

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

**Sr. M. Regina Fahy, RSM,
Haliyamtu 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. _____

**PLAINTIFFS' MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTION**

NOW COME plaintiffs, Sr. M. Regina Fahy, RSM, Haliyamtu Theo Amani, Sarra Ali, Eva Castillo-Turgeon, and Annagreta Swanson, by undersigned counsel, and move the Court for a preliminary and permanent injunction against the enforcement of Saf-C 1002.06 and 1003.04 (the "DMV Non-Citizen Rules"), and against related, but uncodified, policies of the New Hampshire Department of Safety, Division of Motor Vehicles ("DMV") pertaining to non-U.S. citizens. In support of this motion, plaintiffs state as follows:

1. Since at least September 1, 2001, the 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 the Non-Citizen Rules, effective June 24, 2004.
2. As demonstrated in the accompanying memorandum of law, the Non-Citizen Rules impermissibly single plaintiffs out for disparate treatment solely on the basis of their

alienage. The Rules do not further any rational, let alone compelling, state interest. Even if the Rules could be said to foster a compelling state interest, they are not sufficiently narrowly tailored so as to achieve that interest by the least restrictive means possible.

Therefore, the Rules and the related, uncodified policies violate the plaintiffs' constitutional right to equal protection under the law.

3. Also as demonstrated in the accompanying memorandum of law, The Non-Citizen Rules and the related, uncodified policies impermissibly abridge the plaintiffs' constitutional right to travel.
4. Finally, as described in the accompanying memorandum of law, the DMV has adopted unannounced and uncodified policies burdening non-U.S. citizens in the renewal of their drivers' licenses, without any notice to plaintiffs or opportunity to be heard, all in violation of plaintiffs' constitutional right of due process.
5. Plaintiffs have demonstrated not only likelihood, but actual success on the merits.
6. This deprivation of plaintiffs' constitutional rights is itself an irreparable harm, as demonstrated in the accompanying memorandum of law. In addition, as described in the memorandum and the plaintiffs' affidavits, the Non-Citizen Rules and related, uncodified policies create hardship and humiliation that cannot be compensated with money damages.
7. The balance of the equities and the public interest favor the granting of the requested injunction, since the preservation of constitutional rights and the rule of law are themselves unceasing public interests which far outweigh any inconvenience to the DMV if it is enjoined from enforcing the Non-Citizen Rules.

8. No bond is necessary. Plaintiffs seek permanent as well as injunctive relief, and are seeking consolidation of this motion with trial on the merits. Thus, there is no threat of a wrongfully granted preliminary injunction.
9. A proposed order and a memorandum of law accompany this motion.
10. Since this motion seeks a permanent as well as a preliminary injunction, it is dispositive in nature, and therefore concurrence is not required.

WHEREFORE, plaintiffs respectfully request that this Honorable Court:

- A. Preliminarily and permanently enjoin the defendant from enforcing Saf-C 1002.06 and Saf-C 1003.04;
- B. Preliminarily and permanently enjoin the defendant from enforcing the following uncodified policies:
 - a. Requiring that the license of any non-U.S. citizen be renewed more frequently than indicated by RSA 263:10 or RSA 263:39-a, as the case may be;
 - b. Requiring any non-U.S. citizen to prove his or her New Hampshire residency upon license renewal; and
 - c. Issuing a 45-day temporary license in connection with renewals of the drivers' licenses of non-U.S. citizens;
- C. Order that no bond is required of plaintiffs; and
- D. Grant such 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,

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Date: March 23, 2005

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