

**FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO**

THE HONORABLE DAVID COSS, RAUL AARON LARA MARTÍNEZ, CHARLIE MALDONADO JR., ELIZABETH LARA, EULALIA ROBLES, DRUCILLA HAGER and REYNA CARMONA PÉREZ—all residents of New Mexico on behalf of themselves and individuals similarly situated, and THE NEW MEXICO COALITION TO END HOMELESSNESS and SOMOS UN PUEBLO UNIDO, New Mexico membership-based organizations representing low-income individuals;

D-101-CV-2018-00302
No. ~~D-101-CV-2018-~~_____

Case assigned to Thomson, David K.

Plaintiffs,

vs.

JOHN MONFORTE, in his official Capacity as the acting Secretary of the New Mexico Taxation and Revenue Department, ALICIA ORTIZ, acting director of the Motor Vehicle Division of the Taxation and Revenue Department; and the NEW MEXICO TAXATION AND REVENUE DEPARTMENT, an executive agency;

Defendants.

**CLASS ACTION COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF ON BEHALF OF NEW MEXICO RESIDENTS ATTEMPTING
TO ACQUIRE A STATE-ISSUED DRIVER'S LICENSE AND IDENTIFICATION CARD**

1. Plaintiffs seek injunctive relief against the Motor Vehicle Division (MVD) of the State of New Mexico's Taxation and Revenue Department to stop the State from unlawfully denying driver's licenses and identification cards to New Mexicans, in violation of New Mexico's statutory and constitutional law. The named Plaintiffs and untold numbers of other New Mexicans have been unable to obtain driver's licenses and identification (ID) cards from

the MVD because of the Defendants' violations of the law. Under the two-tiered driver's license law that was signed into law on March 8, 2016, Defendants must issue the second-tier license, known as a Driving Authorization Card ("DAC") and second-tier ID card, commonly known as the non-federally compliant ID card, to applicants who provide the documents required by state law. Instead of issuing DACs and non-federally compliant ID cards, Defendants require New Mexicans to turn in additional documents that are not required by the statute. When applicants cannot comply with Defendants' illegal demands for documentation, they are denied access to identification cards and DACs without due process required by state law. The Court has the legal duty to put an end to these illegal state actions in order to remedy the harm inflicted on the Plaintiff class who cannot obtain identification or driver's licenses.

2. An identification card, issued by the state, is a basic necessity. It is the primary form by which most people prove their identity. And without a driver's license—something that New Mexico's courts have described as “an important, protect[able] right”—residents cannot purchase car insurance, register their vehicles, or lawfully drive to work, to school, to childcare, or to the hospital. *Minero v. Dominguez*, 1985-NMCA-100, ¶ 10; accord *Stephens v. State Transp. Dep't, Motor Vehicle Div.*, 1987-NMCA-095, ¶ 12 (“This court has stated that holding a driver's license is an important, [protectable] right[.]”) (citing *Minero*, 1985-NMCA-100, ¶ 10).

3. Without a state-issued identification card or a driver's license, a person cannot check into a motel to get a warm room in the winter. If she is between jobs and looking for work, law-abiding employers will not hire her. She cannot open a bank account, cash a paycheck or obtain medical care. In some cases, she cannot avoid the dangers of domestic violence. Moreover, she cannot perform other routine tasks that are essential to daily modern life.

4. When the State refuses to issue an identification card or a driver's license, it imposes greater hardships on people whose lives are often already precarious—the homeless, the undocumented, Native Americans, senior citizens and people living in poverty.

5. Nevertheless, the MVD, a division within the New Mexico Taxation and Revenue Department (“the Department”) has unlawfully denied the individual Plaintiffs and an untold number of other New Mexicans state-issued driver's licenses—or DACs—and state-issued identification cards (non-federally compliant ID cards).

6. In doing so, MVD has subjected the Plaintiffs and other New Mexicans to illegal documentation requirements—requirements that go beyond the scope of MVD's statutory authority.

7. Moreover, MVD has denied the individual Plaintiffs and other New Mexicans due process by failing to provide them with any means by which they may appeal the MVD's arbitrary and unlawful denials.

8. As a result of MVD's unconstitutional and unlawful policies and practices, Plaintiffs and other New Mexicans have suffered grave injuries. Plaintiffs challenge two of the Department's unlawful policies and practices.

9. **First**, Plaintiffs challenge the Department's unlawful policy and practice of failing to adhere to its statutory mandate to issue DACs and non-federally compliant ID cards. Under state law, “[t]he [D]epartment *shall* issue a driving authorization card to an applicant who is otherwise eligible for a driver's license but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a driving authorization card is not valid for federal purposes.” NMSA 1978, § 66-5-9(E) (2016) (emphasis added). Likewise, “[t]he [D]epartment *shall* issue an identification card not intended to be accepted by federal agencies

for official federal purposes to an applicant who is otherwise eligible but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that an identification card not intended to be accepted by federal agencies for official federal purposes is not valid for federal purposes.” NMSA 1978, § 66-5-401(C) (2016) (emphasis added).

10. Nevertheless, the Department has failed to issue DACs and non-federally compliant ID cards to people who qualify for them. The Department requires applicants for DACs and non-federally compliant ID cards to provide proof of an identification number—a requirement that the legislature neither enacted nor authorized the Department to create or impose. *Compare* NMSA 1978, § 66-5-9 (2016) (DAC statute) *and* NMSA 1978, § 66-5-401 (2016) (non-federally compliant ID card statute), *with* NMAC 18.19.5.15 (2016) (Department regulation requiring proof of identification number). The Department’s offices provide inconsistent and unlawful information about the requirements for a DAC and a non-federally compliant ID card. And the Department has turned away some of the Plaintiffs and other New Mexicans without notifying them of their eligibility for a DAC or a non-federally compliant ID card.

11. **Second**, Plaintiffs challenge the Department’s unlawful policy and practice of denying DACs and non-federally compliant ID cards without procedural due process in violation of Article II, Section 18 of the New Mexico Constitution and NMSA 1978, § 66-2-17 (2015). Defendants routinely turn away New Mexicans seeking DACs and non-federally compliant ID cards at local offices, without providing notice of a right to challenge that denial. Defendants’ standard letter denying DACs and non-federally compliant ID cards on the basis of background checks does not contain information about the right to appeal. Indeed, a public records request

revealed that Defendants do not have a policy for notifying New Mexicans that they can appeal a denial of any credential issued by the MVD.

12. To ensure that the Department complies with its statutory mandate to issue DACs and non-federally compliant ID cards, NMSA § 66-5-9(E), and its constitutional requirement to provide due process, N.M. Const. art. II, § 18, Plaintiffs, through their undersigned counsel, bring this action for declaratory and injunctive relief.

JURISDICTION

13. Plaintiffs bring their claims in this Complaint under the Due Process Clause of Article II, Section 18, of the New Mexico Constitution and New Mexico Declaratory Judgment Act, NMSA 1978, §§ 44-6-1 to -15 (1975).

14. The First Judicial District Court has jurisdiction over this action under Art. VI, Section 13, of the New Mexico Constitution and NMSA 1978, § 41-6-13 (1975).

VENUE

15. Venue for this action lies in the First Judicial Court of Santa Fe County pursuant to NMSA 1978, § 38-3-1(G) (1988).

PARTIES

16. Plaintiff THE HONORABLE DAVID COSS is a long-time Santa Fe resident. Plaintiff Coss served as a Santa Fe City Councilor from 2002 to 2004 and as the Mayor of Santa Fe for two terms from 2006 to 2014. In August 2017, Plaintiff Coss applied for a DAC. As more fully described below, MVD illegally denied Plaintiff Coss a DAC, requiring him to submit a social security number and card, which is not required under state law, and without advising him that he had the right to appeal and of the process for appealing the denial.

17. Plaintiff RAUL AARON LARA MARTÍNEZ is a resident of Santa Fe, New

Mexico. In May 2017, he applied for a DAC. As more fully described below, MVD illegally denied Plaintiff Lara Martínez a DAC without advising him that he had the right to appeal and of the process for appealing the denial.

18. Plaintiff ELIZABETH LARA is a resident of Santa Fe, New Mexico. In December 2017, she applied for a DAC. As more fully described below, MVD illegally denied Plaintiff Lara a DAC, despite the fact that she was eligible under state law and without advising her that she had the right to appeal the denial and of the process for appealing the denial.

19. Plaintiff EULALIA ROBLES is a resident of Albuquerque, New Mexico. In December 2016, she applied for a DAC. As more fully described below, MVD illegally denied Plaintiff Robles a DAC without advising her that she had the right to appeal the denial and of the process for appealing the denial.

20. Plaintiff REYNA CARMONA PÉREZ is a resident of Albuquerque, New Mexico. For five years, Plaintiff Carmona Pérez had a New Mexico driver's license, which she attempted to renew before it expired in December 2016. As more fully described below, MVD illegally denied Plaintiff Carmona Pérez a DAC without advising her that she had the right to appeal the denial and of the process for appealing the denial.

21. Plaintiff CHARLIE MALDONADO JR. is a resident of Albuquerque, New Mexico. Plaintiff Maldonado is currently homeless and qualifies for a non-federally compliant ID card. In October 2017, he applied for a non-federally compliant ID. As more fully described below, MVD illegally denied Plaintiff Maldonado a non-federally compliant ID because he could not provide both a birth certificate and a social security card, both of which are not required under state law. Defendant denied Plaintiff Maldonado without advising him that he had the right to appeal the denial and of the process for appealing the denial.

22. Plaintiff DRUCILLA HAGER is a resident of Albuquerque, New Mexico. She is 87-years-old. Her valid New Mexico driver's license expired in June 2017. In May 2017, Plaintiff Hager applied for a DAC. As more fully described below, MVD illegally denied Plaintiff Hager a DAC, requiring her to submit a social security number and card, which is not required under state law, and without advising her that she had the right to appeal and of the process for appealing the denial.

23. Plaintiff THE NEW MEXICO COALITION TO END HOMELESSNESS ("NMCEH") is a domestic nonprofit corporation registered with the New Mexico Secretary of State. Its main office is in Santa Fe, New Mexico. It also has offices in Albuquerque and Las Cruces, New Mexico. NMCEH is a statewide membership organization consisting of agencies that serve homeless people, formerly homeless people, government agencies, and other concerned individuals. NMCEH works to improve public policy that impacts people who are homeless. NMCEH has worked in the past with the state Department of Taxation and Revenue to simplify the process for obtaining a basic identity card because it is common for people who are experiencing homelessness to lose their identification card and other paperwork, and people who are trying to exit homelessness cannot access housing and services without an identification card. MVD's unlawful practices have harmed NMCEH and its members.

24. Defendant's unlawful regulations cause NMCEH and its members to divert resources not only to assist New Mexicans who are experiencing homelessness in gathering the documents that the MVD unlawfully requires to obtain a DAC or non-federally compliant ID card, but also to assist New Mexicans who continue to experience homelessness because, owing to the Defendants' unlawfully stringent requirements, they cannot obtain an identification card. NMCEH sent Defendants multiple letters concerning these illegal regulations and met with

Defendants, Acting Secretary Monforte, on November 22, 2018 to discuss these concerns. (Letters from NMCEH and N.M. Center on Law & Poverty to Defendants in October 2016 are attached as **Exhibit #1.**)

25. Plaintiff SOMOS UN PUEBLO UNIDO (“Somos”) is a domestic nonprofit corporation registered with the New Mexico Secretary of State, with a main office in Santa Fe, New Mexico. Somos also has an office in Roswell, N.M. Somos is a membership-based organization consisting of immigrants and their supporters in Santa Fe, San Juan, Rio Arriba, Cháves, Curry, Roosevelt, Lea and McKinley counties. Somos works to improve public policy around workers’ and immigrants’ rights issues statewide. In 2003, Somos successfully led a legislative campaign to change New Mexico’s Motor Vehicle Code to allow all New Mexico residents, regardless of immigration status, to apply for driver’s license and identification card. MVD’s unlawful practices have harmed Somos and its members. Somos also submitted a letter regarding the Defendants illegal regulations in October 2016. (The letter attached as **Exhibit #2.**)

26. The unlawful regulations cause Somos to divert its resources to alleviate the adverse impact that the MVD’s unlawful requirements impose on its constituent members. Those members include immigrant workers and their families in New Mexico, whose background checks contain clerical errors DAC or a non-federally compliant ID card because of the Defendants’ illegal requirements.

27. When Defendants fail to issue DACs and non-federally compliant ID cards to Somos’s members, Somos has attempted to deal directly with the Defendants and inform members about their rights. Furthermore, before the Department implemented its unlawful regulations, Somos submitted comments to the Department on its proposal to add an identification number requirement into its regulations, alerting Defendants to the fact that the

regulation was unlawful.

28. Both Somos and NMCEH represent individuals with Spanish surnames or hyphenated last names that are often misspelled or missing from all their identity documents, causing the MVD to deny their applications.

29. Defendant NEW MEXICO TAXATION AND REVENUE DEPARTMENT is an executive branch state agency. The MVD, which is charged by law with administering all State motor vehicle laws, is a division within the Department. NMSA 1978, § 66-2-3(A) (2007).

30. Defendant JOHN MONFORTE is the Acting Secretary of the New Mexico Taxation and Revenue Department. In this role, Defendant Monforte “is responsible to the governor for the operation of the department” and has the “duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.” NMSA 1978, § 9–11–6 (1995). Plaintiffs assert this civil action against Defendant Monforte in his official capacity only.

31. Defendant ALICIA ORTIZ is the acting Director of the MVD. Plaintiffs assert this civil action against Defendant Ortiz in her official capacity only.

LEGAL FRAMEWORK FOR NEW MEXICO’S 2016 TWO-TIERED DRIVER’S LICENSE AND IDENTIFICATION SYSTEM

32. After a five-year battle over driver’s licenses, the New Mexico state legislature agreed on legislation creating a two-tiered driver’s license and identification system. On March 8, 2016, New Mexico Governor Susana Martínez signed that legislation into law. *See* Uriel J. García, *Martinez signs bill to create Real ID-compliant driver’s licenses*, SANTA FE NEW MEXICAN (March 8, 2016), <http://bit.ly/2F7Krjq> (last viewed on January 26, 2018).

33. The first-tier licenses and identification cards meet the requirements of the federal Real ID Act of 2005. The federal Real ID Act of 2005 is a federal law that, for the first time, set

federal requirements for credentials to be accepted by federal agencies for official federal purposes. Real ID Act Driver's Licenses and Identification Cards, REAL ID Act of 2005, Pub. L. 109-13, 119 Stat.302, enacted May 11, 2005. The Act imposes significant expenses and onerous standards on states wishing to issue driver's licenses and identification cards which federal agencies will accept.

34. Real-ID compliant first-tier driver's licenses and identification cards are available to New Mexicans who can prove New Mexico residency, identity, date of birth, social security number and lawful status. NMSA 1978, § 66-5-9(B)–(C) (2016); NMSA 1978, § 66-5-401(A). In fact, the only MVD credentials that require a “unique identifying number” are the REAL ID compliant driver's license and identification cards. NMSA 1978, §§ 66-5-9(B) & (F) (2016).

35. The second-tier driver's licenses—DACs—and non-federally compliant ID cards do not meet the requirements for a credential intended to be accepted by federal agencies for official federal purposes. Under New Mexico law, however, the DAC is treated and defined as a license. NMSA 1978, § 66-5-9(E) (2016). DACs and non-federally compliant ID cards are available to all people who can prove New Mexico residency, identity, and age, and who affirm that they understand that the DAC is not valid for federal purposes. NMSA 1978, § 66-5-9(B) & (E) (2016); NMSA 1978, § 66-5-401(C) (2016).

36. Following the ratification of the 2016 law, and after updating some technological procedures, New Mexico became compliant with the federal REAL ID Act of 2005.

37. A New Mexican who is able to prove lawful status, but chooses not to, is eligible for a DAC or a non-federally compliant ID card. NMSA 1978, § 66–5–9(D) (“A person with lawful status may apply for a driver's license or a driving authorization card.”); NMSA 1978, § 66–5–401(C) (2016).

38. Moreover, New Mexico law requires the Department issue DACs and non-federally compliant ID cards to certain eligible applicants.

39. State law provides, “the department *shall* issue a driving authorization card to an applicant who is otherwise eligible for a driver’s license but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a driving authorization card is not valid for federal purposes.” NMSA 1978, § 66–5–9(E) (2016) (emphasis added).

40. State law also provides, “the department *shall* issue an identification card not intended to be accepted by federal agencies for official federal purposes to an applicant who is otherwise eligible but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that an identification card not intended to be accepted by federal agencies for official federal purposes is not valid for federal purposes.” NMSA 1978, § 66–5–401(C) (2016) (emphasis added).

STATUTORY REQUIREMENTS FOR DACS AND NON-FEDERALLY COMPLIANT ID CARDS

41. To apply for a DAC or a non-federally compliant ID card, all applicants must comply with four statutory requirements. They must (1) submit an application; (2) pay a fee; (3) provide proof of New Mexico residency; and (4) provide proof of identity and age.

42. Certain applicants must also comply with a fifth statutory requirement: (5) DAC or non-federally compliant ID card applicants who do not provide proof of lawful status **and** who do not possess a valid New Mexico license or identification card must also submit to having the Department take a photograph of their full face or front view and take their fingerprints. Each requirement is more fully described below:

Requirements One and Two: Application and Fee

43. Under the statutes, an applicant must apply using a form provided by the Department and pay “the proper fee.” NMSA 1978, § 66-5-9(A) (2016) (DAC); *see also* NMSA 1978, § 66-5-408 (2009) (non-federally compliant ID card).

44. The application for either the DAC or the non-federally compliant ID card must contain “the applicant’s full legal name; date of birth; sex; and current New Mexico residence address[.]” § 66-5-9(B) (DAC); *see also* § 66-5-401(A) (2016) (non-federally compliant ID card).

45. All applicants must “briefly describe [in their application] the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal.” § 66-5-9(B) (DAC); *see also* § 66-5-401(A) (non-federally compliant ID card).

Requirement Three: Proof of New Mexico Residency

46. All applicants must provide proof of New Mexico residency. The statutes authorize the Secretary—Defendant Monforte—to “establish by regulation documents that may be accepted as evidence of residency of the applicant.” § 66-5-9(B) (DAC); *see also* § 66-5-401(A) (non-federally compliant ID card).

Requirement Four: Proof of Identity and Age

47. The statutes require all applicants to provide proof of identity and age by submitting **any** of the following:

- (1) a social security number or an individual tax identification number;

(2) a passport from the applicant's country of citizenship or an identification card, issued by the consulate of Mexico in Albuquerque, New Mexico, the consulate general of Mexico in El Paso, Texas, or such other foreign consulate with which the department has established a reliable method of verifying the authenticity of the identification card;

(3) a valid New Mexico license or identification card;

(4) a certified letter of enrollment or a valid identification card issued by a federally recognized Indian nation, tribe or pueblo; *or*

(5) a document that the secretary has authorized.

§ 66-5-9(G) (emphasis added) (DAC); *see also* § 66-5-401(C) (non-federally compliant ID card).

Requirement Five: Photograph and Fingerprints

48. Additionally, only applicants for DACs or non-federally compliant ID cards who do not provide proof of lawful status **and** who do not possess a valid New Mexico license or identification card must allow the Department to take their photograph and take their fingerprints. § 66-5-15.2(A) (2016).

49. The Department *may* submit the applicant's fingerprint data to the New Mexico Department of Public Safety in order to obtain the applicant's criminal history. The Department of Public Safety may in turn submit the fingerprint data to the FBI in order to conduct a background check. *Id.*

50. Under the statute, the applicant is ineligible for a DAC or a non-federally compliant ID card if the background check reveals that the applicant "has an outstanding valid criminal arrest warrant" or if the "applicant's fingerprints are associated with any name, date of birth or social security number other than those provided by the applicant in the application for a

DAC or identification card not intended to be accepted by federal agencies for official federal purposes.” § 66-5-15.2(B).

51. Under the statute, a person who is denied a DAC or a non-federally compliant ID card following a background check can become eligible only if they provide the Department with “satisfactory evidence that the basis for ineligibility has been resolved.” *Id.*

Other Requirements Not at Issue in this Action

52. There are other requirements that are not at issue in this action. The statute imposes requirements for all applicants (for Tier I driver’s licenses and Tier II DACs), such as disclosing whether the applicant has been convicted of driving under the influence of drugs or alcohol, and imposes additional requirements for first-time applicants under the age of eighteen, first-time applicants between the ages of eighteen and twenty-five years, and first-time applicants who are twenty-five years of age or older who have been convicted of driving under the influence of drugs or alcohol. *See* § 66-5-9(H)–(M).

THE DEPARTMENT’S *ULTRA VIRES* REGULATORY REQUIREMENTS

53. The DAC statute and the non-federally compliant ID card statute each imposes only four major requirements—(1) application, (2) fee, (3) proof of New Mexico residency, and (4) proof of identity and age. For some applicants, the statutes impose a fifth requirement—(5) photograph and fingerprints.

54. However, the Department invented an ultra vires mandatory requirement for DAC and non-federally compliant ID card applicants.

55. Even though it has no statutory authority to do so, the Department also requires DAC and non-federally compliant ID card applicants to “establish proof of identification number.” NMAC 18.19.5.15(A).

56. The ultra vires rule also prevents applicants from using the same document to prove their identification number and their identity or age, meaning that they must provide two separate documents—further burdening applicants. NMAC 18.19.5.15(D).

57. The Department’s ultra vires regulation imposes a further burden as to the proof of identify. For those New Mexicans who attempt to prove their *identity* by submitting their social security number, the Department imposes a requirement, which is not found in the statute, the applicant “must present his or her social security administration (SSA) account number card. If a SSA account card is not available, the person shall present one the following documents, provided that the document bears the applicant’s social security number: (1) a W-2 form; (2) a SSA-1099 form; (3) a non-SSA-1099 form; or (4) a pay stub with the applicant’s name and social security number on it.” NMAC 18.19.5.15(C) (2016).

**THE DEPARTMENT DENIES THE RIGHT TO APPEAL A DENIAL OF ANY
MVD CREDENTIAL**

58. Under NMSA 1978, § 66-2-17(A), any person may dispute the denial of, or failure to either allow or deny, any license, permit, placard or registration provided for under the Motor Vehicle Code.

59. A person is required to file a protest within 30 days of the “date of the mailing or *verbal* notification of the action proposed to be taken by the Department.” (emphasis added)*Id.* However in this case, Defendants failed to notify Plaintiffs of their right to protest or appeal the denial or of the 30-day requirement.

60. Defendants fail to notify New Mexicans of their right to appeal the denial of the DAC or the non-federally compliant ID card.

61. Defendants also fail to notify New Mexicans of the process by which they may appeal the denial of the DAC or the non-federally compliant ID card.

62. Indeed, Defendants did not provide Plaintiffs with any notice of their right to appeal or contest the denial.

FACTUAL ALLEGATIONS

63. Defendants have failed and continue to fail to issue DACs and non-federally compliant ID cards to New Mexicans who are eligible for them. The facts concerning the Plaintiffs and class representatives are described below.

Plaintiff The Honorable David Coss

64. Plaintiff THE HONORABLE DAVID COSS has lived in Santa Fe, New Mexico, since 1959. Plaintiff Coss served as a Santa Fe City Councilor from 2002 to 2004 and as the Mayor of Santa Fe for two terms from 2006 to 2014. Plaintiff Coss has been a licensed New Mexico driver since 1970.

65. On August 30, 2017, Plaintiff Coss attempted to apply for a DAC at the Santa Fe MVD. His license was still valid at that time. Plaintiff Coss presented his valid license, and his U.S. passport. The MVD clerk told him that he would need to provide two proofs of his residency, even though his current address was on his valid state issued license.

66. On September 6, 2017, Plaintiff Coss returned to the Santa Fe MVD with a bill from the New Mexico Gas Company, a cable television bill, and a Santa Fe County property assessment bill as proof of his residency. He also brought his unexpired license and U.S. passport. At that point, Plaintiff Coss had more than sufficient documentation to be issued a DAC under state law. He had 1.) proof of residency as required by NMSA 1978 § 66-5-9(B) (2016) and NMAC 18.19.5.16(B)(2)(6) with two utility bills and a tax assessment record, and 2.) multiple proofs of identity and age under NMSA 1978 § 66-5-9 (G)(3) and (5) (2016) with a valid state issued license and U.S. passport. Instead of issuing a DAC to Plaintiff Coss, the

MVD clerk told him that he would have to meet Defendant's ultra vires regulatory requirement that he provide documentation of identity number to get a DAC, by either providing a SSA-1099 showing his full social security number or his social security card.

67. Plaintiff Coss told the clerk that he is retired and does not have a SSA-1099. Plaintiff Coss also said that he did not know the whereabouts of his social security card. The MVD clerk insisted that Plaintiff Coss would need to present proof of his social security number.

68. On September 12, 2017, or September 13, 2017, Plaintiff Coss returned for a third visit to the Santa Fe MVD. He provided the same documents he brought on September 6, 2017 and a printout of his Public Employees Retirement Association (PERA) of New Mexico account. The MVD clerk illegally denied Mr. Coss a DAC again and informed him the MVD would not accept the printout of his PERA account because it showed only the last four digits of his social security number. The clerk told Plaintiff Coss that he would need to find either an old paystub showing his full social security number or his actual social security card.

69. On September 18, 2017, Plaintiff Coss returned to the MVD a fourth time. By this time, his driver's license had expired. He presented the same documents showing his identity, age and NM residency he brought previously, along with a letter from the Social Security Administration, addressed to the MVD, which showed his full social security number. The MVD denied Mr. Coss a DAC again and rejected the letter from the Social Security Administration. The clerk told Plaintiff Coss that he would need to bring his social security card to prove his identity number. The MVD clerk also informed Plaintiff Coss that since his license had expired, he would need to undergo a background check in order to obtain a DAC, even though his U.S. Passport proved his lawful status.

70. Defendants illegally denied Plaintiff Coss a DAC because he could not comply

with Defendants ultra vires regulatory requirement that he provide proof of an identity number.

71. Defendants denied Plaintiff Coss a DAC four times. At no point, did Defendants notify Plaintiff Coss of his right to challenge a denial of a DAC or the manner in which to appeal.

72. As a result, Plaintiff Coss cannot lawfully drive.

Plaintiff Charlie Maldonado Jr.

73. Plaintiff CHARLIE MALDONADO JR. is a resident of Albuquerque, New Mexico. He has been homeless off and on for many years. He has not had an identification card since 2012, when it was stolen.

74. In January of 2017, Plaintiff Maldonado went to an Albuquerque MVD office to apply for a non-federally compliant identification card. He brought a social security card and two proofs of residency: a lease agreement and mail from the N.M. Child Support Enforcement Division with his address on it.

75. The MVD clerk told Plaintiff Maldonado that he would need to bring his birth certificate to get an identification card. This is incorrect. He had already provided proof of identity and age pursuant to NMSA 1978 § 66-5-401(C) (2016) with his social security card and had met the residency requirement with the lease agreement and letter from a state government agency. In fact, Plaintiff Maldonado could have obtained a non-federally compliant ID under state law if he submitted fingerprints pursuant to NMSA 1978 § 66-5-15.2 (2016).

76. It took Plaintiff Maldonado until October of 2017 to obtain a birth certificate. He brought it to the MVD along with his social security card and an MVD form affidavit from Albuquerque Healthcare for the Homeless attesting that he is homeless and receives services there.

77. The MVD clerk refused to issue Plaintiff Maldonado a DAC and stated that he would need to change the name on his social security card to make it match his driver's license. Plaintiff Maldonado's birth certificate states that his name is "Charlie Maldonado Jr." and his social security card states that his name is "Charles Maldonado." The clerk stated that both a social security card and birth certificate are required to get a non-federally compliant identification card. This is incorrect.

78. Plaintiff Maldonado was eligible for a non-federally compliant identification card using his birth certificate as proof of identity and age pursuant to NMSA 1978 § 66-5-401(C) (2016) and NMAC 18.19.5.12(B)(4), using the affidavit as proof residency pursuant to NMSA 1978 § 66-5-9(B) (2016) and NMAC 18.19.5.16(C). Because a birth certificate shows Plaintiff Maldonado has lawful status, he did not need to be fingerprinted and was immediately eligible for a non-federally compliant identification card.

79. MVD illegally denied Plaintiff Maldonado a non-federally compliant ID card because it enforces an ultra vires requirement that applicants provide proof of identity number in addition to proof of identity and age.

80. Plaintiff Maldonado was denied a non-federally compliant ID card twice and was never informed of his right to challenge a denial or the manner in which to appeal. As a result, he could not address MVD's illegal denial and has gone without identification for over a year. As a result, Mr. Maldonado has lost opportunities to work and remains homeless.

Plaintiff Drucilla Hager

81. Plaintiff DRUCILLA HAGER is a resident of Albuquerque, New Mexico. She is 87-years-old. Her valid New Mexico driver's license expired in June 2017.

82. Plaintiff Hager has limited mobility because of her age and a degenerative knee

condition.

83. In May of 2017, Plaintiff Hager went to the MVD office on Juan Tabo to renew her license. She brought her valid NM driver's license, her birth certificate, social security card, a utility bill and a tax assessment record with her address.

84. The MVD clerk denied Plaintiff Hager a license because her middle name was spelled differently on her birth certificate than on her social security card. Her birth certificate had her middle name listed as "Jeane" and her social security card listed her middle name as "Gean." The MVD clerk told Plaintiff Hager that both a social security card and birth certificate were necessary to get a license from the MVD.

85. The MVD clerk did not inform Plaintiff Hager that she had presented sufficient documents to receive a DAC or even that a DAC exists. The birth certificate and valid New Mexico license she presented are both acceptable proof of identity and age pursuant to NMSA 1978 § 66-5-9(G)(3) and (5) (2016) and NMAC 18.19.5.12(B)(4). The utility bill and property tax assessment record are two valid proof of residency pursuant to NMSA 1978 § 66-5-9(B) (2016) and NMAC 18.19.5.16(B)(2) and (6).

86. The MVD clerk did not issue Plaintiff Hager a DAC because MVD enforces and ultra vires regulatory requirement that all applicants for DACs or non-federally compliant ID cards present both proof of identity and identity number. The clerk stated that they could not accept the social security card and birth certificate because they did not match exactly. The clerk did not inform Plaintiff Hager that she had a right to appeal the denial or the manner in which to appeal.

87. As a result, Plaintiff Hager began contacting the vital records office in Texas to change the middle name on her birth certificate. While she waited to hear back from the Texas,

her N.M. license expired and she could no longer lawfully drive.

88. Without her license, Plaintiff Hager could not drive to buy groceries or visit the doctor. She had to rely on family members for assistance. In July of 2017, Plaintiff Hager became ill and postponed going to the doctor because she could not lawfully drive.

89. On July 25, 2017, Plaintiff Hager had to call an ambulance because she could not drive to the hospital. Plaintiff Hager was hospitalized following intestinal surgery.

90. In September of 2017, after weeks in a rehabilitation facility, Plaintiff Hager returned to the MVD office on Juan Tabo with an attorney from the NM Center on Law and Poverty to apply for a DAC. Plaintiff Hager brought all the same documents she had previously taken to the MVD. The clerk informed the attorney and Plaintiff Hager that Plaintiff Hager would need to submit fingerprints to receive a DAC. This is incorrect. Under state law, only individuals who cannot prove they have lawful status and that do not have a current valid license or ID must be fingerprinted. Plaintiff Hager's Texas birth certificate proves she is a U.S. citizen. The clerk told Plaintiff Hager that the MVD would try to change the law soon, so that people like her did not need to turn in fingerprints. The worker provided a phone number to set up a fingerprinting appointment.

91. A week later, Plaintiff Hager and the attorney went to a fingerprinting appointment at the MVD office on Central and San Mateo. Plaintiff Hager brought the same documents she had previously provided to the MVD. After reviewing the documents, the clerk informed Plaintiff Hager again that she would need to be fingerprinted. The attorney asked the clerk to check with a supervisor. After checking with a supervisor, the clerk agreed to issue Plaintiff Hager a DAC using the same documents she originally presented to the MVD in May of 2017, this included using Plaintiff Hager's social security card to meet the ultra vires

requirement to submit proof of identity number.

92. Plaintiff Hager was denied a DAC twice. At no point, did MVD inform Plaintiff Hager that she had a right to challenge the denial of a DAC or the manner in which to appeal. Plaintiff Hager was only able to get a DAC after an attorney intervened on her behalf. She was not authorized to drive for over three months because of Defendants' violations of the law and suffered great hardship during that time.

Plaintiff Elizabeth Lara

93. Plaintiff ELIZABETH LARA is a resident of Santa Fe, New Mexico. She has been a licensed New Mexico driver since 2004. Her most recent driver's license expired on December 9, 2017. She made her first attempt to renew her license at the Santa Fe MVD on December 5, 2017.

94. Plaintiff Lara told the first MVD clerk with whom she spoke that she wanted to apply for a DAC. She brought a utility bill and her paystub as evidence of her New Mexico residency, her valid Mexican passport, and her valid New Mexico driver's license.

95. Her photograph was taken but before she was issued a DAC, a MVD clerk handed her a letter stating the following: "Your application for a New Mexico driver's license cannot be completed at this time. Our system is unable to verify your lawful status. The documents you presented will need to go through an additional verification process. There is no need to contact the New Mexico Motor Vehicle Division on this issue. When the additional verification is complete you will receive a notice with instructions." The letter did not provide any information about appealing the denial. (Letter is attached as **Exhibit #3**.)

96. In fact, Plaintiff Lara had provided Defendant with sufficient documentation to be issued a DAC under state law. She had 1.) proof of residency as required by NMSA 1978 § 66-5-

9(B) (2016) and NMAC 18.19.5.16 (B)(2) and (5) with a utility bill, and a pay stub; 2.) multiple proofs of identity and age under NMSA1978 § 66-5-9 (G)(2), and (3.) (2016) with a Mexican passport and valid state driver's license. Lawful status is not required to obtain a DAC.

97. Plaintiff Lara learned from a community organization that MVD requires both proof of identity and proof of identity number and that she might be able to get a DAC if she provided proof of her social security number.

98. Plaintiff Lara returned to the Santa Fe MVD the following day—December 6, 2017—and attempted to present her social security card along with the documents she brought the day before. This time, Plaintiff Lara provided more than sufficient documentation to be issued a DAC under state law. She turned in all the documents she provided at her previous visit and a social security card, which is proof of identity and age pursuant to NMSA 1978 § 66-5-9 (G)(1) (2016).

99. During the same visit, the MVD clerk inquired if Plaintiff Lara had any medical conditions and she stated she has Type 1 diabetes. The MVD clerk gave Plaintiff Lara a medical report to be completed by her physician.

100. Plaintiff Lara called her physician that same day and made an appointment for the following morning.

101. The following day—December 7, 2017—Plaintiff Lara visited her physician. The physician completed the medical form, but omitted Plaintiff Lara's personal information, such as her name, address, and phone number. Her physician told Plaintiff Lara to fill out that portion of the form. Plaintiff Lara forgot to complete that portion before she presented the form to the MVD later in the day.

102. The MVD clerk rejected Plaintiff Lara's medical form because of the lack of personal information. Instead of returning the completed medical form, the MVD clerk gave Plaintiff Lara a blank medical form and told her to return to her physician.

103. Plaintiff Lara returned to her doctor's office the following morning—December 8, 2017—but a different doctor was on duty and he refused to fill out the medical report again. Instead, he gave Plaintiff Lara a printout of her medical history.

104. That same day, Plaintiff Lara returned to the Santa Fe MVD with her medical history. The MVD rejected her medical history and denied her DAC application.

105. On the following day—December 9, 2017—her license expired.

106. Plaintiff Lara was denied a DAC, despite being eligible under state law four times. At no point, did Defendant notify Plaintiff Lara that she had a right to challenge the decision to deny her a DAC or the manner in which to appeal. As a result, Plaintiff Lara cannot lawfully drive.

107. Plaintiff Lara has two minor children, whom she must take to school. Both of her children must attend regular medical appointments for allergies and vitamin shots. Plaintiff Lara's spouse is the primary breadwinner in the family and he is unable to undertake these family responsibilities.

108. Plaintiff Lara must also drive to regular physical therapy and medical appointments stemming from a workplace accident.

Plaintiff Raul Aaron Lara Martínez

109. Plaintiff RAUL AARON LARA MARTÍNEZ is a resident of Santa Fe, New Mexico. In May 2017, he applied for his first-time DAC at the Santa Fe MVD office. He brought two proofs of residency—one from PNM and a copy of his lease agreement. He also brought his

translated and notarized birth certificate, a matrícula consular and a letter from the IRS evidencing his individual taxpayer identification number.

110. The MVD clerk told Plaintiff Lara Martínez that because he was applying for his first license, he had to submit fingerprints and undergo a background check.

111. Plaintiff Lara Martínez made an appointment for two weeks later at the Central Avenue and San Mateo Boulevard MVD office in the Albuquerque because the Española MVD had a two-month wait for a fingerprinting appointment. Plaintiff Lara Martínez traveled to Albuquerque to submit fingerprints.

112. A few weeks after he submitted his fingerprints, the MVD sent him a letter, which stated that based on the results of a background check, the MVD “will not be able to issue you a DAC.” The letter did not say what the background check revealed and why it meant he was not eligible for a DAC. The letter did not state that Mr. Lara Martínez had a right to appeal a denial of a DAC or the manner in which to appeal. The letter provided a number to call for questions.

113. Plaintiff Lara Martínez and his wife called the number in the MVD letter. The MVD employee who answered informed him that he was denied a DAC because his fingerprints were associated with a different name in a state database. The MVD employee told him that he would need to contact the New Mexico State Police to correct the record of his name in the database.

114. Plaintiff Lara Martínez and his wife went to the New Mexico Department of Public Safety (“DPS”) in Santa Fe. The DPS employee told them that only the arresting agency could correct the record of his name in the database.

115. Plaintiff Lara Martínez also asked for his records from the Santa Fe Municipal Court and the Santa Fe Magistrate Court. He hoped that the records would reveal which agency had incorrectly recorded his name.

116. In the summer of 2017, Plaintiff Lara Martínez called the MVD again for help and spoke with Monica Miller, an MVD employee in Albuquerque. Ms. Miller told him that the MVD had denied his DAC application because the background check revealed a 2009 arrest record in Santa Fe and the arresting law enforcement agency had recorded his name as “Aaron Lara,” instead of his full name, “Raul Aaron Lara Martínez.”

117. During the same phone call, Plaintiff Lara Martínez told Ms. Miller, the MVD employee, that “Aaron Lara”—the name the agency had recorded—was in fact his name, but was not his full name. Ms. Miller said there was nothing else the MVD could do until he changed his name in the database.

118. The MVD never advised Plaintiff Lara Martínez of his right to challenge the denial of the DAC or of the process he could use to appeal. Nor did the MVD advise him of documentation that he could provide to resolve the basis of his ineligibility, therefore providing him with no means to obtain a DAC.

119. As a result of MVD’s failure to provide due process, Plaintiff Lara Martínez and his family have suffered great hardship. Plaintiff Lara Martinez cannot lawfully drive. He and his wife are expecting a child in March, 2018, and he needs a license to drive so he can work and support his family.

Plaintiff Eulalia Robles

120. Plaintiff EULALIA ROBLES is a resident of Albuquerque, New Mexico.

121. Plaintiff Robles is a long-time licensed driver in New Mexico. Her most recent

driver's license expired on December 15, 2016.

122. On or about two weeks before her license expired, Plaintiff Robles went to the MVD office on Montgomery and San Mateo to apply for a DAC. She brought her valid license, but the MVD clerk turned her away. The MVD clerk told her that she would need to provide a translated and notarized copy of her birth certificate. The MVD clerk also told her that she would need to bring her social security card.

123. Plaintiff Robles visited two more MVD offices in an attempt to renew her license but the clerks again turned her away; eventually her license expired and a clerk at the Rio Rancho MVD told her to make a fingerprinting appointment pursuant to NMSA 1978 § 66-5-15.2(A) (2016).

124. On December 27, 2016, Plaintiff Robles went to the Central Avenue and San Mateo MVD office to undergo fingerprinting. The MVD clerk told Plaintiff Robles if her background check went well, she would receive her license in the mail from Santa Fe. Otherwise, the clerk told her, the MVD would call her or send her a letter.

125. Plaintiff Robles never received a license in the mail. She did not receive a letter nor a call indicating that MVD had denied her a DAC.

126. After a month passed, she called the MVD toll-free number. The MVD clerk told her by phone that her fingerprint background check had shown an arrest in Texas and that, for this reason, the MVD could not issue her a DAC.

127. Plaintiff Robles has lived in New Mexico since her early adolescence and has not lived elsewhere. She told the MVD clerk that she had never been in southern Texas and had never been arrested. The MVD clerk told her to fix the administrative error with the arresting agency in Texas, but refused to tell her any details about the record that would allow her to fix

the error.

128. In September 2017, Plaintiff Robles sought the assistance of U.S. Rep. Michelle Lujan Grisham's office. Following conversations with a congressional liaison with the U. S. Citizenship Immigration Services, staff at Congresswomen Lujan Grisham's office determined that it was most likely a family member of Plaintiff Robles who used her personal information in the arrest.

129. Even if the arrest were valid, an old arrest is not a valid reason to deny a DAC on the basis of a background check. NMSA 1978 § 66-5-15.2(A) (2016) states that DACs can be denied only if an individual has an outstanding valid criminal warrant or if the fingerprints are associated with any name, date of birth or social security number other than those provided by the applicant.

130. Defendant denied Plaintiff Robles a DAC four times and never informed her of her right to challenge the denial and the manner in which to appeal pursuant to the statute. Nor did the MVD advise her of the documentation that she could provide to resolve the basis of her ineligibility, therefore providing her with no means to obtain a DAC.

131. Defendant's denial of due process prevented Plaintiff Robles great harm because she cannot address or correct the improper denial.

132. Since December 2016, Plaintiff Robles has been without a valid license. Plaintiff Robles applied for two care-giver jobs, but was rejected from both due to her expired license.

133. During the time she was unemployed, Plaintiff Robles relied on her siblings, members of her church and friends for donations to continue to pay her bills. Plaintiff Robles has had to forfeit her car because she could not afford payments.

134. Recently, Plaintiff Robles was able to secure a regular babysitting job. However,

she relies on public transportation to travel to her job daily. Instead of a 20-minute drive to travel seven miles, she must take two public buses for a total travel time of 90 minutes each way.

Plaintiff Reyna Carmona Pérez

135. Plaintiff REYNA CARMONA PÉREZ is a resident of Albuquerque, New Mexico and is the mother of five minor children who live with her.

136. Since June 15, 2009, Plaintiff Carmona Pérez had a New Mexico driver's license. Her license expired on December 18, 2016.

137. In October, 2016, two months before her license expired, Plaintiff Carmona Pérez went to the MVD office on Fourth Street in Albuquerque to apply for a DAC. Plaintiff Carmona Pérez brought her valid New Mexico driver's license, her valid Mexican passport, and her federally-issued individual taxpayer identification number card. The MVD clerk told Plaintiff Carmona Pérez that because her license would expire in December 2016, if she renewed her license on that day, in October 2016, the MVD would not issue her a license that was valid for more than two months. The MVD clerk also told her that she would need to bring matrícula consular to obtain a license.

138. Plaintiff Carmona Pérez then made an appointment with the Mexican Consulate in Albuquerque to apply for a matrícula consular.

139. In November 2016, after she had received her matrícula consular, Plaintiff Carmona Pérez went to the MVD office on Coors and Rio Bravo. The MVD clerk told her to wait to apply for a new license until her current license had expired. The clerk told her that the MVD would only be able to give her a license that was valid for one month, until December 2016.

140. In December 2016, Plaintiff Carmona Pérez was hospitalized for a medical

emergency and then remained at home until the end of January 2017. Her license expired.

141. In February 2017, she went to the MVD on Lomas and San Mateo. The MVD clerk told her that she would need to visit the MVD on Central and San Mateo.

142. Later that month, Plaintiff Carmona Pérez made an appointment to visit the Central and San Mateo MVD. The MVD clerk told her that she would have to pay \$64.00 and that the MVD would need to take her fingerprints to be sure that she had not committed any crime. The MVD also told her that she would need to provide a translated copy of her birth certificate, her individual taxpayer identification number card, and her matrícula consular. The MVD also said that she would need to provide two bills showing her New Mexico address.

143. The MVD took her fingerprints and her photo.

144. The MVD gave Plaintiff Carmona Pérez a receipt with a phone number on it and the clerk told her to call the phone number after ten days.

145. After ten days, Plaintiff Carmona Pérez called the MVD. The MVD clerk told her that New Mexico would not issue her a license, but the MVD clerk would not tell her why. The MVD worker told her to call Monica Miller, an MVD employee in Albuquerque.

146. Plaintiff Carmona Pérez called Monica Miller. Ms. Miller told her that her fingerprint background check revealed a 17-year-old record from a 2000 arrest in southern California. Ms. Miller said the arresting agency had recorded her name as “Reyna Pérez Carmona,” instead of Reyna Carmona Pérez, and had incorrectly recorded the date and month of her birth.

147. Plaintiff Carmona Pérez asked Ms. Miller what she could do to obtain a DAC. Ms. Miller told her that she would need to go to the arresting agency in southern California to ask them to change the record.

148. Plaintiff Carmona Pérez told Ms. Miller that the record did contain her name, but that the arresting agency had simply transposed her two last names, a common error. She also said that she did not understand why the record of her birthdate was incorrect because she had given the arresting agency her valid ID with her date of birth.

149. Ms. Miller told her the arresting agency would need to correct the clerical errors or the MVD would not be able to give her a DAC.

150. Defendants denied Plaintiff Carmona Pérez a DAC three times and never informed her of her right to challenge the denial and the manner in which to appeal pursuant to the statute. Nor did the MVD advise her of the documentation that she could provide to resolve the basis of her ineligibility, therefore providing her with no means to obtain a DAC.

151. Defendants' denial of due process causes Plaintiff Carmona Pérez great harm. Without the opportunity to challenge the denials, she cannot lawfully drive. Plaintiff Carmona Pérez' husband and five children depend on her for transportation and the income she earns from her job.

CLASS ACTION ALLEGATIONS

152. The individual plaintiffs bring the Two Claims for Relief under Rule 1-023(A) and (B)(2) NMRA, on behalf of themselves and all New Mexicans who were denied a DAC or a non-federally compliant ID card based on the Defendants' unlawful policy and practices of failing to adhere to its statutory duty to issue these two credentials and denying DACs and non-federally compliant ID cards without procedural due process.

153. The members of the Class are so numerous that joinder of all members is impracticable.

154. There are questions of law and fact common to the class. These include, but are

not limited to, the following:

- Whether Defendants' regulation requiring applicants for a DAC or a non-federally compliant ID card to present an identification number violates the Defendants' statutory duty to issue these credentials?
- Whether Defendants' failure to provide consistent and correct information about the documents required for DACs and non-federally compliant IDs violates their statutory duty to issue DACs and non-federally compliant ID cards?
- Whether Defendants' failure to provide notice of the right to appeal the denial of a DAC or non-federally compliant ID cards and information about the process by which applicants may make an appeal violates their statutory duty to provide an appeals process and procedural due process under the New Mexico Constitution?
- Whether the Class is entitled to injunctive and declaratory relief to remedy Defendants' violations of law?

155. The claims of the Individual Plaintiffs are typical of the class, in that their licenses were lost or expired on or after March 8, 2016, and all applied, attempted to apply, or were eligible to apply for a DAC or a non-federally compliant ID and were subjected to one or more of Defendants' unlawful policies and practices.

156. The Individual Plaintiffs will fairly and adequately represent and protect the interests of the Class and have retained competent and experienced counsel. There is no conflict between these Plaintiffs and the members of the Class.

157. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

CLAIM I

Defendants illegally deny DACs and non-federally compliant ID cards to eligible applicants in violation of NMSA 1978, § 66-5-9(E) and NMSA 1978, § 66-5-401(C).

158. Plaintiffs reallege Paragraphs 1 through 157 as though they were fully set forth herein.

159. The Department has a policy and practice of refusing to issue DACs and non-federally compliant ID cards to eligible applicants in violation of state law.

160. State law requires the Defendants to issue a DAC or an identification card not intended to be accepted by federal agencies to any applicant who is otherwise eligible for a driver's license or ID card but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a DAC is not valid for federal purposes. *See* NMSA 66-5-9(E) (DAC) or NMSA 66-5-401 (C) (non-federally compliant ID cards).

161. Instead of issuing DACs or non-federally compliant ID cards to eligible applicants, the MVD turns them away from local offices verbally notifying them they are denied a DAC or non-federally compliant ID cards, unlawfully requiring applicants to return to the MVD with items that the statute does not require applicants to provide.

162. The Department requires all applicants for DACs and non-federally compliant ID cards to provide proof of “their identification number”—a requirement that the legislature neither enacted nor authorized the Department to create or impose. *Compare* NMSA 1978, § 66-5-9 (2016) (DAC statute) *and* NMSA 1978, § 66-5-401 (2016) (non-federally compliant ID card statute), *with* NMAC 18.19.5.15 (2016) (Department regulation requiring proof of identification number). Indeed, the statute does not require applicants to provide an identification number, much less proof of that number.

163. In fact, the only applicants who are required to show proof of an identification number are those applying for the REAL ID compliant credentials. NMSA 1978, §§ 66-5-9(B) & (E) (2016).

164. In practice and contravening its own ultra vires regulations, the Department requires certain applicants to provide a social security card in order to prove their social security number.

165. The MVD offices give inconsistent and incorrect information about what the statutes and regulations require DAC and non-federally compliant ID card applicants to provide.

166. MVD offices fail to advise applicants that they are eligible for a DAC or a non-federal ID or that DACs and non-federally compliant ID cards exist.

167. When an applicant does not have or does not submit the items that MVD unlawfully requires, the MVD unlawfully denies the applicant a DAC or a non-federally compliant ID card.

168. As a result of MVD's unlawful policies and practices, applicants often return to the MVD repeatedly, attempting to comply with the MVD's unlawful requirements. Many applicants cannot comply with the inconsistent, contradictory information that MVD provides to them.

169. Because MVD's unlawful policies and practices force applicants to return repeatedly to the MVD, many applicants' valid IDs or licenses expire while the applicants attempt to comply with MVD's unlawful requirements. This causes vulnerable New Mexicans and their families great hardship.

170. New Mexico's courts have routinely held that where, as here, a statute delegates authority to an agency, the agency's authority to act is limited to what is expressly contained in the statute.

171. If the agency acts beyond its statutory authority, its actions are ultra vires and unlawful. *See, e.g., Mechem v. City of Santa Fe*, 1981-NMSC-104, ¶ 20, 96 N.M. 668, 634 P.2d

690 (“If the City has authority to terminate a special exception upon a change in ownership, it must be found in the above statutes. The statutes do not expressly provide for regulation of land by making a special exception personal to a particular owner. Any power to do so must be by necessary implication and must reasonably relate to the objectives of zoning. Otherwise the regulation is ultra vires and unenforceable.”) (citing *Vlahos v. Little Boar’s Head District*, 101 N.H. 460, 146 A.2d 257 (1958); *Olevson v. Zoning Board of Review*, 71 R.I. 303, 44 A.2d 720 (1945)); *Fancher v. Bd. of Comm’rs of Grant Cty.*, 1921-NMSC-039, 28 N.M. 179, 210 P. 237 (“Where authority is given to do a particular thing, and the mode of doing it is prescribed, it is limited to be done in that mode, and all other modes are excluded.”); *Old Abe Co. v. New Mexico Min. Comm’n*, 1995-NMCA-134, ¶ 22, 121 N.M. 83, 908 P.2d 776 (“[W]e will presume that the rule will not be interpreted in a manner contrary to the Act”).

172. Here, state law imposes four express requirements on all DAC and non-federally compliant ID card applicants and a fifth express requirement on some applicants. The statutes also contain lists of the documents and information that applicants may provide to meet those requirements. MVD acts unlawfully and beyond its statutory authority by imposing ultra vires requirements on applicants.

173. In sum, the MVD has failed to lawfully implement the DAC and non-federally compliant ID card law, has failed to properly train its staff on what the law requires of DAC and non-federally compliant ID card applicants, and has failed to properly supervise and discipline employees to ensure that the MVD issues DACs and non-federally compliant ID cards to all eligible applicants.

174. The MVD’s policies and practices illegally deny New Mexicans driving authorization cards and non-federally compliant identification cards.

CLAIM II

Defendant denies DACs and non-federally compliant ID cards without procedural due process required by state law.

175. Plaintiffs reallege Paragraphs 1 through 174 as though they were fully set forth herein.

176. The harm that Defendants cause by illegally denying DACs and non-federally compliant ID cards, described above, is compounded by Defendants' failure to provide the legally required notice of the right to challenge the denial.

177. State law requires MVD to provide a process for applicants to dispute the denial of any license, permit, placard or registration provided for under the Motor Vehicle Code by filing with the secretary a written protest against the action or inaction by the department. NMSA 1978 § 66-2-17 (A). The protest must be filed in writing within 30 days of the mailing or verbal notification of the action proposed to be taken by the department. *Id.* at (A) and (B).

178. Procedural due process is also required by Article II, Section 18 of the New Mexico Constitution because driver's licenses are considered an important protected right. *See State v. Herrera*, 1991-NMCA-005, ¶ 4, 111 N.M. 560, 807 P.2d 744 (citing *Bell v. Burson*, 402 U.S. 535, 539 (1991)). Procedural due process requires notice and the opportunity to be heard before a deprivation by the state can occur. *See Maso v. State of N.M. Taxation & Rev. Dep't, Motor Vehicle Div.*, 2004-NMCA-025, ¶ 10, 135 N.M. 152, 85 P.3d 276.

179. Adequate notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Maso*, 2004-NMCA-025, ¶ 19.

180. Defendants do not provide adequate verbal or written notification when they deny DACs or non-federally compliant ID cards. The majority of applicants seeking to obtain or

renew a DAC or non-federally compliant ID card are denied at MVD verbally in MVD field offices. MVD does not inform applicants—whether verbally or in writing at this stage—that they have a right to challenge that denial through the process in state law. Instead, MVD turns them away with no further recourse.

181. MVD denies DACs and non-federally compliant ID cards following fingerprinting and the corresponding background check under NMSA 1978, § 66-5-2(B) with a written notice that does not provide a reason for the denial or information about the right to appeal. Instead, the notice simply states: “The results of your background check to obtain a NM Driving Authorization Card (DAC) have been received. Based on these results, New Mexico Motor Vehicle Division (MVD) will not be able to issue you a DAC.” The notice states that applicants are eligible for a refund of the DAC fee and provides a phone number should the applicant have any questions. (A copy of the standard letter used by MVD is attached hereto as **Exhibit #4**.)

182. Under state law, if the MVD denies a DAC or a non-federally compliant ID card based on a fingerprint background check, the applicant “shall become eligible upon submission of satisfactory evidence that the basis for ineligibility has been resolved.” NMSA 1978 § 66-5-15.2(C).

183. This means some Plaintiffs and untold New Mexicans cannot obtain an DAC or a non-federally compliant ID card because they cannot resolve a problem with their background check. Despite being entitled to do so under the statute.

184. State law only allows MVD to deny a DAC following a background check using fingerprints if the applicant 1.) has an outstanding valid criminal warrant or 2.) the applicant’s fingerprints are associated with any name, date of birth, or social security number other than those provided by the applicant in the application for a DAC or identification card not to be

accepted by federal agencies for federal purposes. NMSA 1978 § 66-5-15.2(B).

185. The MVD does not inform New Mexicans who call the number on the notice of the right to appeal or challenge the denial. Instead, MVD requires denied applicants to take actions that have no basis in law, such as correcting clerical errors involving the applicant's name or social security number at other federal, state, city, or county government databases, or go through a name change.

186. Defendants illegally denied all individual plaintiffs in this action without providing notice of a right to appeal or contest the denial. Without a way to correct MVD's errors, Plaintiffs suffered serious harm, losing offers of employment, housing and income because they do not have valid identification or a legal authorization to drive.

187. Data from Defendants support these facts. According to MVD, it has received no written requests to invoke the administrative appeal process described in NMSA 1978, § 66-2-17. (See Defendants' response to a records request attached hereto as **Exhibit #5**.)

188. Defendants' training for MVD workers on issuing DACs and non-federally compliant ID cards does not include requirements to notify applicants of their right to challenge a denial. (Defendants' manual for MVD workers is attached as **Exhibit #6**.)

189. Records from Defendants indicate that, although required by federal agencies as of December 2017, Defendants do not have a policy on how to inform applicants that they are denied based on the results of a fingerprint background check. (Defendants' emails attached as **Exhibit #7**.)

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that the Department's existing regulations governing DACs and non-federally compliant ID cards, NMAC 18.19.5.15, are ultra vires and contravene the requirements that the Legislature established for obtaining DACs and non-federally compliant ID cards.

2. Issue a declaratory judgment that the Department's practice of denying applicants DACs and non-federally compliant ID cards violates procedural due process.

3. Preliminarily and permanently enjoin the Defendant John Monforte, in his capacity as Acting Secretary of the Department, and the remaining Defendants from enforcing the Department's existing regulations governing DACs and non-federally compliant ID cards, NMAC 18.19.5.15 (2016).

4. Preliminarily and permanently enjoin Defendant John Monforte, in his capacity as Acting Secretary of the Department, and the remaining Defendants from denying DACs and non-federally compliant ID cards without written notice containing individualized and detailed reasons for the denial and information about how and by when to challenge a denial.

5. Require Defendant John Monforte, in his capacity as Acting Secretary of the Department, and the remaining Defendants to issue notice to all New Mexicans whose driver's license or state-issued ID expired following the implementation of Defendants' ultra vires regulations—i.e., following November 15, 2016—with information on the requirements to obtain a DAC and non-federally compliant ID cards as well as information on the statutory right to appeal a denial of any MVD-issued credential.

6. Require Defendants to revise all materials about the requirements for obtaining DACs and non-federally compliant ID cards, including, but not limited to, information on their website, signs, posters, brochures, handouts, and in presentations.

7. Grant all other relief that this Court deems proper.

Dated: January 29, 2018

Respectfully submitted,

//S//David H. Urias

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