlawfully *remain* in the United States.

126. The Act is not narrowly tailored to serve a compelling state interest, is not reasonable, does not further a rational or legitimate objective, and is unconstitutional under Article II, Section 4 of the Montana Constitution.

127. A dispute and actual controversy has arisen and now exists between Plaintiffs and Defendants concerning the constitutionality and enforceability of the Act. Plaintiffs contend that the Act is unconstitutional on its face, or on an as-applied basis, and cannot be enforced or implemented.

128. Plaintiffs seek a declaration under the Uniform Declaratory Judgment Act, Title 27, chapter 8, MCA, that the Act violates Article II, Section 4 on equal protection grounds, either facially or on an as-applied basis, and must be stricken.

IX. COUNT SIX: PRELIMINARY INJUNCTION AGAINST ENFORCEMENT OF THE ACT

129. Plaintiffs re-incorporate paragraphs 1-128, as though set forth in full hereunder.

130. Plaintiffs seek the issuance of a preliminary injunction, pursuant to § 27-19-201, MCA, against enforcement of the Act during the pendency of this litigation.

131. A preliminary injunction does not determine the merits of the case, but rather. prevents further injury or irreparable harm by preserving the *status quo* of the subject in controversy pending adjudication on the merits.

132. Plaintiffs have demonstrated that they are entitled to the relief requested in Counts One through Five above, and the relief requested consists of restraining the Defendants from enforcing or implementing the Act during the pendency of this litigation.

133. As demonstrated above, the enforcement of the Act would produce great or irreparable injury to the Plaintiff, Alisha Blair, and affiant Chris Chambers, including the abrogation of their fundamental rights under Article II, Sections 3, 4, 10, and 17 of the Montana Constitution as alleged herein. Pursuant to § 27-19-104, MCA, all Plaintiffs serve notice that both Ms. Blair and Mr. Chambers may be contacted through undersigned counsel.

134. In addition to Plaintiff Blair and affiant Chambers, other Montana citizens who do not have documentary proof of their U.S. citizenship, or for whom proving they are not an "illegal alien" as defined in Section 1(6)(b) of the Act may involve factual determination or the application of federal law, are at risk of deprivation of their fundamental rights of Article II, Sections 3, 4, 10, and 17 of the Montana Constitution if the Act is enforced. The deprivation of these fundamental rights would constitute a great or irreparable injury.

135. Plaintiffs are also entitled to a preliminary injunction because it appears that if the Defendants enforce or implement the Act, they will commit an act in violation of Plaintiff Blair's fundamental rights under Article II, Sections 3, 4, 10, and 17, as well as the rights of affiant Chambers and other Montana residents exercising their fundamental rights under Article II of the Montana Constitution as described herein.

136. For these reasons, Plaintiffs are entitled to the issuance of preliminary injunction, against the Defendants enjoining enforcement or implementation of the Act, during the pendency of this litigation.

X. COUNT SEVEN: ISSUANCE OF TEMPORARY RESTRAINING ORDER

137. Plaintiffs re-incorporate paragraphs 1-136, as though set forth in full hereunder.

138. Section 27-19-314, MCA, permits a court to issue a temporary restraining order against an adverse party when the party applying for injunctive relief makes its application upon notice or an order to show cause.

139. As set forth below in their Prayer for Relief, Plaintiffs have applied for a preliminary injunction and specifically request an order to show cause why such relief should not be granted. Plaintiffs are also providing notice to all adverse parties that a preliminary injunction is sought.

140. Plaintiffs thereby seek a temporary restraining order from this Court enjoining implementation of the Act until a show cause hearing on Plaintiffs' application for a preliminary injunction has occurred.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

1. That the Court issue a temporary restraining order enjoining the Defendants from implementing or enforcing the Act until after a show cause hearing on Plaintiffs' application for a preliminary injunction;

2. That this Court grant Plaintiffs' application for a preliminary injunction and issue an order enjoining the Defendants from implementing or enforcing the Act during the pendency of this litigation;

3. That the Court enter a declaratory judgment pursuant to the Montana Declaratory Judgment Act, declaring that the Act is unconstitutional pursuant to some or all of the theories set forth above in Counts One, Two, Three, and/or Five;

4. That the Court enter a declaratory judgment pursuant to the Montana Declaratory Judgment Act, declaring that the Act is pre-empted by federal law under the Supremacy Clause of the U.S. Constitution as alleged above in Count IV;

5. That the Court enter such injunctive relief as appropriate to effectuate the declaratory judgment;

6. That Plaintiffs be awarded their attorney fees and costs, pursuant to the Declaratory Judgment Act and the Private Attorney General Doctrine; and

7. That the Court allow any further relief which it may deem just, equitable and proper.

DATED this 7 day of December, 2012.

MORRISON, MOTL AND SHERWOOD, P.L.L.P.

BY: _____
Brian J. Miller
Attorney for Plaintiffs

BORDER CROSSING LAW FIRM, P.C.

BY: _____
Shahid Haque-Hausrath
Attorney for Plaintiffs

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312 N. Ewing St., 2nd Floor
Helena, MT 59601
(406) 594-2004

Attorneys for Plaintiffs

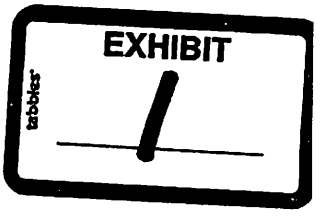
MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

* * * * * * * * * * * * *

MONTANA IMMIGRANT JUSTICE ALLIANCE, MEA-MFT, ALISHA BLAIR, Plaintiffs, v. GOVERNOR BRIAN SCHWEITZER, and STATE OF MONTANA, Defendants.	No.: _____ **AFFIDAVIT OF ALISHA BLAIR**

* * * * * * * * * * * * *

COMES NOW ALISA BLAIR and submits this Affidavit in support of Plaintiffs' Complaint for Injunctive and Declaratory Relief.



State of Montana)
:ss
County of Toole)

Alisha Blair of lawful age and first being duly sworn, deposes and says:

1. My name is Alisha Blair. I am 22 years old. I was born on October 17, 1990 in Lethbridge, Alberta, Canada, but I have lived in Montana since I was only one year old. I grew up and went to high school in Sunburst, and I am now living in Missoula. I have never lived in Canada.

2. My mother was a Canadian citizen, but my father was a U.S. citizen. I understand that I became a U.S. citizen at birth, because my father was able to transfer his citizenship to me, but I have lived my whole life without any proof of my U.S. citizenship.

3. I understand that my father could automatically pass his citizenship on to me if at the time I was born he had been in the United States for a total of 5 years, at least 2 of which were after he reached the age of 14. He definitely met these requirements and so I understand that I became a United States citizen at birth.

4. My father was born in Wisconsin on March 27, 1961. He lived in the U.S. until 1970, when he moved to Canada because my grandfather was a professor at the University of Lethbridge. When he was 18 years old, my father returned to the U.S. and between 1980-1985, he worked in the U.S. and he enlisted in the Air Force for a period of time.

5. Eventually, my father moved back to Canada to be with my mom, and that is where I was born. Soon after my birth, my whole family moved to Sunburst, Montana. I lived in Sunburst most of my life, and I recently moved to Missoula.

6. I have never had any visas or immigration papers, or any documents to prove that I am a U.S. citizen. I was able to get a driver's license when I was 18, but I am not sure if I would have been able to do so under the current laws.

7. When I graduated from high school, I applied to go to college at the University of Montana, and I was accepted. However, I was told that I was not eligible for financial assistance since I did not have proof of citizenship. I could not afford to pay the tuition and so I never went to college.

8. I do plan to go to college to study early childhood development, and one day I would like to open my own daycare. I am worried that under this new law, I would not be allowed admission to college. I am also worried about how it will affect me in other ways, like if I am ever the victim of a crime, need to apply for unemployment insurance, or want to apply for a license to practice a trade. I am worried about being denied my rights.

9. Further affiant sayeth not.

ERIC J CROMWELL NOTARIAL SEAL STATE OF MONTANA
ERIC J CROMWELL
Notary Public for the
State of Montana
Residing at Missoula, Montana
My Commission Expires
March 20, 2016

STATE OF MONTANA)
:ss.
COUNTY OF TOOLE)

ALISHA BLAIR, being first duly sworn, upon oath, deposes and says as follows:

I have read the foregoing Affidavit. The facts and matters contained therein are true, correct and complete to the best of my knowledge and belief.

Alisha A Blair
ALISHA BLAIR

SUBSCRIBED AND SWORN TO before me by ALISHA BLAIR this 6th day of December, 2012.

Eric J. Cromwell (signature)

LEGISLATIVE REFERENDUM NO. 121
BALLOT LANGUAGE

LEGISLATIVE REFERENDUM NO. 121

AN ACT REFERRED BY THE LEGISLATURE

AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

LR-121 prohibits providing state services to people who are not U.S. citizens and who have unlawfully entered or unlawfully remained in the United States. Under LR-121, every individual seeking a state service, such as applying for any state licenses, state employment, unemployment or disability benefits, or aid for university students, must provide evidence of U.S. citizenship or lawful alien status, and/or have their status verified through federal databases. State agencies must notify the U.S. Department of Homeland Security of noncitizens who have unlawfully entered or remained in the U.S. and who have applied for state services.

The costs associated with verifying U.S. citizenship or lawful alien status will vary by agency and cannot be precisely determined. However, on-going costs may include: hiring and training state personnel to use various federal databases; software, hardware and search charges; and information assessment and management costs.

[] FOR denying certain state services to illegal aliens.

[] AGAINST denying certain state services to illegal aliens.

THE COMPLETE TEXT OF HOUSE BILL NO. 638, REFERRED BY LR-121

AN ACT DENYING CERTAIN STATE-FUNDED SERVICES TO ILLEGAL ALIENS; ESTABLISHING PROCEDURES FOR DETERMINING A PERSON'S CITIZENSHIP STATUS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Certain state services denied to illegal aliens. (1) To the extent allowed by federal law and the Montana constitution and notwithstanding any other state law, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

(6) As used in this section, the following definitions apply:

(a) "Agency" means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) "Illegal alien" means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) "State service" means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

(i) employment with a state agency;

(ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

(iii) student financial assistance, as provided in Title 20, chapter 26;

(iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;

(v) unemployment insurance benefits, as provided in Title 39, chapter 51;

(vi) vocational rehabilitation, as provided in Title 53, chapter 7;

(vii) services for victims of crime, as provided in Title 53, chapter 9;

(viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;

(ix) a grant, as provided in Title 90.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 1, chapter 1, part 4, and the provisions of Title 1, chapter 1, part 4, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 534 is passed and approved, then [this act] is void.

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. If approved by the electorate, [this act] is effective January 1, 2013.

Section 6. Applicability. [This act] applies to the provision of a state service, as defined in [section 1], applied for or intended to be made on or after January 1, 2013.

Section 7. Submission to the electorate. [This act] shall be submitted to the qualified electors of Montana at the general election to be held in November 2012 by printing on the ballot the full title of [this act] and the following:

[] FOR denying certain state services to illegal aliens.

[] AGAINST denying certain state services to illegal aliens.

MEMORANDUM OF UNDERSTANDING
Between the
United States Department of Homeland Security,
U.S. Citizenship and Immigration Services
and
USER AGENCY

I. PARTIES

This Memorandum of Understanding (MOU) constitutes an agreement between the United States Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS-USCIS) and the _____ (User Agency).

II. PURPOSE

A. This MOU allows and governs the participation of the User Agency in the DHS-USCIS Systematic Alien Verification for Entitlements (SAVE) program for the purpose of verifying immigration status and information of non-citizens and certain U.S. citizen applicants for *{Benefit}*. The limited data provided to the User Agency will include (1) an initial response (initial verification) by SAVE to an online inquiry by the User Agency and (2) additional verification procedures where applicable. Initial verification and the additional verification procedures will provide the User Agency limited access to information contained in the Verification Information System (VIS) database to verify the alien registration number (A-number), arrival/departure record (I-94), and other citizenship and immigration status data of applicants for *{Benefit}*.

B. This MOU describes the responsibilities of DHS-USCIS and the User Agency for verifying immigration and certain citizenship status information and properly safeguarding, using, maintaining, and disclosing data transferred pursuant to the SAVE procedures set forth in this MOU and other SAVE program policy directives. The responsibilities of the Authorized employees and/or contractor personnel of DHS-USCIS and the User Agency will carry out the requirements of the MOU.

C. The User Agency certifies that it cannot procure the immigration status verification services requested pursuant to this MOU reasonably and expeditiously through ordinary business channels.

III. LEGAL AUTHORITIES

The authorities provided for in this MOU include, but are not limited to, the following:

Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 100 Stat. 2105

Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat 3359

Homeland Security Act of 2002, Title II-Information Analysis and Infrastructure Protection

Privacy Act, 5 U.S.C. section 552a

Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, as amended. *DMVs.*

User Agency Authorities

IV. IMPLEMENTATION

A. DHS-USCIS agrees to:

1. Maintain and make available to the User Agency in limited part and manner determined by DHS-USCIS after consultation with the User Agency, an immigration and certain citizenship status information verification system under the SAVE Program known as the Verification Information System (VIS), as described at 72 Federal Register 17569 (April 9, 2007);

2. Respond through VIS to inquiries from the User Agency by verifying the current immigration status of each alien applicant to the User Agency, as available;

3. Provide to the User Agency operating instructions necessary to use VIS, a sufficient number of verification User IDs to assure the effective implementation of the verification procedures, and instructions for obtaining necessary system access codes;

4. Provide the User Agency with the names, addresses, and telephone numbers of contact persons within the SAVE Program and its contractor who can be contacted regarding any questions or problems which arise in connection with the User Agency's participation in SAVE;

5. Process and respond to additional verification requests submitted by the User Agency through VIS or on Form G-845 (Document Verification Request). Response time may vary, depending on DHS-USCIS workload, resources available to process additional verification requests, and the applicant's specific circumstances;

6. Provide the User Agency a copy of Form G-845, which may be reproduced and/or computer-generated without prior DHS-USCIS approval; and

7. Provide to the User Agency training and information regarding initial and additional verification, relevant DHS-USCIS policy, safeguards regarding data, and DHS-USCIS administration of status verification.

B. The User Agency agrees to:

1. Provide to the SAVE Program available information necessary to verify alien applicants' immigration status, including (a) the alien registration number for initial verification, (b) additional information obtained from the alien's immigration documentation for automated additional verification, and (c) completed Forms G-845, copies of documents, and other information required for manual additional verification;

2. Provide the SAVE Program with the names, addresses, and telephone numbers of contact persons within the User Agency regarding any questions or problems which may arise in connection with the User Agency's participation in SAVE;

3. Pay any and all required fees for the provision of access to the SAVE database as set forth in section VII of this MOU;

4. Address and resolve all lawful requirements and recommendations regarding each and every finding of waste, fraud, abuse, or any misuse of the system, including but not limited to non-compliance with this MOU, SAVE Program procedures, or any applicable law, regulation, or policy;

5. Respond to all findings made by the DHS-USCIS Monitoring and Compliance Branch and take corrective measures as necessary to comply with all lawful requirements and recommendations;

6. Notify the SAVE Program immediately whenever there is probable cause to believe a violation of this MOU has occurred;

7. Notify the SAVE Program immediately whenever there is probable cause to believe an information breach has occurred as a result of User Agency action or inaction pursuant to the Office of Management and Budget (OMB) Memorandum M-07-16;

8. Become familiar with and comply with the SAVE User Manual & System Tutorials; and

9. Ensure each agency representative performing verification procedures completes the SAVE Web-Based Tutorial.

V. SAFEGUARDS REGARDING THE USE AND DISCLOSURE OF DATA

A. Participation of the User Agency in SAVE shall be conducted so as to verify immigration status without regard to the sex, color, race, religion, or nationality of the alien involved. DHS-USCIS and the User Agency shall comply with the Privacy Act, 5 U.S.C. Section 552a, and other applicable laws, regulations, and policies, including but not limited to all OMB privacy guidance, in conducting verification procedures pursuant to this MOU, and in the safeguarding, maintaining, and disclosing of any data provided or received pursuant to the MOU.

B. The User Agency agrees that any information provided by DHS-USCIS under this MOU may only be used for the purpose of determining the eligibility of persons applying for Benefit. The User Agency also agrees to limit its use of such information in accordance with this and all other provisions of this MOU.

C. The User Agency shall not disclose any information provided by DHS-USCIS under this MOU to any other person or entity without the prior written consent of DHS-USCIS. Each applicant seeking access to information regarding himself/herself may do so by submitting a written request to DHS-USCIS. The User Agency fully understands that this MOU does not permit it to use SAVE for the purpose of complying, or assisting any person or entity to comply, with the employment eligibility verification requirements of section 274A of the Immigration and Nationality Act, 8 U.S.C. section 1324a.

D. DHS-USCIS reserves the right to use information received by it from the User Agency for any purpose permitted by law, including the prosecution of violations of Federal criminal law.

E. DHS-USCIS will verify the immigration status of alien applicants pursuant to this MOU, but will make no recommendation to the User Agency whether to issue *{Benefit}*. The User Agency has the sole responsibility to determine the applicant's eligibility for *{Benefit}*.

F. The User Agency and DHS-USCIS agree to comply with the requirements of the Federal Information Security Management Act (FISMA (PL-107-347), Title III, Section 301) and applicable OMB guidance as applicable to electronic storage, transport of records between agencies, and the internal processing of records received by either agency under the terms of this Agreement. The User Agency and DHS-USCIS reserve any right that it may have to conduct onsite inspections to monitor compliance with FISMA during the lifetime of this agreement and any extension thereof.

VI. MONITORING AND COMPLIANCE

The User Agency agrees to allow DHS-USCIS, authorized agents of DHS-USCIS, and other DHS-USCIS designees to:

A. Monitor records and documents related to the use or improper use by the User Agency;

B. Conduct compliance inspections and review User Agency's SAVE-related policies, procedures, guidance, records, and associated documents, including, if appropriate, applicant consent forms relating to the Privacy Act, 5 U.S.C. section 552a, and other applicable law in conducting verification procedures pursuant to this MOU, and in the safeguarding, maintaining, and disclosing of any data provided or received pursuant to this MOU;

C. Interview any and all User Agency system users and any and all contact persons within the User Agency regarding any and all questions or problems which may arise in connection with the User Agency's participation in SAVE;

D. Perform audits of agency User IDs, SAVE Training Records, SAVE financial records, SAVE biographical information, system profiles and usage patterns; and

E. Take other steps to monitor and assure that the terms of this MOU are complied with regarding the use, maintenance and operation relating to SAVE and related to the payment of required fees to DHS-USCIS and its contractors for the provision of access to the USCIS-SAVE database by the User Agency.

VII. COMPENSATION

The User Agency shall pay the standard billing rates to the SAVE Program contractor or, upon written notice from USCIS, any other entity designated by DHS-USCIS.

The current standard billing rates are attached. The standard billing rates and methods of payment are subject to change upon prior written notification to the User Agency.

VIII. POINTS OF CONTACT

USCIS SAVE—David H. Bounds, Chief, SAVE Program, 490 L'Enfant Plaza East SW, Suite 8027, Washington, DC 20024-2135, (202) 358-7807.

USCIS SAVE Contractor—Computer Sciences Corporation, Attn: Gerard LaBerge, SAVE Program, 1001 G Street NW, 300 West, Washington, DC 20001, (202) 824-7791.

USER AGENCY—*Name, Title, Agency, Address, (???) ???-????*

- DHS-USCIS and the User Agency will update these points of contact as needed.

IX. PERIOD OF AGREEMENT AND MODIFICATION/TERMINATION

This agreement shall be effective when, and only when, (1) the DHS-USCIS authorized official and User Agency authorized official have both signed the agreement, and (2) the signatures occurred within 14 calendar days of each other. This MOU shall continue in effect unless (1) modified or terminated in writing by the mutual consent of both parties, or (2) terminated by either party upon 30 days prior written notice to the other party by certified or registered mail, return receipt requested.

This MOU and any annexes hereto may be amended or revised at any time upon the

mutual written consent of the parties.

DHS-USCIS may terminate this MOU without prior notice if deemed necessary because of a requirement of law or policy, upon a determination by DHS-USCIS that there has been a breach of system integrity or security by the User Agency, or a failure by the User Agency to comply with established procedures or legal requirements.

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees.

This MOU is limited to the provision of verification services. It is not intended to be, and should not be construed as, an opinion on the part of DHS-USCIS or the United States regarding any right or benefit under any program administered by the User Agency.

The foregoing constitutes the full agreement on this subject between DHS-USCIS and the User Agency.

The undersigned represent that they are authorized to enter into this MOU on behalf of DHS-USCIS and the User Agency, respectively.

David H. Bounds

Chief, SAVE Program
U.S. Citizenship and Immigration Services
Department of Homeland Security

Date

User Agency Representative

Date

VERIFICATION INFORMATION SYSTEM (VIS)
ACCESS METHODS, TRANSACTION CHARGES, AND REQUIRED EQUIPMENT
EFFECTIVE APRIL 1, 2005

ACCESS METHOD	TRANSACTION CHARGES	EQUIPMENT REQUIRED
Web-Based (Web 1, 2, and 3)	Initial Verification - $0.26 Additional Verification – Additional $0.48	Personal Computer with Internet access and a supported web browser (Internet Explorer 5.5 or newer, or Netscape 6.0 or newer, but not Netscape 7.0).
Computer Matching (SFTP Priority Batch)	Initial Verification - $0.20 Additional Verification – Additional $0.24	Internet access and Secure File Transfer Protocol (SFTP) connectivity. Custom software needed for formatting queries and interpreting the output file.
Web Services	Initial Verification - $0.20 Additional Verification – Additional $0.24	Internet access and commercial off-the-shelf software that enables development of a client web service application.

NOTE: A minimum monthly service fee of $25.00 is automatically billed to user agencies whose VIS query volume totals do not exceed $25.00. However, if no query of VIS is completed during the month, there is no charge.

Revised March 23, 2005

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

JUN 12 2012

The Honorable Ken Detzner
Secretary of State
Florida Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Dear Secretary Detzner:

Thank you for your May 31, 2012 letter to Janet Napolitano, Secretary of the Department of Homeland Security (DHS). In your letter, you expressed the need for the Florida Department of State's access to the federal government's Systematic Alien Verification for Entitlements (SAVE) Program in order to carry out Florida's examination of its voter registration rolls.

Your May 31, 2012 letter to Secretary Napolitano was referred to U.S. Citizenship and Immigration Services (USCIS) for a response. USCIS is the agency within DHS that operates the SAVE Program.

The SAVE Program provides a means for state government entities to verify documentation regarding naturalized U.S. citizens, U.S. citizens born abroad who derived citizenship from U.S. citizen parentage and who have acquired DHS certificates of citizenship, and the immigration status of defined categories of non-citizens. The SAVE Program relies on DHS records, which do not include a comprehensive and definitive listing of all U.S. citizens, including those born in the United States.

USCIS has continuously expressed its willingness to work with Florida regarding possible SAVE Program participation, provided Florida is able to do so consistent with the SAVE Program's mandates and the conditions USCIS has lawfully placed on all SAVE Program participants. To date, Florida has not complied with these requirements.

We understand that the U.S. Department of Justice has written to you separately regarding Florida's failure to comply with the Voting Rights Act and the National Voter Registration Act. In addition, and as USCIS explained to your Department as early as October 2011, the SAVE Program can verify naturalized and derived U.S. citizens and the status of non-citizens only if unique identifiers, such as alien registration numbers or certificate numbers found on immigration-related documents, are provided. To ensure accurate verification of current status, and as a general requirement applied to all users of the program, the SAVE Program does not allow verification based on name and/or date of birth alone. As a general requirement applied to all users of the program, the SAVE Program also requires users to submit copies of the immigration-related documents if needed to complete the verification process. This is necessary

EXHIBIT
tabbies 4

to ensure the accuracy of information provided under the SAVE Program. While to date Florida has not been able to provide the required information to USCIS, USCIS remains willing to work with your Department to achieve Florida's participation in the SAVE Program. Florida must comply with all applicable laws and the SAVE Program's mandates, which apply to all SAVE Program participants.

Other state governments have been able to comply with the SAVE Program's mandates and are accessing the SAVE Program for a wide variety of benefit programs. Five counties in the State of Arizona do so for the purpose of verifying the eligibility of individuals registering to vote: Maricopa, La Paz, Pima, Yavapai, and Yuma. We look forward to continuing to work with Florida on its inquiries regarding its access to the SAVE Program as well.

Sincerely,

Alejandro N. Mayorkas
Director

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Verification Division, MS-2600
131 M Street, N.E., Suite 200
Washington, DC 20529-2600

U.S. Citizenship and Immigration Services

RECEIVED
AUG 11 2010
By AHCCCS

Tom Betlach
Director
Arizona Health Care Cost Containment System
801 E. Jefferson Street, MD 4100
Phoenix, AZ 85034

August 4, 2010

Dear Mr. Betlach:

Your agency currently uses the Systematic Alien Verification for Entitlements (SAVE) program operated by U.S. Citizenship and Immigration Services (USCIS), within the U.S. Department of Homeland Security. SAVE provides benefit-granting agencies with an applicant's U.S. immigration status information to assist agencies in making benefit eligibility determinations, thereby ensuring that only eligible applicants receive Federal, state or local public benefits and licenses. We would like to take this opportunity to remind you of certain important rules governing your agency's use of the program, including the prohibition against using SAVE to conclude that an individual is in violation of U.S. immigration law. We also request that your agency make two changes to recently-issued guidance, to ensure that it is consistent with Federal guidance on the appropriate use of SAVE.

First, SAVE may not be used to conclude that an applicant for benefits is in violation of immigration law, and a SAVE response is not a verification by a Federal agency of such a violation. Simply stated, a SAVE response is relevant only to a benefit eligibility determination; none of SAVE's status responses affirmatively verify that an applicant is not lawfully present in the United States. See the attached Federal guidance entitled "Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' Is Not Lawfully Present in the United States," which states: "A [SAVE] response showing no [DHS] record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present."[1] The Arizona Office of Attorney General has issued an Opinion on Reporting Requirements in A.R.S. I-501 and I-502 (HB 2008) which reiterates the same guidance.[2]

[1] 65 Fed. Reg. 58303 (28 Sept. 2000).
[2] Arizona Attorney General Opinion, Reporting Requirements in A.R.S. 1-501, -502; No. 110-004, at 7 (March 24, 2010).

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Similarly, the fact that an immigration document has expired should not be interpreted to suggest an applicant is in violation of his or her immigration status, contrary to your agency's guidelines on HB 2008, dated November 24, 2009.[3] Although a document may have expired, the individual may *still* remain in legal status. For example, lawful permanent residents, refugees, and asylees remain in status even though documentation may have expired. This may also extend to other immigration statuses, including persons with Temporary Protected Status. Consequently, to prevent any misuse of the information SAVE provides, including incorrect determinations regarding benefits eligibility, we request that you amend your agency's November 2009 guidance to remove the following phrase from Section III(A)(2): "You discover, through the SAVE verification process, that the individual's immigration document is expired; or....". Additionally, we request that you add the following text to Part III (B): "A response from the SAVE program is not a determination that a person is in violation of Federal immigration law."

In addition to following Federal guidance on the appropriate use of SAVE, each agency must enter into a Memorandum of Agreement (MOA) with the Department of Homeland Security, which also governs the permissible uses of the SAVE program. Section IV of the SAVE – Health Care Cost Containment System MOA, executed by the agency on May 28, 2009, specifically limits the use of immigration information to "determining the eligibility of persons applying" for benefits. This statement recognizes that the SAVE program is not designed to identify individuals who do not possess lawful status.

Second, an agency that shares information received from SAVE outside of that agency, other than with the U.S. Department of Homeland Security, may be in violation of its MOA and Federal law. The use of information gleaned from the SAVE program is restricted by the Privacy Act, 5 U.S.C. Section 552a, and your agency's signed MOA, both of which protect the privacy rights of individuals and work to ensure that the information is used only for lawful purposes. Section IV(B)(1)(k) of the MOA expressly prohibits the sharing of information provided by SAVE to any "person or entity without the prior written consent of the DHS."

Please notify SAVE immediately if any person on your staff shares or intends to share information obtained from the SAVE program, directly or indirectly, with persons within your agency who do not need such information to make a benefit determination, or persons outside your agency, not to include DHS or its component agencies. Failure to report this information would violate Section IV(B)(2)(b) of the MOA.

Third, failure to conduct all necessary SAVE verification steps, a violation of MOA Section IV(B)(1)(c), could result in the improper denial of benefits. To ensure that SAVE is responding to an agency with the most accurate immigration status information available, it is sometimes necessary to conduct additional steps. Therefore, the program requires that each agency complete all necessary additional verification procedures as prompted by the SAVE system. Continued access to SAVE requires correct use. We are committed to helping your agency use SAVE correctly, and we are available to provide additional training, if that would be helpful. We monitor the use of SAVE to

[3] See http://azahcccs.gov/reporting/downloads/legislation/2009third/hb2008_ahcccspolicy.pdf

help ensure that it is used correctly. In addition, the fact that a system response prompts the agency to Institute Additional Verification (IAV) is not an indicator that an individual lacks legal status or is ineligible for the benefit being sought. [4]

SAVE also requires users to provide benefit applicants with information about their rights under the program. Specifically, MOA Section IV(B)(1)(n) requires users to direct benefit applicants to the Department of Homeland Security in the event that the applicants believe that a SAVE response is inaccurate. If the benefit applicant has questions regarding his or her immigration status or the SAVE query, users must provide the applicant with the information necessary to contact USCIS so that the individual may seek to correct DHS records in a timely manner, if necessary. Please see the attached Fact Sheet entitled, "Information for Applicants: Verification of Immigration Status and How to Correct Your Record with USCIS."

Finally, authorized users may run queries only on benefit applicants. For instance, if a child is seeking benefits, then an authorized user may not run a SAVE query on his or her parent. Doing so violates the MOA at section III and paragraph IV.B(1)(i), and may subject the user agency to a loss of SAVE privileges.

In addition to the obligations outlined above, please also note that an agency receiving Federal financial assistance is subject to a number of nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, which prohibits discrimination against individuals based on their race, color, or national origin, and Section 504 of the Rehabilitation Act of 1973, which prohibits federally assisted programs from discriminating against individuals on the basis of a disability. Agencies should also be mindful of their obligations under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits recipients from discriminating on the basis of sex in a federally supported education program. To ensure compliance with Federal anti-discrimination laws, state and local programs that receive Federal financial assistance must operate in a non-discriminatory manner, and not—intentionally or unintentionally—exclude, deny or otherwise discriminate against individuals on any of these bases.

In conclusion, SAVE's mission is to provide its customers with immigration status information to assist agencies in making benefit eligibility determinations. The program was not designed to identify persons who are not lawfully present in the United States and does not generate documentation to support such determinations.

Thank you for your attention in this matter. If you have any questions or concerns, please contact me at 202-443-0002. And as always, your staff may contact the SAVE program anytime at SAVE.HELP@dhs.gov or 1-888-464-4218.

[4] See, SAVE Program Guide, Section 3.3, located in the Verification Information System Online Resources section.

Sincerely,

Howard McMillan
Chief, Verification Division
U.S. Citizenship and Immigration Services

ATTACHMENTS: "Responsibility of Certain Entities To Notify the Immigration and Naturalization Service of Any Alien Who the Entity 'Knows' Is Not Lawfully Present in the United States"
"Information for Applicants: Verification of Immigration Status and How to Correct Your Record with USCIS"
"Memorandum of Agreement Between the Department of Homeland Security, U.S. Citizenship and Immigration Services, and Arizona Health Care Cost Containment System"

CITIZENS WITHOUT PROOF:

A SURVEY OF AMERICANS' POSSESSION OF DOCUMENTARY PROOF OF CITIZENSHIP AND PHOTO IDENTIFICATION

Summary

A recent national survey sponsored by the Brennan Center for Justice at NYU School of Law reveals that millions of American citizens do not have readily available documentary proof of citizenship. Many more – primarily women – do not have proof of citizenship with their current name. The survey also showed that millions of American citizens do not have government-issued photo identification, such as a driver's license or passport. Finally, the survey demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of documentation than the general population.

From November 16-19, 2006, the independent Opinion Research Corporation conducted a telephone survey of 987 randomly selected voting-age American citizens.[1] The survey included several questions sponsored by the Brennan Center, asking whether respondents had readily available documentary proof of citizenship or government-issued photo identification, and if so, whether it contained current information:

> 1) Do you have a current, unexpired government-issued ID with your picture on it, like a driver's license or a military ID?
>
> 2) If yes, does this photo ID have both your current address AND your current name (as opposed to a maiden name) on it?
>
> 3) Do you have any of the following citizenship documents (U.S. birth certificate/U.S. passport/U.S. naturalization papers) in a place where you can quickly find it if you had to show it tomorrow?
>
> 4) If yes, does [that document] have your current name on it (as opposed to a maiden name)?

[1] Scholars recognize that many telephone surveys underrepresent low-income and minority households. *See, e.g.*, Stephen J. Blumberg et al., Telephone Coverage and Health Survey Estimates: Evaluating the Need for Concern About Wireless Substitution, 96 AM. J. PUBLIC HEALTH 926 (2006); U.S. BUREAU OF THE CENSUS, STATISTICAL BRIEF: PHONELESS IN AMERICA (1994), at http://www.census.gov/apsd/www/statbrief/sb94_16.pdf. Although the results of this survey were weighted to account for underrepresentation of race, they were not weighted to account for a likely skew toward higher-income households. Because the survey found that low-income households were less likely to have documentary proof of citizenship or photo ID, it is therefore likely that the survey results actually underestimate the total number of American citizens who do not have readily available documentation.

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Survey results: proof of citizenship

As many as 7% of United States citizens – 13 million individuals – do not have ready access to citizenship documents. Seven percent of the American citizens surveyed responded that they do not have ready access to U.S. passports, naturalization papers, or birth certificates.[2] Using 2000 census calculations of the citizen voting-age population, this translates to more than **13 million** American adult citizens nationwide who cannot easily produce documentation proving their citizenship.[3]

Citizens with comparatively low incomes are less likely to possess documentation proving their citizenship. Citizens earning less than $25,000 per year are more than twice as likely to lack ready documentation of their citizenship as those earning more than $25,000.[4] Indeed, the survey indicates that at least **12 percent** of voting-age American citizens earning less than $25,000 per year do not have a readily available U.S. passport, naturalization document, or birth certificate.[5]

Documentation proving citizenship often does not reflect the citizen's current name. Many of those who possess ready documentation of their citizenship do not have documentation that reflects their current name. For example, survey results show that only 48% of voting-age women with ready access to their U.S. birth certificates have a birth certificate with current legal name[6] – and only 66% of voting-age women with ready access to *any* proof of citizenship have a document with current legal name.[7] Using 2000 census citizen voting-age population data, this means that as many as **32 million** voting-age women may have available only proof of citizenship documents that do not reflect their current name.

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[2] Unless otherwise indicated, the margin of error for these survey results, to a 95% confidence level, is ±2%.
[3] We note that 135 respondents indicated that they had *both* a U.S. birth certificate and U.S. naturalization papers. This most likely indicates confusion on the part of the respondents, who might not have understood what a "naturalization certificate" is. Because these 135 individuals most likely do possess some documentary proof of citizenship, whether birth certificate or naturalization papers, they have been included for purposes of these results with survey respondents who indicated that they do possess citizenship documents. If these 135 respondents were excluded from the total sample, the remaining population would have revealed an even larger portion (nine percent) without documentary proof of citizenship.
[4] The survey did not yield statistically significant results for differential rates of possession of citizenship documents by race, age, or other identified demographic factors.
[5] The margin of error for this particular result, to a 95% confidence level, is ±5%.
[6] The margin of error for this particular result, to a 95% confidence level, is ±5%.
[7] The margin of error for this particular result, to a 95% confidence level, is ±4%.

Survey results: photo identification

As many as 11 percent of United States citizens – more than 21 million individuals – do not have government-issued photo identification. Eleven percent of the American citizens surveyed responded that they do not have current, unexpired government-issued identification with a photograph, such as a driver's license or military ID.[8] Using 2000 census calculations of the citizen voting-age population, this translates to more than **21 million** American adult citizens nationwide who do not possess valid government photo ID.

Elderly citizens are less likely to possess government-issued photo identification. Survey results indicate that seniors disproportionately lack photo identification. **Eighteen percent** of American citizens age 65 and above do not have current government-issued photo ID.[9] Using 2005 census estimates, this amounts to more than **6 million** senior citizens.

Minority citizens are less likely to possess government-issued photo identification. According to the survey, African-American citizens also disproportionately lack photo identification. **Twenty-five percent** of African-American voting-age citizens have no current government-issued photo ID, compared to eight percent of white voting-age citizens.[10] Using 2000 census figures, this amounts to more than **5.5 million** adult African-American citizens without photo identification. Our survey also indicated that sixteen percent of Hispanic voting-age citizens have no current government-issued photo ID, but due to a low sample size, the results did not achieve statistical significance.[11]

Citizens with comparatively low incomes are less likely to possess photo identification. Citizens earning less than $35,000 per year are more than twice as likely to lack current government-issued photo identification as those earning more than $35,000. Indeed, the survey indicates that at least **15 percent** of voting-age American citizens earning less than $35,000 per year do not have a valid government-issued photo ID.[12]

Photo identification often does not reflect current information. For many of those who possess current, valid government-issued photo ID, the documentation does not reflect their current information. For example, survey results show that ten percent of voting-age citizens who have current photo ID do not have photo ID with both their current address and their current legal name. The rate is higher among younger citizens: as many as **18 percent** of citizens aged 18-24 do not have photo ID with current address and name; using 2004 census tallies, that amounts to almost **4.5 million** American citizens.[13]

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[8] This figure is consistent with official government estimates. The 2005 Carter-Baker Commission, for example, cited the U.S. Department of Transportation and the U.S. Census Bureau in finding that approximately twelve percent of the national voting-age population does not possess a driver's license. Commission on Federal Election Reform, Building Confidence in U.S. Elections, at 73 n.22 (2005).
[9] The margin of error for this particular result, to a 95% confidence level, is ±6%.
[10] The margin of error for this particular result, to a 95% confidence level, is ±8%.
[11] The margin of error for this particular result, to a 95% confidence level, is ±7%.
[12] The margin of error for this particular result, to a 95% confidence level, is ±4%.
[13] The margin of error for this particular result, to a 95% confidence level, is ±7%.

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Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

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MONTANA IMMIGRANT JUSTICE ALLIANCE, MEA-MFT, ALISHA BLAIR, Plaintiffs, v. GOVERNOR BRIAN SCHWEITZER, and STATE OF MONTANA, Defendants.	No.: _____ **AFFIDAVIT OF CHRIS CHAMBERS**

* * * * * * * * * * * * *

COMES NOW CHRIS CHAMBERS and submits this Affidavit in support of Plaintiffs' Complaint for Injunctive and Declaratory Relief.

State of Montana)
:ss
County of Ravalli)

Chris Chambers of lawful age and first being duly sworn, deposes and says:

1. My name is Chris Chambers. I live and work in Hamilton, Montana. I was born on August 15, 1968 in Red Deer, Alberta, Canada. My mother was a Canadian citizen, and my father was a U.S. citizen.

2. I am a U.S. citizen, because my father transferred his citizenship to me. However, I don't currently have documentary proof of my U.S. citizenship.

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3. Under the laws that existed at the time of my birth, I understand that my father could automatically transmit his citizenship to me if he had resided in the United States for a total of 10 years, at least 5 of which were after he reached the age of 14. He met these requirements and I understand that I became a citizen at birth.

4. My mother and father divorced when I was around five years old, and my mother remarried. My stepfather legally adopted me and my brother and sisters, and we moved to Montana. I've been living here ever since.

5. Although I know that I am a U.S. citizen, I have never had any documentation to prove it. I have my Canadian birth certificate, my father's U.S. birth certificate, and other documentation that establishes how I came to acquire citizenship under the law, but I may not be able to prove to the State of Montana that I'm not an illegal alien under House Bill 638, which is soon to be the law in Montana.

6. I am a taxpaying citizen, and I am concerned that if I lose my job and need to apply for unemployment benefits, or need to access other state services, I may be wrongly denied because I can't prove my citizenship.

7. Further affiant sayeth not.

STATE OF MONTANA)
:ss.
COUNTY OF RAVALLI)

CHRIS CHAMBERS, being first duly sworn, upon oath, deposes and says as follows:

I have read the foregoing Affidavit. The facts and matters contained therein are true, correct and complete to the best of my knowledge and belief.

Chris Chambers
CHRIS CHAMBERS

SUBSCRIBED AND SWORN TO before me by CHRIS CHAMBERS this 3rd day of December, 2012.

Cass Cooper (signature)

CASS COOPER
NOTARY PUBLIC for the
State of Montana
Residing at Victor, Montana
My Commission Expires
October 27 2015