

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

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**Sr. M. Regina Fahy, RSM,  
Haliyantu Theo Amani, Sarra Ali,  
Eva Castillo-Turgeon, and  
Annagreta Swanson,  
Plaintiffs**

**v.**

**Commissioner, New Hampshire Department  
of Safety, In his Official Capacity,  
Defendant**

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**Civil Action No. \_\_\_\_\_**

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. Plaintiffs are immigrants who are lawfully present in this country, and who in some cases have lived here for years. They “ha[ve] a place of abode” in this state, and “ha[ve], through all [their] actions, demonstrated a current intent to designate that place of abode as [their] principal place of physical presence for the indefinite future to the exclusion of all others.” Thus, they are residents and inhabitants of New Hampshire as defined by RSA 21:6 and RSA 21:6-a. Since at least September 1, 2001, the New Hampshire Department of Safety, Division of Motor Vehicles (“DMV”) has subjected plaintiffs to unwritten and discriminatory policies and practices regarding the obtaining and renewing of drivers licenses. The DMV did eventually codify most, but not all, of these policies as Saf-C 1002.06 and 1003.04, effective June 24, 2004 (the “Non-Citizen Rules”). This action, brought pursuant to 42 U.S.C. §1983, seeks a judgment declaring unconstitutional the

DMV Non-Citizen Rules and certain related DMV policies, and enjoining their enforcement.

2. Contrary to the Fourteenth Amendment of the Constitution of the United States, the DMV Non-Citizen Rules and the related uncodified policies deny plaintiffs the equal protection of the law. Among other things, these rules:

- Require non-citizens to apply for and renew drivers licenses and non-driver identification cards at the Concord DMV office only. U.S. citizens are permitted to make similar applications and renewals at DMV substations throughout New Hampshire, as well as by mail;
- Require non-U.S. citizens to provide proof of New Hampshire residency as a condition for applying for an original or renewal drivers license, but are silent as to what documents would provide satisfactory proof of residency. U.S. citizens are not required to prove residency unless their initial license application indicates a non-New Hampshire address. Pursuant to an unannounced and uncodified policy, the DMV requires non-U.S. citizens to prove residency at each license renewal, but imposes no such requirement on U.S. citizens.
- Require non-U.S. citizens, even those with valid driver licenses from other states, to re-take a road skills examination. U.S. citizens from another state need not re-take the road skills examination except in unusual circumstances.
- Provide for a 45-day temporary paper license for non-citizens who apply for a driver license. U.S. citizens, upon application for an original driver license, are provided with six-month temporary picture licenses.
- Require applicants who were never licensed to drive in their countries of origin or in another U.S. state to verify that fact. The DMV Non-Citizen Rules do not articulate what proof would be sufficient, nor do they allow for any waiver if political conditions in the country of origin made such documentation impossible.
- The DMV has also implemented and is currently enforcing a policy, uncodified in any Rule, requiring some non-citizens, particularly refugees, asylees and others on provisional permanent status, to renew their licenses yearly, or at least more frequently than U.S. citizens, issuing temporary paper 45-day licenses at the start of every renewal. The drivers licenses of citizens are valid for five years.

3. In addition, the DMV Non-Citizen Rules and related policies impose restrictions based on alienage that interfere with the right to travel guaranteed by the United States Constitution.

4. Further, to the extent that the DMV's non-citizen policies are uncodified and unannounced, they were adopted and are applied without affording affected persons any notice or opportunity to be heard. Therefore, they violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
5. Responding to pressure and criticism brought by plaintiffs' counsel, immigrants' rights groups, and others, the DMV instituted a "pilot program," effective January 20, 2005, allowing certain non-citizens to renew their licenses at any DMV substation. Under the "pilot program," all non-citizens will still be required to obtain their initial New Hampshire drivers license at the Concord DMV headquarters only. Further, permanent residents, refugees and asylees who received or last renewed their New Hampshire drivers license prior to September 1, 2001 will be required to process their next renewal in Concord, and thereafter will be able to process subsequent renewals in any DMV substation. These measures have been instituted in the form of a "pilot program" only. There has been no amendment or proposed amendment to the Rules themselves, nor has the DMV made any commitment to the permanence or continuation of such a program. Further, the "pilot program" does not ameliorate any of the other unconstitutional policies and practices of the DMV described herein. Thus, the implementation of the so-called "pilot program" does not affect plaintiffs' right to a judgment declaring the DMV Non-Citizen Rules and related policies unconstitutional, nor does it affect their right to a preliminary and permanent injunction.

## **PARTIES**

6. Plaintiff Sister M. Regina Fahy, RSM ("Fahy") is an individual residing in Manchester, New Hampshire. Sr. Fahy is a citizen of the Republic of Ireland. She is a legal permanent

resident who has lived in New Hampshire continuously since 1975. She has been a member of the Order of the Sisters of Mercy for almost 44 years.

7. Plaintiff Haliyantu Theo Amani (“Amani”) is an individual residing in Manchester, New Hampshire. Amani is a citizen of the Democratic Republic of Congo and is a refugee who arrived in New Hampshire in 1990 as a student and was granted refugee status in 1997.
8. Plaintiff Sarra Ali (“Ali”) is an individual residing in Manchester, New Hampshire. Ali is a citizen of Sudan and she was granted asylum in the United States in 2002.
9. Plaintiff Eva Castillo-Turgeon (“Castillo-Turgeon”) is an individual residing in Manchester, New Hampshire. Castillo-Turgeon is a citizen of Venezuela and is a legal permanent resident who has lived in the United States for several years, most recently returning with her U.S.-born husband and children in 1999.
10. Plaintiff Annagreta Swanson (“Swanson”) is an individual residing in Peterborough, New Hampshire. Swanson is a citizen of Germany and is a legal permanent resident who has lived in the United States continuously since 1965.
11. Defendant (“the Commissioner”) is the Commissioner of the New Hampshire Department of Safety. He is charged by law with enforcement of the operations of the DMV, including enforcement of the provisions of the DMV Non-Citizen Rules. The Commissioner is sued in his official capacity, as are his agents and successors in office.

## **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because plaintiffs and defendant are located in the District of New Hampshire.

## **STATUTORY, REGULATORY AND POLICY FRAMEWORK**

### **Saf-C 1002.06**

14. Part Saf-C 1002 of the Rules of the Department of Safety address the requirements for applying for drivers licenses or non-driver identification cards in the State of New Hampshire. Saf-C 1002.01 through 1002.04 address the form, data and identification required, and the fees payable, generally in connection with such applications.
15. Saf-C 1002.06 is entitled “Requirements for Non-United States Citizen.” Saf-C 1002.06 (b) requires that “each non-United States citizen applying for an original or renewal driver license shall appear *only at the Division of Motor Vehicles, 23 Hazen Drive, Concord, N.H. 03305.*” (Emphasis added.) In contrast, a United States citizen, pursuant to Saf-C 1002.01 (b), may submit an original or renewal application “in person to a substation or, in person or by mail, to the Division of Motor Vehicles, 23 Hazen Drive, Concord, N.H. 03305.”
16. Section 1002.06(a) requires that non-U.S. citizens submit certain documents “in addition to the other requirements set forth in these rules.” Each subsection of this rule requires non-citizens to submit proof of residency as a condition of applying for a drivers license or non-driver identification card. The rule is silent as to what constitutes adequate proof of residency.

### **Saf-C 1003.04**

17. Part Saf-C 1003 of the Rules of the Department of Safety addresses the examinations required in order to obtain an original drivers license in New Hampshire. Saf-C 1003.02 addresses the examinations generally required when applying in New Hampshire for an

original driver license. Saf-C 1003.03 addresses the examinations and procedures required of a person who holds a drivers license from another jurisdiction.

18. Saf-C 1003.04 is entitled “Original Driver License for Non-United States Citizen, Examinations Required.” This section imposes several requirements on non-citizens that are not required of U.S. citizens, and otherwise impermissibly treats non-citizens differently from citizens.
19. Saf-C 1003.04 (e) authorizes the DMV to issue to non-citizens who have submitted the required original license application, documents and fees, a temporary paper permit, which is valid only for 45 days. In contrast, a U.S. citizen who holds a license from another state, and submits the required license application and fee, is issued a temporary photo drivers license, which is valid for six months. Saf-C 1003.03 (c).
20. Saf-C 1003.04 (a) (3) requires all non-citizens, even those with valid drivers licenses from other states, to re-take a road skills examination. U.S. citizens from another state need not re-take the road skills examination except in unusual circumstances. Saf-C 1003.03 (a) (2).
21. Saf-C 1003.04 (c) requires that applicants who were never licensed to drive in their countries of origin or in another state to “provide verification from his/her home country that he/she (1) Has never held a driver license; or (2) Has held a driver license in the United States.” The rule does not articulate what type of proof would be sufficient, nor does it allow for any waiver if documentation is impossible due to political conditions in the applicant’s country of origin.

### **Uncodified Policies**

22. The DMV has also implemented and is currently enforcing certain policies, uncodified in any Rule. One of these uncodified policies is that the DMV requires some non-citizens,

particularly refugees, asylees and others on provisional permanent status, to renew their licenses yearly, or at least more frequently than U.S. citizens. The DMV requires non-citizens to pay \$50.00 for each renewal. The drivers licenses of citizens are valid for five years, pursuant to RSA 263:10, and citizens need pay the \$50.00 renewal fee only once every five years. RSA 263:39-a provides for shorter renewal terms for non-citizens temporarily residing in New Hampshire, but plaintiffs are not temporary residents and this statute does not apply to them.

23. Pursuant to another unannounced and uncodified policy, the DMV requires non-U.S. citizens to prove their New Hampshire residency with each renewal. Saf-C 1002.06(a) purports to require such proof of residency only upon application for an original driver license. The DMV has identified no uniform set of documents as necessary or acceptable for proof of residency.
24. Pursuant to another unannounced and uncodified policy, the DMV issues a 45-day temporary paper license at the start of every non-citizen's driver license renewal. Saf-C 1003.04(e), which provides for the 45-day temporary paper license, purports to do so only for original drivers licenses.

## **FACTUAL ALLEGATIONS**

### **Plaintiff Fahy**

25. Plaintiff Sr. M. Regina Fahy is a legal permanent resident who came to New Hampshire in 1975. She has had a New Hampshire drivers license since 1980. Until April 2004, Sr. Regina routinely renewed her license at the Manchester DMV. In April 2004, Sr. Regina was told that because she was a non-citizen, she had to renew her license at the DMV main office in Concord. She was not given any additional information.

26. The next day, Sr. Regina went to Concord. She brought her drivers license and her social security card. At the non-citizens' window, she was told that the documentation she provided was not sufficient and was turned away.
27. On her third attempt, Sr. Regina was able to renew her license. She paid \$50.00 and to her surprise was given a yellow, handwritten, temporary license with no picture. The temporary license was for a forty-five day term. Because she wished to avoid further embarrassment and humiliation, Sr. Regina did not drive a car again until she received her standard photo-quality license.
28. Sr. Regina received the standard license in the mail and discovered that instead of a five-year term, her license expired in two years and nine months, on December 12, 2006. Her current driver license does not bear a blue bar below her picture.

**Plaintiff Amani**

29. Plaintiff H. Theo Amani obtained his first drivers license at the DMV's Manchester office in 1990. Until April 2002, Amani was able to renew his license every five years at the Manchester DMV substation. In April 2002, Amani went to the Manchester DMV substation in order to once again renew his drivers license. When he entered, he saw a sign directing all non-citizens to Concord. Because he already had a drivers license, Amani asked if he could still renew in Manchester. He was told he had to go to Concord.
30. Amani traveled to Concord on that same day, and was directed to a segregated line for non-citizens. Once he reached the window, he discovered that in addition to being required to prove his identity and citizenship status, he was now required to show proof of residency. He returned to Concord on another day, his paperwork was approved and he was given a yellow, handwritten temporary license with no picture. The temporary license

was good for forty-five days. When Amani asked why he was given a temporary license he was told that the DMV had to investigate all non-citizens.

31. Since April 2002, Amani has been required to renew his license every year. At each annual renewal, he has been required to pay \$50.00, and to bring documents proving his identity and immigration status and proof of residency. Every year, he receives a yellow forty-five day temporary license, and later receives a drivers license that expires in 10 ½ months. Although he has never requested a duplicate license, Amani's license bears a blue bar directly below his photograph.

**Plaintiff Ali**

32. Plaintiff Sarra Ali is a citizen of Sudan who was granted asylum in the United States in 2002. In preparation for looking for work in her new country, Ali sought to obtain a New Hampshire drivers license. It took Ali several weeks and repeated trips to Concord to accomplish this. Each time, she was required to go to a segregated "non-citizens" window.
33. Ali first attempted to apply for a drivers license in January 2003. DMV personnel told her that she was required to show proof of residency by producing utilities bills in her name, a social security number, a letter from her employer, and a car registered in her name. Her brother helped her to put a utility bill to her name and register a car.
34. On March 19, 2003, Ali passed the practical driving test after two unsuccessful attempts. She was given a yellow, handwritten temporary license with no picture. The temporary license was good for forty-five days.
35. Ali's temporary license was replaced by an original drivers license, which expired slightly less than nine months after it was issued. Her second drivers license was valid for a period of less than four months. Her current drivers license was issued for a term of one year.

Each time Ali has renewed her license, she has been required to pay a fee of \$50.00, and has been issued the yellow forty-five day temporary license. Her current license and the one previous both bear blue bars directly below her photograph, although she has never requested a duplicate license.

**Plaintiff Castillo-Turgeon**

36. Plaintiff Eva Castillo-Turgeon, a legal permanent resident of the United States and a citizen of Venezuela, has lived in the United States for several years. Most recently, she moved back to the United States from Venezuela with her family in 1999, and settled in New Hampshire in 2000. In approximately May of 2001, Castillo-Turgeon went to the Manchester DMV substation in order to obtain a New Hampshire drivers license. She was issued a license that was good until November 2001 (expiring on the same day as her work permit).
37. In November 2001, Castillo-Turgeon returned to the Manchester DMV substation to renew her license. The Manchester substation personnel directed her to go to Concord. Once in Concord, she was directed to a segregated line for non-citizens. She obtained her new license without being required to show proof of identity, immigration status, or residency. She was given a license that expires in four years – November 6, 2005. Her license bears a blue bar directly below her photograph, although she has never requested a duplicate license.

**Plaintiff Swanson**

38. Plaintiff Annagreta Swanson, a legal permanent resident, has been living in the United States for over thirty years, and has had a New Hampshire drivers license since 1973. In November 2001, she attempted to renew her license at the Milford DMV substation. A

uniformed DMV officer asked her whether she was a U.S. citizen. When she replied that she was not, she was told that she had to travel to Concord to renew her license. When she questioned that information, the officer called Concord and confirmed his original instructions.

39. Swanson drove to Concord on the same day and saw a sign for “visitors and non-permanent residents.” Because she is neither a visitor nor a non-permanent resident, Swanson went to the citizens’ line, but was redirected back to the segregated non-citizen line.
40. At the non-citizen station, Swanson showed the DMV personnel documents indicating that she was a legal permanent resident of the U.S. When she was given a yellow forty-five day temporary license, she questioned why she did not receive the standard New Hampshire driver’s license. The DMV employee responded in a loud voice that she was “under investigation.”
41. Swanson and her husband, upset by that remark, made numerous attempts to discover the subject of the investigation. The Swansons filed requests for information with the DMV, the Attorney General’s Office, the Governor’s Office, and with their elected representatives. Eight months later, Swanson received a written response from the DMV Director, apologizing for the incident. The Director further advised in this response that Swanson was not being investigated, but was subject to a new policy implemented on September 1, 2001. Swanson received her drivers license by mail. It expires on January 8, 2006. She does not have a blue bar on her current license.
42. The DMV Non-Citizen Rules were not enacted, and the uncodified policies were not implemented, in order to further any compelling state interest.

43. Responding to pressure and criticism brought by plaintiffs' counsel, immigrants' rights groups, and others, the DMV instituted a "pilot program," effective January 20, 2005, allowing certain non-citizens to renew their licenses at any DMV substation. Under the "pilot program," all non-citizens will still be required to obtain their original New Hampshire driver licenses at the Concord DMV headquarters only. Further, permanent residents, refugees and asylees who received or last renewed their New Hampshire driver licenses prior to September 1, 2001 will be required to process their next renewal in Concord, and thereafter will be able to process subsequent renewals in any DMV substation.
44. These measures have been instituted in the form of a "pilot program" only. There has been no amendment or proposed amendment to the Rules themselves, nor has the DMV made any commitment to the permanence or continuation of such a program. Further, the "pilot program" does not ameliorate any of the other unconstitutional policies and practices of the DMV described herein. Thus, the implementation of the so-called "pilot program" does not affect plaintiffs' right to a judgment declaring the DMV Non-Citizen Rules and related policies unconstitutional, nor does it affect plaintiffs' right to a preliminary and permanent injunction.

**COUNT I**  
**(Violation of Equal Protection)**

45. Plaintiffs repeat and incorporate the allegations contained in the preceding paragraphs.
46. The Fourteenth Amendment to the Constitution of the United States provides in relevant part: "Nor shall any State ...deny to any person within its jurisdiction the equal protection of the laws."

47. The DMV Non-Citizen Rules and related, uncodified policies impose substantially different requirements on non-citizen residents of New Hampshire for the obtaining and renewing of drivers licenses and non-driver identification cards than are imposed on New Hampshire residents who are United States citizens.
48. The DMV Non-Citizen Rules constitute classification by alienage, and do not further any compelling state interest. Even if the DMV Non-Citizen Rules could be said to further a compelling state interest, they are not sufficiently narrowly tailored so as to achieve such an interest by the least restrictive means possible.
49. Therefore, the DMV Non-Citizen Rules and related, uncodified policies violate the equal protection guarantee afforded to plaintiffs by the Fourteenth Amendment of the United States Constitution.

**COUNT II**  
**(Violation of Right to Travel)**

50. Plaintiffs repeat and incorporate the allegations contained in the preceding paragraphs.
51. The Constitution of the United States guarantees each person the right to travel freely from State to State.
52. The DMV Non-Citizen Rules and related, uncodified policies impermissibly interfere with this constitutional right to travel.

**COUNT III**  
**(Violation of Due Process)**

53. Plaintiffs repeat and incorporate the allegations contained in the preceding paragraphs.

54. The Fourteenth Amendment to the Constitution of the United States provides in relevant part: “Nor shall any State deprive any person of life, liberty or property, without due process of law...”
55. By adopting and enforcing uncodified and unannounced policies that burden plaintiffs in the renewing of their drivers licenses, without affording to them any notice or opportunity to be heard, the DMV has violated the due process guarantee afforded to plaintiffs by the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiffs respectfully request that this Honorable Court:

- A. Issue a judgment pursuant to 42 U.S.C. §1983 and 28 U.S.C. §§2201 and 2202, declaring that the DMV Non-Citizen Rules and the related, uncodified policies described in this Complaint: (1) violate plaintiffs’ right to the equal protection of the laws as protected by the Fourteenth Amendment to the United States Constitution; (2) violate plaintiffs’ constitutional right to travel; and (3) violate plaintiffs’ right to the due process of law as protected by the Fourteenth Amendment to the United States Constitution; and are therefore void and of no effect;
- B. Issue preliminary and permanent injunctive relief, without bond, restraining the enforcement, operation and execution of the DMV Non-Citizen Rules and the related, uncodified policies described in this Complaint by enjoining the Commissioner, his agents, employees, appointees or successors from enforcing, threatening to enforce or otherwise applying the DMV Non-Citizen Rules or related policies described herein;
- C. Grant plaintiffs their attorneys’ fees, costs and expenses pursuant to 42 U.S.C. §1988; and
- D. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

**Plaintiffs Sr. M. Regina Fahy, RSM, Haliyamtu Theo Amani, Sarra Ali, Eva Castillo-Turgeon, and Annagreta Swanson,**

By their attorneys,

**NEW HAMPSHIRE LEGAL ASSISTANCE**

Date: March 23, 2005

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