

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

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CATHERINE GATES; CARLOS ERBACH;  
MURUGUSUNDARAM VEERAMANI;  
JAYANTI BANERJEE; CLAUDIA  
MIRELES ESPARZA, through her Next Friend,  
Raquelle D. Harris; JOHN DOE; and  
FREEDOM HOUSE, a Michigan  
Non-profit Corporation,

Plaintiffs,

JAMES R. GIDDINGS

v

Case No. 08 186 -CZ

TERRI LYNN LAND, in her official capacity  
as Michigan Secretary of State,

Defendant.

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Andrew Nickelhoff (P37990)  
Sachs Waldman P.C.  
Cooperating Attorney/ACLU Fund of Michigan  
1000 Farmer Street  
Detroit, MI 48226  
(313) 496-9429

Michael J. Steinberg (P43085)  
Kary L. Moss  
ACLU Fund of Michigan  
60 West Hancock Street  
Detroit, MI 48201  
(313) 578-6814

Jocelyn Benson (P69342)  
Cooperating Attorney/ACLU Fund of Michigan  
471 West Palmer Street  
Suite 3223  
Detroit, MI 48202  
(313) 577-3971

Bryan Waldman (P46864)  
Sinas, Dramis, Brake, Boughton & McIntyre, PC  
Cooperating Attorney/ACLU Fund of Michigan  
3380 Pine Tree Road  
Lansing, MI 48911  
(517)394-7500

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

THERE IS NO PENDING OR RESOLVED CIVIL ACTION  
ARISING OUT OF THE TRANSACTION OR OCCURRENCE  
ALLEGED IN THIS COMPLAINT.

NOW COME plaintiffs CATHERINE GATES, CARLOS ERBACH, MURUGUSUNDARAM VEERAMANI, JAYANTI BANERJEE, CLAUDIA MIRELES ESPARZA (through her Next Friend, Raquelle D. Harris), and JOHN DOE (hereinafter referred to collectively as “the individual plaintiffs”), and FREEDOM HOUSE on behalf of itself and in a representative capacity, through their attorneys, and state as their Complaint for Declaratory and Injunctive Relief as follows:

### INTRODUCTION

1. This Complaint seeks declaratory and preliminary and permanent injunctive relief to remedy Michigan Secretary of State Terri Lynn Land’s unlawful and unconstitutional application of the Michigan Vehicle Code, 1949 PA 300, MCL 257.1 *et seq*, to prohibit the issuance of a driver’s license to any applicant who is not a U.S. citizen or a “lawful permanent resident,” i.e., a green card holder. Defendant Land’s action was based on her interpretation of an opinion issued by Attorney General Mike Cox, OAG No. 7210 (December 27, 2007), which announced a new interpretation of the term “resident” set forth in Section 51a of the Michigan Vehicle Code, MCL 257.51a. Defendant Land interpreted the OAG as limiting eligibility for a driver’s license only to U.S. citizens and to “lawful permanent residents” as defined by federal immigration law, thereby excluding other residents of Michigan from obtaining a driver’s license.
2. This unprecedented interpretation of the Michigan Vehicle Code is erroneous, invalid, arbitrary, and without any basis in law; it also violates the Michigan Constitution. Defendant’s misinterpretation of the Michigan Vehicle Code will cause significant hardship to plaintiffs and to thousands of other people who reside in Michigan legally and who will be unable to

obtain a Michigan driver's license as a result. As a direct result of defendant Land's actions complained of herein, many non-citizens who have not yet attained the status of permanent resident but who live and work in Michigan under a variety of legal work permits and visas will be unable to obtain a driver's license, which will wreak havoc on this State's economy and on its communities.

3. Ironically, Defendant Land has publicly criticized Attorney General Mike Cox for issuing an opinion barring persons who are residing in Michigan legally from obtaining a driver's license, while Cox has stated publicly that defendant Land has misinterpreted his Opinion and that persons residing in this state legally are, in fact, entitled to a driver's license. Plaintiffs accordingly seek to enjoin the unlawful and unconstitutional denial of driver's licenses based on defendant Land's interpretation of Cox's Opinion, and they seek a declaration that all "residents" of Michigan as that term is defined in the Motor Vehicle Code, not just citizens and permanent residents, are entitled to a driver's license if they otherwise qualify.

#### **PARTIES**

4. Plaintiff Catherine Gates is a Canadian citizen. Plaintiff Gates resides in Muskegon, Muskegon County, Michigan. Plaintiff Gates intends to remain in the Muskegon area. She is a Registered Nurse specializing in public health nursing. Plaintiff Gates is currently seeking employment as a nurse in Michigan, where there is a shortage of nurses. She has a one year work visa while her application for permanent residence is being processed. All of the positions for which Gates has applied require that she have a Michigan driver's license because she will have to travel to clinics and homes to treat patients. Before the recent events giving rise to this action, plaintiff Gates was planning on applying for a Michigan driver's

license. Plaintiff Gates has an Ontario driver's license, but renewing her Canadian driver's license will jeopardize her application for permanent resident status. Because she does not meet the definition of a "resident" eligible for a Michigan driver's license under defendant's interpretation of the Michigan Vehicle Code, absent relief from this Court plaintiff Gates' ability to obtain employment and practice her livelihood will be significantly impaired. But for defendant's unlawful actions, plaintiff Gates would apply for a Michigan driver's license.

5. Plaintiff Carlos Erbach resides in Norton Shores, Muskegon County, Michigan. He was born and raised in Mexico, and he moved to Michigan approximately one year ago. Mr. Erbach is a self-employed business consultant. He has a Bachelor of Science degree in industrial and systems engineering. He has been retained as an independent contractor by a company that is based on Fremont, Michigan, a commute of over thirty miles each way from his home which he must make five days per week. Mr. Erbach is in Michigan under a B-1/B-2 business/travel visa and he has been issued an I-94 card. Plaintiff Erbach applied for permanent resident status in August, 2007; he is awaiting processing of his application. Plaintiff Erbach intends to remain in Michigan. He has applied for a Michigan driver's license. He passed the written test in December, 2007, and he passed the driving test in late January, 2008. When he presented his certificate to a Secretary of State branch office to obtain his license, he was told that he was disqualified based on defendant's interpretation of the Michigan Vehicle Code. Plaintiff Erbach has found that not having a Michigan driver's license presents many difficulties and obstacles, including making it far more difficult to travel to and from his work and to secure credit or qualify for a credit card.

6. Plaintiff Dr. Murugusundaram Veeramani resides in Linden, Genesee County, Michigan. Plaintiff Veeramani was born in India. Dr. Veeramani is a neuro-radiologist employed at Hurley Medical Center in Flint, Michigan. Dr. Veeramani was trained in the United States. He is working under an H-1 work visa. He intends to remain in Michigan. Dr. Veeramani's patients are largely low income people who either qualify for Medicaid or Medicare or who lack medical insurance.
7. Plaintiff Jayanti Banerjee resides in Ann Arbor, Washtenaw County, Michigan. She is a Singaporean national who, since December, 2007, has been employed as a language assessment specialist at the University of Michigan's English Language Institute. Plaintiff Banerjee has an H-1B work visa, which is issued for workers needed in skilled, specialty occupations. Plaintiff Banerjee intends to apply for permanent resident status, and she would like to obtain a Michigan driver's license. Plaintiff Banerjee has discovered that automobile insurance is significantly more expensive for owners who do not possess a Michigan driver's license. She also has found it difficult to conduct many transactions that require photo identification, such as filling prescriptions at a pharmacy, without a Michigan driver's license. But for defendant's unlawful actions, plaintiff Banerjee would apply for a Michigan driver's license.
8. Plaintiff Claudia Mireles Esparza is fifteen years old and she lives in Detroit, Wayne County, Michigan. Plaintiff Esparza sues by and through her Next Friend, Raquelle D. Harris. Plaintiff Esparza was born in Mexico and immigrated to the United States in 1998. She is an orphan and a ward of the Wayne County Circuit Court. Plaintiff Esparza is seeking Special Immigrant Juvenile Status. In order to complete biometrics for security clearance purposes,

which is required in order to obtain Special Immigrant Juvenile Status, plaintiff Esparza must secure one piece of government-issued photo identification. Plaintiff Esparza's Next Friend was advised by the Michigan Secretary of State's office that Ms. Esparza is not eligible for a state identification card now and that she would not be eligible for a driver's license when she reaches age sixteen in July 2008.

9. Plaintiff John Doe appears under a pseudonym. He lives in a housing facility provided by plaintiff Freedom House in the Detroit metropolitan area. Plaintiff Doe is a political refugee from an African country. He came to Michigan in 2007 to escape the detention, arrest and horrific torture he suffered in his home country because of his political activity. Mr. Doe believes that his family, which remains in Africa, may suffer retribution if his real name is used in this Complaint. He hopes to bring his family to the United States eventually. Mr. Doe has been granted political asylum in this country and is seeking permanent resident status. In the meantime, Mr. Doe wishes to apply for a driver's license so that he can obtain employment as a truck driver; however, as a result of defendant's unlawful actions he cannot do so.
10. Plaintiff Freedom House is a Michigan non-profit corporation with its headquarters located in Detroit, Wayne County, Michigan. Freedom House sues on behalf of itself and in a representative capacity on behalf of asylum seekers it assists who are seeking or who may seek a Michigan driver's license and who will be unable to obtain one as a result of defendant's actions complained of herein. The mission of Freedom House is to provide temporary shelter and support to people seeking refuge and asylum in the U.S. from persecution abroad as well as helping them to find jobs and housing so that they may live independently. Freedom House provides its residents with needed housing and social services while they file and await

determination of their claims for asylum status. After Freedom House residents apply for asylum status they have a legal right to remain in the U.S. while they await determination on their applications. The majority of Freedom House residents and graduates remain in Michigan while they await and after they receive their green cards, during which time Freedom House offers them continuing assistance with education, job training and other services. All of Freedom House's residents who obtain asylum status become independent, i.e., they obtain employment, they have their own transportation and they live independently. In order to work and live independently in Michigan, Freedom House clients and graduates need to be able to drive automobiles. The inability of Freedom House clients and graduates to obtain driver's licenses frustrates the mission of Freedom House to help political refugees become independent.

11. Defendant Terri Lynn Land is the Michigan Secretary of State. Defendant Land has statutory authority to enforce and administer the Michigan Vehicle Code. MCL 257.204(1). Defendant Land has responsibility for promulgating rules and requirements for the issuance of a driver's license under the Vehicle Code.

#### **JURISDICTION AND VENUE**

12. The Court has jurisdiction pursuant to MCL 600.601, 600.605 and MCR 2.605.
13. Venue is proper in this Circuit Court under MCL 600.1621(a) and 600.1641(1). Defendant Land's principal place of business is in Ingham County, Michigan.

## COMMON ALLEGATIONS

14. For years, and until the events giving rise to this action, all residents of Michigan have been able to obtain a driver's license.
15. In order to qualify for a Michigan driver's license an applicant must be a "resident" of Michigan. The Michigan Vehicle Code, MCL 257.51a, defines a "resident" as:

every person who resides in a settled or permanent home or domicile with the intention of remaining in this state. A person who obtains employment in this state is presumed to have the intention of remaining in this state.
16. On December 14, 1995, former Attorney General Frank J. Kelley issued an Opinion stating that under the statutory definition of "resident" set forth in the Vehicle Code, an "illegal alien" does not automatically fail to meet the residency requirement for issuance of a driver's license. (OAG No. 6883). Attorney General Kelley noted that the exclusion of "nonresidents" from eligibility for a driver's license was inserted in the Vehicle Code as part of a package of bills dealing with truck safety, and that, "[a] review of the legislative history . . . reveals no indication that this prohibition was directed at illegal aliens."
17. Upon information and belief, until the events giving rise to this action, residents of Michigan have never been disqualified from obtaining a driver's license based on their status as non-permanent residents or illegal aliens.
18. On December 27, 2007, Michigan Attorney General Mike Cox issued an Opinion, OAG No. 7210, rescinding former Attorney General Kelley's opinion in OAG No. 6883. In OAG 7210, Mr. Cox opined that the Michigan Vehicle Code requires that driver's licenses be denied to any person who is not a U.S. citizen or who has not secured permanent resident status with

the federal government, i.e., obtained a “green card.” Despite the operative language of the Michigan Vehicle Code defining a “resident” eligible for a driver’s license as, “every person who resides in a settled *or* permanent home or domicile,” and disregarding the Code’s stated presumption that a person obtaining employment in Michigan intends to remain in Michigan, defendant Cox substituted his own definition of “resident” for the Vehicle Code’s. Defendant Cox explained his interpretation of the Vehicle Code by stating that the federal government has exclusive authority to regulate immigration and to determine whether an alien is or is not a resident of Michigan, even with respect to the definition written by Michigan’s legislators into the Michigan Vehicle Code. While no provision of federal law requires Michigan to deny issuance of driver’s licenses to aliens who are not lawful permanent residents, defendant Cox decided that the Michigan Vehicle Code must be construed in that manner, based on his perception of “national security and false identification concerns.”

19. On January 21, 2008, based on defendant Cox’s opinion in OAG No. 7210, defendant Land announced a new policy requiring Michigan residents to prove that they have “established a permanent legal presence” in order to qualify for issuance of an original driver’s license. The announcement stated that effective January 22, 2008, applicants for a new driver’s license would be required to provide documentation of “Michigan residency” *as well as* documentation of “legal and permanent presence in the United States.” (Jan. 21, 2008 press release, available at: <http://www.michigan.gov/sos/0,1607,7-127--183894--,00.html>)(emphasis added) Defendant Land’s press release stated, “Under the attorney general’s opinion, those who are in the country legally but on temporary student or work visas are ineligible for a Michigan license . . . .”

20. In order to drive in Michigan, defendant Land requires all individuals over 18 years of age to “obtain a Michigan driver’s license immediately upon moving to the state or obtaining employment with the intent of remaining in the state.” ([http://www.michigan.gov/sos/0,1607,7-127-1627\\_8669\\_9044-25223--,00.html](http://www.michigan.gov/sos/0,1607,7-127-1627_8669_9044-25223--,00.html)).
21. As a result of defendant Land’s actions described above, the individual plaintiffs and many other persons represented and served by plaintiff Freedom House are unable to obtain a new Michigan driver’s license, despite their meeting the Michigan Vehicle Code’s definition of a “resident,” because they are not citizens or permanent residents.
22. The inability to obtain a Michigan driver’s license will impose a substantial and irreparable hardship on the individual plaintiffs and on other similarly situated persons represented by plaintiff Freedom House, which cannot be rectified other than by immediate injunctive relief. In some cases, the inability to obtain a driver’s license will hinder or prevent people from pursuing their livelihoods; in other cases defendant’s actions will make it far more difficult or impossible for persons who are lawfully residents of Michigan to obtain lawful permanent resident status or U.S. citizenship.

**COUNT I: ERRONEOUS AND UNLAWFUL ADMINISTRATION  
OF THE MICHIGAN VEHICLE CODE**

23. Plaintiffs restate the above allegations as if originally set forth herein.
24. Defendant Land’s interpretation and application of the Michigan Vehicle Code is incorrect, contrary to the plain meaning of the applicable terms of the Vehicle Code, and contravenes well-established rules of statutory construction. Defendant Land’s interpretation of the

Michigan Vehicle Code violates the legislative intent as expressed in the plain meaning of the term “resident” as used in the Michigan Vehicle Code.

25. Defendant Land has wrongfully barred Michigan residents who are not U.S. citizens or permanent residents from obtaining a Michigan driver’s license based on an erroneous and unlawful misinterpretation and misapplication of the plain language of the Vehicle Code.
26. As stated above, as a direct result of defendant’s unlawful actions, the individual plaintiffs, and others represented by plaintiff Freedom House who are similarly situated, will suffer substantial harm as a result of their inability to obtain a Michigan driver’s license.

#### **COUNT II: VIOLATION OF CONST 1963, ART 10, § 6**

27. Plaintiffs restate the above allegations as if originally set forth herein.
28. Const 1963, art 10, § 6 states: “Aliens who are residents of this state shall enjoy the same rights and privileges in property as citizens of this state.”
29. The ability to obtain a Michigan driver’s license is a right and privilege in property under Const 1963, art 10, § 6.
30. By her unlawful actions alleged above, defendant Land has violated Const 1963, art 10, § 6 by depriving the individual plaintiffs and other similarly situated persons represented by plaintiff Freedom House of the valuable property right of access to a Michigan driver’s license which is available to other residents of the State.
31. Defendant has not asserted and cannot assert a sufficient reason or governmental interest justifying denial to the individual plaintiffs and other persons represented by plaintiff Freedom House of the same rights and privileges in property as are enjoyed by citizens of this State, in violation of Const 1963, art 10, § 6.

32. As a direct result of defendant's unconstitutional actions, the individual plaintiffs and others represented by plaintiff Freedom House will suffer substantial harm as a result of their inability to obtain a Michigan driver's license.

**COUNT III: INJUNCTIVE RELIEF AGAINST DEFENDANT LAND**

33. Plaintiffs restate the above allegations as if originally set forth herein.
34. Unless enjoined by this Court, defendant Land's new policy of denying a Michigan driver's license to Michigan residents who are not U.S. citizens or permanent residents will cause immediate and substantial irreparable harm and injury to the named plaintiffs and to other similarly situated persons represented by Freedom House, including but not limited to: interference with their ability to pursue their employment and livelihoods, interference with their ability to obtain U.S. citizenship or permanent resident status or other legal status, and interference with their ability to engage in many normal transactions such as obtaining credit, goods, services and property. Plaintiffs have no adequate remedy at law for defendant Land's unlawful actions.
35. Because defendant Land's interpretation, administration and application of the Michigan Vehicle Code in the manner complained of herein is unlawful, unconstitutional and contrary to the Vehicle Code, plaintiffs have a strong likelihood of prevailing in this action.
36. The balance of harms favors the issuance of an injunction, inasmuch as defendant Land will suffer no harm if an injunction issues.
37. In addition, the public interest strongly favors the granting of injunctive relief. The named plaintiffs and many others similarly situated who are represented by Freedom House are productive residents of Michigan who contribute significantly and in many ways to their

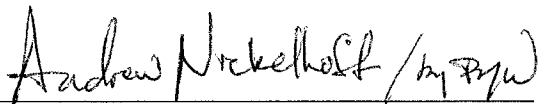
communities and to Michigan's economic and social well-being, and these contributions will be diminished and impaired to the detriment of the public welfare unless defendant Land is enjoined as requested in this Complaint.

#### **PRAYER FOR RELIEF**

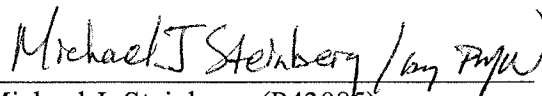
WHEREFORE, plaintiffs request that the Court enter judgment for them and against defendant and that the Court:

- A. Declare that defendant Land has violated the Michigan Vehicle Code and Const 1963, art 10, § 6, by stating that only U.S. citizens or lawful permanent residents are "residents" as used in the Michigan Vehicle Code for purposes of eligibility for a Michigan driver's license, and further declare that all residents of Michigan as defined in the Michigan Vehicle Code are entitled to apply for a driver's license, not only citizens and permanent residents;
- B. Issue preliminary and permanent injunctions ordering defendant Land to cease denying Michigan driver's licenses to applicants on the basis that they are not U.S. citizens or permanent residents, and further ordering defendant Land to announce, publicize and inform the public that her earlier position concerning the requirements for obtaining a driver's license is rescinded and that the requirements for issuance of a license that were in effect prior to January 22, 2008 are reinstated;
- C. Grant such other relief as the Court deems just.

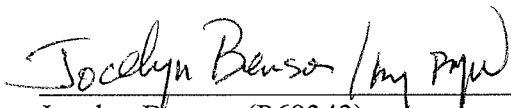
Respectfully submitted,



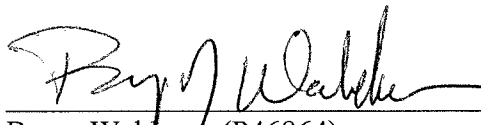
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(517)394-7500

Dated: **February 13, 2008**