

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

Cause No. D-101-CV-2011-02630

**The HON. MIGUEL GARCIA, HON.
HOWIE MORALES, HON. ELISEO
ALCON, and HON. GERALD ORTIZ Y
PINO**, Citizens of New Mexico and members of
the New Mexico Legislature, and **MARISELA
MORALES**, a legal permanent resident of New
Mexico,

Plaintiffs,

vs.

DEMESIA PADILLA, in her capacity as the
Secretary of the New Mexico Taxation and
Revenue Department,

Defendant.

AGREED PERMANENT INJUNCTION

This Agreed Permanent Injunction is entered into between Defendant Demesia Padilla, in her capacity as the Secretary of the New Mexico Taxation and Revenue Department, and Plaintiffs, the Honorable Miguel Garcia, *et al.* (Collectively herein, “the Parties.”) In lieu of litigating further the claims in this case, the Parties make the following stipulations and agree to the entry of this Judgment.

BACKGROUND

This action arose following the Governor of New Mexico’s announcement of the creation and implementation of a “residency certification program for those who have obtained a foreign national driver’s license.” Shortly after the announcement, Plaintiff Marisela Morales received a form letter from the Motor Vehicle Division regarding the Residency Certification Program.

On August 24, 2011, Plaintiffs filed a Petition for Writ of Mandamus alleging that the MVD's executive action was in violation of the: (1) Separation of Powers Provision of Article III, Section 1 of the New Mexico Constitution, and (2) Equal Protection Clause of Article II, Section 18 of the New Mexico Constitution, both of which Defendant denied. On August 31, 2011, Plaintiffs filed, and the Court granted, an Application for Temporary Restraining Order asking the Court to temporarily restrain Defendant from further implementing and executing the Residency Certification Program until a preliminary hearing could be scheduled. On September 2, 2011, Plaintiffs filed their Motion for Preliminary Injunction and Memorandum of Law in Support Thereof asking the Court to restrain Defendant from further implementing and executing the Residency Certification Program during the pendency of this lawsuit. The Court granted the Motion, in part on equal protection grounds, and signed its Order Granting Preliminary Injunction on September 22, 2011.

INJUNCTION

The Parties have compromised and settled all claims alleged by Plaintiffs in this cause without the necessity of a trial. The Parties stipulate that this Court has jurisdiction over all the parties and claims in this matter. The Parties stipulate that Plaintiffs have no adequate and complete remedy at law. The Parties stipulate that this Agreed Permanent Injunction only applies to the Residency Certification Program. It is further stipulated that Plaintiffs and Defendant agree to, and do not contest, the entry of this Judgment.

Upon review of the pleadings and stipulations of the Parties, the Court finds that the Parties agree to and approve the entry of this Judgment. Additionally, after reviewing the terms of this Agreed Permanent Injunction, the Court finds that the provisions of the Agreed Permanent Injunction are fair, just, and reasonable. The Court concludes that it has jurisdiction

over all matters and entry of this Judgment is consistent with the rules and laws of this State. The Court therefore ORDERS a Permanent Injunction against Defendant Demesia Padilla in her capacity as the Secretary of the New Mexico Taxation and Revenue Department. In agreeing to entry of this judgment, the Parties each maintain that they have valid claims and defenses and neither party waives those claims or defenses. Defendant does not admit liability and specifically denies it.

IT IS ORDERED that Demesia Padilla in her capacity as the Secretary of the New Mexico Taxation and Revenue Department is permanently enjoined from implementing and executing the Residency Certification Program. Specifically, Defendant Padilla is enjoined from sending out any new or additional communications related to the Residency Certification Program to persons who did not originally receive letters as part of the Residency Certification Program before the Temporary Restraining Order (“TRO”) was issued in this case. Defendant Padilla is further enjoined from taking any suspension or cancellation action against persons who were sent a letter through the Residency Certification Program prior to entry of the TRO based solely upon either a lack of response to the letter or a return of the letter to the Department as undeliverable. The Department may further investigate and take appropriate action as specifically allowed below, relating to a person for whom the Department had obtained a returned letter prior to the entry of the TRO in this case raising a question of fraud as to that person’s obtaining of a New Mexico driver’s license or identification card. The Department may also investigate further individuals who, during interviews taken under the Residency Recertification Program, presented documents reasonably believed to be fraudulent pertaining to their proof of residency. This further investigation is to be conducted only as permitted by law

and would be needed prior to any suspension or cancellation of any driver's licenses or identification cards.

This Agreed Permanent Injunction does not apply to and specifically allows further Department investigation of and/or contact with individuals whom the Department has received specific information through the Residency Certification Program prior to the issuance of the TRO in this case raising a question of fraud as to that person. Those persons are limited to those for whom the Department received returned letters with an explicit notice that the license or identification holder never lived at the address, letters that were returned undeliverable, letters indicating that the address never existed and indeed, does not exist, or letters that were returned with a forwarding address in another state or country. The Department will not suspend or cancel licenses or identification cards solely because the letter was returned undeliverable. If the Department chooses to take further action regarding the letters identified above, further investigation as permitted by law would be needed prior to any suspension or cancellation.

Except as limited above, the Agreed Permanent injunction does not prohibit the Department from investigating and taking appropriate action after investigation to cancel or suspend a driver's license or identification card when the Department determines that the person was not entitled to the issuance, the person failed to give the required or correct information in his or her application, or the person committed any fraud in making the application as permitted by law.

The Parties have agreed that the Department will pay an agreed upon portion of Plaintiffs' attorneys' fees and costs incurred in this case. The Department shall make payment to Plaintiffs no later than 30 days following the date that this Agreed Permanent Injunction is signed and entered by the Court.

The entry of this Agreed Permanent Injunction shall conclude these proceedings, except that the Court shall retain jurisdiction over this case with respect to the enforcement of the Agreed Permanent Injunction. In any action to enforce the terms of this Agreed Permanent Injunction, the prevailing party shall be entitled to all reasonable attorneys' fees, costs, and expenses incurred in that action, regardless of whether the prevailing party is initiating or defending the enforcement action. In addition, the failure to abide by this Agreed Permanent Injunction may result in contempt of court.


SARAH M. SINGLETON
District Court Judge

Approved as to Form and Substance:

David G. Hinojosa
Attorney for Plaintiff
Mexican American Legal Defense and Educational Fund
110 Broadway, Suite 300
San Antonio, TX 78205
Tel: (210) 224-5476
Fax: (210) 224-5382
dhinojosa@maldef.org

Julia Belles
Taxation and Revenue Department
Legal Services Bureau
P.O. Box 630
Santa Fe, NM 87504-0630
Tel: (505) 827-9807
Fax: (505) 827-0684
Julia.belles@state.nm.us