

Supreme Court of the State of New York  
County of New York

\_\_\_\_\_  
MARIA CUBAS, ROBERT McINTYRE, ERIS LUMI  
John Doe I, John Doe II, John Doe III, and  
John DOE IV,

X

Plaintiffs,

CIVIL ACTION  
Index No. \_\_\_\_\_

-against-

CLASS ACTION  
VERIFIED COMPLAINT

[JURY TRIAL  
REQUESTED]

GEORGE PATAKI, Governor of New York,  
in his Official and Individual capacity; and  
RAYMOND P. MARTINEZ, Commissioner,  
in his Official and Individual capacity;  
New York State Department of Motor Vehicles,

Defendants.

\_\_\_\_\_  
X

Plaintiffs, by their attorneys the Puerto Rican Legal Defense & Education Fund, affirm  
and declare the following:

## **PRELIMINARY STATEMENT**

1. Over the past several months, the New York State Department of Motor Vehicles (“DMV”) has notified hundreds of thousands of New York State residents holding valid driver’s licenses and non-driver identification cards that their Social Security Number (“SSN”) information must be verified because it does not match information from the Social Security Administration (“SSA”).

2. Without lawful authority or standards, DMV has then denied requests by these license and cardholders to renew their licenses or cards if the holder is not able to produce an acceptable SSN or otherwise document the legality of their immigration status to DMV’s satisfaction. DMV has not given these license holders any written notice of these denials nor an opportunity to contest DMV’s action as mandated by the State and Federal Constitutions. Raising the specter of substantial social disruption, DMV has publicly stated that it anticipates suspending the licenses and cards of 300,000 individuals in the coming months.

3. Plaintiffs, all of whom have been denied licenses or cards due to these unlawful policies and practices, face extreme hardship and deprivation as a result of DMV’s actions. Many are at risk of losing their livelihoods and becoming unable to support themselves, their spouses, children, parents or other dependents. Others face problems taking their children to school and obtaining necessary food, medical care, shelter and other vital services.

4. The population targeted by DMV’s actions consists, for the most part, of immigrants, giving rise to the widespread belief that their actions have less to do with motor vehicle regulation and more to do with the post-September 11 anti-immigrant

frenzy that has resulted in official actions at all levels of government that are discriminatory, arbitrary and unlawful. The actions at issue are no exception.

5. Though Defendants Pataki and Martinez claim all of their actions serve security purposes, certain of their actions are clearly and solely intended to ensure that the targeted class has legal immigration status. That is the responsibility of the federal government, not a state motor vehicle agency. In fact, by denying these licenses and cards, Defendants frustrate their own ability to regulate these residents in any way as the State will lose track of the whereabouts of hundreds of thousands of its own residents and will no longer be able to compel them to comply with insurance and other critical governmental mandates.

6. On behalf of the class of New York State residents who have been denied or will imminently be denied driver's licenses because of their inability to obtain a Social Security card or to document their lawful immigration status, Plaintiffs bring this action seeking declaratory and injunctive relief to prohibit DMV's unlawful and discriminatory practices and to restore licenses wrongfully denied.

### **VENUE**

7. Venue lies in this court as Defendant DMV's acts, decisions, and other material events have arisen within this judicial district. CPLR Sec. 506(b). Similarly, at least one of the parties resides within New York County where this court is situated. CPLR Sec. 503(a).

### **CLASS ACTION ALLEGATIONS**

8. The action is brought as a class action pursuant to the provisions of Article Nine of the CPLR. The class consists of New York State residents who have been denied

driver's licenses and identification cards because they were unable to produce an acceptable SSN and/or otherwise document their legal immigration status to DMV's satisfaction.

9. The exact number of Plaintiffs' class members is not known. Plaintiffs estimate that the class includes hundreds of thousands of New York residents and thus is so numerous that joinder of individual members is impractical. The number and identities of the class members can only be ascertained through appropriate discovery.

10. Questions of law and fact common to the class predominate over any questions affecting only individual members of the class.

11. The common questions of fact are:

a. Whether the denials of class members' driver's licenses are due to Defendants' policy and practice to deny licenses and cards to persons unable to provide an acceptable Social Security Number (SSN) and/or document their legal immigration status; and

b. Whether the licenses of class members are being denied by Defendants without the provision of written notice of the denial and the opportunity to be heard.

12. The common questions of law are:

a. Whether Defendants' policy and practice that State residents must either produce an acceptable Social Security number or be able to document their lawful immigration status in order to be eligible to obtain a driver's license is in excess of statutory authority;

b. Whether Defendants are obligated to promulgate, pursuant to the procedures set forth in the State Administrative Procedures Act (SAPA), its requirement that a State resident must be able to produce an acceptable SSN and/or otherwise

document their legal immigration status in order to be eligible to obtain a driver's license; and

c. Whether Defendants' policy and practice that State residents must either produce an acceptable Social Security number or be able to document their lawful immigration status in order to be eligible to obtain a driver's license without providing written notice of the denial of the opportunity to be heard violated the due process clauses of the United States and New York Constitutions.

13. The claims of the individually named Plaintiffs are typical of the claims of the Plaintiff class members. The Plaintiffs and all members of the Plaintiff class have been similarly affected by the Defendants' course of conduct and the members of the class have similarly situated claims and causes of action against the Defendants.

14. There is no conflict between the named Plaintiffs and other class members with respect to this action or the claims and requested relief herein. The claims or defenses of the representative parties are typical of the claims or defenses of the class.

15. Plaintiffs and their attorneys are able to and will fairly and adequately protect the interest of the class. Plaintiffs' attorneys can vigorously prosecute the rights of the proposed class members.

16. The prosecution of separate actions by individual Plaintiffs is not feasible or efficient and would be unduly burdensome. Individual prosecution will create the risk of inconsistent and varying adjudications and will establish incompatible standards of conduct for the Defendants.

17. A class action is superior to the other available methods for the fair, just and efficient adjudication of the controversy.

18. The class action device allows a single court to provide the benefits of a single

adjudication, conserving judicial economy and the fair and equitable handling of all of Plaintiffs' claims in a single action and forum.

### **PARTIES**

19. Plaintiff Maria CUBAS has been a resident of Bronx County since 1996.
20. Plaintiff Robert Mc INTYRE has been a resident of Queens County since 1992.
21. Plaintiff John DOE I has been a resident of New York County since 1995.
22. Plaintiff John DOE II has been a resident of Queens County since 1998.
23. Plaintiff John DOE III has been a resident of Queens County since 1988.
24. Plaintiff John DOE IV has been a resident of Kings County since 1985.
25. Plaintiff Eris Lumi has been a resident of Kings County since 2001.
26. Defendant George PATAKI is the Governor of the State of New York and its chief executive officer.
27. Defendant Raymond P. MARTINEZ is the Commissioner of the New York State Department of Motor Vehicles. In his official capacity, he is authorized to establish regulations and rules for the DMV and to enforce its statutory, regulatory and licensing functions.

### **STATEMENT OF FACTS**

#### **DMV's Policy Regarding Licenses and Identification Cards**

28. DMV issues driver's licenses, learner's permits and non-driver identification cards to residents of New York.
29. In order to receive a license or identification card, a resident submits an application to DMV and must furnish proof of identity, age, and fitness. VTL 502(a).
30. DMV, by administrative action, devised a point system for applicants to document

his or her age and identity.

31. Under that point system certain specified documents are assigned certain point values, and the applicant is required to produce a minimum of six (6) points of acceptable documents in the aggregate.

32. Prior to 1995, an applicant was not required to provide a Social Security number in order to obtain a license. In 1995, as part of New York State's omnibus legislation to improve child support enforcement, the legislature amended VTL Sec. 502(a) so as to require residents to provide their Social Security number (SSN), if they had one, in order to receive a license.

33. Pursuant to that legislative enactment, DMV promulgated regulations to require that an applicant either present his or her Social Security number (SSN) or, *in the alternative*, provide proof of SSN ineligibility by presenting a Letter of Ineligibility (SSA L-676) from the United States Social Security Administration (SSA). 15 NYCRR 3.9.

#### DMV's Use of SSNs to Implement its 'Legal Presence' Policy

34. Upon information and belief, in or around 2003, Defendants entered into a set of agreements with the SSA, memorialized at least in part by Memoranda of Understandings, to exchange and compare certain data regarding license holders or applicants.

35. Upon information and belief, beginning from December 2003 on, DMV began cross-referencing the data for all license and cardholders in the State with the SSA's database to determine if the data from the two databases matched.

36. Upon information and belief, of the eleven million New York licenses and cards issued and valid as of 2004, the data from at least six hundred thousand of those licenses or cards did not match the information in the SSA database.

37. Starting in or about January 2004, DMV began mailing "Verification Letters" to those license and cardholders whose SSN data failed to match the SSA database.

38. DMV's letter directs the holder to respond and verify his or her SSN data within 15 days and warns that a failure to do so will result in further unspecified adverse action, including possible suspension.

39. Thereafter, when those persons have sought to renew their licenses or cards, they have been informed by DMV personnel that they must produce acceptable SSNs or, in many instances, otherwise document their legal immigration status to DMV's satisfaction.

40. Persons who failed to produce either a SSN or other documentation demonstrating legal immigration status have been denied renewal of their licenses or identification cards.

41. These actions by DMV are not authorized by, or being conducted pursuant to, any legislative authority, promulgated regulation, written standards, or any other published rule making but have been, upon information and belief, authorized by Defendants George Pataki and Raymond P. Martinez.

### **PLAINTIFFS' FACTS**

#### **Plaintiff ROBERT McINTYRE**

42. Plaintiff ROBERT McINTYRE had a New York State driver's license issued to him in 1996 with an expiration date of August 4, 2004. He has had no prior convictions or arrests for the use or operation of a motor vehicle and is otherwise fit to operate a motor vehicle.

43. In or about April 2004, he received the DMV Verification Letter stating that the

SSN data he had submitted did not match information in the SSA database and that he had to verify his SSN data within 15 days or else risk the suspension of his license.

44. He is not eligible for a Social Security number and did not respond to that letter.

45. In early August 2004, he went to the DMV Office in College Point in Queens County to renew his driver's license.

46. He spoke with the DMV supervisor who told him he could not renew his driver's license if he was not able to present an acceptable Social Security number.

47. He left the DMV without being able to renew his driver's license

48. He was never given any written notice of this denial of his request to renew his license nor of his opportunity to contest the denial.

49. He needs to have a driver's license in order to take his infant daughter to see medical specialists required for treatment of seizures.

50. He also needs to have access to a car because as a shipping consultant, he is required to visit clients at their offices and residences in the tri-state metropolitan New York area.

#### Plaintiff John DOE I

51. Plaintiff John DOE I received an identification card in 2000, a driver's license in 2000, and a commercial driver's license in 2001. He has had no prior convictions or arrests for the use or operation of a motor vehicle and is otherwise fit to operate a motor vehicle. He is an automobile body parts mechanic.

52. He received the DMV Verification Letter sometime in March 2004. He is not eligible to receive a Social Security number and did not respond to that letter.

53. As his license was to expire in April 2004, Plaintiff made several attempts to renew his license before its expiration.

54. In March 2004, DMV denied John DOE I's request to renew his license at the DMV College Point Office in Queens County because he did not have a Social Security card and could not prove his lawful immigration status.

55. He obtained a Social Security Administration Letter of Ineligibility (SSA L-676). ("SSA Letter of Ineligibility")

56. On April 29, 2004, he went to the DMV on Greenwich Street in Manhattan to renew his license.

57. He presented his SSA Letter of Ineligibility, his driver's license, foreign passport, and other identity documents.

58. The DMV staff would not process his application and denied his license renewal application because he could not prove his legal status.

59. He was never given any written notice of this denial of his request to renew his license nor of his opportunity to contest the denial.

60. As a result of losing his driver's license and the use of his car, he has not been able to attend his regular evening religious mass nor provide voluntary services to his congregation.

61. Because of his concerns about possible harassment and retaliation, Plaintiff John DOE I wishes to bring this action under a pseudonym or fictitious name.

Plaintiff John DOE II

62. Plaintiff John DOE II has been employed as a professional asbestos removal handler since 2000.

63. Asbestos handler licenses are annually renewed under certification procedures set by the State Department of Labor (DOL).

64. In mid-2003, the DOL entered into a Memorandum of Understanding with the

DMV whereby DMV would take over the processing of photographs for all applicants of asbestos licensees seeking certification in asbestos-related occupations. (Prior to July 2003, the DOL generated photographs for all job titles needing asbestos certifications.)

65. Asbestos licenses and certificates that expired after July 1, 2003, were required to have photo identification generated by DMV and to use the DMV License number or Client ID number on the DOL applications.

66. On or about June 29, 2004, Plaintiff John DOE II went to the DMV Office in Manhattan to apply for a DMV photo identification card.

67. He produced a SSA Letter of Ineligibility and various identity documents.

68. The DMV denied his application stating that he was ineligible to obtain a DMV document based on his lack of current immigration status.

69. He was never given any written notice of this denial of his request to renew his license nor of his opportunity to contest the denial.

70. As a result, he was not able to recertify his asbestos-handling license. He has suffered a sharp reduction in income, as he no longer can obtain employment in a lucrative yet hazardous profession that he has trained and worked in.

71. Because of his concerns about possible harassment and retaliation, Plaintiff John DOE II wishes to bring this action under a pseudonym or fictitious name.

Plaintiff John DOE III

72. Plaintiff John DOE III was issued his first driver's license by DMV in 1991. His last license was issued in 1999, with an expiration date in April 2004. He has had no prior convictions or arrests for the use or operation of a motor vehicle and is otherwise fit to operate a motor vehicle.

73. Until his license expired, John DOE III had been a taxicab and livery driver for

over twelve years.

74. On April 29, 2004, he went to the DMV Office on Greenwich Street in Manhattan to renew his license. He presented his SSA Letter of Ineligibility, his driver's license, foreign passport and other identity documents.

75. The DMV staff would not process his application and denied his license renewal application.

76. DMV supervisors told him that because he could not prove his legal status, he would not be allowed to renew his license. One supervisor stated that she was authorized to deny his renewal application under homeland security laws.

77. He was never given any written notice of this denial of his request to renew his license nor of his opportunity to contest the denial.

78. As a result of that denial, his income has been reduced upon the loss of his ability to drive a taxicab and he is no longer able to conduct his normal daily activities.

79. Because of his concerns about possible harassment and retaliation, Plaintiff John DOE III wishes to bring this action under a pseudonym or fictitious name

Plaintiff John DOE IV

80. Plaintiff John DOE IV first received his New York driver's license in 1986. His last state driver's license was issued in July 1999 and expired on August 12, 2004. He has had no prior convictions or arrests for the use or operation of a motor vehicle and is otherwise fit to operate a motor vehicle.

81. He received the DMV verification letter in March 2004.

82. He is not eligible to receive a Social Security number and did not respond to the letter.

83. On May 11, 2004, he went to the DMV office to apply for a renewal of his driver's

license prior to its expiration and he presented his SSA Letter of Ineligibility, his driver's license, foreign passport, and other identity documents.

84. DMV staff refused to accept his SSA Letter of Ineligibility and stated that he was required to show a Social Security card.

85. A DMV supervisor affirmed that the SSA letter was no longer accepted. She asked him if he had a permanent resident card and stated that he needed to return with a Social Security card and proof that he was legally in the U.S. His renewal application was denied.

86. He made a second attempt to renew his driver's license on May 11, 2004 at DMV's Flatbush office in Brooklyn.

87. He was denied by DMV because he did not have a Social Security card and because he was asked for but had no proof of legal immigration status.

88. He was never given any written notice of either of these denials of his request to renew his license nor of his opportunity to contest the denial.

89. As a result of this denial, in June 2004, Plaintiff John DOE IV was also unable to renew his Tier II operator's license issued by the New York City Taxi and Limousine Commission.

90. Also as a result of this denial, he has been unable to conduct his normal daily activities and has lost his ability to drive his car as a small business operator and owner. He was forced to sell his vehicle. His income has plummeted by about sixty (60) percent.

91. He and his family face hardships in purchasing medications for Plaintiff related to the treatment of a stroke and heart surgery he suffered in 2000. In addition, his family faces hardships in meeting parochial school tuition expenses for two U.S.-born minor

children, as well as covering other essentials for his family.

92. Because of his concerns about possible harassment and retaliation, Plaintiff John DOE IV wishes to bring this action under a pseudonym or fictitious name.

Plaintiff MARIA CUBAS

93. Plaintiff MARIA CUBAS is a Honduran national who received a humanitarian grant of Temporary Protected Status (TPS) pursuant to 8 U.S.C. Sec. 1254a, INA Sec. 244, and 64 Fed. Reg. 524-28 (Jan. 5, 1999), from the Bureau of Citizenship and Immigration Services of the U.S. Department of Homeland Security (“DHS”), (formerly, U.S. Department of Justice).

94. In or about 1998, Ms. Cubas applied for and was issued a New York State non-driver’s identification card from DMV.

95. On or about July 7, 2004, she went to the DMV office in Bronx County to submit her application for a learner’s permit. She had already passed the written examination.

96. She presented her valid Social Security card and other identity documents. DMV staff denied her request because her Employment Authorization Document (EAD) issued by DHS was two days less than the minimum six months set by DMV, even though her EAD will be renewable for one year sometime after January 2005.

97. She was never given any written notice of this denial of her request to obtain a learner’s permit nor of an opportunity to contest the denial.

98. As a result of this denial, she cannot accept employment offers that require her to operate and use a car or such employment that is inaccessible to mass transportation, particularly in areas outside of the City and her immediate community.

99. Also as result of this denial, she has been unable to conduct her normal daily activities. She is unable to operate and drive her husband’s car for the common

occasions she needs a car to drive home after her midnight factory shift ends. Her workplace is located in an isolated and unsafe area in the Bronx.

#### Plaintiff ERIS LUMI

100. Plaintiff ERIS LUMI is a derivative asylee (8 USC §208) from Albania since 2001 based on his father's petition. He is also an applicant for adjustment of status.

101. In April 2001, he went to the DMV's Coney Island office in Brooklyn. He applied for a learner's permit by presenting his valid SSN, his Albanian passport, which was stamped at entry with an asylee seal, and a U.S. Refugee Travel document, and took his examination. He informed DMV staff that he had a grant of political asylum status.

102. Furthermore, Plaintiff has a pending adjustment of status application (lawful permanent status) and is awaiting DHS processing.

103. Soon after, DMV mailed a learner's permit to Plaintiff with the notation "Temporary Visitor". His learner's permit had a July 23, 2004 expiration date, which coincided with the U.S. Refugee Travel document's expiration. However, refugee and asylee statuses are neither altered nor diminished by the expiration of the travel document. Asylee status is extinguished only by abandonment or by decision of an immigration court.

104. Plaintiff scheduled his last road test with DMV in August 23, 2004. When he arrived at the DMV's driving test site, he was told by the DMV staff that he was not eligible to take the road test or obtain a license. The DMV staff told him "You are illegally here, your visa has expired", and to go home. He was never given any written notice of this denial of his request to obtain his license nor of his opportunity to contest the denial.

## **CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

105. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 104 above.

106. Defendants, by wrongfully denying plaintiffs' requests for licenses and cards due to their adoption of the policy and practice of requiring production of an acceptable SSN and/or documentation of lawful immigration status to DMV's satisfaction as a condition of issuing a driver's license, learner's permit or non-driver identification card, have acted without statutory authority and in an arbitrary and capricious manner.

### **SECOND CAUSE OF ACTION**

107. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 104 above.

108. Defendants, by wrongfully denying plaintiffs' requests for licenses and cards due to their adoption of the policy and practice of requiring production of an acceptable SSN and/or documentation of lawful immigration status to DMV's satisfaction as a condition of issuing a driver's license, learner's permit or non-driver's identification card, have acted in an arbitrary and capricious manner and in violation of the mandatory rule-making requirements set forth in SAPA, Sec. 203, and the New York Constitution, Art. IV, Sec. 8.

### **THIRD CAUSE OF ACTION**

109. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 104 above.

110. Defendants' policy and practice of denying licenses and cards to State residents if they cannot produce an acceptable SSN and/or documentation of lawful immigration

status to DMV's satisfaction without providing notice of the action or of the opportunity to challenge and without creating meaningful standards as to what is acceptable violates the Due Process clauses of the United States and New York State Constitutions and SAPA.

### **JURY DEMAND**

111. Plaintiffs hereby demand a trial by jury.

### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendants as follows:

- 1) Certify this case to proceed as a class action pursuant to CPLR Article 9;
- 2) Issue an Order declaring that Defendants, by requiring production of a valid SSN and/or documentation of lawful immigration status as a condition of issuing a driver's license, learner's permit or non-driver identification card, have acted without statutory authority, and enjoining them from continuing to impose that requirement;
- 3) Issue an Order declaring that Defendants, by adopting the policy and practice of requiring production of a valid SSN and/or documentation of lawful immigration status as a condition of issuing a driver's license, learner's permit or non-driver's identification card, have done so in violation of the rule-making requirements set forth in SAPA, Sec 203, and New York State Constitution, Art. IV, Sec. 8, and enjoining them from continuing to engage in or otherwise implement that policy and practice;
- 4) Issue an Order restoring the driver's licenses and identification cards to all class members;
- 5) Award Plaintiffs reasonable costs, litigation expenses, and attorneys' fees;

6) Grant Plaintiffs such additional relief as may be just, proper and equitable.

Dated: New York, New York  
August 27, 2004

PUERTO RICAN LEGAL DEFENSE  
& EDUCATION FUND, Inc.

By: \_\_\_\_\_

Foster S. Maer  
Jackson Chin

99 Hudson Street, 14<sup>th</sup> Floor  
New York, New York 10013  
(212) 219-3360

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss:

Jackson Chin, being duly sworn, deposes and says:

Deponent is an attorney for Plaintiffs in this action. Deponent has read the foregoing Complaint and knows the contents thereof; the same is true to deponent own knowledge, based on communications with Plaintiffs, other affiants and other individuals, and on a review of the file, except as to the matters therein alleged upon information and belief, and as to those matters deponent believes it to be true. Plaintiffs' attorney makes this verification because Plaintiffs reside outside the county in which the offices of the Puerto Rican Legal Defense and Education Fund are located.

\_\_\_\_\_  
Jackson Chin

Sworn to before me this  
\_\_\_\_ day of August, 2004

\_\_\_\_\_  
NOTARY PUBLIC