IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

Enrique BAUTISTA and Juan Carlos ANGEL-LOPEZ, individually, and on behalf of all people similarly situated;	)	
Plaintiffs,	)	
v.	)	
TENNESSEE DEPARTMENT OF SAFETY; David MITCHELL, individually and in his official capacity as Commissioner of the Tennessee Department of Safety; Michael HOGAN, individually and in his official capacity as Director of Driver License Issuance in the Tennessee Department of Safety; Tiffany TAYLOR, individually and in her official capacity as Deputy Director of Driver License Issuance in the Tennessee Department of Safety; George DITTFURTH, individually and in his official capacity as Supervisor of the Intelligence Unit in the Criminal Investigation Division of the Tennessee Department of Safety; Saunda HARRIS, individually and in her official capacity as Supervisor of the Williamson County Driver License Station in the Tennessee Department of Safety; and Tennessee Department of Safety Employees Kim DRAPER, Cynthia McCULLOUGH, Rick BLACKBURN, and other Unknown Employees of the Tennessee Department of Safety, in their official and individual capacities,	)	**Case No. ___________**
Defendants.	)	

COMPLAINT

Introduction

1. This is a civil rights class action in three Counts. The suit challenges the practice of the Tennessee Department of Safety of confiscating the "green card" (officially designated as I-551 by the U.S. Department of Homeland Security) of Legal Permanent Residents and other documentation of those legally present in the United States without any reasonable basis to suspect or believe that they are counterfeit or otherwise invalid, and seizing and retaining them for unreasonable periods of time far beyond that necessary to verify the validity of same.

2. This case involves two plaintiffs, both of whom are legal permanent residents, whose green cards were wrongly confiscated by the Tennessee Department of Safety while they were trying to obtain a driver license or a driver license renewal. Both cards were retained by the Tennessee Department of Safety for an extended period of time. Such confiscation and retention can have serious consequences. For example, as a result of not having his green card, Plaintiff Angel-Lopez was prevented from (a) being with his wife while she was in the hospital giving birth to their child, (b) cashing his paychecks, and (c) visiting with his family in Mexico over the Christmas holidays since he could re-enter the United States without his green card.

3. In Farm Labor Organizing Committee, et al, v. The Ohio State Highway Patrol, 308 F. 3d 523 (6th Cir., 2002), the Sixth Circuit Court of Appeals stated: "The [district] court concluded, however, that Trooper Kiefer's failure to return the green cards changed the nature of the seizure from a brief investigative detention that could be based upon mere reasonable suspicion to a full seizure that could be justified only by probable

cause." Id. at 543. Further, the court noted that "[g]reen cards play a significant role in the daily lives of [lawful permanent resident aliens]."(cite omitted) Id. at 546. The Court went on to say that the four-day detention of the green cards in that case constituted detention that was excessive in light of "the law enforcement purposes to be served . . . as well as the time reasonably needed to effectuate those purposes." Id.

4. Plaintiffs assert that if a four-day detention of valid green cards was too long under the Farm Labor case cited above, certainly the confiscation of Plaintiffs' green cards of more than two months goes beyond any reasonable time frame and violates Plaintiffs' fourth amendment right to illegal seizure. The Tennessee Department of Safety has over reached its power relative to legal permanent residents by confiscating valid green cards.

5. This policy is part of a disturbing trend and pattern of discriminatory treatment of foreign-born residents of Tennessee who are legally present in the United States. Until very recently, pursuant to a law which the Tennessee Department of Safety wrote and pushed through the Legislature (Public Chapter 194, signed into law on May 21, 2007 — see Exhibit D), the State of Tennessee refused to issue driver licenses to persons legally present in the United States because the projected length of their legal presence could not be proven to be one (1) year or longer. This affected thousands of persons legally present in the United States whose Employment Authorization Cards or visas (or authorized stays pursuant thereto) are not issued in multi-year segments and include such persons as those who have been given Temporary Protected Status (TPS), applicants for adjustment to legal permanent resident status, B-1 or B-2 visitors for business or pleasure (including tourists), K-1 visa holders who are legally present for ninety (90) days, L-2 visa holders,

certain J-2 visa holders, students who are authorized to be present for the "duration of status" as full-time students, F-1 students in an Optional Training Program, M-1 students seeking practical training after completing their studies, applicants for asylum, asylees, refugees, temporary workers in the United States for ten months or less (H-2A agricultural workers, H-2B temporary workers), and other similar foreign-born persons legally present in the United States.

6. This discriminatory abuse and harassment threatens to spread even further pursuant to another statute enacted on May 15, 2007 (Public Chapter 165), which authorized the Tennessee Highway Patrol, hereafter THP (part of the Tennessee Department of Safety), to enter into a memorandum of understanding with the Department of Homeland Security, hereafter DHS, to allow training of THP officers in immigration law. This would presumably lead to increased frequency of traffic stops and confiscation and detention of legally-issued federal identification documents not familiar to the individual trooper who may be conducting the traffic stop. According to published reports, a "287(g) contract" has since been executed between THP and DHS, which presumably delegates certain enforcement functions of Immigration and Customs Enforcement (ICE) to DHS.

7. Safety Officials, including Commissioner David Mitchell and THP Colonel Mike Walker, have acknowledged in previous media interviews that the Highway Patrol currently lacks the communications infrastructure necessary to allow federal officials to securely install immigration database software and computers which would enable state officials to verify in a timely manner the validity of federally-issued identification

documents such as I-551's (green cards) and Employment Authorization Cards (work permits).

8. Count I is brought pursuant to 42 U.S.C. §§ 1983, 1988 and 28 U.S.C. § 2201 et seq. for violations of the First and the Fourth Amendments to the United States Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. In Count I, plaintiffs seek declaratory and injunctive relief and money damages for themselves and for the plaintiff class. Injunctive Relief is authorized by Federal Rule of Civil Procedure 65.

9. Count II is brought pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., as amended, and 28 CFR § 32.101 et seq., the administrative regulations of the United States Department of Justice effectuating Title VI. In this Count, plaintiffs seek declaratory and injunctive relief and money damages for themselves and for the plaintiff class.

10. In Count III, plaintiffs invoke the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1376, and raise claims under state constitutional and common law. In Count III, plaintiffs seek money damages for themselves and for the plaintiff class.

Jurisdiction

11. The jurisdiction of the Court in Counts I and II is founded on 28 U.S.C. §§ 1331 and 1343(a)(3) and (4) and 42 U.S.C. § 2000d-1. Jurisdiction in Count III is based on this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

12. This court has personal jurisdiction pursuant to 28 U.S.C. § 1391(e) over all named defendants, all of whom are located in the Middle District of Tennessee.

13. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(e), because defendant Tennessee Department of Safety maintains an office, and all other individual defendants reside, in this district.

Standing

14. Plaintiffs Enrique Bautista and Juan Carlos Angel-Lopez both have standing to sue under Article III due to the confiscation of their valid green cards. By leaving the Department of Safety without their valid green card, and for every day thereafter until the return of their respective green cards months later, Mr. Bautista and Mr. Angel-Lopez were forced each day by the Tennessee Department of Safety and its employees to violate 8 U.S.C. §1304(e) which states:

> Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both.

Parties

15. Plaintiffs Enrique Bautista and Juan Carlos Angel-Lopez are legal permanent residents of the United States. Mr. Bautista and Mr. Angel-Lopez are both Hispanic. Defendants seized the lawfully issued I-551 cards of Mr. Bautista and Mr. Angel-Lopez during the application process for either a driver license or a driver license renewal at the Franklin, Tennessee Driver License Station. Mr. Bautista and Mr. Angel-Lopez travel in and through Tennessee frequently.

16. Defendant Tennessee Department of Safety is a state law-enforcement agency. Pursuant to Title 55, Chapter 50 of the Tennessee Code Annotated, the Tennessee

Department of Safety is empowered to enforce the laws of the State of Tennessee relative to issuance and regulation of driver's licenses in the State of Tennessee. Pursuant to this authority, the Tennessee Department of Safety promulgated General Order 544 relative to fraudulent document detection and confiscation, attached hereto and incorporated herein by reference as Exhibit A. The Tennessee Department of Safety is a recipient of federal funds. The Tennessee Department of Safety is a defendant in Count II only, pursuant to 42 U.S.C. § 2000d-7.

17. Defendant David Mitchell is the Commissioner of the Tennessee Department of Safety. Defendant Mitchell is sued in his official capacity for injunctive relief and in his individual capacity for money damages. Defendant Mitchell is authorized to make policy for the Defendant Tennessee Department of Safety and is the successor to Fred Phillips, Commissioner, who signed Exhibit A, and therefore possesses the authority to alter the provisions of Exhibit A.

18. Defendant Michael Hogan is the Director of the Driver License Issuance Division of the Tennessee Department of Safety. Defendant Moore is sued in his official capacity for injunctive relief and in her individual capacity for money damages. Defendant Moore is authorized to make policy for the Driver License Issuance Division of the Defendant Tennessee Department of Safety. The Driver License Issuance Division is responsible for seizing and confiscating certain documents presented to the Tennessee Department of Safety for the purpose of obtaining a Tennessee driver license.

19. Defendant Tiffany Taylor is the Deputy Director of the Driver License Issuance Division of the Tennessee Department of Safety. Defendant Taylor is sued in her official capacity for injunctive relief and in her individual capacity for money

damages. Defendant Taylor is authorized to make policy for the Driver License Issuance Division of the Defendant Tennessee Department of Safety. The Driver License Issuance Division is responsible for seizing and confiscating certain documents presented to the Tennessee Department of Safety for the purpose of obtaining a Tennessee driver license.

20. Defendant George Dittfurth is a Captain with the Driver License Divison of the Tennessee Highway Patrol. Defendant Dittfurth is sued in his individual capacity for money damages and in his official capacity for injunctive relief. Defendant Dittfurth is authorized to make policy for the Driver License Division of the Tennessee Department of Safety. He retained and either had or has had possession of one or both of the green card documents at issue in this case for an extended and unreasonable period of time.

21. Defendant Kim Draper is an employee of the Tennessee Department of Safety Franklin Office, and is being sued in her individual capacity for damages and her official capacity for injunctive relief.

22. Defendant Saundra Harris is a supervisor in the Tennessee Department of Safety Franklin Office and is being sued in her individual capacity for damages and her official capacity for injunctive relief.

23. Defendant Cynthia McCullough is an employee of the Tennessee Department of Safety Franklin Office and is being sued in her individual capacity for damages and her official capacity for injunctive relief.

24. Defendant Rick Blackburn is an employee of the Tennessee Department of Safety Franklin Office and is being sued in his individual capacity for damages and his official capacity for injunctive relief.

25. Defendants Unnamed Employees of the Tennessee Department of Safety are employees or officers in the Tennessee Department of Safety who have either played a role in promulgating the illegal policy as pronounced in Exhibit A or who have played a role in confiscating the driver licenses and legal documentation, including but not limited to green cards, of foreign-born individuals who are legally present in the United States and who have had encounters with the Tennessee Department of Safety. While their identities are not currently known to Plaintiffs, their identities are well known to the Defendants in this matter. Defendants Unnamed Employees of the Tennessee Department of Safety are named in both their official and individual capacities.

26. At all times pertinent hereto, all defendants were acting under color of state law and their conduct constituted state action.

27. Plaintiffs Enrique Batista and Juan Carlos Angel-Lopez are suing David Mitchell, Michael Hogan, Tiffany Taylor, Kim Draper, Saundra Harris, Cynthia McCullough, Rick Blackburn, George Dittfurth, and other Unknown Employees of the Tennessee Department of Safety for damages in their individual capacities. Suit against state officials acting in their official capacities is a suit against the state, and thus such suits seeking damages are barred in federal courts by the Eleventh Amendment, but federal court may entertain suit seeking damages where state officials are sued in their individual capacities. Maryland Committee Against Gun Ban v. Simms, 835 F.Supp. 854. (Md. 1993).

Class Allegations

28. Plaintiffs bring this Complaint as a class action under Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek to represent, pursuant to Rules 23(b)(2) and

23(b)(3), a class of all persons legally present in the United States and who visit the Tennessee Department of Safety and attempt to procure identification and driver license documents therefrom, and who, because of their national origin and/or race, in the past have, or in the future may have, their legal and genuine immigration documents seized by defendants.

29. All of the prerequisites to a class action as stated in Rule 23(a) are satisfied by the class:

a. Numerous individuals have had their immigration documents seized by defendants, and numerous individuals will be in the future. The class and subclass are so numerous that joinder of all members is impracticable.

b. There are questions of law and fact common to the plaintiff cases. The common questions include whether the defendants' practices described below of (a) confiscating documents of foreign-born persons on the basis of national origin and/or race without legally sufficient cause and justification and (b) keeping the confiscated green cards for an extended period of time without just cause, any explanation, or a receipt showing the legality of the document, unconstitutionally burdens the First, Fourth, and Fourteenth Amendment rights of those whose documents are confiscated, their constitutional right to freedom of movement, and the corresponding state constitutional guarantees, and whether these practices of defendants violate Title VI of the Civil Rights Act of 1964.

c. The claims of the named plaintiffs are typical of the claims of the class: the named plaintiffs' legal documents were confiscated and kept for an extended period of time pursuant to the practices challenged here.

d. The named plaintiffs will fairly and adequately represent the interests of the class: they have no interests antagonistic to the class; they seek declaratory and injunctive relief and money damages on behalf of the entire class and such relief will benefit all members of the class.

e. The named Plaintiffs are represented by competent counsel, fully capable of adequately representing and protecting the interests of the class.

30. The class satisfies Rule 23(b)(2) because the defendants have engaged in a course of conduct common to all members of the class, and final declaratory and injunctive relief in favor of the plaintiff class is therefore appropriate. In addition, the class satisfies Rule 23(b)(3) because the questions of law and fact common to members of the class predominate over any questions affecting individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Factual Allegations Relative to Enrique Bautista

31. Plaintiff Enrique Bautista had a valid I-551 (commonly known and hereinafter referred to as a "green card") and Tennessee ID card when he went to the Department of Safety in Franklin, Tennessee to try and get his driver's license.

32. Plaintiff Bautista had been to this Department of Safety office on a previous occasion, as it had issued his Tennessee ID card, and said plaintiff had already taken and failed the driver's license exam on a previous occasion. On the prior visit, the validity of Plaintiff's green card was not questioned.

33. On November 15, 2007, Plaintiff Bautista returned to the Department of Safety to try again to get his driver's license.

34. Defendant Kim Draper met with Mr. Bautista, took his green card and Tennessee ID card to the back office for approximately 30 minutes to where Defendant Saundra Harris, the supervisor, was located.

35. Defendant Draper later returned and informed Plaintiff Bautista that the Department of Safety was confiscating both his Tennessee ID card and his green card. He was then given a copy of the Tennessee Fraudulent Document Report and related documents, attached hereto as Exhibit B, and was informed that he was not going to get his green card back, and that his driver's license would not be issued.

36. Plaintiffs attorney received a letter dated January 24, 2008, admitting that in fact the documents presented by Plaintiff were authentic and informed plaintiff that his documents could be picked up from the Franklin Driver License station beginning January 28, 2008. See Exhibit E. The seizure and retention, therefore, constituted a continuing violation of this Plaintiff's rights as described herein until January 28, 2008. The conduct described herein constitutes a longstanding and demonstrable policy of discrimination. Injuries to this Plaintiff as a result of the conduct of the Defendants herein continued to accrue and accumulate throughout the entire period of seizure and retention. Various injuries to this Plaintiff could have been avoided at multiple points throughout the period of seizure and retention had defendants returned this Plaintiff's green card sooner.

37. The letter also denied Plaintiff a hearing on the matter of the seizure of the documents.

Factual Allegations Relative to Juan Carlos Angel-Lopez

38. Plaintiff Juan Carlos Angel-Lopez had a valid green card issued by the U.S. government and driver's license issued by the State of Tennessee. The driver's license was set to expire on November 20, 2007.

39. On November 14, 2007, Plaintiff Angel-Lopez went to the Tennessee Department of Safety, Franklin Office, to renew his driver's license. Defendant Rick Blackburn was working the front desk and was the first person to initially take Plaintiff Angel-Lopez's documents to Defendant McCullough and Defendant Harris.

40. Plaintiff Angel-Lopez was then met by Defendant Cynthia McCullough, who then asked Plaintiff Angel-Lopez first for a Mexican passport, which he did not have. He was then asked for his green card, which he supplied. His green card was valid and was not set to expire for another year.

41. Plaintiff Angel-Lopez presented his existing drivers license and stated his desire to renew the same.

42. Approximately two (2) hours after his green card and driver's license were taken, Plaintiff Angel-Lopez approached Defendant Harris, the Supervisor, and inquired about his documents. He was then given a copy of the Tennessee Fraudulent Document Report and related documents, attached hereto as Exhibit C, and was informed that he was not going to get his green card or his driver's license back, and that his driver's license would not be renewed.

43. Saundra Harris informed Plaintiff that he had ten (10) days during which time to write a letter stating that he wanted his green card back, or his green card would be destroyed. Plaintiff called the Tennessee Department of Safety, and was told that his

phone call would replace the necessity for a letter. By letter dated February 21, 2008, this Plaintiff was advised that his green card could be retrieved on February 22, 2008. See Exhibit F. The seizure and retention of this Plaintiff's green card constituted a continuing violation of this Plaintiff's rights as described herein until February 22, 2008. The conduct described herein constitutes a longstanding and demonstrable policy of discrimination. Injuries to this Plaintiff as a result of the conduct of the Defendants herein continued to accrue and accumulate throughout the entire period of seizure and retention. Various injuries to this Plaintiff could have been avoided at multiple points throughout the period of seizure and retention had defendants returned this Plaintiff's green card sooner.

44. As a result of the confiscation of his green card and driver's license, Plaintiff Angel-Lopez:

a. was denied access to his wife while she was in the hospital giving birth to their child;

b. was unable to cash his paychecks; and

c. had to cancel plans to go to Mexico to visit his family over the Christmas holiday since without his green card he could not re-enter the United States.

General Allegations Concerning Defendants' Conduct

45. Each Plaintiff's green card was confiscated without reasonable suspicion that they were invalid.

46. The complained of conduct by Defendants Harris, Draper, McCullough, and Blackburn was motivated by plaintiffs' national origin and race.

47. Defendants Moore, Taylor, Dittfurth, and Harris either authorized or knowingly acquiesced in the unconstitutional actions of their subordinates, and they were deliberately indifferent to constitutional violations likely to result from serious deficiencies in the training program of personnel who staff driver license stations concerning the illegal confiscation and retention of federal identification documents.

48. Each Plaintiff's green card was confiscated without receiving procedural due process, i.e., a hearing as afforded them by Exhibit A:

a. Pursuant to General Order Number 544 of the Tennessee Department of Safety, there is a multi-step process that must be pursued before the confiscation of documents from an individual. First the initial examiner looks at the documents, if unfamiliar or unsure of the validity of the document, all information should be given to the Supervisor to make a determination as to whether or not the documents are valid.

b. Section IV, Part C outlines the procedure that the Supervisor must follow if the validity of the documents is questioned:

> 1. Employing all additional training and resources available at the supervisory level to further review the document(s). The use of specialized resources or programs requires proper training, certification and/or authorization. Therefore, regardless of the type(s) of verification resources used, training, certification and/or authorization must have been completed or attained before utilizing any of the following:
>
> > a) Conducting a Social Security On-Line Verification (SSOLV) request through the computer system.
> >
> > b) Conducting detailed scrutiny of the document by using black lights (UV), magnifying glasses, and other resources. This shall be done in an area not accessibly to the public in order to avoid the

possibility of revealing certain document security features.

c) Calling the specific agency that issued the document, if possible. Examples include the local immigration office contact for immigration documents, …

d) Interviewing the applicant by asking specific questions about the document and/or information contained in the document.

c. Neither named Plaintiff was ever interviewed or asked any questions about his green card.

49. Each defendant and the other unknown employees of the Tennessee Department of Safety acted knowingly and intentionally. Moreover, their actions were taken with recklessness or callous disregard for plaintiffs' rights.

50. The actions of defendants in illegally confiscating and retaining plaintiffs' federal identification documents have had a disproportionate effect on Hispanics and other persons of a different national origin and color, have penalized plaintiffs for the exercise of their constitutional right to freedom of movement in the State of Tennessee, and have hindered plaintiffs' exercise of that right.

Injury to Plaintiffs

51. As a direct and proximate result of defendants' conduct as stated herein, plaintiffs and the class they seek to represent have suffered humiliation, embarrassment, mental fright, and emotional distress. Plaintiffs have incurred legal fees in connection with their missing federal identification documents. In addition, defendants' conduct has hindered plaintiffs and the class they seek to represent in freely traveling the streets and

highways in the State of Tennessee. Defendants' actions have had a discriminatory impact against plaintiffs and class members.

Necessity for Injunctive Relief

52. Each plaintiff presently either resides in Tennessee or has family, friends, or business interests in Tennessee and thus expects to travel Tennessee's highways in the future when properly licensed. They wish to be free to obtain a driver license and travel to and in Tennessee and on highways in Tennessee without the confiscation of their identification documents.

53. Plaintiffs and the class they seek to represent are threatened with substantial, immediate and irreparable injury at the hands of defendants. Upon information and belief, Defendants began their practices of confiscating and retaining federal identification documents before the incidents involving the named plaintiffs, and Defendants continue to engage in the practices against the numerous members of the class. Plaintiffs will also continue in the future to suffer the ongoing effects of Defendants' past applications of the practice to them.

54. Unless restrained by this Court, Defendants will continue their unlawful practices. Pursuant to these practices, Plaintiffs are likely in the future to have their federal identification documents illegally confiscated and retained based on national origin and/or race with or without legally sufficient cause and justification. Plaintiffs are desirous of continuing to, and will in the future when properly licensed, travel on streets and highways in Tennessee. Plaintiffs continue to be unable, even by fully conforming their conduct to all legal requirements, to avoid the confiscation and retention of their identification documents.

55. Plaintiffs have suffered irreparable injury and, in the absence of injunctive relief, will continue to suffer irreparable injury. They have no adequate remedy at law.

COUNT I

(Right to Freedom from Illegal Seizure)

56. In Farm Labor Organizing Committee, et al, v. The Ohio State Highway Patrol, 308 F. 3d 523, the court stated "that Trooper Kiefer's failure to return the green cards changed the nature of the seizure from a brief investigative detention that could be based upon mere reasonable suspicion to a full seizure that could be justified only by probable cause." Id. at 543.

57. Further, the court noted that "[g]reen cards' play a significant role in the daily lives of [lawful permanent resident aliens]."(cite omitted) Id. at 546.

58. The Court went on to say of the 4 day detention of the green cards that "the facts alleged by the plaintiffs sufficiently demonstrate that the length of the detention was excessive in light of "the law enforcement purposes to be served by the stop as well as the time reasonably needed to effectuate those purposes." Id.

59. The confiscation over two months by the Tennessee Department of Safety exceeds any reasonable time frame and violates Plaintiffs' fourth amendment right to freedom from illegal seizure.

60. The Tennessee Department of Safety has over reached its power over legal permanent residents by confiscating valid green cards simply because the forms were different than what they were accustomed to seeing.

(Interference with Freedom of Association)

61. The defendants' actions in confiscating and retaining plaintiffs' federal identification documents and, because of this, arbitrarily refusing to issue or reissue a driver license have been motivated by discriminatory animus and have thus deprived plaintiffs and the class they seek to represent of their right to freedom of association as guaranteed by the First Amendment to the United States Constitution.

(Denial of Equal Protection)

62. The defendants' actions in confiscating and retaining plaintiffs' federal identification documents and, because of this, arbitrarily refusing to issue or reissue a driver license have been motivated by discriminatory animus and constitute denial of equal protection of the laws based on plaintiffs' national origin and/or race in violation of the Fourteenth Amendment to the United States Constitution.

(Violation of Right to Travel)

63. The defendants' actions in confiscating and retaining plaintiffs' federal identification documents and, because of this, arbitrarily refusing to issue or reissue a driver license have unreasonably burdened the fundamental right to travel guaranteed to plaintiffs and the class they seek to represent by Article IV, Section II of the United States Constitution.

(Violation of Freedom of Movement)

64. The defendants' actions in confiscating and retaining plaintiffs' federal identification documents and, because of this, arbitrarily refusing to issue or reissue a driver license have unreasonably burdened the fundamental right to freedom of

movement guaranteed to plaintiffs and the class they seek to represent by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT II

(Violation of 42 USC § 2000d et seq. and Regulations Promulgated Thereunder)

65. The Department of Safety and/or the Tennessee Highway Patrol maintains or constitutes a program or activity that receives federal financial assistance from the United States Department of Justice. Thus, it is subject to the requirements of 42 USC § 2000d et seq. and 28 CFR § 42.101 et seq. Plaintiffs are intended beneficiaries of such program or activity.

66. The selection of persons whose documents are confiscated on the basis of race and/or national origin, with or without sufficient cause or justification constitutes intentional discrimination and has a discriminatory effect and a disproportionate impact on Hispanics and other persons of color.

67. The violation of 42 USC § 2000d and 28 CFR § 42.101 et seq. as alleged above, has caused, and will cause unless this practice is enjoined by the Court, tremendous harm and public humiliation to Hispanics and other individuals of color who are stopped, detained or searched pursuant to the above practices.

68. The defendants' actions as described herein have been motivated by discriminatory animus, have a discriminatory effect, have a disproportionate impact on Hispanics and other persons of color and constitute a violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq. and its implementing regulation at 28 CFR § 42.101 et seq.

(Violation of 42 USC § 1983 – Against Officials in Their Individual Capacity Only)

69. Defendants included in this Sub-Count of the Complaint are only those named in their individual capacities and are hereby sued for violations of this Sub-Count in their individual capacities only.

70. The actions by said defendants described herein are not confined to the incidents described.

71. Said officers of the Tennessee Department of Safety have committed a pattern of discrimination against the Hispanic community exemplified by the two confiscations of the representative parties and such behavior has been in clear violation of the civil rights of residents of the state of Tennessee. The two incidents described by the named plaintiffs happened two days in a row and in two different offices of the Tennessee Department of Safety, clearly shows a pattern of discrimination.

72. To have a §1983 claim, the plaintiff must allege a (1) deprivation of a federal right, and (2) that the person who deprived him of that right acted under color of state law.

a. For a legal permanent resident, like said plaintiffs, it is a crime, punishable by incarceration and or a fine to be anywhere at anytime without their green card. By confiscating valid green cards, the Tennessee Department of Safety has placed the two named plaintiffs, as well as the class they seek to represent at risk of violating 8 U.S.C. §1304(e).

b. Under Tennessee Law, citizens and legal permanent residents are eligible to get their drivers license as long as they can show documentation as to their status. Plaintiffs had valid documentation, their green card, when they entered into the office of the Tennessee Department of Safety in Franklin.

c. All named defendants are employees of the Tennessee Department of Safety, an agency of the State of Tennessee, and thus are actors under the color of state law.

d. Such behavior, confiscating valid green cards is clearly against established law and as such, defendants should not be eligible for qualified immunity.

COUNT III

(Supplemental State Claims)

73. Defendants included in this Count are those named in their individual capacities and are hereby sued for violations of this Count in their individual capacities only.

74. Said Defendants have acted recklessly, oppressively and willfully, with a design to oppress and injure Plaintiffs and the class they seek to represent.

75. By not receiving any hearing as required by Exhibit A, Plaintiffs were denied procedural due process, as guaranteed by the Tennessee Constitution, Article I, Section 8.

76. By being deprived of their identification documents, Plaintiffs were denied their freedom from illegal seizures, as guaranteed by the Tennessee Constitution, Article I, Section 7.

77. By being deprived of their identification documents as a result of discriminatory animus, plaintiffs and the class they seek to represent have been deprived of the equal protection of the laws based on plaintiffs' national origin or race in violation of the Tennessee Constitution, Article I, Section 8 and Article XI, Section 8.

Damages

78. Plaintiffs are suing Defendants Kim Draper, Saundra Harris, Cynthia McCullough, Rick Blackburn and George Dittfurth in their individual capacities and prays for damages including legal fees necessitated by the confiscation of plaintiffs' green card, loss of income from employment when visiting the Franklin Drivers License Office and attorney visits, gas money for all of his travels, and punitive damages for the unreasonable time that it has taken the Tennessee Department of Safety to validate Mr. Bautista's green card and return it to him, and for not returning Plaintiff Angel-Lopez's valid green card and driver's license. Plaintiffs also request attorney's fees under the EAJA, 28 U.S.C. §2412 (d)(1)(A), and grant any other and further relief as the court may deem just and proper.

Injunctive Relief

79. Plaintiffs are suing all Defendants for injunctive relief to prevent the Tennessee Department of Safety and its employees from confiscating any and all legal documentation, on behalf of the class of all Hispanic residents of Tennessee who are legally present in the United States and who risk confiscation of their federal identification documents as a result of encounters with the Tennessee Department of Safety.

Prayer for Relief

WHEREFORE, Plaintiffs request as follows:

A. A declaratory judgment that Defendants' practices of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates the rights of Plaintiff class members, guaranteed by the First Amendment, to freedom of association.

B. A declaratory judgment that Defendants' practice of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates the rights of plaintiff class members, guaranteed by the Fourth Amendment, to be free from unreasonable searches and seizures;

C. A declaratory judgment that Defendants' practice of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates the right of plaintiff class members to Equal Protection of the laws under the Fourteenth Amendment;

D. A declaratory judgment that Defendants' practice of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates the right of plaintiff class members to freedom of movement as secured by the Due Process Clause of the Fourteenth Amendment;

E. A declaratory judgment that Defendants' practice of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates the right of plaintiff class members to freedom of travel as secured by Article IV, Section II of the United States Constitution;

F. A declaratory judgment that Defendants' practice of confiscating and retaining federal identification documents with or without legally sufficient cause or justification on the basis of national origin and/or race violates 42 USC § 1983 and 42 USC § 2000d and their implementing regulations;

G. A preliminary, and then a permanent injunction barring all defendants and their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them from confiscating and retaining federal identification documents on the basis of race and/or national origin, with or without legally sufficient cause or justification;

H. Reasonable and appropriate compensatory damages for the named plaintiffs and each plaintiff class member for the unlawful confiscation and retention of federal identification documents;

I. Punitive damages for the named plaintiffs and each class member in an amount to be ascertained at trial;

J. Plaintiffs' costs, expenses, and reasonable attorneys' fees pursuant to 42 USC § 1988 and/or 28 U.S.C. §2412 (d)(1)(A); and

K. Such other and further relief as this Court deems necessary and proper.

Respectf ully submitted,

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DEPARTMENT OF SAFETY TENNESSEE

GENERAL ORDER

Number: 544

Page: 1 of 8

Subject: Fraudulent Document Detection and Confiscation

Date: 15 August 2005

Distribution: All Commissioned, Driver Improvement, Driver License Issuance Division, Financial Responsibility

I. **PURPOSE:**

To establish policy and procedures for Driver License Issuance Division personnel and commissioned members regarding the above captioned subject.

II. **POLICY:**

It shall be the policy of the Tennessee Department of Safety to establish and provide uniform inspection and/or confiscation procedures to Driver License Examiners, Supervisors, and commissioned members should they encounter a suspected fraudulent document. For purposes of this Order, Fraud is defined as, but is not limited to, deceit, trickery, misrepresentation and subterfuge. Misrepresentation of a person's identity information is generally the most common form of fraud encountered by Driver License Issuance employees and by commissioned members.

III. **EXAMPLES OF FRAUDULENT DOCUMENTS ENCOUNTERED BY DRIVER LICENSE ISSUANCE DIVISION EMPLOYEES:**

A. Fraudulent documentation may be encountered in various formats. The two most frequently encountered fraudulent documents are counterfeit and altered. The following types of fraudulent documentation may be produced by applicants when attempting to obtain a Tennessee Drivers License (DL), Identification Only Card (ID), or Certificate for Driving (CFD):

1. Various means of identification that may include the use of any name or number, alone or in conjunction with any other information, to identify a specific individual, this includes certificates or other documentation disclosing:

   a) Name;

   b) Social Security Number; and/or,

   c) Date of birth.

2. Other forms of documentation produced may include:

   a) An official state or government issued driver license or identification number that has been fraudulently altered or was not issued to the applicant;

   b) An alien registration number;

   c) A passport number; or,

C.A.L.E.A. Standard(s): 42.1.2, 42.2.1, 82.2.3

EXHIBIT A

d) An employer or taxpayer identification number.

B. Even though an applicant may be presenting a fraudulent document, they are still entitled to the rights and remedies established by the Uniform Procedures Act, compiled in Title 4, Chapter 5, for contested case hearings. Therefore, it is essential that anytime a Supervisor/Examiner-in-Charge authorizes the confiscation of a document, or when a commissioned officer confiscates a document, that all the proper forms and receipts be fully completed and the applicant/person is given a copy of each.

IV. **PROCEDURAL GUIDELINES FOR DRIVER LICENSE ISSUANCE EMPLOYEES:**

A. It is the responsibility of all employees of the Driver License Issuance Division to ensure that all documents are issued based on information obtained from true, legitimate and authentic documents.

B. It is realized that time constraints and the volume of customers hamper a time consuming examination of all documents that may be produced. However, basic responsibilities required of all Driver License Examiners shall include:

1. Quickly and thoroughly reviewing and verifying all documents presented to the fullest extent possible, given the time constraints, and based on fraud training and/or computer verification programs.

2. Making the initial assessment as to the validity of documents presented.

a) If the examiner is satisfied that the document is authentic and valid, he/she will continue with the issuance process.

b) If the examiner is unfamiliar with the document and/or unsure of the document's validity, all information will be given to the Supervisor/Examiner-in-Charge to make a determination. If, after additional review by the Supervisor/Examiner-in-Charge, it is determined that the document is acceptable, issuance will proceed as normal.

c) If the Supervisor/Examiner-in-Charge determines that adequate factors are present to make the item a suspected fraudulent document, the procedures outlined in Section C below will be followed.

C. The basic responsibilities of Driver License Supervisors/Examiners-in-Charge shall include:

1. Employing all additional training and resources available at the supervisory level to further review the document(s). The use of specialized resources or programs requires proper training, certification and/or authorization. Therefore, regardless of the type(s) of verification resources used, training, certification, and/or authorization must have been completed or attained before utilizing any of the following:

a) Conducting a Social Security On-Line Verification (SSOLV) request through the computer system.

b) Conducting detailed scrutiny of the document by using black lights (UV), magnifying glasses, and other resources. This shall be done in an area not accessible to the public in order to avoid the possibility of revealing certain document security features.

c) Calling the specific agency that issued the document, if possible. Examples include the local immigration office contact for immigration documents, vital records for birth certificates (including vital records in other states), etc.

d) Interviewing the applicant by asking specific questions about the document and/or information contained in the document.

2. Determining if the document is acceptable.

a) If acceptable, they will authorize the Examiner to proceed with issuance as usual.

b) If the Supervisor determines that the document(s) is indeed a suspected fraudulent document(s), it/they shall be seized and the appropriate forms will be completed.

3. When the document(s) is/are seized, the following forms shall be completed by the Supervisor/Examiner-in-Charge. An explanation for the use of each form is also provided.

a) A **NOTICE OF DOCUMENT SEIZURE FORM (SF-1338)** containing all the applicants' information and the information on the type of document(s) seized will be completed. This form's primary purpose is to serve as a receipt to the applicant and the Department. The form provides details on the type of document(s) confiscated, the Department of Safety Driver License Testing Station, personnel confiscating the documents, and information for the applicant regarding his/her rights to a hearing. It is important that the Supervisor ensure that as much information as possible is captured on this form including the signature of the applicant from whom the document(s) is/are being confiscated, if possible. This form is to be completed **immediately** while the applicant is still in the office. When the Supervisor/Examiner-in-Charge attempts to obtain the applicant's signature on this form, the Supervisor/Examiner-in-Charge should briefly explain the Administrative Review and Hearing process to the applicant advising them that they will be notified through certified mail by the Central Office of their right to request a hearing to contest the confiscation of their document(s). Distribution of this form is explained in Section V. of this Order.

b) A **TENNESSEE DEPARTMENT OF SAFETY PROPERTY RECEIPT/RELEASE FORM (SF-0575)** will also be completed. This form serves to document the various transfers of the confiscated document(s) to other Divisions or personnel within the investigative cycle. Although the applicant has already signed the Notice of Document Seizure, it is still necessary to obtain their signature, if possible, on this form as well. This will document the original transfer of the confiscated document(s) from the applicant to the Supervisor/Examiner-in-Charge. As with (SF-1338), this form should be completed **immediately** while the applicant is still in the office. Distribution of this form is explained in Section V. of this Order.

1) A second SF-0575 will be completed by the Supervisor/ Examiner-in-Charge if the confiscated document(s) and paperwork is given to a Law Enforcement Officer (LEO) that is called to the scene and takes possession of the confiscated documents.

c) A **TENNESSEE DEPARTMENT OF SAFETY FRAUDULENT LICENSE REPORT (SF-0894)** must be completed by the Supervisor/Examiner-in-Charge describing the details of the incident when the suspected document(s) was/were presented to the Department as part of the person's application process. In most cases involving the confiscation of documents, the Victim or Complainant Sections on the form will not apply and can therefore be left blank. However, all other information sections (Incident, Suspect, Narrative, and Reporting) must be completed as fully as possible. This form can be completed prior to submitting the entire packet to the Criminal Investigations Division, Driver License Fraud Unit. Since the main focus of this report is the Narrative of the Supervisor/Examiner-in-Charge, it may not always be possible to fully complete this report immediately, especially if the Supervisor/Examiner-in-Charge must return to provide customer service to other waiting applicants in the office. If more space is required for the Narrative section, additional pages may be attached as needed.

d) NOTE: In some rare cases, a **RECEIPT FOR DRIVER LICENSE/LICENSE PLATES/REGISTRATIONS (SF-0826)** may be used IF the applicant presented a Tennessee DL that is under suspension, cancellation, or revocation and/or IF the altered document presented was a Tennessee DL, ID, or CFD.

V. FORM COMPLETION, DISTRIBUTION, AND SUBMISSION:

A. The following steps will be taken after completing Notice of Document Seizure Form (SF-1338):

1. The Original or Top Copy ("Applicant" printed at bottom) is given to person from whom document(s) is/are being confiscated.

2. Second copy (Yellow) will stay at the Driver License Testing Station and be placed in a Fraud File.

3. Third copy (Pink) will be sent in with all the other paperwork to the Criminal Investigations Division, Driver License Fraud Unit.

B. The following steps will be taken after completing the Property Receipt/Release Form (SF-0575):

1. The original (Case File printed at bottom and white in color) and first copy (Evidence Custodian printed at bottom and off white in color) are to be sent with the paperwork packet to the Criminal Investigations Division, Driver License Fraud Unit.

2. The second copy (Member printed at bottom and yellow in color) will stay at the Driver License Testing Station and be placed in Fraud File.

3. The third copy (Person printed at bottom and pink in color) is given to the applicant.

C. If a Law Enforcement Officer (LEO) is called to the scene and he/she takes possession of the original confiscated documents(s), the following will occur.

1. A second SF-0575 will need to be completed by the Supervisor/ Examiner-in-Charge.

2. Distribution will be as follows:

a) The third copy (Person printed at bottom and pink in color) is retained by the Branch Supervisor.

b) The second copy (Member printed at bottom and yellow in color) copy goes to the Law Enforcement Officer (LEO).

c) The first copy (Evidence Custodian printed at bottom and off white in color) stays with packet going to Criminal Investigations Division, Driver License Fraud Unit.

d) The original (Case File printed at bottom and white in color) stays with original documents (i.e. the LEO).

D. When/If the original document(s) is/are transferred to a LEO, the Supervisor/ Examiner-in-Charge shall always make copies of the front and back of each confiscated document transferred and ensure that such copies are kept in the local Driver License Station file and attached to the evidence packet being forwarded to the Criminal Investigations Division, Driver License Fraud Unit.

E. The following steps will be taken after completing the Fraudulent License Report Form (SF-0894).

1. Original – goes with all other original documents and paperwork to the Criminal Investigations Division, Driver License Fraud Unit.

2. First copy (yellow) – stays in local Driver License Testing Station files.

F. If the Receipt for DL/LP/Registration Form is used, the following steps will be taken after completion.

1. Original – sent to the Financial Responsibility Section with a copy of the document and the notation that the original document has been submitted to the Criminal Investigations Division, Driver License Fraud Unit for possible criminal prosecution.

2. First copy (yellow) – sent with the original document and other paperwork to the Criminal Investigations Division, Driver License Fraud Unit.

3. Second copy (pink) – given to the Holder of License.

VI. PROCEDURES FOR D.L. EMPLOYEES WHEN A LAW ENFORCEMENT OFFICER CONDUCTS THE INVESTIGATION:

A. The Supervisor/Examiner-in-Charge has the discretionary authority to call for a Law Enforcement Officer (LEO) if he/she feels that the individual situation warrants immediate involvement of a LEO. Some situations where calling a LEO may be warranted include:

1. If the document(s) is/are obviously fraudulent and are government issued documents (i.e. state, federal, birth certificate, social security card, passport, etc.) the LEO could have sufficient grounds to take the applicant into custody.

2. If the applicant is creating a disturbance because of the confiscation of their documents.

3. If the Supervisor/Examiner-in-Charge feels that there is a heightened safety concern for the employees and customers in the office.

B. Since each individual office location will have different circumstances affecting response times and other factors, it will again be up to the discretion of the Supervisor/Examiner-in-Charge as to the type of LEO to call. Whenever possible it is preferable to call for local THP or CID. However, especially if security and safety is a concern and response time is crucial, it may be faster to call for local law enforcement assistance (i.e. City, Metro, County, etc.).

C. If the Law Enforcement Officer (LEO) is called and responds by taking the applicant into custody, the LEO may want the original confiscated document(s). When this is requested, the Supervisor/Examiner-in-Charge must complete the Property Receipt/Release Form (SF-0575) and have the Officer sign the form showing receipt of the document(s) as outlined above. The Supervisor/ Examiner- in-Charge shall also obtain a telephone number from the officer. The telephone number and officer's agency name shall be written on the SF-0575.

D. The Supervisor/Examiner-in-Charge will then package all the forms and document(s) (copies of documents if the originals were given to the Law Enforcement Officer) together in an official evidence envelope and mail them to the Criminal Investigations Division, Driver License Fraud Unit where the master case file will be created and a file number assigned.

E. At this point, Supervisor/Examiner-in-Charge involvement are complete until or unless the applicant later requests a hearing. Should this occur, either or both may be called to testify as witnesses.

F. Upon receipt, the Criminal Investigations Division, Driver License Fraud Unit, will maintain all documents until a meeting with the Driver License Fraudulent Document Expert occurs. The documents will be reviewed and a determination made as to which of two possible courses of action to take.

1. If the administrative review determines that there was not enough reasonable suspicion to confiscate the documents, the Driver License Fraudulent Document Expert shall send an apology letter to the applicant advising that the documents are being returned to the Driver License Testing Station where they were confiscated.

2. If the administrative review determines that the item(s) is/are indeed suspected fraudulent documents, they will be retained by the Criminal Investigation Division, Driver License Fraud Unit for possible criminal proceedings. Should this be the determination, a due process letter will be sent to the applicant as specified below.

VII. ADMINISTRATIVE PROCEDURES WHEN FURTHER INVESTIGATION OCCURS:

A. If it is determined, after the Administrative Review, that further investigation is warranted, the procedures described below will be followed.

1. The Driver License Fraudulent Document Expert will assign a specific Driver History Action Code to the applicant's record and forward all documents, forms and correspondence to the Financial Responsibility Section. If the applicant has no Tennessee Record, a History Only Driver License Number will be assigned.

2. Upon receipt, the Financial Responsibility Section will microfilm all correspondence and afterwards, forward all correspondence to Data Entry.

3. Upon receipt, Data Entry will key the information and post the Driver History Action Code to the Applicants Record. This will cause a Due Process Letter to be generated by the Driver Improvement Section that will be sent to the applicant via certified mail, return receipt requested, explaining the details on how to request a hearing.

   a) Ten (10) days after the Driver Improvement Section receives the return receipt, if no hearing has been requested by the applicant, the case file will be closed as it pertains to the confiscation of the document(s).

b) If a hearing is requested, the Driver Improvement Section will schedule the hearing and send the applicant a letter disclosing the location, date, and time of the hearing.

c) A Hearing Officer will hold the hearing and may call the Supervisor/Examiner-In-Charge for testimony, if applicable.

d) A decision will be rendered by the Hearing Officer and the case will be closed accordingly.

B. The Criminal Investigation Division may have additional interests in applicants and may continue to conduct an investigation. This has no bearing on all previously disclosed procedures. The Criminal Investigations Division may, however, request the results of the Hearing for inclusion in their case file, if applicable.

VIII. PROCEDURES FOR COMMISSIONED MEMBERS WHEN CONFISCATING DOCUMENT(S):

A. Anytime a commissioned member confiscates a document, he/she will complete the SF-0575. Distribution will be consistent with previously described procedures.

B. In addition, an Incident/Offense Report (SF-1266) will be completed. Distribution will be as usual, with one exception. One copy will be made and forwarded to the Criminal Investigations Division, Driver License Fraud Unit.

C. Also, if charges are filed and citations issued, copies shall be made and forwarded to the Criminal Investigations Division, Driver License Fraud Unit along with all other documents.

Fred Phillips
COMMISSIONER

Lynn Pitts
COLONEL

All Personnel: I have read and fully understand the above Order.

Signature

Date

TN DEPARTMENT OF SAFETY
DRIVER LICENSE

NOTICE OF DOCUMENT SEIZURE

DATE OF SEIZURE: 11-15-07 CASE NUMBER: ______
DRIVER LICENSE ISSUANCE STATION: 330
SUPERVISOR: [signature]
ADDRESS: 3830 Carothers Parkway (STREET ADDRESS) Franklin TN (CITY - STATE - ZIP)

THE DOCUMENT(S) DESCRIBED BELOW HAS BEEN SEIZED UPON THE AUTHORITY OF T.C.A. 39-14-113, T.C.A. ~~39-14-115~~, T.C.A. 55-50-321(e) AND T.C.A. 55-50-601.

PERSON IN POSSESSION AT TIME OF SEIZURE

NAME: Enrique Bautista Olmos
ADDRESS: 300 Cherry Drive
CITY/STATE/ZIP Franklin TN 37064
AREA CODE + PHONE
DATE OF BIRTH 6-20-48 D.L. NUMBER 112708235 S.S.N. ______

DOCUMENT(S) SEIZED:

TYPE	DOCUMENT NUMBER
1. Permanent Resident Card	A-046-600-304
2. TN ID	112708235
3.	
4.	
5.	

I, Kim Draper (SUPERVISOR/EXAMINER), CERTIFY THAT THE ABOVE DOCUMENT(S) WAS SEIZED IN CONNECTION WITH THE ABOVE NAMED STATUTES AND THAT I DELIVERED THE ORIGINAL OF THE NOTICE BY HAND ON ~~11-15-07~~ (DATE) OR SENT THE ORIGINAL OF THIS NOTICE BY CERTIFIED MAIL ON 11-15-07 (DATE).

BY SIGNING, I AM ONLY ACKNOWLEDGING RECEIPT OF THE SEIZURE NOTICE.

______ (SIGNATURE OF PERSON IN POSSESSION AT TIME OF SEIZURE) (DATE)

[signature] Kim Draper
(D.L. SUPERVISOR/EXAMINER)

oliver

✓ REFUSED NOS

IF YOU HAVE ANY QUESTIONS ABOUT THE SEIZURE OF THE ABOVE DOCUMENT(S)
TELEPHONE ______ AT (615) 741-3954
MONDAY THROUGH FRIDAY FROM 8 A.M. TO 4:30 P.M.

SEIZURE OF DOCUMENTS PURSUANT TO T.C.A. 39-14-113, 39-14-115, 55-50-321(e) AND 55-50-601
The above described documents were seized in accordance with the above named statutes upon reasonable belief that the documents were altered with intent to defraud or that the applicant made false or fraudulent certification as to the applicant's identity, date of birth or driving privileges, or that the driver license or certificate for driving was fraudulently altered or used. The "person in possession" may request a hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. 4-5-101 et seq.) A written hearing request must be received within ten (10) days of the receipt of this notice of seizure. Failure to request a hearing in a timely manner acts as a waiver of your ownership interest in the above described documents and such documents will be considered contraband and, unless held as evidence in a court proceeding, destroyed.

Send hearing request to: ______

EXHIBIT B

TENNESSEE DEPARTMENT OF SAFETY
FRAUDULENT LICENSE REPORT

Victim Information

Complainant:	Driver License Number
Current Address	Telephone Number(s):

Incident Information

☐ Stolen	☒ Altered	☐ False Information	☐ Other (explain)

Suspect Information

Name: Enrique Bautista Olmos	Address: 300 Cherry Drive Franklin TN 37064	
Driver License Number: 112708235	Social Security Number:	Date of Birth: 6-20-48
Place of Employment:	Additional Location Information:	

Narrative (give all available information concerning the incident)

Refused to sign

Reporting Information

Reporting Station	County	Date/Time	Completed by:
330	Williamson	11-15-07 8:52	Kim Draper

Signature of Complainant	Date	Signature of Reporting Examiner	Date
		Kim Draper	11-15-07

CID Information

Case Number Assigned	Date	Assigned To

SF-0894 (REV. 9/99)

ORIGINAL - DEPT OF SAFETY YELLOW - REPORTING AGENCY

TENNESSEE DEPARTMENT OF SAFETY
HIGHWAY PATROL
PROPERTY RECEIPT/RELEASE

Case Number	Trooper	County	Date	Time
				☐ AM ☐ PM

Defendant # 1/Person Possessing Property	Defendant # 2/Person Possessing Property	Defendant # 3/Person Possessing Property
Enrique Bautista Olmos		

On the above date I, Kim Draper (Subject receiving property), received from Enrique Bautista Olm (Subject releasing property) the below listed items pursuant to an official investigation conducted by the Tennessee Department of Safety:

Exhibit No.	Quantity	Defendant/ Person #	Description of Items	Location at time of Discovery	Evidence or Other Identifying Number
	1	046-600-304	Permanent Resident Card	3830 Carothers Parkway Franklin TN	
	1	112 708 235	TN ID	3830 Carothers Parkway Franklin TN	

DO NOT USE THIS FORM TO TRANSFER ITEMS TO ANOTHER PARTY ONCE IT HAS BEEN USED AS A RECEIPT OR RELEASE. COMPLETE ANOTHER FORM FOR TRANSFER AND RETAIN A COPY OF EACH FORM TOGETHER TO MAINTAIN A COMPLETE CHAIN OF CUSTODY.

Person's Signature Receiving Items: Kim Draper

Person's Signature Releasing Items: Refused to Sign

Witness(es): Sandra Harris

(Print Name) (Print Name) (Print Name)

SF-0575 (Rev. 5/06)

Page ____ of pages ____

RDA 283

Case File (Original) Evidence Custodian (White) Member (Canary) Person (Pink)

Standard Register ®

397-3120

397 4615
Carlos

TN DEPARTMENT OF SAFETY
DRIVER LICENSE

NOTICE OF DOCUMENT SEIZURE

DATE OF SEIZURE: Nov. 14, 2007 CASE NUMBER:
DRIVER LICENSE ISSUANCE STATION: 330 - FRANKLIN
SUPERVISOR: SAUNDA HARRIS
ADDRESS: 3830 CAROTHERS PARKWAY
(STREET ADDRESS) (CITY - STATE - ZIP)

THE DOCUMENT(S) DESCRIBED BELOW HAS BEEN SEIZED UPON THE AUTHORITY OF T.C.A. 39-14-113, T.C.A. 39-14-115, T.C.A. 55-50-321(e) AND T.C.A. 55-50-601.

PERSON IN POSSESSION AT TIME OF SEIZURE

NAME: JUAN C LOPEZ
ADDRESS: 817 LIBERTY PIKE
CITY/STATE/ZIP FRANKLIN, TN 37064
AREA CODE + PHONE
DATE OF BIRTH 11/20/82 D.L. NUMBER 098599410 S.S.N. 610-32-8999

DOCUMENT(S) SEIZED:

TYPE	DOCUMENT NUMBER
1. Permanent Resident Card	A 047-324-214
2. Driver License	098599410
3	
4	
5.	

I, SAUNDA HARRIS, CERTIFY THAT THE ABOVE DOCUMENT(S) WAS SEIZED IN CONNECTION
(SUPERVISOR/EXAMINER)
WITH THE ABOVE NAMED STATUTES AND THAT I DELIVERED THE ORIGINAL OF THE NOTICE BY HAND ON ______ OR SENT THE ORIGINAL OF THIS NOTICE BY CERTIFIED MAIL ON 11/14/07.
(DATE) (DATE)

BY SIGNING, I AM ONLY ACKNOWLEDGING RECEIPT OF THE SEIZURE NOTICE.

Juan Carlos Hugel Lopez 11/14/007
(SIGNATURE OF PERSON IN POSSESSION AT TIME OF SEIZURE) (DATE)

Saunda Harris
(D.L. SUPERVISOR/EXAMINER)

____REFUSED NOS

IF YOU HAVE ANY QUESTIONS ABOUT THE SEIZURE OF THE ABOVE DOCUMENT(S), 741-3954
TELEPHONE ______ AT (615) 741-3954
MONDAY THROUGH FRIDAY FROM 8 A.M. TO 4:30 P.M.

SEIZURE OF DOCUMENTS PURSUANT TO T.C.A. 39-14-113, 39-14-115, 55-50-321(e) AND 55-50-601
The above described documents were seized in accordance with the above named statutes upon reasonable belief that the documents were altered with intent to defraud or that the applicant made false or fraudulent certification as to the applicant's identity, date of birth or driving privileges, or that the driver license or certificate for driving was fraudulently altered or used. The "person in possession" may request a hearing pursuant to the Uniform Administrative Procedures Act (T.C.A. 4-5-101 et seq.) A written hearing request must be received within ten (10) days of the receipt of this notice of seizure. Failure to request a hearing in a timely manner acts as a waiver of your ownership interest in the above described documents and such documents [...] and, unless held as evidence in a court proceeding, destroyed.

EXHIBIT C

Send hearing request to:

TENNESSEE DEPARTMENT OF SAFETY
HIGHWAY PATROL
PROPERTY RECEIPT/RELEASE

McCullough

Case Number	Trooper	County	Date	Time
		Williamson	11/14/07	10:27 ☒AM ☐PM

Defendant # 1/Person Possessing Property	Defendant # 2/Person Possessing Property	Defendant # 3/Person Possessing Property
Juan C Lopez		

On the above date I, Saunda Harris / Cynthia McCullough, received from Juan C Lopez
(Subject receiving property) (Subject releasing property)
the below listed items pursuant to an official investigation conducted by the Tennessee Department of Safety:

Exhibit No.	Quantity	Defendant/ Person #	Description of Items	Location at time of Discovery	Evidence or Other Identifying Number
	1		TN DL	3830 Carothers	A047-324-314
	1		Permanent Resident Card	Parkway Franklin	098544410
				TN 37067	

DO NOT USE THIS FORM TO TRANSFER ITEMS TO ANOTHER PARTY ONCE IT HAS BEEN USED AS A RECEIPT OR RELEASE. COMPLETE ANOTHER FORM FOR TRANSFER AND RETAIN A COPY OF EACH FORM TOGETHER TO MAINTAIN A COMPLETE CHAIN OF CUSTODY.

Person's Signature Receiving Items: Saunda Harris CM

Person's Signature Releasing Items: Juan Carlos Hugo Lopez

Witness(es) Rick Blackburn
(Print Name) (Print Name) (Print Name)

Page 1 of pages 1

SF 0175 (Rev. 5/06) RDA 283

Case File (Original) Evidence Custodian (White) Member (Canary) Person (Pink)

Standard Register ® ZIPSET®

TENNESSEE DEPARTMENT OF SAFETY
FRAUDULENT LICENSE REPORT

Victim Information

Complainant:	Driver License Number
Current Address	Telephone Number(s):

Incident Information

☐ Stolen	☒ Altered	☐ False Information	☐ Other (explain)

Suspect Information

Name: Juan C Angel Lopez	Address: 817 Liberty Pike Franklin, TN 37064	
Driver License Number: 098599410	Social Security Number: 610-32-8499	Date of Birth: 11-20-82
Place of Employment:	Additional Location Information:	

Narrative (give all available information concerning the incident)

Applicant presented Permanent Resident Card that does not look authentic.

Juan Carlos Angel Lopez

Reporting Information

Reporting Station	County	Date/Time	Completed by:
530 - Franklin	Williamson	11/14/07 10:27 am	Saunda Harris

Signature of Complainant	Date	Signature of Reporting Examiner	Date
		Saunda Harris	11/14/07

CID Information

Case Number Assigned	Date	Assigned To

PUBLIC CHAPTER NO. 194

HOUSE BILL NO. 1827

By Representatives Mike Turner, Rowland, Odom, Fincher, Harmon, Hackworth, Bibb, Curtiss, Bass, Pitts, Hood, Coleman, Moore, Sontany, Harwell, McDonald, Sherry Jones, Todd, Borchert, West, Rinks, Ferguson, Fraley, Casada, Fitzhugh, Mumpower, Watson, McDaniel, Eldridge, McManus, Coley, Jim Cobb, Lynn, Maggart, Tidwell, Bell, DuBois, Kevin Brooks, Baird, Lundberg, Lollar, Matheny, Dunn, Harry Brooks, Phillip Johnson, Dean, Gresham, Hill, Hensley, Shepard, Hawk, Campfield, Strader, Montgomery, Harrison, Ford, West, Yokley, Winningham, Curtis Johnson, Williams, Litz, Casada, Niceley

Substituted for: Senate Bill No. 1968

By Senators Kyle, Norris, Williams, Kilby, Herron, Black, Southerland, Tracy, Stanley, Burchett, Beavers, Ketron, Watson, Woodson, Johnson, Raymond Finney

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 55, relative to driver license and certificate for driving issuance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-50-102(6), is amended by deleting the subsection in its entirety and renumbering the remaining subsections accordingly.

SECTION 2. Tennessee Code Annotated, Section 55-50-102, is amended by adding the following as a new subsection (50) and renumbering existing subsection (50) and the remaining subsections accordingly:

> (50) "Temporary Driver License" means a license issued by the department to an individual which authorizes the individual to operate a motor vehicle on the highways for the individual's authorized period of stay in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year.

SECTION 3. Tennessee Code Annotated, Section 55-50-202(a), is amended by adding the following language at the end of the subsection:

> The commissioner is authorized to adopt the rules and regulations, exemptions and policies promulgated by the United States Secretary of Homeland Security. The department is also authorized to utilize any verification process to comply with any rules and regulations, exemptions and policies promulgated by the United States Secretary of Homeland Security.

EXHIBIT
Blumberg No. 5208
D

SECTION 4. Tennessee Code Annotated, Section 55-50-204, is amended by adding the following language as a new subsection (e):

> This section is also applicable when the department issues a photo identification license, intermediate driver license, learner permit, temporary driver license, temporary learner permit, temporary intermediate driver license, or temporary photo identification license.

SECTION 5. Tennessee Code Annotated, Section 55-50-301, is amended by designating the existing language as subsection (a) and adding the following language as a new subsection (b):

> This section is applicable to the issuance of temporary driver licenses and permits.

SECTION 6. Tennessee Code Annotated, Section 55-50-302, is amended by adding the following language as a new, appropriately designated subsection:

> ( ) This section is applicable to the issuance of temporary driver licenses and permits.

SECTION 7. Tennessee Code Annotated, Section 55-50-302(d) is amended by deleting the subsection in its entirety and renumbering the remaining subsections accordingly.

SECTION 8. Tennessee Code Annotated, Section 55-50-303 is amended by adding the following language as a new subsection:

> ( ) Notwithstanding the provisions of this section, the department may issue a temporary license, pursuant to the provisions of Section 55-50-331(g) and any other departmental rules and regulations promulgated by the department.

SECTION 9. Tennessee Code Annotated, Section 55-50-321 is amended by adding the following language as a new subsection (h):

> (h) Any applicant applying for a temporary driver license, temporary learner permit, temporary intermediate driver license or temporary photo identification license, upon initial issuance, renewal and reinstatement, shall provide proof acceptable to the department relative to the applicant's identity, Tennessee residency, and authorized period of stay in the United States.

SECTION 10. Tennessee Code Annotated, Section 55-50-321(a), is amended by adding the following language at the end of the subsection:

> The application shall also be accompanied by proof of Tennessee residency acceptable to the department.

SECTION 11. Tennessee Code Annotated, Section 55-50-322(a)(1)(A), is amended by deleting the first sentence in its entirety and substituting instead the following:

> The department shall examine every applicant for a driver license, intermediate driver license, learner permit, temporary driver license, temporary learner permit, and temporary intermediate driver license, except as otherwise provided in this part.

SECTION 12. Tennessee Code Annotated, Section 55-50-322(e), is amended by inserting the words "an eye test", between the words "required to take" and "knowledge and".

SECTION 13. Tennessee Code Annotated, Section 55-50-322(f), is amended by inserting the language "non-public schools in categories 1, 2, or 3 as recognized by the state board of education," between the words "vehicles by " and "a public school".

SECTION 14. Tennessee Code Annotated, Section 55-50-323(c)(2)(J)(i) is amended by adding the following as a new second sentence:

> The fee charged for a photo identification license or renewal thereof issued pursuant to § 55-50-331(g) shall be the same as the fee charged for a five-year photo identification license pursuant to this subsection.

SECTION 15. Tennessee Code Annotated, Section 55-50-323, is amended by deleting subsection (e) in its entirety and by substituting instead the following language:

> (e) The fee charged for any temporary driver license issued pursuant to § 55-50-331(g) shall be the same as the fee charged for a five-year Class D license.

SECTION 16. Tennessee Code Annotated, Section 55-50-331(g), is amended by deleting the subsection in its entirety and substituting instead the following:

> (g) Notwithstanding any other provision of law to the contrary, the department may issue a temporary driver license, temporary intermediate driver license, temporary photo identification license or a temporary learner permit to persons whose presence in the United States has been authorized by the federal government for a specific purpose and for a specified period of authorized stay. Such temporary driver license or photo identification license shall be valid only during the period of time of the applicant's authorized stay in the United States; <u>provided, however, that no temporary license or photo identification license shall be issued for a period of less than one (1) year and no longer than five (5) years.</u>

SECTION 17. Tennessee Code Annotated, Section 55-50-331(h) is amended by deleting the subsection in its entirety and renumbering the remaining subsections accordingly.

SECTION 18. Tennessee Code Annotated, Section 55-50-331(i), is amended by deleting the subsection in its entirety and substituting instead the following:

> (i) Any applicant applying for a temporary driver license, temporary intermediate driver license, temporary photo identification license or temporary learner permit, upon initial issuance, renewal or reinstatement, shall meet the requirements of this chapter and any rules and regulations promulgated by the department.

SECTION 19. Tennessee Code Annotated, Section 55-50-332(b), is amended by deleting the subsection in its entirety and substituting instead the following:

> (b) Duplicate licenses obtained during the normal five-year cycle shall expire on the licensee's birth date in the fifth year following the initial issuance, excluding Class P licenses which shall expire one (1) year from the date of issuance.

SECTION 20. Tennessee Code Annotated, Section 55-50-332(c) is amended by deleting the subsection in its entirety and substituting instead the following:

> (c) Duplicate temporary licenses obtained in place of such temporary licenses, issued pursuant to § 55-50-331(g) shall be valid during the period of time specified in such subsection.

SECTION 21. Tennessee Code Annotated, Section 55-50-336, is amended by adding the following language as new appropriately designated subsections:

> ( ) The department is authorized to issue a temporary photo identification license which shall be valid only during the period of time of the applicant's authorized stay in the United States; or, if there is no definite end to the period of authorized stay, a period of one (1) year.
>
> ( ) An applicant for such temporary photo identification license shall submit an application that includes proof of the applicant's identity, Tennessee residency, and authorized stay in the United States.

SECTION 22. Tennessee Code Annotated, Section 55-50-337, is amended by deleting subsection (c) in its entirety and substituting instead the following:

> (c) Notwithstanding any other provisions of law to the contrary, temporary licenses issued pursuant to § 55-50-331(g) shall be valid during the period of time specified in such subsection.

SECTION 23. Tennessee Code Annotated, Section 55-50-337, is amended by deleting subsection (d) in its entirety and substituting instead the following language:

(d) Any person issued a license or permit prior to July 1, 2004 who is subject to the provisions of § 55-50-331(g) shall, upon renewal or reapplication, receive, if otherwise eligible, a temporary license which shall expire in accordance with such subsection.

SECTION 24. For purposes of the department promulgating public necessity rules and regulations to implement the provisions of this act, this act shall take effect upon becoming law, the public welfare requiring it. Section 17 of this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect on October 1, 2007, the public welfare requiring it.

PASSED: May 7, 2007

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 21st day of May 2007

PHIL BREDESEN, GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
NASHVILLE, TENNESSEE 37249-1000

January 24, 2008

Mr. Elliott Ozment, Esq.
Immigration Law Offices of Elliott Ozment
1214 Murfreesboro Pike
Nashville, TN 37217-2411

Re: Enrique Bautista

Dear Mr. Ozment:

As mentioned in my phone call of January 17, 2008, the Department of Safety has concluded its investigation into the authenticity of the documents presented by your client, Mr. Enrique Bautista, at the Franklin Driver License station. We have determined that the documents were not fraudulent. Per Department of Safety General Order 544, the documents are being returned to the Franklin Driver License station. Mr. Bautista will be able to retrieve his documents there beginning January 28, 2008, during normal business hours.

The Department has received your request for a hearing regarding the seizure of Mr. Bautista's documents. As the Department of Safety is returning the documents to Mr. Bautista, the relief that could have been obtained through the hearing process – the return of his documents – has been achieved. Thus, the Department will not be scheduling a hearing on the matter.

If you have any further questions, you may contact me at 615-251-5349.

Sincerely,

Lizabeth Hale

Lizabeth Hale
Staff Attorney

cc: George Dittfurth
Tiffany L. Taylor

EXHIBIT
E

Blumberg No. 5208

STATE OF TENNESSEE
DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
NASHVILLE, TENNESSEE 37249-1000

February 21, 2008

Mr. Elliott Ozment, Esq.
Immigration Law Offices of Elliott Ozment
1214 Murfreesboro Pike
Nashville, TN 37217-2411

Re: Juan Carlos Lopez

Dear Mr. Ozment:

To confirm our phone call earlier this afternoon, the document of your client, Juan Carlos Lopez, are being returned to the Franklin Driver License station on Carothers Parkway. Mr. Lopez will be able to retrieve his documents there beginning February 22, 2008, during normal business hours, which are Tuesday through Friday, 7 am to 5:30 pm.

If you have any further questions, you may contact me at 615-251-5349.

Sincerely,

Lizabeth Hale

Lizabeth Hale
Staff Attorney

cc: George Dittfurth
Tiffany L. Taylor

Blumberg No. 5208
EXHIBIT
F