

BEFORE THE SECRETARY  
OF THE NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

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**PETITION FOR DECLARATORY RULING**

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Petitioners Maria Analida Perez Fernandez, Marcela Valdebenito Pizzaro, and Mayra Itzel Luna Huerta on behalf of themselves and all others similarly situated submit this petition for declaratory ruling to the Secretary of the North Carolina Department of Transportation (“NCDOT”) pursuant to N.C. Gen. Stat. § 150B-4 and 19A NC ADC 1B.0401.

## **INTRODUCTION**

1. This petition involves the North Carolina Department of Transportation, Division of Motor Vehicles’ (“NCDMV’s”) interpretation and application of a statute, N.C.G.S. § 20-7(f), which results in the unlawful denial of driver licenses and the issuance of driver licenses of an improper length and category to certain legally-present noncitizens with indefinite or permanent immigration classifications.

2. NCDMV’s unlawful denial of driver licenses and its improper issuance of short-term driver licenses to certain lawfully present noncitizens is based on its mischaracterization of certain noncitizens whose immigration classifications are of indefinite length as immigrants who have a legal presence of “limited duration” as defined in N.C.G.S. § 20-7(f).

3. NCDMV’s interpretation and application of N.C.G.S. § 20-7(f) and their resulting denials of driver licenses or improper issuances of short-term driver licenses to certain noncitizens with indefinite immigration classifications is based on a substantial misinterpretation of the requirements and applicability of North Carolina and federal law and is preempted by federal immigration authority.

4. Legally-present noncitizens who, as determined by federal immigration authorities, do not have a definitive end date to their authorized period of stay cannot be classified as immigrants with a legal presence of “limited duration” pursuant to N.C.G.S. § 20-7(f)(3).

5. Petitioners are legally-present noncitizens with permanent immigration classifications or indefinite immigration classification leading toward permanency. Petitioner

Maria Analida Perez Fernandez is a lawful permanent resident, Petitioner Marcela Valdebenito Pizzaro is a conditional permanent resident, and Petitioner Mayra Itzel Luna Huerta is a U visa holder with a pending adjustment of status to lawful permanent resident.

6. Petitioners have been denied renewal of driver licenses of appropriate length due to NCDMV's interpretation and application of N.C.G.S. § 20-7(f), upon which NCDMV has based its demands for "renewed" or "updated" documents from driver licenses applicants or its improper provision of limited term licenses, despite the fact that these applicants' immigration classification is permanent or indefinite.

7. Petitioners are among tens of thousands of noncitizens in North Carolina that are harmed by the NCDMV's mistaken interpretation and application of N.C.G.S. § 20-7(f). In a state where being able to lawfully drive is critical to navigating everyday life, NCDMV's failure to furnish full-term driver licenses to otherwise eligible noncitizens has resulted in Petitioners being unable to drive to medical appointments, work, and other necessary destinations without fear of law enforcement consequences. Petitioners have had to pay for expensive ride-sharing services and often rely on friends and family to drive them to their obligations each day that they are without a license.

8. Pursuant to N.C. Gen. Stat. § 150B-4 and 19A NC ADC 1B.0401, the Secretary of NCDOT has the authority to issue a declaratory ruling interpreting and applying N.C.G.S. § 20-7(f) to petitioners and similarly situated noncitizens in a manner that comports with the federal Supremacy Clause and Equal Protection Clause as well as Article I, Section 19 of the North Carolina State Constitution.

9. Accordingly, Petitioners respectfully request a declaratory ruling articulating NCDMV's interpretation of N.C.G.S § 20-7 and how it should be applied to Petitioners and others similarly situated. NCDMV's ruling should contain a clear interpretation of N.C.G.S § 20-7

directing the issuance of full-term driver licenses to lawfully present noncitizens with permanent or indefinite immigration classification, regardless of any expiration date on their documentation. To ensure compliance with this declaratory ruling, Petitioners also request that NCDMV provide a plan for prompt, mandatory training on these policies for all NCDMV staff involved in reviewing noncitizen driver license applications. Petitioners' specific requests for a declaratory ruling from NCDMV are set forth more fully below. *See infra* pp. 32-33.

### **BACKGROUND**

#### ***Federal Law Governing Immigration Classification and Issuance of Driver Licenses to Non-Citizens***

10. The federal government has exclusive power to determine and regulate the classification of noncitizens in the United States. Under the United States Constitution, the federal government has the power to “establish a uniform Rule of Naturalization.” U.S. Const. art. I, § 8, cl. 4, and to “regulate Commerce with foreign Nations,” *id.*, art. I, § 8, cl. 3.

11. Congress has enacted a comprehensive body of law that governs immigration and the enforcement of immigration law through the Immigration and Nationality Act (“INA”). *See* 8 U.S.C. §§ 1101 et seq. (2016). The INA defines procedures for determining immigration and citizenship status. *See Toll v. Moreno*, 458 U.S. 1, 10 (1982) (noting that the INA represents “‘a comprehensive and complete code covering all aspects of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent residents’” (quoting *Elkins v. Moreno*, 435 U.S. 647, 664 (1978))). The federal government has delegated to specialized federal agencies and federal immigration courts the responsibility of determining the status or classification of noncitizens, enforcing immigration law, and promulgating immigration policy. 8 U.S.C. §§ 1101(b)(4), 1229a, 1551 et seq. (2016); 8 C.F.R. §§ 2.1, 1003.1 et seq. (2016).

12. The extensive federal statutory and regulatory scheme governing immigration classifications leaves no room for state laws or policies that attempt to classify noncitizens. Accordingly, the Supreme Court has long held that “[t]he States enjoy no power with respect to the classification of aliens,” and that “[t]his power is ‘committed to the political branches of the Federal Government.’” *Plyler v. Doe*, 457 U.S. 202, 225 (1982) (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1983)). Thus, states cannot make their own assessments about the lawfulness—or the duration—of an immigrant’s presence or status in the United States that conflict with federal immigration classifications.

### ***Forms of Permanent or Indefinite Immigration Classification***

13. Petitioners are persons who have indefinite or permanent immigration classifications, as defined under federal statutes, regulations, and guidance. As described more fully below, N.C.G.S. § 20-7(f)(3) provides that “a license of shorter duration should be issued when [an] applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of *limited duration* in the United States.” (emphasis added). Contrary to federal law, however, NCDMV has frequently classified Petitioners and other similarly-situated driver license applicants with indefinite or permanent immigration classifications as immigrants with “legal presence of limited duration.” By doing so, NCDMV has mistakenly interpreted N.C.G.S. § 20-7(f)(3) as applying to Petitioners.

14. As outlined below, several categories of noncitizens are considered to have indefinite or permanent immigration classifications pursuant to federal law. *See* Exhibit A, October 28, 2022 Letter to DMV and Noncitizen Eligibility for Driver Licenses Chart (detailing non-exhaustive list of categories of noncitizens and the licenses they should receive pursuant to N.C.G.S. § 20-7).

#### **a. *Lawful Permanent Residents (“LPR”)***

Under the INA, a lawful permanent resident is defined as one who has “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.” 8 U.S.C. § 1101(a)(20) (emphasis added). LPR status is typically demonstrated using the I-551 Permanent Resident Card (commonly known as the “Green Card”). See Exhibit B, Sample I-551 Permanent Resident Card. This card is statutorily issued to permanent residents by the Attorney General. See 8 U.S.C. § 1304(d). LPR status is durable and generally can only end if such status is rescinded by United States Citizenship and Immigration Services (“USCIS”), terminated in removal proceedings, or abandoned by the status-holder. See generally 8 U.S.C. §§ 1256; 1229a; 1101(13)(C). The expiration date found on this card “reflects only that the card must be renewed, not that the bearer’s work authorization has expired . . . .” 8 C.F.R. § 274a.12(a)(1). Even in the instance where a person with LPR status is in removal or deportation proceedings, they retain permanent resident status from USCIS “until ordered excluded, deported, or removed . . . until the proceedings are concluded.” 8 CFR § 264.5(a). The durability of the status is wholly independent from the documentation of that status. See, e.g. U.S. Department of Homeland Security, *Instructions for Form I-9, Employment Eligibility Verification*, at p. 12, <https://www.justice.gov/crt/page/file/1130601/download>, (last accessed December 20, 2022)(instructing employers not to re-verify employment authorization for legal permanent residents or conditional permanent residents, since their status is permanent regardless of any expiration date on their immigration documents).

b. *Conditional Permanent Residents*

Under the INA, a conditional permanent resident is an “alien who has been lawfully admitted for *permanent residence* within the meaning of section 101(a)(20) of the Act.” 8 C.F.R. § 216.1 (emphasis added). Although conditional permanent residents are required to file certain

paperwork with USCIS to remove conditions on their residence, that paperwork does not change the fact that their initial residence is granted *permanently*, just with imposition of certain conditions that must be removed. As federal law makes clear, “[u]nless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to . . . the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws . . . .” 8 C.F.R. § 216.1.

c. *Refugees and Asylees*

Refugee status is granted to people outside of the United States who meet the statutory definition of a refugee and are admitted under that status by the Attorney General. *See* 8 U.S.C. § 1101(a)(42). Asylees must meet this same refugee definition, but they apply for and acquire asylee status while being present in the United States. *See* 8 U.S.C. § 1158(a). In both instances, the status is indefinite until the individual acquires LPR status or has their status terminated. Only the Attorney General has the authority to terminate refugee or asylee status, and only in certain limited circumstances. *See* 8 U.S.C. §§ 1157(c)(4); 1158(c)(2). These protections extend to an asylee’s spouse and children, who maintain their status “for an indefinite period unless the principal’s status is revoked.” 8 C.F.R. § 1208.21(g). Refugee and asylee statuses may be evidenced by several forms of documentation but exist as a legal protection regardless of whether the refugee or asylee individual has been issued or is able to produce any particular form of documentation.

d. *Adjustees*

Many of those who are adjusting their immigration status to permanent residence remain in the prior immigration classification indefinitely until their adjustment of status application<sup>1</sup> is adjudicated. Two primary examples of this are “T” and “U” non-immigrant visas. T nonimmigrant visas (T-visas) are visas specially designated for people who are or have been victims of a severe form of trafficking in persons and who have complied with reasonable law enforcement requests to assist in the investigation of that trafficking. *See* 8 U.S.C. § 1101(a)(15)(T). While this visa is considered a nonimmigrant visa, a holder of a T-visa is eligible to adjust to LPR status after 3 years. *See* 8 U.S.C. § 1255(l). “U” visas, which are available for certain victims of crime, operate in a similar manner. *See, e.g.* 8 U.S.C. § 1101(a)(15)(U) (defining U visa status) and 8 U.S.C. § 1255(m) (allowing adjustment of status for U visa recipients)). Pursuant to both federal law and USCIS policy, noncitizens in T and U visa status waiting for USCIS to decide their adjustment of status petition have their T or U status extended automatically and *indefinitely* while awaiting a decision. *See* USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)*, PM-602-0032.2 at 5, Policy Memorandum, <https://www.uscis.gov/sites/default/files/document/memos/2016-1004-T-U-Extension-PM-602-0032-2.pdf> (last accessed August 1, 2022) (emphasis added); 8 C.F.R. §214.11(l)(7); 8 U.S.C. § 1184(o)(7)(C); 8 U.S.C. § 1184(p)(6).

e. *Other Forms of Permanent or Indefinite Immigration Classification*

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<sup>1</sup> Adjustment of status “refers to a process in which aliens with non-immigrant immigration status who are physically present in the United States can apply for LPR status without having to return to their home country to obtain an immigrant visa.” *Cyrousi v. Kashyap*, 386 F. Supp. 3d 1278, 1286 (C.D. Cal. 2019) (citing 8 U.S.C. § 1255.).

A number of other noncitizens have permanent or indefinite immigration classifications that are not of a fixed, limited duration. Some of those classifications include, but are not limited to: Amerasians; citizens of Micronesia, the Marshall Islands, and Palau; persons granted withholding of deportation; Iraqi or Afghan Special Immigrants; and several other categories. See Exhibit A, October 28, 2022 Letter to DMV and Noncitizen Eligibility for Driver Licenses Chart (listing all immigration statuses and indicating whether those classifications are of indefinite or limited duration).

### ***Evidence of Status***

15. In addition to having different *types* of immigration classifications granted to them by the federal government, noncitizens will also have varying forms of *evidence* of that underlying status or classification. NCDMV frequently conflates *evidence of status* with a noncitizen's actual immigration classification when reviewing driver license applications. Just like a U.S. citizen's underlying citizenship status does not end just because their passport document has expired or they have lost their birth certificate, noncitizens with permanent or indefinite immigration classifications retain their underlying status even when their immigration documents have expired on their face.

16. NCDMV has often denied driver licenses to persons who, like some of the Petitioners, have a document *evidencing status* which has expired, despite the applicant's underlying classification remaining valid.

17. As described below, there are multiple types of documents that can serve as evidence of a noncitizen's status or classification, but the expiration of these documents does not mean that a noncitizen's underlying status has expired.

a. *Permanent Resident Cards and Temporary I-551 Stamps*

There are several types of documents an LPR may have as evidence of their LPR status. The most common type of evidence of status, a permanent resident card, normally expires after ten years. However, even when this card expires, an LPR's status does not terminate. *See* 8 C.F.R. § 274a.12(a)(1); *see also Vargas-Ortiz v. McCarthy*, No. 1:14-CV-00393-CWD, 2016 WL 707340, at \*10 (D. Idaho Feb. 22, 2016). For example, a current permanent resident card is not required for international air travel to the U.S. and individuals with an expired card are able to board a plane. *See* CBP Carrier Information Guide, United States Document Requirements for Travel at 28, <https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/2019%20Carrier%20Information%20Guide%20-%20ENGLISH.pdf> (last modified March 22, 2019).

Moreover, as described below, renewal of a permanent resident card is not even required by federal law in certain circumstances, such as for people awaiting completion of their naturalization process. *See* USCIS Policy Alert, Extension of Permanent Resident Card For Naturalization Applicants, PA-2022-26, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf> (last accessed December 19, 2022). In other instances, a person might have timely applied to renew their permanent resident card, but may still be awaiting a renewal decision from USCIS when their previous card expires.

Another type of document LPRs might have as evidence of their permanent status is a temporary I-551 stamp in their passport from USCIS. Like permanent resident cards, these temporary stamps serve as evidence of an LPR status, but their expiration does not mean an individual's LPR status has expired.

b. *Employment Authorization Documents*

Some, but not all, lawfully present noncitizens are granted “employment authorization documents” (EADs), also commonly referred to as “work permits.” *See generally*, 8 C.F.R. 274a.12. The EAD is granted by USCIS as an indication that a person is lawfully permitted to work in the United States. An EAD is usually granted for a fixed time period of 24 months but can be issued for longer or shorter periods of time. *See USCIS Guidelines on Maximum Validity Periods for New Employment Authorization Documents*, <https://www.uscis.gov/newsroom/alerts/uscis-updates-guidelines-on-maximum-validity-periods-for-new-employment-authorization-documents-for> (last updated February 7, 2022).

The EAD is not necessary to demonstrate a person’s legal presence in the United States and an expired EAD has no bearing on a person’s legal status. In fact, many legally present noncitizens do not have an EAD. Additionally, there are circumstances in which the expiration date on an EAD is automatically extended. As USCIS notes in its recent temporary final rule on renewal applicants, numerous EAD categories are eligible for an automatic extension of their EAD, including but not limited to refugees, asylees, Temporary Protected Status (TPS) recipients, pending adjustment of status applicants, and VAWA self-petitioners. *See Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants*, 87 FR 26614 (effective May 4, 2022 through October 15, 2025), <https://www.federalregister.gov/documents/2022/05/04/2022-09539/temporary-increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation>.

c. *Nonimmigrant Visas*

While a nonimmigrant visa usually represents temporary lawful status, there are certain circumstances where the expiration of an individual’s nonimmigrant visa has no bearing on the duration of their lawful status. For example, when a nonimmigrant visa holder is in the process of applying for an adjustment of status, his or her legal presence is extended indefinitely until the

adjudication of that application. In these cases, a noncitizen with an expired nonimmigrant visa still has a valid underlying lawful status.

***DMV’s Unlawful Interpretation and Application of  
N.C.G.S. § 20-7(f) to Noncitizen Driver License Applicants***

18. Despite the comprehensive federal statutory and regulatory scheme that determines the length of each person’s immigration classification, NCDMV has been improperly making determinations about whether particular noncitizens are immigrants of “limited duration” under N.C.G.S. § 20-7(f). It appears that NCDMV made these determinations for Petitioners based on its interpretation of N.C.G.S. § 20-7, and, as a result, denied them licenses to which they are entitled under state law.

19. N.C.G.S. § 20-7(f)(2) establishes the baseline eight (8)-year duration of a driver license for an adults between 18 and 66 years of age and a five (5)-year duration of a driver license for an adult over the age of 66 years old and for a commercial driver license. The eight-year license issued to those who are between ages 18 and 66, and the five-year license issued to those over the age of 66 years old will be hereinafter referred to as a “full-term driver licenses.”<sup>2</sup>

20. N.C.G.S. § 20-7(f)(3) states that the full-term driver license for adults over age 18 is the default, but that “a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant’s legal presence of limited duration in the United States.”

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<sup>2</sup> N.C.G.S. § 20-7(f)(2) also sets different full-length terms for a commercial driver license, which at least one of the Petitioners has had, and presumably many other similarly-situated noncitizens. For purposes of this petition, we refer to a “full-term driver license” as the full length of a license spelled out in N.C.G.S. § 20-7(f)(2), in whatever category the applicant is based on his or her age and whether the license is commercial or non-commercial.

21. Ms. Perez Fernandez, Ms. Valdebenito Pizzaro, and Ms. Luna Huerta have permanent or indefinite lawful immigration classifications in the United States. Their legal presence is not of limited duration and is in fact either “permanent” or indefinite. Because N.C.G.S. § 20-7(f)(3) is applicable only to applicants who have “legal presence of limited duration,” Petitioners and other similarly situated noncitizen applicants are eligible for a full-term driver licenses.

22. NCDMV, based on its incorrect interpretation of N.C.G.S § 20-7, has improperly and unlawfully denied full-term drivers licenses to Petitioners and other similarly situated noncitizen applicants.

#### *NCDMV’s Failure to Resolve the Issue*

23. In August 2021, attorneys from the ACLU of North Carolina (“ACLU-NC”) wrote to NCDMV regarding an LPR individual who applied for a REAL ID-compliant driver license but was denied a full-term driver license because his permanent resident card document showed an expiration date of October 2021. The letter explained that the facial expiration of the permanent resident card did not determine the individual’s legal presence; NCDMV ultimately issued this individual a full-term REAL-ID compliant driver license. In September 2021, ACLU-NC followed up with NCDMV and renewed its request that NCDMV educate its staff about the rights of LPRs and other North Carolinians with permanent or indefinite immigration classifications. A representative from NCDMV responded but did not commit to making the systemic changes that ACLU-NC had outlined.

24. The August 2021 letter sent by ACLU-NC also highlighted that NCDMV has in the past required the issuance of full-term driver licenses to certain categories of noncitizens. The August 2021 letter references an email from Ms. April Dozier, Supervisor of the Document Verification Unit, sent out in 2018 providing the following guidance to NCDMV employees:

- “Lawful Permanent Resident, Refugee, and Asylee[s] will no longer have ‘Limited Term’ on their Driver License and identification cards.
- Identification cards will no longer have the Legal Presence expiration date on the back of the card for those customers that have an indefinite length of stay (Lawful Permanent Resident, Refugee and Asylee). **The customers will now see U.S. GOV. LEGAL PRESENCE on the back of the card.**
- Conditional Resident Customers ex: Permanent Resident Card with two-year issuance, Machine Readable Immigrant Visa, or Temp I-551 Stamp in the Passport or on an I-94 restrictions will remain the same.”

Exhibit C, April 20, 2018 Email from April Dozier.

25. Notwithstanding Ms. Dozier’s representations, NCDMV has continued to improperly deny full-term driver licenses to otherwise eligible noncitizens who have permanent or indefinite legal presence in the United States.

26. Through a public record request dated April 26, 2022, Petitioners’ attorneys requested NCDMV’s most recent policies addressing issuance of driver licenses to lawfully present noncitizens. The policies obtained from that request further highlight NCDMV’s failure to adhere to a lawful interpretation of N.C.G.S. § 20-7(f) and to adopt consistent policies to ensure lawful actions with respect to certain noncitizen driver license applicants. The policies were silent on the issue of training employees on what kind of driver license should be issued to noncitizens.<sup>3</sup> DMV documents obtained also provided instructions on how to “calculate”

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<sup>3</sup> Exhibit D, Excerpts from DLE Manual Dec. 2018, pp. 1-17 to 1-18.

expiration dates for certain categories of noncitizens that conflict with USCIS's determination regarding whether an individual's legal presence is current.<sup>4</sup>

27. On August 2, 2022, undersigned counsel sent NCDMV a letter regarding its interpretation and application of N.C.G.S. § 20-7(f) which led to the denial of full-term licenses to several of the Petitioners and other similarly situated noncitizens. Exhibit F, August 2, 2022 Letter to DMV.<sup>5</sup> The letter detailed how NCDMV's policy of denying full-term licenses to otherwise eligible noncitizens of permanent or indefinite immigration classification, based on their mistaken interpretation and application of N.C.G.S. § 20-7(f), violates North Carolina law, the United States Constitution, and the North Carolina Constitution.

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<sup>4</sup> See Exhibit E, Calculate Legal Presence Extension Update. This document instructs DMV employees how to calculate the "expiration date" of noncitizen applicants' legal presence, including the "expiration date" of noncitizens who have indefinite immigration classifications. The document instructs DMV staff to add a certain number of days or months to the expiration date listed on a noncitizen's "legal presence document." This tool does not reflect USCIS's May 2022 announcement that EADs of certain categories of lawfully present noncitizens will be automatically extended 540 days.

While it is unnecessary for NCDMV to calculate the "expiration date" for individuals like petitioners who have permanent or indefinite immigration classification, this document evidences that NCDMV is not relying on up to date information and mandates from USCIS for its calculations of when a noncitizen's driver's license should expire. See Exhibit D, Excerpts from DLE Manual, Dec. 2018, at 4-3 (NCDMV advising its employees that USCIS documents can only be used if they are "unexpired" or "accompanied by a 'letter' from USCIS extending the expiration date (example: I-797)).

This requirement implicitly excludes notices from the USCIS that are not directly issued to impacted noncitizens, such as Federal Register Notices that extend certain noncitizens' legal presence, or the recent 540-day work permit extension, and fails to recognize that certain immigration classifications are durable or permanent even if the card evidencing them is "expired." It also implies that if the card evidencing a person's immigration classification (such as an LPR card or an Employment Authorization Document) is expired, the person no longer has legal presence in the United States, which is untrue for the reasons described in this Petition.

<sup>5</sup> Two noncitizens whose names appeared in the August 2, 2022 are not petitioners in the instant matter. As such, their names have been redacted for privacy reasons.

28. On September 9, 2022, a number of the undersigned counsel met with NCDMV Commissioner, Wayne Goodwin, Director of Driver Services at NCDMV, Michael Newsome, Senior Deputy Counsel for NCDMV, William Marsh, Special Deputy Attorney General, Chris Brooks, and others to discuss the August 2, 2022 letter. During this meeting NCDMV conceded that LPRs should be receiving full-term driver licenses regardless of the expiration date on their permanent resident cards. NCDMV stated that they would need to assess further whether other categories of noncitizens are eligible to receive full-term driver licenses. To assist NCDMV officials, undersigned counsel offered to produce a chart detailing a non-exhaustive list of noncitizen immigration classifications and the appropriate license individuals falling in these categories should be receiving pursuant to N.C.G.S. § 20-7. NCDMV indicated that they would find such a chart useful.

29. Mr. Marsh followed up that same day with an email stating that while LPRs should be receiving full-term driver licenses, they would still need to go through Systematic Alien Verification for Entitlements (SAVE) verification. Exhibit G, September 9, 2022 Email from William Marsh.

30. Undersigned counsel responded by email on the following business day, Monday, September 12, asking for clarification about the meaning of Mr. Marsh's September 9 email, and requesting a copy of the policy that NCDMV was relying on to impose these extra conditions. Exhibit H, September 12, 2022 Email from Kate Woomer-Deters.

31. On September 15, Mr. Marsh responded as follows:

I've received your message from Monday [September 12]. Most of the senior DMV leadership is away at a conference this week. After they return, we will seek to share any internal policy which may apply. For now, here is what I wanted to let you know.

A LPR will not need to have current, immigration documentation to support the renewal of a drivers license for a period of time that is applicable to their respective age. DMV will conduct a verification

(SAVE) for any non-U.S. Citizen issued or renewed a drivers license. We look forward to working with you on the concerns that you raised.

Exhibit H, September 15, 2022 Email from William Marsh.

32. On October 28, 2022 undersigned counsel sent NCDMV officials and counsel a chart detailing a non-exhaustive list of categories of noncitizens, whether each category of noncitizen should be considered “permanent or indefinite” based on federal law, and consequently whether each category should receive a full-term driver license pursuant to N.C.G.S § 20-7. Exhibit A, October 28, 2022 Letter to DMV and Noncitizen Eligibility for Driver Licenses Chart. In that correspondence, undersigned counsel requested that NCDMV respond and indicate whether it intended to interpret N.C.G.S. § 20-7 the same way that counsel suggested they do so in the chart. *Id.*

33. Undersigned counsel’s October 28, 2022 letter also asked NCDMV for clarification or legal support for its assertion that *all* noncitizens must be run through USCIS’s “SAVE” system when applying for a North Carolina driver licenses, even (apparently) those who are not applying for a REAL-ID compliant license. *See* Exhibit A, October 28, 2022 Letter to DMV and Noncitizen Eligibility for Driver Licenses Chart. NCDMV has not at any time provided legal support for that assertion, and yet continues to raise the necessity of “SAVE” verification in response to undersigned counsel’s requests for clarity on NCDMV’s interpretation of N.C.G.S. § 20-7.

34. On November 1, 2022 Commissioner Goodwin replied to the undersigned’s October 28 communication and stated that NCDMV would provide a response soon.

35. Since November 1, 2022, the undersigned counsel have not received any further communication from NCDMV. Nor has NCDMV provided any other clarification of its

interpretation of N.C.G.S. § 20-7(f) or its policy of denying full-length licenses to LPRs or any of the other permanent or indefinite categories of immigration classifications.

36. As described, *supra*, even after the fall 2022 correspondence and the September 2022 meeting with undersigned counsel, NCDMV still continues to interpret N.C.G.S. § 20-7 in ways that are inconsistent with both the text of the statute, and in conflict with federal law.

***Petitioners are Aggrieved Parties***

37. Maria Analida Perez Fernandez has been a lawful permanent resident of the United States since 1989 and has been living in North Carolina for approximately 18 years. Ms. Perez Fernandez is 65 years old.

38. Ms. Perez Fernandez does not “hold[] [any] valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States” within the meaning of N.C.G.S. § 20-7. Indeed, because Ms. Perez Fernandez’s legal permanent resident status is indefinite or permanent, such documentation would be incompatible with her legal status.

39. Ms. Perez Fernandez has had a number of driver licenses issued by the DMV, including at least one commercial driver license that she used for her job as a school bus driver. Ms. Perez Fernandez’s previous commercial driver license expired in 2021.

40. Ms. Perez Fernandez’s permanent resident card was set to expire on June 6, 2022. Per its practice, in 2021, DMV issued Ms. Perez Fernandez a new commercial driver license that would expire on June 6, 2022, the same day that her permanent resident card would expire. DMV issued that license for less than the standard commercial driver license length of five years.

41. Shortly before Ms. Perez Fernandez’s driver license was set to expire in June 2022, she visited the NCDMV office in Graham, NC to try to obtain a renewal. NCDMV staff

told her that because her permanent resident card would expire on June 6, 2022, NCDMV could not issue her a new or extended driver license beyond that date.

42. Ms. Perez Fernandez is currently going through the naturalization process with USCIS. As such, she is not required to renew her permanent resident card while her naturalization is pending, per USCIS policy. *See* USCIS Policy Alert, Extension of Permanent Resident Card For Naturalization Applicants, PA-2022-26, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221209-ExtendingPRC.pdf> (last accessed December 19, 2022). Ms. Perez Fernandez is unemployed due to a back injury and does not have the financial means to pay for an unnecessary renewal of her permanent resident card.

43. After the meeting on September 9, 2022 and the emails exchanged between undersigned counsel and Mr. Marsh wherein NCDMV stated that it was their position that LPRs should be receiving full-term licenses regardless of the expiration date on their permanent resident card, Ms. Perez Fernandez again visited the NCDMV. On or around October 6, 2022, she tried to obtain a driver license at the NCDMV office in Graham, NC. Despite NCDMV's assurances to undersigned counsel during the September 9 meeting and subsequent emails, NCDMV staff in Graham informed Ms. Perez Fernandez that her expired permanent resident card was not acceptable, and that she would need to get an extension on her permanent resident card in order to be eligible for a driver license.

44. On or around November 28, 2022, Ms. Perez Fernandez was finally able to get a stamp in her passport from USCIS indicating that she has permanent resident status.

45. Ms. Perez Fernandez then went to an NCDMV office and presented her USCIS stamp in her passport indicating her permanent resident status. She was issued a temporary "paper" license and told that her regular license would arrive in the mail.

46. In December 2022, Ms. Perez Fernandez received her new driver license from NCDMV, which is only valid for one year from the permanent resident stamp in her passport (valid until November 27, 2023), and is not a “full-term driver license” as required by N.C.G.S. § 20-7(f)(2).

47. From June through December 2022, Ms. Perez Fernandez was afraid to drive for fear of suffering the legal consequences of driving without a license, but she needed a vehicle to attend her regular medical appointments related to her back injury. Ms. Perez Fernandez spent large amounts of money on ride sharing services in order to be able to attend her necessary medical appointments, which was a financial hardship for her. Although NCDMV has now issued her a new license, she will need to renew it in only one year instead of the waiting until the end of a full-term license, as should be allowed and required under the statutory language.

48. Marcela Valdebenito Pizzaro is a conditional lawful permanent resident<sup>6</sup> of the United States and has lived in North Carolina since 2018. Ms. Valdebenito is 35 years old.

49. Ms. Valdebenito Pizzaro does not “hold [any] valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States” within the meaning of N.C.G.S. § 20-7. Indeed, because Ms. Valdebenito Pizzaro’s conditional legal permanent resident status is indefinite or permanent, such documentation would be incompatible with her legal status.

50. Ms. Valdebenito Pizzaro previously obtained a driver license from NCDMV in 2018 that was set to expire in July 2020, on the same date as her conditional permanent resident

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<sup>6</sup> Upon information and belief, USCIS approved a removal of the conditions on Ms. Valdebenito Pizarro's permanent residence in or around November 2022. However, she still has not received a new permanent resident card in the mail as of the filing of this petition. As of the filing of this petition, she still has a driver license that is only valid for one year, instead of a full-term license.

card would expire. NCDMV issued that license for less than the full-term license length of eight years.

51. In May of 2020, Ms. Valdebenito Pizzaro timely petitioned USCIS to “remove the conditions” on her permanent residence, and the filing of this petition automatically extended the validity of her I-551 Permanent Residence Card an additional 24 months from the date on the card while USCIS adjudicated her petition.

52. Even though her conditional permanent resident card had been extended for 24 months, the NCDMV office in Jacksonville, North Carolina required Ms. Valdebenito Pizzaro to appear in person and request a renewal of her driver license every six months during the period from July 2020 through July 2022.

53. In July 2022, NCDMV staff in Jacksonville, NC told her that because the 24-month extension on her conditional permanent resident card was expiring, her status was expiring, and therefore NCDMV could not issue her a new driver license beyond July 2022. She was told to come back with a “new receipt notice.”

54. Because of NCDMV’s refusal to renew her driver license, Ms. Valdebenito Pizzaro was without a driver license entirely from July 2022 to August 2022. During this time, her lack of a driver license made it difficult to continue working, transporting her young daughter to and from school, and attending medical and other necessary appointments.

55. In August 2022, Ms. Valdebenito Pizzaro obtained a temporary stamp in her passport as evidence of her permanent resident status at the USCIS office in Raleigh. On August 23, 2022 Ms. Valdebenito Pizzaro again visited the NCDMV office in Jacksonville. She was granted a limited term driver license that will expire on the same date that the extension of her permanent resident card will expire in August 2023 instead of a full-term driver license.

56. Ms. Valdebenito Pizzaro had to miss work each time she went to the DMV to renew her license. Ms. Valdebenito Pizzaro also had to take off work to travel all the way to the USCIS Office in Raleigh (over four hours round-trip from her home in Jacksonville) to obtain the temporary stamp from USCIS so that she could renew her driver license.

57. Ms. Valdebenito Pizzaro depends on her driver license to go to work, her medical appointments, and to take care of herself and her young daughter.

58. Mayra Itzel Luna Huerta is a resident of Durham County, North Carolina, and is a “U” visa holder who has a pending application for adjustment of status to lawful permanent resident, filed on September 23, 2021. Her U-visa approval from USCIS showed that her U-visa status was valid until April 1, 2022. Ms. Luna Huerta is 27 years old.

59. Ms. Luna Huerta does not “hold[] [any] valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States” within the meaning of N.C.G.S. § 20-7. Indeed, because Ms. Luna Huerta’s U visa status is valid indefinitely until her adjustment of status is adjudicated, holding such documentation would be incompatible with her legal status.

60. Ms. Luna Huerta obtained a driver license from DMV on May 6, 2021 which was issued until the same expiration date listed on her then-current EAD, April 1, 2022.

61. At or around the time Ms. Luna Huerta’s driver license was set to expire in April 2022, she went to the NCDMV office in Durham, NC in an attempt to renew her license. She presented her USCIS documentation, including her Notice of Application to Adjust Status indicating that her U visa status “[wa]s extended until a decision is reached on [he]r Form I-485” and her Notice of Application for Employment Authorization granting her an “[a]utomatic 180 day Employment Authorization Document (EAD) Extension,” and a letter from her Legal Aid attorney explaining her status. NCDMV staff told Ms. Luna Huerta that she had brought

“too many pages” and that they were “not going to read all of that.” She was told to come back with “proper documentation” in order to renew her license.

62. Ms. Luna Huerta attempted to renew her license four times at NCDMV offices in Durham, NC and Raleigh, NC. At one appointment she was issued a two-month temporary license, which was subsequently revoked on a phone call.

63. Ms. Luna Huerta was without a driver license from April 1, 2022 to October 28, 2022, due to the actions and statements of NCDMV staff.

64. Because Ms. Luna Huerta was unable to renew her driver license in a timely manner, she was forced to quit her job at the Cheesecake Factory as she was unable to reliably get to work. During the period in which she was unable to renew her license, Ms. Luna Huerta was scared to drive because of the legal consequences of driving without a license. She incurred additional expenses to have groceries delivered to her house through delivery services such as Instacart.

65. In October 2022, Ms. Luna Huerta obtained a renewed EAD. On October 28, 2022, Ms. Luna Huerta again visited the NCDMV office in Durham, NC. She was granted a limited term driver license that will expire on the same date that her renewed EAD will expire, October 10, 2024, instead of a full-term driver license.

66. Ms. Perez Fernandez, Ms. Valdebenito Pizzaro, and Ms. Luna Huerta all have permanent or indefinite lawful status in the United States.

67. Their legal presence is not of limited duration and is in fact either “permanent” or indefinite and leading towards permanency.

68. Because § 20-7(f)(3) is applicable only to applicants who have “legal presence of limited duration,” Petitioners and other similarly situated noncitizen applicants should be eligible for full-term driver licenses.

69. By denying Petitioners and other similarly situated noncitizen applicants full-term driver licenses, NCDMV is violating N.C. Gen. Stat. § 20-7(f)’s mandate that, with limited exceptions based on age, lawfully present noncitizens with permanent or indefinite legal immigration classification shall receive licenses for eight years’ duration (or five years’ duration for persons of age 66 and over/ for commercial driver licenses). In addition, as described below, NCDMV’s interpretation and application of N.C.G.S. § 20-7(f) also violates federal law and both the federal and state constitutions.

***NCDMV’s Unlawful Interpretation and Application of N.C.G.S. § 20-7(f)  
Harms Petitioners And Similarly Situated Noncitizens***

70. In North Carolina, the ability to drive is an essential part of navigating everyday life. Eligible noncitizens live all throughout North Carolina and are virtually unable to travel to meet their daily obligations without the use of a car.

71. While the consequences fall more heavily on rural North Carolinians who do not have ready access to public transportation, even in more urban areas of North Carolina, very few residents are fully able to rely on public transportation. Indeed, over 90% of North Carolina’s working population relies on a car to get to work.<sup>7</sup> Research has found that nationwide, if a person relies on public transportation alone in a metropolitan areas, they can only access “about

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<sup>7</sup> Rebecca Tippet, *NC in Focus: Mode of Transportation to Work*, Carolina Demography (August 20, 2015), <https://www.ncdemography.org/2015/08/20/nc-in-focus-mode-of-transportation-to-work/>. Of note, the ramifications of loss of a driver license have arisen in the context of debt-based license suspensions, when people cannot afford to reinstate their driver licenses due to fines or fees owed to the state. Recognizing the serious harms that come from these suspensions, 22 states have enacted reforms to curb or lessen the impacts of debt-based license suspensions. *Map of State Reforms on Debt-Based License Suspensions*, Free to Drive, <https://www.freetodrive.org/maps/#page-content>. (last accessed December 15, 2022). Although the instant case does not involve debt-based suspensions, the harms imposed by NCDMV’s erroneous interpretation of the law with regard to Petitioners are the same harms as those that dozens of states have recognized with regard to suspended licenses: inability to get to work, school, medical appointments, and provide care for children.

one-quarter of jobs in low- and middle-skill industries...within 90 minutes” and only about 22% of low- and middle-skilled jobs in suburban communities.”<sup>8</sup> The same study showed that in Raleigh, Charlotte, and Greensboro metropolitan areas, well under 10% of jobs were reachable by public transportation in less than 45 minutes, on average, and under 15% were reachable by transit in less than an hour in each metro area.”<sup>9</sup> As such, a car is effectively necessary to reach employment even in major metropolitan areas of North Carolina.”

72. Petitioners have been unable to drive to medical appointments, work, and other necessary destinations without fear of law enforcement consequences, or without having to rely on friends and family members or expensive (and unreliable) ridesharing services to drive them.

73. A long-term study from Wisconsin detailed the impact that lack of a drivers’ license has on employment prospects and earnings. The study found that women who obtained drivers’ licenses, after previously not having them, increased their earnings by 64%, and that having a driver license was more important for finding steady employment than having a high school diploma.<sup>10</sup> A New Jersey study conducted by Rutgers University found that of those surveyed who had had their driver licenses suspended, 42% had lost their jobs when their driving privileges were suspended, 45% of those who lost their job could not find another job, and of

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<sup>8</sup> Adie Tomer, et al., *Missed Opportunity: Transit and Jobs in Metropolitan America*, Brookings Institute, May 2011, [https://www.brookings.edu/wp-content/uploads/2016/06/0512\\_jobs\\_transit.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0512_jobs_transit.pdf).

<sup>9</sup> Adie Tomer, et al., *Missed Opportunity: Transit and Jobs in Metropolitan America*, Brookings Institute, May 2011, Appendix 5, [https://www.brookings.edu/wp-content/uploads/2016/06/0512\\_jobs\\_transit.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0512_jobs_transit.pdf). Although this data is over 10 years old, the percentage of jobs accessible by transit in North Carolina metro areas was so low in 2011, it is likely that percentage is still low in 2022, even if it has increased.

<sup>10</sup> John Pawasarat & Lois M. Quinn, *Research Brief on ETI Driver License Studies*, ETI Publications (2017), [https://dc.uwm.edu/cgi/viewcontent.cgi?article=1185&context=eti\\_pubs](https://dc.uwm.edu/cgi/viewcontent.cgi?article=1185&context=eti_pubs) (last accessed December 15, 2022).

those who did find another job, 88% reported a decrease in income.<sup>11</sup> The percentage of *low-income* residents who lost their jobs after license suspension was 64%, and 96% had their income negatively affected by the license suspension.<sup>12</sup> The New Jersey study further showed that 83% of those who had lost driving privileges faced increased stress; 74% reported that it had caused strain with their friends, family, and colleagues; and 46% reported having no form of identification as a result.<sup>13</sup>

74. The costs and burdens borne by Petitioners and those similarly situated as a result of NCDMV's unlawful actions, based upon their interpretation and application of N.C.G.S. § 20-7(f), disproportionately harm lower income North Carolinians who are forced to spend time and money they cannot spare. NCDMV's policies cause those who do not have access to alternate transportation to risk harsh fines and even jail time if they drive without a license while awaiting renewal of documentation evidencing their legal presence.

### **GROUND'S FOR DECLARATORY RULING**

#### **I. NCDMV's interpretation and application of N.C.G.S. § 20-7(f) violates the Supremacy Clause and is preempted.**

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<sup>11</sup> Rutgers University and New Jersey Motor Vehicle Commission (preparers), *Motor Vehicles Affordability and Fairness Task Force Final Report*, February 2006, p. xii, [https://www.state.nj.us/mvc/pdf/about/AFTF\\_final\\_02.pdf](https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf) (last accessed December 15, 2022). The New Jersey report noted other impacts of license suspension, including the economic effects of reduced motor vehicle sales, limitation of the labor force in key industries such as home health care aides or construction trades which may require a driver license, lower tax revenues due to decreased employment, and increased benefit costs to the state when people are forced to turn to public benefits because they cannot access work.

<sup>12</sup> *Id.* at 38.

<sup>13</sup> *Id.* at p. xiii.

75. NCDMV's current interpretation and application of N.C.G.S. § 20-7(f) conflicts with federal and constitutional law in that it is preempted by federal law and violates the Supremacy Clause of the United State Constitution for the reasons outlined herein.

76. The Supremacy Clause provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, clause 2.

77. Pursuant to the Supremacy Clause, federal law preempts state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the federal government. *See, e.g., Arizona v. United States*, 132 S. Ct. 2492, 2500-01 (2012). Any state law that conflicts or interferes with federal law is preempted. Similarly, any state policy or interpretation that conflicts with federal governmental policy established pursuant to federal law or the United States Constitution is also preempted. *United States v. South Carolina*, 720 F.3d 518, 529 (4th Cir. 2013) (quoting *Arizona*, 132 S. Ct. at 2501).

78. As described above, the federal government has sole and exclusive power to regulate immigration. *See DeCanas v. Bica*, 424 U.S. at 351, 354-55 ("Power to regulate immigration is unquestionably exclusively a federal power."); *see supra* pp. 4-5.

79. As part of its immigration power, the federal government has exclusive authority to enact and to enforce regulations concerning which noncitizens to admit, exclude, remove, or allow to remain in the United States. *Arizona v. U.S.*, 132 S. Ct. 2492, 2494-95 (2012). The federal government also has exclusive authority over the terms and conditions of a noncitizen's stay in the United States. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948) (finding

that states “can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization, and residence of aliens in the United States or the several states.”). Further, the federal government has exclusive authority to classify noncitizens, which includes determining the categories of noncitizens who are granted federal authorization to be present in the United States. *Plyler v. Doe*, 457 U.S. 202, 225 (1982) (holding that “[t]he States enjoy no power with respect to the classification of aliens,” and that “[t]his power is ‘committed to the political branches of the Federal Government.’”).

80. Pursuant to its powers, the federal government has established a comprehensive system of laws, regulations, procedures, and administrative agencies that determine, subject to judicial review, whether and under what conditions a noncitizen may enter and live in the United States, when a noncitizen may be subject to removal, and when a noncitizen may be eligible for relief from removal, either temporarily or permanently, and the authorized length of a non-citizen's stay in the U.S.

81. Under that system, Congress delegated to the federal Executive Branch broad discretion over the manner of the execution of the immigration laws, including the manner of their enforcement. That discretion includes the power to classify noncitizens and to determine the length of their authorized stay. States “can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization, and residence of aliens in the United States or the several states.” *Takahashi v. Fish & Game Comm’n*, 334 U.S. 410, 419 (1948).

82. As outlined above, the federal government has determined that some immigration classifications, such as certain non-immigrant visas, will be of a specified and limited duration, but that other classifications are either indefinite or permanent. *See supra* pp. 5-9. Immigration classifications including, but not limited to, legal permanent residents, conditional lawful

permanent residents, refugees, asylees, T and U adjustees, are of an indefinite or permanent length. They are not limited by any specific end date, and the federal government has determined that the persons holding those classifications can remain legally present unless or until they are ordered removed from the United States by the federal government. *See supra* pp. 6-8; *see also*, e.g. 8 U.S.C. § 1227 (outlining grounds for deportation or removal).

83. NCDMV's mistaken interpretation of N.C.G.S. § 20-7(f)(3) involves labeling Petitioners and similarly situated noncitizens with indefinite or permanent immigration classifications as persons with "limited duration status" and thereby denies them full term driver licenses. This interpretation conflicts with, frustrates, and serves as an obstacle to federal immigration law, regulations, goals, and policies. Furthermore, NCDMV's interpretation of N.C.G.S. § 20-7(f) and its resulting actions impermissibly discriminate against certain lawfully present noncitizens by issuing them North Carolina driver licenses that end at the expiration date of their immigration *documents* (i.e., evidence of status), instead of granting them full-term driver licenses in accordance with the indefinite or permanent nature of their actual legal *classification or status*. NCDMV's misclassification of indefinite or permanent noncitizens as having a legal presence of "limited duration" directly and fundamentally conflicts with federal law, and policy, in violation of the Supremacy Clause.

84. Furthermore, NCDMV, as a state actor, does not have authority to make its own classifications of noncitizens for purposes of purporting to determine the length of their authorized stay in the United States because such regulations would be preempted by federal law. Therefore, NCDMV's mistaken interpretation of N.C.G.S. § 20-7(f)(3), under which it labels Petitioners and similarly situated persons with indefinite or permanent immigration classifications as having a legal presence of "limited duration," is contrary to the federal law and violates the Supremacy Clause of the United States Constitution.

## **II. NCDMV's interpretation and application of N.C.G.S. § 20-7(f) violates the Equal Protection Clause.**

85. The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

86. Based on its mistaken interpretation and application of N.C.G.S. § 20-7(f), NCDMV refused to grant full-length licenses to Petitioners and similarly situated noncitizens who have indefinite or permanent immigration classifications. This policy constitutes impermissible discrimination against certain lawfully present noncitizens on the basis of alienage and deprives them of equal protection of the laws within the meaning of the Fourteenth Amendment.

87. Classifications based on alienage "are inherently suspect and subject to close judicial scrutiny." *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *see also Moreno v. Univ. of Maryland*, 645 F.2d 217, 220 (4th Cir. 1981) (adopting *Moreno v. Toll*, 489 F. Supp 658, 663–64 (D.Md. 1980) and affirming without qualification that all lawfully present noncitizens who live in the United States are wrapped in the suspect classification blanket).

88. Furthermore, NCDMV's interpretation and application of N.C.G.S. § 20-7(f) does not further any compelling or substantial state interest. Because NCDMV's differential treatment of these indefinite or permanent noncitizens lacks even a rational basis, it violates the Equal Protection Clause of the Fourteenth Amendment. In order to conform NCDMV's policy so that it is not violative of the Equal Protection Clause, the Secretary's declaratory ruling should institute a policy that affords a full-term license to Petitioners and other similarly situated persons with permanent or indefinite immigration classification and is not conditioned on the expiration date of their immigration documents.

**III. NCDMV's interpretation and application of N.C.G.S. § 20-7(f) violates Article I, Section 19 of the North Carolina Constitution.**

89. Article I, Section 19 of the North Carolina Constitution provides that “[n]o person shall be denied the equal protection of laws.” N.C. Const. art. I, § 19.

90. NCDMV's policy of issuing licenses of “shorter duration” to Petitioners and other similarly situated noncitizens with indefinite or permanent immigration classifications constitutes impermissible discrimination against certain lawfully present noncitizens on the basis of alienage and deprives them of equal protection of the laws within the meaning of Article I, Section 19 of the North Carolina Constitution.

## **CONCLUSION**

As described above, NCDMV unlawfully issues limited duration driver licenses to Petitioners and similarly situated individuals based on an interpretation of N.C.G.S. § 20-7(f) that violates both federal and constitutional law. Petitioners respectfully request that pursuant to N.C.G.S. § 150B-4 and 12 A NC ADC 1B.0401 the Secretary of NCDOT issue a declaratory ruling clarifying NCDMV's interpretation of N.C.G.S. § 20-7(f) consistent with federal and constitutional law.

Specifically, Petitioners request that the declaratory ruling address the following questions:

- (1) Assuming all other requirements for a driver license are met, are Petitioners and similarly situated noncitizens of permanent or indefinite lawful immigration classification as defined by the federal government and as identified in the third column of the chart provided in Exhibit A eligible for full-term driver licenses pursuant to N.C.G.S. § 20-7(f)(2) and (f)(2a)?
- (2) Are Petitioners and similarly situated individuals with permanent or indefinite lawful immigration classifications eligible for full-term driver licenses regardless of expiration date on their immigration documents pursuant to N.C.G.S. § 20-7(f)(2) and (f)(2a), given that expiration date on documents like permanent resident cards and EADS does not reflect the legal presence of such noncitizens?
- (3) Does NCDMV interpret N.C.G.S. § 20-7(f), as applied to any of the categories of permanent or indefinite lawful immigration classification that undersigned counsel have identified in Exhibit A to mean some or all of those categories of individuals are ineligible for a full-term driver license? If so, Petitioners respectfully request that NCDMV fully state in its declaratory ruling which categories it deems eligible and which it does not.
- (4) Does NCDMV interpret N.C.G.S. § 20-7(f) to require verification of all noncitizens' immigration statuses using the USCIS "SAVE" system, even for applicants who do not seek a REAL-ID compliant license? What legal support does NCDMV rely on for that contention?

Furthermore, Petitioners request that NCDMV state in its declaratory ruling how its interpretation and application of N.C.G.S. § 20-7 pertains specifically to Petitioners' facts:

- (5) Assuming all other requirements for a driver license are met, is Petitioner Perez Fernandez, a lawful permanent resident, eligible for a full-term license as defined

in N.C.G.S. § 20-7(f)(2) and (f)(2)(a), notwithstanding the expiration date on her immigration documents?

- (6) Assuming all other requirements for a driver license are met, is Petitioner Valdebenito Pizarro, a conditional lawful permanent resident, eligible for a full-term license as defined in N.C.G.S. § 20-7(f)(2) and (f)(2)(a), notwithstanding the expiration date on her immigration documents?
- (7) Assuming all other requirements for a driver license are met, is Petitioner Luna Huerta, a U visa holder with a pending adjustment of status to lawful permanent resident, eligible for a full-term license as defined in N.C.G.S. § 20-7(f)(2) and (f)(2)(a), notwithstanding the expiration date on his immigration documents?

Finally, to ensure compliance with NCDMV's declaratory ruling, Petitioners also request that NCDMV promptly implement mandatory training policies for all NCDMV staff involved in reviewing noncitizen driver license applications to ensure compliance with NCDMV's declaratory ruling, which will be "binding on the agency." N.C.G.S. § 150B-4.

Respectfully submitted the 20th day of December, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing *Petition for Declaratory Ruling* by U.S. and electronic mail, addressed to the following persons at the following addresses:

Secretary J. Eric Boyette  
Department of Transportation  
Highway Building  
1 South Wilmington Street  
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This the 20th day of December, 2022.



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## **INDEX OF EXHIBITS**

- A.     October 28, 2022 Letter to DMV and Noncitizen Eligibility for Driver Licenses Chart
- B.     Sample I-551 Permanent Resident Card
- C.     April 20, 2018, Email from April Dozier
- D.     Excerpts from DLE Manual, Dec. 2018
- E.     Calculate Legal Presence Extension Update
- F.     August 2, 2022 Letter to DMV
- G.     September 9, 2022 Email from William Marsh
- H.     September 12-15, 2022 Email Exchange between Kate Woome-Deters and William Marsh

# Exhibit A

October 28, 2022

Wayne Goodwin  
Commissioner, North Carolina Division of Motor Vehicles  
1501 Mail Service Center  
Raleigh, NC 27699-1501

*Sent by email to:* [dmv.commissioners.office@ncdot.gov](mailto:dmv.commissioners.office@ncdot.gov)

CC: William A. Marsh, NC DOT, by email to: [wamarsh@ncdot.gov](mailto:wamarsh@ncdot.gov)  
Portia Manley, NC DOT, [pmanley@ncdot.gov](mailto:pmanley@ncdot.gov)  
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**RE: Unlawful denial of Full-Term Licenses to lawfully present noncitizens with indefinite/undefined legal status in the United States**

Dear Commissioner Goodwin et. al.,:

We are writing to follow up on our meeting with you on September 9, 2022, and specifically to provide a sample policy for the DMV to follow regarding issuance of driver licenses to noncitizen applicants.

On September 9, 2022, several attorneys and staffers of NCDMV and NCDOJ met with us regarding our concerns about the provision of driver licenses to certain lawfully present immigrants in North Carolina who had indefinite or permanent immigration statuses. Those concerns were laid out in detail in a letter to DMV dated August 2, 2022 on behalf of four individual lawfully-present immigrant clients who had been denied licenses by the DMV. As we noted, immigrants who have permanent or indefinite immigration statuses, as determined by the federal government, do not and cannot fall under the category of immigrants outlined in N.C.G.S. § 20-7(f)(3).<sup>1</sup> Rather, they should receive full-length licenses, pursuant to N.C.G.S. § 20-7(f)(1-2). Further, the expiration of an immigration document for an immigrant with permanent or indefinite immigration status should be immaterial to DMV's issuance of a license.

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<sup>1</sup> N.C.G.S. 20-7(f)(3) states, "[t]he [full-length license] durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of *limited duration* in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States." (emphasis added).

A permanent or indefinite immigration status, once granted, is not of “limited duration,” and the expiration of a card indicating such status does not indicate that the underlying status has been terminated.

During our September 9 meeting and subsequent email correspondence, DMV and DOJ staff took what seemed to be several positions regarding our claims. Counsel Marsh, for example, seemed to state during the September 9 meeting that a legal permanent resident (“LPR”) could obtain a permanent, full-term driver license regardless of whether or not their LPR card was expired, and that N.C.G.S. § 20-7(f)(3) did not apply to them as they were not immigrants with “limited duration” status. However, Counsel Marsh then followed up that call with an email the same day, September 9, titled, “Clarification” and stating:

[Y]our hypothetical posited whether a person would need to show updated documentation from the US government if their green card expired in June. They still need to be verified under the SAVE system. The expired green card doesn’t vault them from 20-7(f) (3). They don’t need updated documentation if inside 2 years, rather they are treated the same as natural born US citizens for that *except*, SAVE verification. Unless and until they become a US citizen, regardless of an expired date for a Permanent Resident, they must be verified under SAVE.

We responded by email on the following business day, Monday, September 12, asking for clarification about the meaning of Counsel Marsh’s September 9 email, as it seemed clear from our September 9 meeting that DMV had taken the position that N.C.G.S. § 20-7(f)(3) did *not* apply to LPRs, yet Counsel Marsh’s email, sent the same day, implied that LPRs could not be “vault[ed]...from 20-7(f)(3).” Of course, N.C.G.S. § 20-7(f)(3) clearly does not and cannot apply to LPRs and other immigrants with permanent or indefinite immigration statuses, as it would be wholly inconsistent with federal law to classify permanent immigrants as having a “limited duration” status.

After we sought clarification and a copy of a written policy from DMV, Counsel Marsh responded by email on September 15, 2022 as follows:

I’ve received your message from Monday [September 12]. Most of the senior DMV leadership is away at a conference this week. After they return, we will seek to share any internal policy which may apply. For now, here is what I wanted to let you know.

A LPR will not need to have current, immigration documentation to support the renewal of a driver license for a period of time that is applicable to their respective age. DMV will conduct a verification (SAVE) for any non-U.S. Citizen issued or renewed a driver license. We look forward to working with you on the concerns that you raised.

Counsel Marsh's follow-up email dated September 15 does not actually state whether DMV will apply N.C.G.S. § 20-7(f)(3) to LPRs, or whether it will apply N.C.G.S. § 20-7(f)(1-2). It does seem to state that DMV will accept an expired LPR card as evidence of an LPR's status.

Subsequent to Counsel Marsh's September 15, 2022 email, undersigned counsel have not received any further communication from DMV. We have not received a copy of any "internal policy" that DMV has created, if one exists. We have not received further clarification on DMV's policies with regard to LPRs or any of the other permanent or indefinite categories of status outlined in our August 2, 2022 letter.

Further, it does not appear that any DMV policy allowing for LPRs to use expired licenses has been promulgated or shared widely with staff. Our client Maria Analida Perez Fernandez (who was included in our August 2, 2022 letter) visited a local DMV office in Alamance County on or around October 6, 2022. On that date, she presented her expired LPR card and the other necessary documents to obtain a North Carolina driver license. Pursuant to Counsel Marsh's September 15, 2022, those documents should have been accepted. However, she was turned away by local DMV staff and told she needs an "extension" on her green card. She still does not have a North Carolina driver license as of the writing of this letter, and she has been a legal permanent resident for over 30 years.

It is a grave concern to us that DMV has not yet issued or promulgated any coherent policy with regard to licenses for LPRs, a category of driver license applicants for whom it seemed DMV and DOJ agree should be issued full-term licenses. Various members of the private bar in North Carolina, as well as undersigned counsel from the ACLU of NC and previously the North Carolina Justice Center, have been raising this issue with the DMV since as far back as 2018. Multiple attorneys have written to the DMV via postal mail, email, and spoken to DMV staff by phone, and yet LPRs are still being denied driver licenses as recently as October 2022.

Aside from the issues detailed above, we know that DMV and DOJ staff asked us for a list of statuses and a chart that DMV staff could adopt for all immigration statuses, indicating the length of driver license that is appropriate for that immigration status. In the interest of avoiding unnecessary litigation, we proposed that we would provide a sample policy that DMV could use. As such, **enclosed with this letter, please find a sample policy we are asking DMV to adopt, outlining what form of license (shorter duration, or full-term) should be applied to each type of immigration status.** We have cited federal authority for each form of status to indicate that those persons are legally present, and whether their form of status is of "limited duration" (within the meaning of N.C.G.S. § 20-7(f)(3)), or whether it is a status of permanent or indefinite length, meaning that immigrants should be granted full-term licenses pursuant to N.C.G.S. § 20-7(f)(1-2).

We told you that the North Carolina Justice Center and the Charlotte Center for Legal Advocacy worked collaboratively with NCDHHS a number of years ago to help them draft and adopt a

similar policy regarding immigrant eligibility for Medicaid a number of years ago. That policy, for Family and Children's Medicaid, can be found here as an example: <https://policies.ncdhhs.gov/divisional/health-benefits-nc-medicaid/family-and-childrens-medicaid/family-and-childrens-medicaid/ma-3330-7.pdf>. While we don't have on hand the names of all we worked with on editing that policy, one was Assistant Director of Policy, Walker Wilson, [walker.wilson@dhhs.nc.gov](mailto:walker.wilson@dhhs.nc.gov).

The issue of SAVE verification also arose during our conversation with DMV and DOJ staff on September 9, and in the subsequent email correspondence. SAVE is a verification system that agencies may use to check with USCIS whether immigrants are eligible for certain state or federal benefit programs. Counsel Marsh stated in his September 15 email that "DMV will conduct a verification (SAVE) for any non-U.S. Citizen issued or renewed a drivers license." (emphasis added). We had asked in our September 12, 2022 email for any legal support or citation for the assertion that DMV must conduct a SAVE verification of all non-citizen applicants for a North Carolina driver license. While there *is* such a requirement under federal law for those applying for "REAL IDs," there is no such requirement in North Carolina law for those who applying for non-REAL ID compliant licenses. We have not received any response to our query for legal support for DMV's assertion that all noncitizen driver license applicants must undergo a SAVE verification.

While SAVE verifications were *not* part of the substance of the letter that we sent to DMV on August 2, DMV seems to raise this issue as a barrier or hurdle as to why they cannot issue licenses to certain applicants. As DMV staff are aware, SAVE verifications can delay issuance of a license by several weeks, presenting additional hardships to license applicants who must wait during that time without lawful permission to drive. DMV cannot discriminate against non-citizen applicants by applying an additional requirement for license issuance that is simply not required by North Carolina law. To the extent that DMV presents SAVE as a reason they must violate the Supremacy Clause, the Equal Protection clause of the Constitution, and the plain text of N.C.G.S. Chapter 20, we reject that argument. A SAVE check is not required for non-REAL ID license applications in North Carolina at all. Moreover, a SAVE check is not a valid reason why LPRs and other permanent immigrants cannot be issued regular, full-length licenses. A SAVE check of any LPR (which, again, is *not* required for non-REAL ID compliant licenses), should return a "notification" that the person is an LPR, regardless of whether a person's LPR card is or isn't expired. A SAVE check would have no bearing on whether DMV chooses to apply N.C.G.S. 20-7(f)(3) or (f)(1-2) to a person's license length determination. That determination (whether to apply (f)(3) or (f)(1-2)) must be determined solely by the federal statutes and regulations that determine whether a person's immigration status is a "permanent or indefinite" status, or one of "limited duration."

In conclusion, we are asking the DMV to review our enclosed proposed policy for issuance of full-length or "shorter duration" to all forms of immigration status that driver license applicants may have. **Please respond to this proposed policy within 2 weeks of today's date, and**

**indicate whether DMV plans to adopt this policy, to adopt it with changes, or to reject the proposed policy.** To the extent that DMV proposes changes or edits to this policy, please let us know in detail what those changes are, and please provide legal citations as to the basis for your reasons for the edits.

We also ask, separately, for a response on whether DMV continues to assert that a SAVE verification is required for all driver license applicants, even those who are applying for non-REAL ID compliant licenses. To the extent that DMV continues to make such an assertion, please provide legal support or citation for your assertion. Please provide this response within the two-week time frame noted above.

We are happy to answer any questions regarding the proposed policy we sent over, or any other questions you may have. Muneeba Talukder can be reached at 919-532-3686 or [mtalukder@acluofnc.org](mailto:mtalukder@acluofnc.org), and Kate Woomer-Deters at 919-861-2072 or [kate@ncjustice.org](mailto:kate@ncjustice.org).

Thank you for your attention to this matter.

Sincerely,

*/s/ Katharine Woomer-Deters, Daniel Melo, Sarah Laws*

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*/s/ Kristi Graunke, Muneeba S. Talukder, Sam Davis*

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## 1. INTRODUCTION

Noncitizens are individuals who live in the U.S. and who do not have U.S. citizenship..

The purpose of this section is to provide instructions for determining whether a noncitizen applicant is eligible for a North Carolina driver license or state identification, and whether that noncitizen should be given a regular, full-length length license or identification card or one of limited duration. Section III, Overview of Alien Eligibility for North Carolina driver licenses and state identification cards, provides a list of immigration statuses, eligibility information and verification documents.

The REAL ID Act of 2005 is an Act of Congress that sets forth requirements for state driver licenses and ID cards to be accepted by the federal government to board commercial flights and enter secure federal buildings. North Carolina drivers are not required to obtain a REAL ID driver license. The terms of the REAL ID Act only apply when a driver license applicant seeks a “REAL ID.” The federal terms do not apply when a driver license applicant seeks a non-REAL ID-compliant license or identification card.

## II. KEY PRINCIPLES

To be eligible for standard North Carolina driver license or state identification, one must present:

*[Insert language here about other requirements for license (age, identity, etc.) and/or link to another relevant DMV policy on basic license application requirements.]*

REGARDLESS OF IMMIGRATION CLASSIFICATION OR SOCIAL SECURITY NUMBER, EACH APPLICANT MUST MEET ALL OTHER ELIGIBILITY REQUIREMENTS FOR A NORTH CAROLINA DRIVER LICENSE OR STATE IDENTIFICATION.

It is important to note that there are many types of lawful immigration status, and each immigration status may be proved by a variety of different documents from the federal government verifying that status. Some of the most common types of documents to verify a person’s immigration status are:

- A permanent resident card, I-551
- A visa or visa stamp in a passport indicating that the person has a temporary visa
- A document “I-797” Approval Notice which is an 8.5 x 11 sheet of paper from USCIS indicating that a person has been approved for a certain type of immigration status,
- A document “I-797” Notice of Action showing that the person has a pending application granting them legal presence and/or that work authorization has been extended during the time that a pending application is decided by USCIS and

- An ‘Employment Authorization Document,’ (I-766) showing that a person has received permission to work as a result of having some sort of lawful presence OR a combination of I-797 or federal register notices showing that USCIS has automatically extended the validity of the document.

These documents are not the only valid documents to verify an applicant’s immigration status, but they are some of the most common ones. Many non-citizens have only one of these types of documents, but some may have more than one from this list, or an entirely different document evidencing their current immigration classification. An applicant should not be told he or she is ineligible because he has only one of the documents above, or because he has a different type of document besides those on this short list.

The NCDMV should only issue a license that is of shorter duration than the regular, full-length driver license (based on the applicant’s age) when the applicant presents documentation from the federal government that indicates that he or she has legal presence of “limited duration” issued by the U.S. government. The driver license in these instances must expire on the same day as the applicant’s immigration document indicating a legal presence of “limited duration.” Not all noncitizens should receive shorter duration licenses. The chart below details which immigration classifications should receive a “shorter duration” license, and which should receive a regular, full-length license.

Some immigration classifications are permanent or indefinite. Noncitizens with a permanent or indefinite immigration classification should be granted a regular, full-length driver license or identification. The examiner should not use the expiration date on an immigration document for a noncitizen with permanent or indefinite immigration classification to determine driver license length. The chart below details which immigration classifications should receive a “shorter duration” license, and which should receive a regular, full-length license.

### III.. OVERVIEW OF ALIEN ELIGIBILITY FOR NORTH CAROLINA DRIVER LICENSES OR STATE IDENTIFICATION CARDS

**NOTE: This is not an all-inclusive list.**

ALIEN STATUS	VERIFICATION DOCUMENTS	Type of License
<b>American Indian</b>  Does not include spouse or child of the individual. Does not include noncitizen whose membership in an Indian tribe or family is created by adoption, unless he is of at least 50% or more American Indian by blood.	<ul style="list-style-type: none"> <li>• Tribal membership card or tribal document demonstrating membership in a federally recognized Indian tribe under section 4(e) of the Indian Self-Determination Education Assistance Act.</li> <li>• Does not include spouse or child of the individual. Does not include noncitizen whose membership in an Indian tribe or</li> </ul>	Regular, full-term license.  This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration

	family is created by adoption, unless he is of at least 50% or more American Indian by blood.	document should not be used to determine driver license length.
<b>American Indian Born In Canada<sup>1</sup></b>	<ul style="list-style-type: none"> <li>• I-551 (Alien Registration Receipt card) with code S13.</li> <li>• Canadian passport stamped with an unexpired temporary I-551 stamp with code (S13.)</li> <li>• A letter or other tribal document certifying at least 50% American Indian blood, as required by section 289 of the INA, combined with a birth certificate or other satisfactory evidence of birth in Canada.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<b>American Samoa<sup>2</sup></b>	<ul style="list-style-type: none"> <li>• Documentation from American Samoa Immigration Office.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>1</sup> 8 U.S.C. § 1359; Akins v. Saxbe, 380 F. Supp. 1210, 1219 (D. Me. 1974) (“the intent of Congress in enacting Section 1359 was to preserve the aboriginal right of American Indians to move freely throughout the territories originally occupied by them on either side of the American and Canadian border, and, thus, to exempt Canadian-born Indians from all immigration restrictions imposed on aliens by the Immigration and Nationality Act.”).

<sup>2</sup> INA 101(a)(29), (a)(22); § 308(1), 308(3) (confer non-citizen U.S. nationality to anyone born in American Samoa, and holding that U.S. nationals are those who “owe[] permanent allegiance to the United States.”).

<b>Amerasian Immigrants<sup>3</sup></b>	<ul style="list-style-type: none"> <li>• I-551, Foreign passport or I-94 stamped with one of the following codes: AM-1, AM-2, AM-3, AM-6, AM-7, or AM-8</li> <li>• Any verification from the INS, DHS or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<b>Asylee<sup>4</sup></b>  People already in the U.S. who fear persecution in their home country and satisfy the requirements for refugee status may apply for asylum in the U.S. A person granted asylum is an “asylee.” After one year in this status, asylees may apply to obtain LPR status. Asylees are “lawfully present” in the U.S.	<ul style="list-style-type: none"> <li>• Form I-94, I-94A, or passport stamped “asylee” or “§ 208”</li> <li>• Order granting asylum issued by the INS, DHS, an immigration judge, the BIA, or a federal court</li> <li>• Form I-688B or I-766 EAD coded 274a.12(a)(5) or A5</li> <li>• Refugee travel document (I-571)</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>3</sup> 8 U.S.C. 1154(f) (allowing Amerasian immigrants to petition for permanent immigrant visas).

<sup>4</sup> 8 USC 1158(c)(1)-(2) (allowing asylees to remain in status indefinitely unless or until the Attorney General determines that specific reasons for termination exist). *See also* 8 CFR § 209.2; 8 USC § 1159(b) (allowing asylees to adjust status to permanent residents). *See also USCIS Handbook for Employers M-274 § 6.3 Refugees and Asylees*, <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-evidence-of-status-for-certain-categories/63-refugees-and-asylees> (last updated May 20, 2022)

<p><b>Battered Alien With Approved I-360 and Deferred Action</b> (Violence Against Women Act)- Includes battered alien’s child and parent of battered alien child.<sup>5</sup></p> <p>Applicants under VAWA can either apply immediately for adjustment of status if they are immediate relatives or must wait until a visa number becomes available. For those in the latter category, they are issued “deferred action” will allows them to live and work in the U.S. until they are able to file to adjust status.<sup>6</sup> Those with “deferred action” are lawfully present in the U.S..</p>	<ul style="list-style-type: none"> <li>• Form I-797 Notice of Action referencing approved I-130 or I-360 with an I-797 granting deferred action</li> <li>• Any documents indicating a pending suspension of deportation or cancellation of removal case, including a receipt from an immigration court indicating filing of Form EOIR-40 (Application for Suspension of Deportation) or EOIR-42 (Application for Cancellation of Removal) pursuant to VAWA</li> <li>• Form I-688B or I-766 EAD coded 274a.12(a)(10) or A10 (applicant for suspension of deportation) or 274a.12(c)(14) or C14 (individual granted deferred action status)</li> <li>• Form I-688B or I-766 EAD coded 274.a.12(c)(9) or C9 (applicant for adjustment) or 274a.12(c)(10) or C10 (applicant for suspension of deportation) or 274a.12(c)(14) or C14 (individual granted deferred action status) or C31 (approved VAWA self-petition)</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p> <p><b>BUT SEE</b> categories below in this chart for those with pending adjustment of status applications.</p>
<p><b>Conditional Entrant<sup>7</sup></b></p> <p>A status similar to refugee status used before the Refugee Act. This classification has not been used since 1980. Conditional entrants are “lawfully present” in the U.S.</p>	<ul style="list-style-type: none"> <li>• Form I-94, I-94A, or other document indicating status as “conditional entrant,” “Seventh Preference,” § 203(a)(7), or A7</li> <li>• I-766 or I-688B (Employment Authorization Card) annotated 274a.12(a)(3) or A3</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to</p>

<sup>5</sup> See INA 204(a)(1)(A)(iii) and (B)(ii); 8 CFR § 204.2(c)((1)

<sup>6</sup> See 8 USC §§ 1154(a)(1)(K), (a)(1)(D); USCIS Policy Manual Volume 3, Part D, Chapter 5.

<sup>7</sup> See Pub. L. No. 95-412, October 5, 1978.

		determine driver license length.
<p><b>Citizens of Micronesia, Marshall Islands, Palau<sup>8</sup></b></p> <p>Citizens of the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau have special rights. They are nonimmigrants who are allowed to enter, reside, and work in the U.S. indefinitely, and are “lawfully present” in the U.S.</p>	<ul style="list-style-type: none"> <li>• I-94- marked Compact of free Association (CFA) with FSM- Federated States of Micronesia or CFA with MIS-Marshall Islands</li> <li>• I-766 OR I-688B (Employment Authorization Card) annotated "274a.12(a)(8)</li> <li>• Any verification from Department of Homeland Security (DHS) or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<p><b>Conditional Permanent Resident<sup>9</sup></b></p> <p>This category includes individuals who have been lawfully admitted for permanent residence under the INA and are required to file additional</p>	<ul style="list-style-type: none"> <li>• “Green card” (Form I-551) or earlier versions: I-151, AR-2 and AR-3</li> <li>• Reentry permit (I-327)</li> <li>• Foreign passport stamped to show temporary evidence of LPR or “I-551” status</li> </ul>	<p>Regular, Full-term license.</p> <p>This immigration classification is permanent or indefinite. Any</p>

<sup>8</sup> See Compact Of Free Association With Micronesia And Marshall Islands, PL 108–188, December 17, 2003, 117 Stat 2720, Section 141 (allowing Micronesians and Marshallese to enter U.S. as nonimmigrants while waiving certain visa and documentation); Compact Free Association between the United States and the Government of Palau, PL 99-658, November, 14, 1986 (allowing Palauans to enter U.S. as nonimmigrants while waiving certain visa and documentation). See also USCIS, *Fact Sheet: Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands*, Sept. 2020 (available at <https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf>) (citizens of these two places are “granted an unlimited length of stay.”); USCIS, *Fact Sheet: Status of Citizens of the Republic of Palau*, (Sept. 2020) (available at <https://www.uscis.gov/sites/default/files/document/fact-sheets/SAVEfactsheetStatusofCitizensoftheRepublicofPalau.pdf>) (Palauan citizens who are admitted to the U.S. “are granted an indefinite length of stay).

<sup>9</sup> See 8 U.S.C. §§ 1186a; 101(a)(20) A conditional permanent resident is also an “alien who has been lawfully admitted for *permanent residence* within the meaning of section 101(a)(20) of the Act.” This includes the “the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws.” 8 C.F.R. § 216.1

paperwork with USCIS to remove conditions on their residence. However, they have the same rights, including permanent residence in the U.S. as LPRs.	<ul style="list-style-type: none"> <li>• I-797 Notice of Action or Receipt from USCIS (U.S. Citizenship and Immigration Services) indicating that an I-90 application to replace LPR card has been filed</li> <li>• Memorandum of Creation of Lawful Permanent Residence with approval stamp (I-181)</li> <li>• I-94 or I-94A with stamp indicating admission for lawful permanent residence</li> </ul>	expiration date that may exist on an immigration document should not be used to determine driver license length.
<b>Cuban-Haitian Entrants with parole<sup>10</sup></b>  This category includes nationals of Cuba or Haiti who (1) were paroled into the U.S., regardless of whether the parole document states “Cuban/Haitian entrant”; or (2) have a pending exclusion or deportation case, or applied for asylum, provided that they are not subject to a final order of deportation or exclusion. Cuban and Haitian entrants are “lawfully present” in the U.S.	<ul style="list-style-type: none"> <li>• Form I-94 with a stamp indicating “Cuban/Haitian entrant” (this may be rare, as it has not been used since 1980) or any other notation indicating “parole,” any documents indicating pending exclusion or deportation proceedings</li> <li>• Any documents indicating a pending asylum application, including a receipt from an INS Asylum Office indicating filing of Form I-589 application for asylum</li> <li>• Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8, or 274a.12(c)(11) or C11</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> </ul>	Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.  <b>BUT SEE</b> categories below in this chart for those with pending adjustment of status or pending asylum applications.
<b>Granted withholding of deportation or withholding of removal<sup>11</sup></b>	<ul style="list-style-type: none"> <li>• Court order (EOIR judge) showing deportation withheld under section 243(h) of INA in effect prior April 1, 1997 or</li> </ul>	Regular, full-term license.

<sup>10</sup> See 45 CFR § 401.2 (defining Cuban-Haitian Entrants).

<sup>11</sup> See 8 USC § 1231(b)(3); 8 CFR § 208.16 (former INA section 243(h) for those granted prior to 1997) (describing withholding of removal); 8 CFR § 208.24 (describing the procedure for termination of a grant of withholding by USCIS or an immigration judge); 8 CFR § 208.22 (preventing removal of someone granted withholding unless to a third country or where the grant is terminated); see generally 8 CFR § 1.3 (categories of aliens lawfully present in the U.S. for purposes of certain benefits). See also, USCIS, *Adjudicators Field Manual*, 40.9.2 (detailing that individuals granted withholding of removal or deportation do not accrue unlawful presence); DOS *Foreign Affairs Manual*, 9 FAM 302.11-3(B)(1) (stating that for purposes for the unlawful presence provisions of the INA, unlawful presence does not include any period of authorized stay).

<p>This status is similar to, but separate from, asylum, for persons whose life or freedom would be threatened if they return to their home country. Persons granted withholding may be deported to a third country if one will accept them, but they may not be returned to their home country. Unlike refugee and asylum status, this status does not provide a path for individuals to obtain LPR status. Persons granted withholding of deportation or removal are “qualified” immigrants and are “lawfully present” in the U.S.</p>	<p>removal withheld under section 241(b)(3) of INA with date of grant</p> <ul style="list-style-type: none"> <li>• <b>I-571</b> Refugee Travel Document</li> <li>• <b>I-766 OR I-688B</b> (Employment Authorization Card) annotated 274a.12(a)(10) or A10</li> </ul>	<p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<p><b>Deferred Action<sup>12</sup></b></p> <p>Deferred action is granted by USCIS administratively for a limited number of reasons. This relief most commonly has been used by USCIS to grant employment authorization to individuals who have petitioned for status under the Violence Against Women Act and for people with urgent medical needs. With the exception of individuals granted deferred action under the DACA program described below, persons granted deferred action are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>• Form I-797 Notice of Action or other form showing approval of deferred action status</li> <li>• Form I-688B or I-766 EAD coded 274a.12(c)(14) or C14</li> <li>• Any verification from the INS, DHS, or other authoritative document</li> <li>• NOTE: See below for DACA – Deferred Action for Childhood Arrivals which is a different category.</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>

<sup>12</sup> See 8 CFR § 1.3(a)(4)(vi) (aliens in deferred action are “lawfully present” for the purposes of certain benefits. *See also*, USCIS, *Adjudicators Field Manual*, 40.9.2 (detailing that individuals granted deferred action do not accrue unlawful presence); 9 FAM 302.11-3(B)(1) (stating that for purposes for the unlawful presence provisions of the INA, unlawful presence does not include any period of authorized stay, including deferred action).

<p><b>Deferred Action for Childhood Arrivals (DACA)<sup>13</sup></b></p> <p>Allows certain undocumented immigrants who entered the country before their 16th birthday and before June 2007 to receive a renewable work permit and exemption from deportation. It does not confer legal immigration status or provide a path to citizenship. It was started by the Obama administration in June 2012.</p>	<ul style="list-style-type: none"> <li>• Employment Authorization card coded C33</li> <li>• I-797 Notice of Action Granting DACA</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>
<p><b>Deferred Enforced Departure (DED)<sup>14</sup></b></p> <p>Deferred enforced departure is a status very similar to Temporary Protected Status (TPS). DED is granted to noncitizens from particular countries by presidential proclamation or other executive action. DED status allows eligible persons to remain lawfully in the U.S. for a limited, specified period and to receive employment authorization. Persons granted DED are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>• I-766 OR I-688B (Employment Authorization Card) annotated "274a.12(a)(11)</li> <li>• Approval Notice showing grant of Deferred Enforced Departure.</li> <li>• Any verification from DHS or other authoritative document</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>

<sup>13</sup> Until the final rule regarding DACA is implemented on October 31, 2022, the lawful presence and authorized stay provisions of deferred action (*supra*) apply to DACA as well. The North Carolina Attorney General has determined that those with DACA and other forms of deferred action are lawfully “present” within the meaning of N.C.G.S. § 20-7, and thus eligible for driver licenses. See Letter from Chief Deputy Attorney General Grayson G. Kelley to NC DMV Acting Commissioner J. Eric Boyette, dated January 17, 2013, available at:

<https://www.acluofnorthcarolina.org/sites/default/files/AG-opinion-DACA1-17-2013.pdf>. See also USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(3)(J), available at:

<https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf> (listing those with deferred action as not accruing unlawful presence while their deferred action is current).

<sup>14</sup> See 8 CFR § 1.3(a)(4)(vi) (aliens in deferred enforced departure are “lawfully present” for the purposes of certain benefits). See also, USCIS, *Adjudicators Field Manual*, 40.9.2 (detailing that individuals granted deferred enforced departure do not accrue unlawful presence).

<p><b>Iraqi or Afghan Special Immigrant<sup>15</sup></b></p> <p>Iraqi or Afghan nationals who worked for the US government (and their derivatives) admitted to the U.S. as permanent residents.</p>	<ul style="list-style-type: none"> <li>• Iraqi or Afghan passport with an immigrant visa stamp noting that the individual has been admitted under IV (Immigrant Visa) and DHS stamp or notation on passport.</li> <li>• I-94 showing date of entry</li> <li>• I-551 showing Iraqi or Afghan nationality (or Iraqi or Afghan passport) with an IV (Immigrant Visa) code.</li> </ul>	<p>Regular, Full Term License.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<p><b>Lawful Permanent Resident (LPR)<sup>16</sup></b></p> <p>Also known as “permanent resident” or “Green card holder.” While the I-551 card can expire, an LPR’s status is indefinite.</p>	<ul style="list-style-type: none"> <li>• “Green card” (Form I-551) or earlier versions: I-151, AR-2 and AR-3</li> <li>• Reentry permit (I-327)</li> <li>• Foreign passport stamped to show temporary evidence of LPR or “I-551” status</li> <li>• Receipt from USCIS (U.S. Citizenship and Immigration Services) indicating that an I-90 application to replace LPR card has been filed</li> <li>• Memorandum of Creation of Lawful Permanent Residence with approval stamp (I-181)</li> <li>• I-94 or I-94A with stamp indicating admission for lawful permanent residence</li> <li>• Order issued by the INS/DHS (Immigration and Naturalization Service/Dept. of Homeland</li> </ul>	<p>Regular, Full Term License.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>15</sup> See 8 USC § 1101(a)(27) (defining special immigrants employed by the US government); § 1154(a)(1)(G) (establishing procedure for granting immigrant visas to special immigrants); Public Laws 117-31, 111-8, creating the SIV categories for certain Iraqi and Afghan nationals. See also 9 FAM § 502.12(B) (detailing special immigrant visas and their admission for permanent residence in the US); USCIS, *Policy Manual*, Chapter 1, Vol. 6, Part H (denoting special immigrant classifications for admission as permanent residents).

<sup>16</sup> See generally 8 U.S.C. §§ 1101(a)(20); 1101(13)(C); 1256; 1229a; 1304(d) (defining LPR status and its permanent and durable nature); 8 C.F.R. §§ 274a.12(a)(1); 264.5(a) (denoting that LPRs that an expired card does not denote that the work authorization has expired and that they are entitled to evidence of status even during the duration of removal proceedings).

	<p>Security), an immigration judge, the BIA (Board of Immigration Appeals), or a federal court granting registry, suspension of deportation, cancellation of removal, or adjustment of status</p> <ul style="list-style-type: none"> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	
<p><b>Lawful Temporary Resident under IRCA<sup>17</sup></b></p> <p>Adjustment of status for certain individuals admitted to the US before January 1, 1982. This program ended in 1988.</p>	<ul style="list-style-type: none"> <li>Form I-688 Temporary Resident Card</li> <li>Form I-688A EAD</li> <li>Form I-688B or I-766 EAD coded 274a.12(a)(2) or A2; or with other evidence indicating eligibility under INA §§210 or 245A</li> <li>Form I-698 Application to Adjust from Temporary to Permanent Residence under INA § 245A</li> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>
<p><b>Family Unity Beneficiaries<sup>18</sup></b></p> <p>Family Unity status provides protection from deportation/removal and eligibility for employment authorization to the spouses and children of noncitizens who legalized under IRCA of LIFE Act. All persons granted Family Unity status are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>Form I-688B or I-766 EAD coded 274a.12(a)(14), 274a.12(c)(20), (c)(22), or (c)(24)</li> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Regular, full term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>17</sup> 8 USC 1255A (defining the status and detailing its requirements and that it is only revocable by the Attorney General in certain limited circumstances).

<sup>18</sup> See Immigration Act of 1990, Public Law 101-649; 8 CFR § 236, Subpart B (defining the status eligibility; 8 CFR 236.18(a) (for the grounds under which the status can be terminated).

<p><b>Non-Immigrant Visa Holder</b></p> <ul style="list-style-type: none"> <li>• A-Diplomats</li> <li>• B-Tourists/Business</li> <li>• C-Aliens in Transit</li> <li>• D-Alien Crewman</li> <li>• E-Investor/Business F-Students</li> <li>• G-Accredited representatives of international organizations, their families and their servants</li> <li>• H-work</li> <li>• J-Exchange Students</li> <li>• K- Fiancé</li> <li>• L-Manager or Executive</li> <li>• M-Vocational</li> <li>• N-Parent of Special Immigrant</li> <li>• O-extraordinary ability in arts/science/sports/ (and their assistants)</li> <li>• P-Culturally unique performers</li> <li>• Q-Cultural Exchange</li> <li>• R-Religious Worker</li> <li>• S-Witness/Informant in a criminal investigation</li> <li>• U-Victim of crime in the US</li> <li>• T-Victim of trafficking</li> <li>• V-Waiting 3+ years for visa</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 or I-94A Arrival/Departure Record</li> <li>• Foreign Passport indicating admission to U.S. with nonimmigrant visa</li> <li>• I-766 or I688B EAD annotated with 274a.12( c ) (21)</li> <li>• Receipt for Form I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document</li> <li>• I-797 approving application to extend/change nonimmigrant status</li> <li>• I-797 approving application for S, T, U, or V nonimmigrant status</li> <li>• EAD or other INS/DHS document indicating nonimmigrant.</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> </ul> <p>For T Visas Only: See box (below) on T visas for more types of evidence of T visa status.</p> <table border="1" data-bbox="656 1276 1042 1843"> <thead> <tr> <th>Visa Category</th><th>I-94 Foreign Passport code</th><th>EAD Codes</th></tr> </thead> <tbody> <tr> <td><b>A</b></td><td>A-1, A-2, A-3</td><td>C1</td></tr> <tr> <td><b>B</b></td><td>B-1, B-2</td><td>C17</td></tr> <tr> <td><b>C</b></td><td>C-1, C-2, C-3</td><td>C26</td></tr> <tr> <td><b>D</b></td><td>D-1, D-2</td><td></td></tr> <tr> <td><b>E</b></td><td>E-1, E-2, E-3</td><td>A17</td></tr> <tr> <td><b>F</b></td><td>F-1</td><td>C3</td></tr> <tr> <td><b>G</b></td><td>G-1, G-2, G-3 or G-4</td><td>C4</td></tr> </tbody> </table>	Visa Category	I-94 Foreign Passport code	EAD Codes	<b>A</b>	A-1, A-2, A-3	C1	<b>B</b>	B-1, B-2	C17	<b>C</b>	C-1, C-2, C-3	C26	<b>D</b>	D-1, D-2		<b>E</b>	E-1, E-2, E-3	A17	<b>F</b>	F-1	C3	<b>G</b>	G-1, G-2, G-3 or G-4	C4	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States. Limited Term License</p> <p><b>BUT SEE</b> categories below in this chart for those with pending adjustment of status applications.</p>
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<p><b>Order of Supervision<sup>19</sup></b> with employment authorization</p> <p>Individuals with final orders of deportation or removal whom the immigration authorities are unable to remove may be released under an order of supervision. Persons under an order of supervision who have employment authorization are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>• Notice or Form showing release under order of supervision</li> <li>• Form I-688B or I-766 EAD-annotated with 274a.12 (c)(18) or C18</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> <li>•</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>																																													

<sup>19</sup> See 8 USC § 1231(a); 8 CFR § 241.5.

<p><b>Parolee<sup>20</sup></b></p> <p>Individuals paroled into the U.S. are permitted to enter the country for humanitarian or public interest reasons. Persons paroled into the U.S. are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>• Form I-94 or I-94A indicating “parole” or “PIP” or “212(d)(5),” or other language indicating parole status</li> <li>• Form I-688B or I-766 EAD coded 274a.12(a)(4), 274a.12(c)(11), A4, or C11</li> <li>• Any verification from the INS, DHS, or other authoritative document.</li> <li>• NOTE: If subsequently adjusted to LPR status, may have I-551 card (for Lautenberg parolees, these may be coded LA).</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p>
<p><b>Refugee<sup>21</sup></b></p> <p>Refugees are noncitizens who, while outside the U.S. and their home country, were granted permission to enter and reside in the U.S. because they have a well-founded fear of persecution in their home country. Refugees are “lawfully present” in the U.S.</p>	<ul style="list-style-type: none"> <li>• Form I-94 or I-94A Arrival/Departure Record or passport stamped “refugee” or “§ 207”</li> <li>• Form I-688B or I-766 EAD coded 274a.12(a)(3) or A3; or (a)(4) or “A4” (paroled as a refugee)</li> <li>• Refugee travel document (I-571)</li> <li>• Any verification from the INS, DHS or other authoritative document.</li> <li>• NOTE: If adjusted to LPR status, I-551 may be coded R8-6, RE-6, RE-7, RE-8, or RE-9.</li> </ul>	<p>Regular, Full-Term License.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>20</sup> 8 USC § 1182(d)(5)(A); 8 CFR § 212.5.

<sup>21</sup> 8 U.S.C. §§ 1157(c)(4); 8 CFR § 207.9 (the status of the refugee is indefinite until the individual acquires LPR status or has their status terminated—solely—by the Attorney General in certain limited circumstances). *See also USCIS Handbook for Employers M-274 § 6.3 Refugees and Asylees*, <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-evidence-of-status-for-certain-categories/63-refugees-and-asylees> (last updated May 20, 2022).

<p><b>Temporary Protected Status (TPS)<sup>22</sup></b></p> <p>Temporary Protected Status is given to eligible nationals of designated countries who are present in the United States, and who cannot return safely to their home country because it is experiencing ongoing armed conflict, an environmental disaster, or any temporary or extraordinary conditions.</p>	<ul style="list-style-type: none"> <li>• <b>I-766 OR I-688B</b> (Employment Authorization Card) annotated 274a.12(a)(12) or A12.</li> <li>• <b>I-797A</b> Approval Notice for Temporary Protected Status</li> <li>• Automatic extension of status by Federal Register notice. TPS Status extended through a Federal Register notice will not have the applicant's individual name or identifying information on it.</li> <li>• Any verification from DHS or other authoritative document</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p> <p>TPS applicants may be subject to automatic extensions of their status as published in the Federal Register.</p>
<p><b>Trafficking Victim/ “T” Visa and Their Derivative Beneficiaries<sup>23</sup></b></p> <p>Immigrant survivors of a severe form of human trafficking. Although T visa holders are nonimmigrants like those in the “Nonimmigrant” box above, more information is found here about the various types of documents that evidence their T visa status.</p> <p>Trafficking survivors with a T visa are “lawfully present” in the U.S.</p>	<ul style="list-style-type: none"> <li>• I-94 or passport stamped T-2, T-3, T-4, or T-5</li> <li>• Certification from U.S. Dept. of Health and Human Services (HHS) Office of Refugee Resettlement (ORR)</li> <li>• ORR eligibility letter (if under 18)</li> <li>• Certification status verified through HHS Trafficking Verification Line 202-401-5510 or 866-401-5510</li> <li>• Approved I-914 (T status application) or I-914A</li> <li>• I-766 EAD coded (a)(16) or (c)(25)</li> <li>• Form I-797 approval notice for “CP” (continued presence)</li> </ul>	<p>Shorter duration license – License should expire on the expiration date of the authorization for the applicant's legal presence in the United States.</p> <p><b>BUT SEE</b> categories below in this chart for those with pending adjustment of status applications.</p>

<sup>22</sup> 8 U.S.C. 1254a (granting temporary status to noncitizens from certain countries designated by the Attorney General).

<sup>23</sup> 8 U.S.C. § 1101(a)(15)(T); 8 C.F.R. 214.11(c)(allowing T-1 visa holders and their beneficiaries to remain in status for four years).

	<ul style="list-style-type: none"> <li>• Form I-797 indicating approval of T-1, T-2, T-3, T-4 or T-5 status</li> <li>• Bona fide case determination on a T status application</li> <li>• Form I-797 “Extension of T or U Nonimmigrant Status”</li> <li>• I-512 authorization for parole, indicating T-1, T-2, T-3, T-4 or T-5 status</li> <li>• I-551 coded ST6, ST7, ST8, ST9, or ST0</li> <li>• Any verification from HHS, INS, DHS, or other authoritative document.</li> </ul>	
<p><b>ALIEN STATUS</b></p> <p><b><u>Applicants</u> for certain types of legal status are considered lawfully present and thus may be eligible for driver licenses. See list below.</b></p>	<p><b>VERIFICATION DOCUMENTS</b></p>	<p><b>Eligibility Status</b></p>

<p><b><u>Applicants</u> for asylum or withholding of deportation/removal (including withholding of deportation/removal under the Convention Against Torture (CAT)) with Social Security number<sup>24</sup></b></p>	<ul style="list-style-type: none"> <li>• I-797 Receipt or notice showing filing or pending status of Form I-589 Application for Asylum and Withholding or CAT</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any</p>
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<sup>24</sup> “An alien, whose bona fide application for asylum is pending, is in an authorized period of stay and does not accrue unlawful presence for purposes of section 212(a)(9)(B) of the Act[.]” USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(2)(B), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf>.

	<ul style="list-style-type: none"> <li>• Form I-688B or I-766 EAD coded 274a.12(c)(8) or C8</li> <li>• Any verification from the INS, DHS, or other authoritative document</li> </ul>	expiration date that may exist on an immigration document should not be used to determine driver license length.
<p><b>Applicants for Adjustment to LPR Status with Social Security number<sup>25</sup></b></p> <p>Individuals whose relatives or employers have petitioned for them to receive immigration benefits may be able to adjust to LPR status in the U.S. Also, individuals who previously had nonimmigrant visas such as Us or Ts can adjust status to become permanent residents after set periods of time. There are often long waiting periods while their applications are being processed.</p> <p><b>Individuals who have applied for adjustment to LPR status are “lawfully present.”</b></p>	<ul style="list-style-type: none"> <li>• Receipt or notice showing filing or pending status of Form I-485 Application to Register Permanent Residence or Adjust Status</li> <li>• Form I-797 ASC Appointment Notice with Case Type “I-485 Application to Register Permanent Residence or Adjust Status”</li> <li>• Form I-688B or I-766 employment authorization document (EAD) coded 274a.12(c)(9) or C9 or C9P</li> <li>• I-797 receipt for Application for Employment Authorization based on C09</li> <li>• I-512 authorization for parole, indicating applicant for adjustment of status</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>25</sup> USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(3)(A), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf> (listing applicants for adjustment of status as not accruing unlawful presence while their adjustment application is pending). *See also* USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)*, PM-602-0032.2 at 5, Policy Memorandum, available at <https://www.uscis.gov/sites/default/files/document/memos/2016-1004-T-U-Extension-PM-602-0032-2.pdf> (last accessed August 1, 2022); 8 CFR § 274a.12(c)(9) (including adjustment applicants among the classes of aliens authorized to accept employment with permission of the Attorney General).

	<ul style="list-style-type: none"> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	
<p><b>Applicant for Temporary Protected Status (TPS) with Social Security number<sup>26</sup></b></p> <p>Temporary Protected Status is given to eligible nationals of designated countries who are present in the United States, and who cannot return safely to their home country because it is experiencing ongoing armed conflict, an environmental disaster, or any temporary or extraordinary conditions.</p> <p>Applicants for TPS are lawfully present while their application for TPS is pending.</p>	<ul style="list-style-type: none"> <li>Receipt or notice showing filing or pending status of Form I-821 (Application for Temporary Protected Status)</li> <li>Form I-688B or I-766 EAD coded 274a.12(c)(19) or C19</li> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<p><b>Applicants for Cancellation of Removal or Suspension of Deportation with employment authorization<sup>27</sup></b></p> <p>Individuals in removal or deportation proceedings who establish that they have been continuously present in the U.S., that they have good moral character, and that their removal would cause “exceptional and extremely unusual hardship” to a U.S. citizen or LPR parent, spouse, or child may apply for the discretionary relief of cancellation of removal or suspension of deportation.</p> <p>Applicants for cancellation of removal and suspension of deportation who are granted employment authorization are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>Receipt or notice showing filing Form EOIR-40 (Application for Suspension of Deportation), EOIR-42 (Application for Cancellation of Removal), or I-881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal)</li> <li>I-256A (former suspension application)</li> <li>Form I-688B or I-766 EAD coded 274a.12(c)(10) or C10</li> </ul>	<p>Regular, full term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>26</sup> USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(3)(G), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf> (listing applicants for temporary protected status as not accruing unlawful presence while their TPS application is pending).

<sup>27</sup> 8 C.F.R. § 274a.12 (allowing work authorization for applicants for cancellation of removal or suspension of deportation).

	<ul style="list-style-type: none"> <li>Any verification from the INS, DHS, or other authoritative document</li> </ul>	
<p><b>Registry Applicants with Social Security number<sup>28</sup></b></p> <p>Individuals who have resided continuously in the U.S. since January 1, 1972, and who meet the requirements of LPR status may adjust their status by applying for “registry.”</p> <p>Applicants for registry are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>Receipt or notice showing filing Form I-485 Application to Register Permanent Resident or Adjust Status</li> <li>Form I-688B or I-766 EAD coded 274a.12(c)(16) or C16</li> <li>Any verification from the INS, DHS or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>
<p><b>Applicant for Legalization under IRCA or the LIFE Act with Social Security number <sup>29</sup></b></p> <p>Applicants for adjustment under IRCA or LIFE are “lawfully present.”</p>	<ul style="list-style-type: none"> <li>Form I-688B or I-766 EAD coded 274a.12(c)(20), (c)(22), or (c)(24)</li> <li>Form I-687 Application for Temporary Residence under INA § 245A</li> <li>Passport, with stamp or writing by INS/DHS officer, indicating pending §245 application</li> <li>Any verification from the INS, DHS, or other authoritative document.</li> </ul>	<p>Regular, full-term license.</p> <p>This immigration classification is permanent or indefinite. Any expiration date that may exist on an immigration document should not be used to determine driver license length.</p>

<sup>28</sup> USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(3)(A), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf> (listing applicants for registry as not accruing unlawful presence while their registry application is pending).

<sup>29</sup> USCIS Adjudicator’s Field Manual, Section 40.9.2(b)(3)(E), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf> (listing applicants for LIFE Act Legalization as not accruing unlawful presence while their legalization application is pending).

# Exhibit B

Example of Current Permanent Resident Card, Form I-551, front and back



# Exhibit C

**From:** Dozier, April J

**Sent:** Friday, April 20, 2018 1:51:59 PM

**To:** DOT Senior Examiners; DMV Field Managers; DL District Supervisors; Johnson, Kathleen H; Russell, Nina; Spivey, Michael D; White, Lasonya B; Jones, Rossie L; Hooker, Sandra L; Sutton, Phyllis; Brown, Julie A; DLHelpDesk; Dozier, April J

**Cc:** Manley, Portia; Windley, Paula M; Harris, Serena L; Quinn, Robert B; Rice, Tracy L; Boyd-Malette, Charlotte; Fuller, Terry A; Newkirk, Genia LaRese

**Subject:** Driver License and Identification Card Changes for Legal Presence

Please Retain

As of 04/20/2018 the following changes has been made:

- Lawful Permanent Resident, Refugee, and Asylee will no longer have “Limited Term” on their Driver License and identification cards.
- Identification cards will no longer have the Legal Presence expiration date on the back of the card for those customers that have an indefinite length of stay (Lawful Permanent Resident, Refugee and Asylee).  
**The customers will now see U.S. GOV. LEGAL PRESENCE on the back of the card.**
- Conditional Resident Customers ex: Permanent Resident Card with two year issuance, Machine Readable Immigrant Visa, or Temp I-551 Stamp in the Passport or on an I-94 restrictions will remain the same.

If you have any questions, please contact the CIV Unit at 919-861-3011.

**Thank you,**

**April Dozier**

Supervisor

Document Verification Unit

North Carolina Department of Transportation

919 861 3198      office  
919 368 0644      Mobile  
919 716 5995      fax

[ajdozier@ncdot.gov](mailto:ajdozier@ncdot.gov)

1100 New Bern Avenue  
Raleigh, NC 27699

<image003.png>

# Exhibit D

Employees are cautioned that e-mail messages may be misinterpreted as a more formal communication than the sender intended and that care should be taken in their intent and composition. Employees should follow the same standards as used with other forms of correspondences. All e-mail messages and responses will follow accepted e-mail etiquette, including being courteous and using appropriate language.

E-mail transmissions with the NCDOT system shall not be considered confidential and may be monitored at any time by request of the unit head/supervisor or by a designated NCDOT staff.

Consistent with North Carolina General Statutes Chapter 132-1, the contents of e-mail messages “made or received pursuant to law or ordinance in connection with the transaction of public business” are a public record and are subject to inspection unless specifically exempted by statute or judicial interpretation. Creators or recipients of e-mail messages may be required to allow such inspection of messages in their custody. Furthermore, the department will treat information such as e-mail system usage or message destinations as a public record subject to inspection.

All files downloaded from an external source must be scanned for viruses. This includes files obtained as e-mail attachments and by any other file transfer mechanism. It is the responsibility of all employees to prevent the introduction or propagation of viruses. Should an incoming e-mail appear suspicious or if the sender is not recognized, do not open it. Delete the e-mail without opening.

The unit head may monitor the employee’s use of e-mail and may request an independent reviewer to monitor the unit’s use of e-mail.

Violations may result in removal of access to the Internet or e-mail and to other shared computing systems or resources. In addition, violations may result in disciplinary action up to and including dismissal. Violations, which constitute a criminal offense, will lead to dismissal.

### 1.23 DOT TRAINING AND DEVELOPMENT

It is the policy of the NCDOT to provide management with a means to support those training and development activities that are beneficial to both the department and the employee, and serve the citizens of North Carolina.

The intent of this policy is to support training and development activities that directly relate to DOT’s identified mission, goals, and values and to enhance employee development through the acquisition of job-related knowledge, skills, and behaviors (e.g. competencies.) Training and development is a management program for workforce development. It is not an employee benefit, right or entitlement. Denial of access to training and development is not grievable, except on grounds of discrimination.

It is the policy of DOT not to deny training based on race, sex, color, creed, national origin, age, or disability.

DOT encourages all employees to take full advantage of developmental programs that will improve their job performance, increase their potential, and enhance the mission and goals of the Department.

Limitations or delays in offering training to an employee may be necessary due to budget restrictions, temporary workload or staffing issues, resource limitations and/or the unsuitability of the proposed training activity as determined by management.

Special developmental opportunities for selected groups or individuals that address the defined needs of specific business unit may be requested or arranged by management.

Training may be mandatory or voluntary, depending on the needs of the workplace. If the training is mandatory, that fact will be stated at the time the training is offered.

All mandatory training activities shall be included on the Employee Training and Development Plan.

DOT considers registration or enrollment in a training program to be a commitment on the employee's part to complete the program.

Employees who fail to complete a training activity for which DOT has paid tuition or registration fees will be required to reimburse the full cost of training.

Employees who fail to complete a training activity may be held accountable under the disciplinary action policy.

Each employee shall:

- Be ultimately responsible for their development and education.
- Identify developmental opportunities to improve their on-the-job performance.
- Attend the training activities for which they are scheduled, and participate fully.
- Complete all mandatory training programs required for their position.
- Apply the knowledge, behaviors, and skills gained to their current job.

Employee development is a management responsibility. Every supervisor and manager shall:

- Provide a climate in which employee training and development is encouraged.
- Provide employees with on-the-job training in the proper performance of their assigned tasks.
- Identify opportunities for employee improvement.
- Ensure that all employees have access to training activities.
- Develop a Training and Development Plan for each employee.
- Assess the effectiveness of training through its application in day-to-day work performance.
- Integrate employee development needs with the mission and goals of DOT.

## CHAPTER 4 REQUIREMENTS FOR IDENTITY

U.S. law requires that we serve all of our customers without discrimination based on race, religion, ethnicity, national origin, language, etc. That does not mean customers are excused from meeting the statutory requirements of North Carolina law. This means we cannot impose our personal standards based on opinion of their legal status, their religion, their national origin, sexual preference, etc. This is a standard that we expect all Examiners to adhere to.

### 4.1 IDENTITY DOCUMENTS FOR FIRST TIME CUSTOMERS

Customers who have not been established in the DMV database are considered 1<sup>st</sup> time customers.

Customers applying for a driver license, learner permit, or Special Identification Card for the first time in North Carolina, will need to provide two documents proving identity<sup>7</sup> from the below list:

One document must have their date of birth.

The name must be the same on both documents. One document will need to show the customer's full name. Notations will need to be made on the customer's record.

**EXCEPTION: NAME CHANGE BY MARRIAGE OR DIVORCE WITH PROPER DOCUMENTATION.**

**NOTE: IF ONE DOCUMENT STATES JOHN J. SMITH AND ANOTHER DOCUMENT STATES JOHN JAMES SMITH THIS WOULD BE ACCEPTABLE.**

The documents cannot come from the same category (e.g. two school documents).

A document may be held for a brief time in order to validate the document or verify its information. Altered documents are not acceptable. Examiners are not allowed to mark on the document or otherwise tamper with it.

1. Driver License, Learner's Permit, or Identification Card from another state, Puerto Rico, a U.S. territory or a Canadian province
  - A valid, unexpired DL/ID/LP with a photo (Consult your Chain of Command for any documents without a photo, these will be approved on a case-by-case basis)
  - A Classified Regular A or B DL/LP with a photo expired less than one year
  - A Commercial A, B or C with a photo expired less than one year
  - A Classified C DL/LP or its equivalent with a photo expired less than two years

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<sup>7</sup> GS §20-7(b1)

- An ID with a photo expired less than two year

**NOTE: SOME STATES CONSIDER A LICENSE HELD BY A MEMBER OF THE ARMED FORCES TO BE VALID EVEN AFTER THE EXPIRATION DATE. IF THE CUSTOMER IS A MEMBER OF THE ARMED FORCES AND COMES FROM A STATE THAT ALLOWS AN AUTOMATIC EXTENSION OF VALIDITY, THEN WE WILL NEED TO ACCEPT THAT LICENSE AS VALID. THESE MUST BE CONSIDERED ON A CASE BY CASE BASIS. USE THE ID CHECK GUIDE TO DETERMINE IF THE STATE IS ONE WHICH FOLLOWS THIS PROCEDURE.**

2. Certified birth certificates issued by a government agency in the U.S., Puerto Rico, a U.S. territory, Canada, or a Report of Consular Birth Abroad
  - No photocopies allowed, unless certified by issuing agency
  - Delayed Birth Certificates will be accepted as proof of identity for NCDMV purposes. Delayed Birth Certificates are indeed birth certificates; however, they were issued after the child was more than a year old when registering the birth with the government agency.<sup>8</sup>
3. Original Social Security Card
4. Tax forms that reflects full name and full social security number
  - W-2
  - 1099
5. Motor Vehicle Driver's Record
  - Certified North Carolina Motor Vehicle Report
  - Non-Certified North Carolina Motor Vehicle Report
  - Certified Out-of-State Motor Vehicle Record
6. North Carolina school transcript/registration signed by a school official, or diploma or GED from a North Carolina school, community college, or North Carolina university
  - Driver Education Certificates, Driving Eligibility Certificates and report cards are not acceptable as proof of identification.
7. Unexpired U.S. Military Identification
  - Including DD-2, DD-214, Common Access Card, U.S. Veterans Universal Access Card, and U.S. Military Dependents Card
8. Valid, unexpired passport from any nation

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<sup>8</sup> Broadcast Message, June 22, 2018, Regional Chief Newkirk via e-mail.

9. Certified copy of marriage certificate from a Register of Deeds or appropriate government agency in the U.S., Puerto Rico, U.S. territory, or Canada.
10. Limited Driving Privilege issued by a North Carolina court
  - Cannot be expired more than one year
11. Valid, unexpired document issued by the United States Citizenship and Immigrant Services (USCIS) / Department of Homeland Security (DHS)
  - An expired immigration document may be valid if accompanied by a letter from the USCIS extending the expiration date (example: I-797).
12. Court documents from U.S. jurisdiction, Puerto Rico, U.S. territories, or Canada
  - Including a court certified divorce decree, court order for name change/sex change, adoption papers, and court order for child support.

#### 4.2 IDENTITY DOCUMENTS FOR EXISTING CUSTOMERS

When an existing customer is applying for a driver license, learner permit, or Special Identification Card they will need to provide two documents proving identity. To enhance customer service and expedite the issuance for an established customer, the customer's image history may be used to assist in verifying the customer's identity when the customer provides verbal confirmation of the following:

- Full name and DOB
- The SSN
- Most recent address and at least one address from history when applicable

The process of using the customer's image history, along with verbal confirmation of information is known as the Verbal and Image Verification Process. In the FORM OF ID field on screen DL-102 you must enter "customer image/knowledge of info."

**NOTE: A CUSTOMER APPLYING FOR A DUPLICATE ISSUANCE THAT HAS ALREADY BEEN ESTABLISHED IN SADLS SHOULD BE ALLOWED TO VERBALLY VERIFY INFORMATION FROM THEIR RECORD. THE EXAMINER WILL VERIFY CUSTOMERS IMAGE USING CARD MANAGER. IF THE CUSTOMER IS ESTABLISHED (HAS HAD AN ISSUANCE) IN SADLS THEN THEY ARE NOT A 1<sup>st</sup> TIME CUSTOMER AND WE CAN CHECK THEIR IMAGE AND HAVE THEM VERIFY PII IN ORDER TO ISSUE. IF THEY HAVE BEEN INVOLVED IN A FRAUD CASE THIS DOES NOT APPLY AND ORIGINAL FORMS OF IDENTIFICATION WILL NEED TO BE PRESENTED. A CUSTOMER THAT HAS NOT BEEN ISSUED IN SADLS BUT HAS A CONTROL NUMBER IN SADLS IS CONSIDERED A 1<sup>ST</sup> TIME CUSTOMER.**

# Exhibit E

## Calculate Legal Presence Extension Update Tool

### EXPIRATION DATE FOR LEGAL PRESENCE

ENTER EXPIRATION DATE	05/10/20
<b>30 DAYS FROM EXPIRATION</b> (M1 OR M2) (J1 OR J2) <span>DS2019</span>	06/09/20
<b>60 DAYS FROM EXPIRATION</b> I-20 or I-766 from expiration date + 60/days (stem, opt, post completion-opt)	07/09/20
<b>6 MONTHS FROM THE NOTICE DATE OF THE I-797</b> (I797 With Case Type I765 or I485)	11/06/20
<b>6 MONTHS FROM I-766 EXPIRATION (SPECIAL EXCEPTION)</b> Only for Category: A03,A05, A07, A08, A10, A12, C08, C09, C10, C16, C19, C20, C22, C24, C31 If the notice date is prior to the exp date of the I-766 (category is same on card and recpt notice), then give 6mths from the exp date of the I-766 card. (I797 With Case Type I765)	11/06/20
<b>240 DAYS FROM EXPIRATION</b> 797 with Case Type I-129 or I539) (I-	01/05/21
<b>1 YEAR FROM EXPIRATION</b> (receipt notice first paragraph states 1 year from date on the I-551 Card) (I-797 With Case Type I-751 or I-829)	05/10/21
<b>18 MONTHS FROM EXPIRATION</b> (receipt notice first paragraph states 18mths from date on the I-551 Card) (I-797 with Case Type I-751 or I-829)	11/09/21

# Exhibit F

August 2, 2022

Wayne Goodwin  
Commissioner, North Carolina Division of Motor Vehicles  
1501 Mail Service Center  
Raleigh, NC 27699-1501

*Sent by email to:* [dmv.commissioners.office@ncdot.gov](mailto:dmv.commissioners.office@ncdot.gov)

CC: William A. Marsh, by email to: [wamarsh@ncdot.gov](mailto:wamarsh@ncdot.gov)

**RE: Unlawful denial of Full-Term Licenses to lawfully present noncitizens with indefinite/undefined legal status in the United States**

Dear Commissioner Goodwin:

We represent Maria Analida Perez Fernandez, [REDACTED], Marcela Valdebenito Pizarro, and [REDACTED], North Carolina residents and lawfully present noncitizens with permanent and/or indefinite legal status in the United States. Despite their clear statutory eligibility for full-term driver's licenses, our clients have either wrongfully been denied a driver's license or improperly been provided a limited-term driver's license. Ms. Perez, [REDACTED], and Ms. Valdebenito Pizarro are lawful permanent residents (LPRs) or conditional lawful permanent residents who have been denied driver's licenses based on the expiration dates on their permanent resident cards. [REDACTED] is a holder of a T visa for victims of human trafficking who is in current and indefinite lawful status while his adjustment of status application to a legal permanent resident is pending, and was denied renewal of his license because NCDMV required that he present a "new" document from the United States Citizenship and Immigration Services ("USCIS") confirming his status. Because our clients have been granted either permanent or indefinite legal status to be in the United States, these denials violate the federal and state constitutions, N.C.G.S. § 20-7, and NCDMV's own stated policy.

**I. Factual Background**

Maria Analida Perez Fernandez ("Ms. Perez") has been a lawful permanent resident ("LPR") since 1989 and has been living in North Carolina for approximately 18 years. Ms. Perez had a commercial driver's license that she used for her job as a school bus driver. Ms. Perez's previous commercial driver's license expired in 2021. Her permanent resident card (I-551) was set to expire

on June 6, 2022. Per its practice, the NCDMV issued Ms. Perez a new commercial driver's license in 2021 that would expire on June 6, 2022, the same day that her permanent resident card would expire. That license issuance was much shorter than the full five-year length of a standard commercial driver's license. Shortly before Ms. Perez's driver's license was set to expire in June 2022, she visited the NCDMV office in Graham, NC to try to obtain a renewal. She was told that because her permanent resident card would expire on June 6, 2022, NCDMV could not issue her a new or extended driver's license beyond that date, despite the fact that Ms. Perez would remain a lawful permanent resident. Ms. Perez is currently going through the naturalization process with USCIS. USCIS policy and practice does not require her to renew her permanent resident (I-551) card due to her pending naturalization application. *See USCIS Policy Manual, Vol. 12, Part D, Chapter 2- Lawful Permanent Resident*, available at <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-2> (current as of July 22, 2022). Even if she wanted to renew her permanent resident card, it would be costly for her to do so, with U.S. Citizenship and Immigration Service ("USCIS") fees exceeding \$500. She has been unable to get any stamp or other document from USCIS showing an extension of her permanent resident card due to a lack of available appointments at USCIS. Ms. Perez cannot currently afford to pay a fee to file a renewal application for the permanent resident card, because she is unemployed due to a back injury. Since June 6, 2022, Ms. Perez has not had a driver's license, despite the fact that she remains a lawful permanent resident of the United States. She is afraid to drive for fear of facing legal consequences of driving without a license, and she needs a vehicle to attend her regular medical appointments related to her back injury.

██████████ is a LPR who has lived in North Carolina for 34 years. His permanent resident card expired on June 28, 2022. His limited term driver's license expired in June 2022 and he is unable to renew his driver's license because his permanent resident card is expired. When he applied for his last license, he was told by the NCDMV office in Durham, NC that he could not receive a full-term license but rather that its expiration would be tied to the expiration of his permanent resident card. ██████████ has held numerous licenses in his 34 years of residency in North Carolina that were issued for the full term. Like Ms. Perez, ██████████ is also in the process of naturalizing and his application for citizenship has been pending before USCIS for one year. While he waits for the completion of the naturalization process, ██████████ is not required to renew his permanent resident card (per USCIS policy), yet he is unable to obtain a renewed driver's license from NCDMV. He is relying on his wife and ride share services to get to work because public transportation is unreliable.

As LPRs, Ms. Perez and ██████████ hold permanent immigration status in this country. Under the Immigration and Nationality Act ("INA"), an LPR is defined as a person who has "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 U.S.C. § 1101(a)(20) (emphasis added). LPR status is typically demonstrated using the I-551 Card (commonly known as the "green card" or "permanent resident card"). LPR status is durable and

generally permanent, with the few following exceptions of, rescission by USCIS, completion of removal proceedings, abandonment. *See generally* 8 U.S.C. §§ 1256; 1229a; 1101(13)(C). The expiration date found on the permanent resident card “reflects only that the card must be renewed, not that the bearer’s work authorization has expired . . .” 8 C.F.R. § 274a.12(a)(1) and the durability of an LPR’s status is wholly independent from the documentation of that status. Ms. Perez Fernandez and [REDACTED] are eligible for full-term licenses pursuant to N.C.G.S. § 20-7(f).

Ms. Valdebenito Pizarro has lived in North Carolina since 2018 as a conditional lawful permanent resident. Her permanent resident card was set to expire in July of 2020, and her initial license was only issued a limited term license for that two-year period. In May of 2020, she timely petitioned USCIS to remove the conditions on her permanent residence, and the filing of said petition automatically extended the validity of her I-551 Permanent Residence Card an additional 24 months from the date on the card while USCIS adjudicated her petition. Even though her card had been extended for 24 months, the NCDMV required her to appear in person and request a renewal of her driver’s license every six months during the period from July 2020 through July 2022. Ms. Valdebenito Pizarro had to take off work each time she came to the NCDMV to renew her license. Upon her most recent visit to the NCDMV office in Jacksonville, NC in July 2022, she was told that because the extension on her card was expiring, her status was expiring, and the NCDMV could not issue her a new driver’s license beyond July 2022. She was told to come back with a “new receipt notice.” Thus far, Ms. Valdebenito Pizarro has been unable to secure an appointment with USCIS to request any additional or temporary proof of her lawful permanent residence. She is dependent on her driver’s license to go to work, medical appointments, and take care of herself and her young daughter.

As a conditional legal permanent resident, Ms. Valdebenito Pizarro also has a permanent lawful status in the United States. “A conditional permanent resident is an alien who has been lawfully admitted for *permanent residence* within the meaning of section 101(a)(20) of the Act.” 8 C.F.R. § 216.1 (emphasis added). Although conditional permanent residents are required to file certain paperwork with USCIS to remove conditions on their residence, such paperwork does not change the fact that their initial residence is granted *permanently*, just with imposition of certain conditions that must be removed. As federal law states, “[u]nless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to...the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws.” 8 C.F.R. § 216.1. As such, conditional permanent residents are not immigrants with a “limited duration” status within the meaning of N.C.G.S. § 20-7.

[REDACTED] is a resident of Chatham County, North Carolina, and obtained a “T” visa for victims of human trafficking in May 2018. [REDACTED] then obtained a driver’s license from NCDMV which was issued until the expiration date listed on his “T visa” approval notice, May 23, 2022. In June 2021, [REDACTED] applied with USCIS, as allowed by

law, to adjust his status from that of a T visa holder to that of a lawful permanent resident. Due to USCIS backlogs in processing, ██████████'s application to adjust status to permanent resident status remains pending as of today. ██████████'s driver's license expired in May 2022. He went to the NCDMV office in Siler City, NC and presented his paperwork, including his adjustment of status application from 2021. NCDMV staff told ██████████ that he could not renew his license because he needed "current" papers from 2022, and that his 2021 adjustment of status receipt notice was "too old." ██████████ is now without a driver's license, which he needs to commute to work and to visit family members.

██████████ has a T-nonimmigrant visa, which is a visa specially designated for people who are or have been victims of a severe form of trafficking in persons and who have complied with reasonable law enforcement requests to assist in investigation of that trafficking. *See* 8 U.S.C. § 1101(a)(15)(T). While this visa is considered a nonimmigrant visa, a holder of a T-visa is eligible to adjust to an LPR after 3 years. *See* 8 U.S.C. § 1255(l). (Of note, while ██████████ is a T visa holder, similar statutes apply to those holding "U" visas for victims of crime. *See, e.g.* 8 U.S.C. § 1101(a)(15)(U)(defining U visa status) and 8 U.S.C. § 1255(m) (allowing adjustment of status for U visa recipients)). Pursuant to both federal law and USCIS policy, both immigrants in T and U visa status waiting for USCIS to decide their Adjustment of Status petition have their T or U status extended automatically and indefinitely while awaiting a decision-- "The extension of T [or U] will be valid until a decision is rendered on the pending Form I-485 and, during that time, the applicant will continue in valid T [or U] nonimmigrant status with all the associated rights, privileges, and responsibilities." *See* USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)*, PM-602-0032.2 at 5, Policy Memorandum, available at <https://www.uscis.gov/sites/default/files/document/memos/2016-1004-T-U-Extension-PM-602-0032-2.pdf> (last accessed August 1, 2022); 8 C.F.R. §214.11(l)(7); 8 U.S.C. § 1184(o)(7)(C); 8 U.S.C. § 1184(p)(6).

Lastly, while none of the persons we currently represent are refugees or asylees, such persons are also affected by NCDMV's policy of giving less-than-full-duration licenses to those with permanent or indefinite immigration statuses leading toward permanency. Refugee status is granted outside of the U.S. to those who meet the statutory definition of a refugee; refugees are then admitted under that status by the Attorney General. *See* 8 U.S.C. § 1101(a)(42). Asylees must meet this same definition but apply for and acquire asylee status while being present in the United States. *See* 8 U.S.C. § 1158(a). In both instances, the status is indefinite until the individual acquires LPR status or has their status terminated—solely by the Attorney General in certain enumerated, limited circumstances. *See* 8 U.S.C. §§ 1157(c)(4); 1158(c)(2). Refugee and asylee statuses are often documented through several forms of documentation but exist as a legal protection independent of any and all documentation. Any expiration dates on these documents do not reflect the indefinite status that asylees and refugees have. Those with both refugee and asylee statuses should be eligible for full-term licenses pursuant to N.C.G.S. § 20-7(f).

## **II. The Denial of a Full-Term Driver's License to Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED] violates North Carolina law, the REAL ID Act, Equal Protection Guarantees under the state and U.S. Constitutions and the Supremacy Clause of the U.S. Constitution.**

Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED]'s (hereinafter "Clients") experiences are just a few examples of NCDMV's widespread practice of violating state law, federal law, the North Carolina and U.S. constitutions, and NCDMV's own internal policy in their handling of driver's license applications submitted by lawfully present noncitizens with indefinite legal status in the U.S. Lawfully present noncitizens are entitled to robust protection against discrimination in the issuance of public benefits like driver's licenses. NCDMV's failure to provide full-term driver's licenses to our clients and other similarly situated noncitizens raises serious constitutional concerns.

### **A. The Issuance of Limited Duration Licenses to Permanent or Indefinite Noncitizens Violates North Carolina Law**

NCDMV's failure to issue our Clients standard, full-term driver's licenses violates North Carolina law. Excepting certain restrictions based on driver age that are not relevant here, the standard period of duration for a North Carolina driver's license is eight years. N.C.G.S. § 20-7(f)(2).<sup>1</sup> Licenses may only be renewed within the period of 180 days before the expiration date. *Id.* § 20-7(f)(3). Under § 20-7(f)(3), there are very limited circumstances under which NCDMV is permitted to issue a license of shorter duration:

The durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless the Division determines that a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that *demonstrates the applicant's legal presence of limited duration in the United States*. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States.

Section 20-7(f)(3) (emphasis added).

As discussed above, Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED] have permanent or indefinite lawful status in the United States. Their legal presence is not of limited duration and is in fact either "permanent" or indefinite and leading towards permanency. Because § 20-7(f)(3) is applicable only to applicants who have "legal presence of limited duration," our Clients and other similarly situated noncitizen applicants are eligible for a full-term driver's licenses. By denying our Clients full-term driver's licenses, NCDMV is violating N.C. Gen. Stat.

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<sup>1</sup> Ms. Perez has also held a commercial driver's license, which has a full-length duration of five years. N.C.G.S. § 20-7(f)(2).

§ 20-7(f)'s mandate that, with limited exceptions based on age, lawfully present noncitizens with permanent or indefinite legal status shall receive licenses for eight years' duration (or five years for a commercial driver's license). Contrary to representations made by NCDMV to our Clients, nowhere is it required by state law that lawfully present noncitizens of permanent or indefinite legal status present "new" or "updated" documentation to continually reaffirm their status as a person with a permanent or indefinite lawful status. As discussed earlier, the expiration date on such documentation is irrelevant because our clients' statuses are, by definition, permanent or indefinite. Imposing such a requirement reveals a fundamental misunderstanding of how LPR, asylee and refugee, U-or T-visa adjustees and other forms of indefinite, ongoing legal status operate and results in the denial of full duration licenses to non-citizens who are clearly eligible for these licenses under N.C.G.S. Chapter 20.

## **B. Equal Protection Violations**

By refusing to provide a license of equal duration to noncitizens who have lawful status that is indefinite, NCDMV is violating the equal protection guarantees of the U.S. and North Carolina constitutions.<sup>2</sup>

The Fourteenth Amendment "embod[ies] a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws." *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 420 (1948). Classifications based on alienage "are inherently suspect and subject to close judicial scrutiny." *Graham v. Richardson*, 403 U.S. 365, 372 (1971); *see also Moreno v. Univ. of Maryland*, 645 F.2d 217, 220 (4th Cir. 1981) (adopting *Moreno v. Toll*, 489 F. Supp. 658, 663–64 (D. Md. 1980) and affirming without qualification that all lawfully present noncitizens who live in the United States are wrapped in the suspect classification blanket); *Dandamudi v. Tisch*, 686 F.3d 66 (2d. Cir. 2012).

Courts have held that state limitations on the driving privileges afforded to lawfully present noncitizens with indefinite legal status generally violate the equal protection clause. *See, e.g., Intercommunity Just. & Peace Ctr. v. Norman*, 440 F. Supp. 3d 896–97 (S.D. Ohio 2020); *Fahy v. Comm'r, New Hampshire Dep't of Safety*, No. CIV. 05-CV-97-SM, 2006 WL 827805, at \*6 (D.N.H. Mar. 29, 2006), order clarified on reconsideration, No. 05-CV-97-SM, 2006 WL 1764346, at \*2 (D.N.H. June 26, 2006). NCDMV's practice of outright denying driver's licenses or providing only limited-duration driver's licenses to noncitizens of permanent or indefinite legal status impermissibly discriminates against noncitizen drivers based on their "alienage." *See, e.g., Takahashi*, 334 U.S. at 414, 420 (holding that state denial of fishing licenses to "lawful alien inhabitants" who were ineligible for citizenship violates the Fourteenth Amendment). Because this

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<sup>2</sup> "The minimum level of review" for an equal protection challenge under our state constitution is equivalent to that required by the U.S. Constitution. *See M.E. v. T.J.*, 854 S.E.2D 74, 94 (N.C. Ct. App. 2020).

practice is subject to close judicial scrutiny and is not necessary to achieve a compelling state interest it is violative of the equal protection clause.

### C. Preemption Violations

NCDMV's policy also violates the Supremacy Clause and is preempted. The Supremacy Clause of the U.S. Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." United States Constitution, Article VI, clause 2.

Pursuant to the Supremacy Clause, federal law preempts state regulation of any area over which Congress has expressly or impliedly exercised exclusive authority or which is constitutionally reserved to the federal government. Because the federal government has sole and exclusive power to regulate immigration through "its uniform naturalization and immigration laws," *Hines v. Davidowitz*, 312 U.S. 52, 74 (1941), any state law, policy, or practice that conflicts or interferes with federal law is preempted. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 419 (1948) (finding that states "can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization, and residence of aliens in the United States or the several states."). Notably, courts have consistently rejected state governments' attempts to categorize noncitizens when deciding what constitutes authorized presence. See *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 962–63 (9th Cir. 2017) (finding that "the INA . . . occup[ies] the field of Arizona's classification of noncitizens with regard to whether their presence is authorized by federal law" and preempting Arizona Department of Transportation's rejections of Employment Authorization Documents ("EADs") issued to DACA recipients as proof of authorized presence to obtain a driver's licenses); *Community Refugee and Immigration Services v. Petit*, 334 F.R.D. 493, 510 (S.D. Ohio 2020) (finding that Ohio's Bureau of Motor Vehicles policy of requiring refugees with documentation from USCIS that was issued more than two years ago to submit supplemental proof of their status to obtain a driver's license created a "subclassification of immigrant status that is preempted by federal law"); *Poder in Action v. City of Phoenix*, 506 F. Supp. 3d 725, 727 (D. Ariz. 2020) (finding that state's requirement that applicants to an emergency housing program provide proof of qualified legal status in the United States based on the city's interpretation of the Personal Responsibility and Work Opportunity Reconciliation Act conflicted with federal law that did not require exclusion of all "unqualified aliens" from the program and was thus preempted); *Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 614 (E.D. Va. 2004) (denying defendants' motion to dismiss Supremacy Clause claim "insofar as the complaint alleges that defendants use other than federal standards to identify applicants who are illegal aliens"). Accordingly, NCDMV's practice of categorizing lawfully present noncitizens with permanent or indefinite legal status as immigrants of "limited duration" is preempted by federal law.

**D. The REAL ID Act Explicitly Excludes Permanent Residents, Refugees, and Asylees from the Categories of Non-Citizens Designated to Receive Limited-Duration Licenses**

DMV's actions as they relate to Ms. Perez, [REDACTED], and Ms. Valdebenito Pizarro and other similarly situated noncitizens, are also in conflict with the federal REAL ID law. Section 202(c)(2) of this Act sets forth the federal identification requirements for issuance of a REAL ID-complaint license as follows:

(B) EVIDENCE OF LAWFUL STATUS. -A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person-

- (i) is a citizen or national of the United States;
- (ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
- (iii) has conditional permanent resident status in the United States;
- (iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;
- (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
- (vi) has a pending application for asylum in the United States;
- (vii) has a pending or approved application for temporary protected status in the United States;
- (viii) has approved deferred action status; or
- (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS' LICENSES AND IDENTIFICATION CARDS. -

(i) IN GENERAL. -If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) EXPIRATION DATE. -A temporary driver's license or temporary identification card issued pursuant to this subparagraph 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 year.

(iii) DISPLAY OF EXPIRATION DATE. -A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) RENEWAL. -A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

REAL ID Act of 2005, Pub. L. No. 109-13, § 202(c)(2)(B)-(C), 119 Stat. 231, 313-14 (emphasis added to I and (C)(i)).

As set forth above, Section 202(c)(2)(C)(ii) is the section of the REAL ID Act that discusses the issuance of "temporary" driver's license for certain categories of non-citizens and requires that a license expire at the conclusion of the person's authorized stay. However, this provision for a limited duration license explicitly applies only to persons presenting evidence of lawful status listed in clauses (v) through (ix) of subparagraph (B) and plainly does not include LPRs, conditional LPRs, or refugees or asylees which are included at clauses (ii)(iii), and (iv). Under REAL ID, Ms. Perez, [REDACTED], and Ms. Valdebenito Pizarro along with other similarly situated LPR or conditional LPR applicants, as well as refugees and asylees, are not among the category of non-citizens for whom a limited duration driver's license is mandated or appropriate pursuant to the REAL ID Act.

**E. The NCDMV has Taken Inconsistent Positions on Their Policy on Issuance of Driver's Licenses to Lawfully Present Noncitizens and Refused to Follow a Policy that Conforms to State Law and State and Constitutional Protections.**

In August 2021, ACLU of NC wrote to NCDMV regarding an LPR client who applied for a REAL ID-compliant driver's license but was denied a full-term license because his permanent resident card document showed an expiration date of October 2021. We explained that the facial expiration of the permanent resident card did not determine our client's lawful status and NCDMV ultimately issued our client a full-term REAL-ID compliant license. In September 2021, we asked that NCDMV educate its staff about the rights of LPRs and other North Carolinians with long-term immigration statuses. A representative from NCDMV responded to our follow-up letter but misstated NCDMV's obligations and did not commit to making the systemic changes that we had outlined.

In our August 2021 letter we also highlighted that DMV has a policy requiring the issuance of full term-licenses to certain categories of noncitizens. In 2018, Ms. April Dozier, Supervisor of the Document Verification Unit, wrote the following email:

- "Lawful Permanent Resident, Refugee, and Asylee will no longer have "Limited Term" on their Driver License and identification cards.
- Identification cards will no longer have the Legal Presence expiration date on the back of the card for those customers that have an indefinite length of stay (Lawful Permanent Resident, Refugee and Asylee). **The customers will now see U.S. GOV. LEGAL PRESENCE on the back of the card.**
- Conditional Resident Customers ex:

Permanent Resident Card with two-year issuance, Machine Readable Immigrant Visa, or Temp I-551 Stamp in the Passport or on an I-94 restrictions will remain the same."

Through a public record request dated April 26, 2022, we requested NCDMV's most recent policies addressing issuance of driver's licenses to lawfully present noncitizens. The policies we obtained from that public record request further highlight NCDMV's inconsistencies within their own policies. According to the policies that we received, NCDMV does not have required training on what kind of driver's license should be issued to noncitizens,<sup>3</sup> provides instructions on how to "calculate" expiration dates for certain categories of noncitizens that conflict with USCIS's determination on whether an individual's status is current,<sup>4</sup> and takes inconsistent positions on what documents NCDMV will accept to demonstrate a noncitizen applicant's legal presence.

The NCDMV has continued to take often inconsistent and unlawful positions on their policy on the issuance of driver's licenses to lawfully present noncitizens. In certain communications between NCDMV staff and local immigration attorneys that we have reviewed from recent months, NCDMV staff seems to be wholly unaware that the expiration date on a permanent resident card bears no relationship to the expiration of that person's lawful status in the United States. This fundamental lack of understanding of immigration law is not just concerning and frustrating for driver's license applicants, but also leads to NCDMV policies and practices that violate state and federal law, as outlined herein.

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<sup>3</sup> Exhibit A (DLE Manual Dec. 2018, p. 1-18).

<sup>4</sup> This document instructs DMV employees how to calculate the "expiration date" of noncitizen applicants' lawful status, including the "expiration date" of noncitizens who have indefinite status. The document instructs DMV staff to add a certain number of days or months to the expiration date listed on a noncitizen's legal presence document. This tool does not reflect USCIS's May 2022 announcement that EAD's of certain categories of lawfully present noncitizens will be automatically extended 540 days. While it is completely unnecessary for NCDMV to calculate the "expiration date" for individuals like our clients who have permanent or indefinite status, this document evidences that NCDMV is not even relying on up to date information and mandates from USCIS for its calculations of when a noncitizen's driver's license should expire. Exhibit B (Calculate Legal Presence Extension Update); *see also* Exhibit A, DLE Manual Dec. 2018, p. 4-1, where NCDMV advises its employees that USCIS documents can only be used if they are "unexpired" or "accompanied by a 'letter' from USCIS extending the expiration date (example: I-797). This requirement implicitly excludes notices from the USCIS that are not directly issued to impacted noncitizens, such as Federal Register Notices that extend the status of certain noncitizens or the recent 540-day work permit extension, and fails to recognize that certain statuses are durable or permanent even if the card evidencing them is "expired."

## **F. Our Clients and other Similarly Situated Noncitizen North Carolinians Face Significant Hardship as a Result of NCDMV's Practices.**

Our Clients are among well over one-hundred thousand immigrants in North Carolina that are potentially impacted by NCDMV's practice of denying standard full-term driver's licenses and in some cases denying even limited term driver's licenses. NCDMV should not require that Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED], who are all lawfully present noncitizens with permanent or indefinite legal status in the United States, show the expiration date of their legal status. Such a requirement is burdensome and in some cases presents an actual impossibility due to the severe document renewal and processing backlogs at USCIS that have delayed renewal and issuance of documents to drivers like our Clients. *See e.g.*, USCIS, Automatic Employment Authorization Document (EAD) Extension, (May 17, 2022), available at <https://www.uscis.gov/eadautoextend> (explaining that certain noncitizens are eligible for automatic extensions of their employment authorization document by up to 540 days). As discussed above, the expiration date on documentation evidencing the lawful presence of Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED] is not indicative of how long they have legal status in the U.S. In North Carolina where the ability to drive is a necessity to conduct everyday life, NCDMV's failure to furnish full-term driver's licenses to otherwise eligible immigrants has left our Clients Ms. Perez, [REDACTED], Ms. Valdebenito Pizarro, and [REDACTED] without driver's licenses at all. As a result, our Clients have been unable to drive to medical appointments, work, and other necessary destinations without fear of law enforcement consequences, or without having to rely on friends and family members to drive them. Our Clients at times had to pay for expensive ride sharing services to avoid facing law enforcement consequences for driving without a license. Our Clients were also, in the past, wrongfully provided limited duration licenses and were subject to additional administrative hassles and fees when they had to obtain replacement licenses more frequently than they should have under North Carolina law. Our Clients will face these same hassles and issues in the future if NCDMV does not change its practices and policies. The costs and inconveniences borne by our Clients as a result of NCDMV's policies disproportionately harm lower income North Carolinians who are forced to spend time and money they cannot spare, and will cause those who do not have access to alternate transportation to risk harsh fines and even jail time if they drive without a license while awaiting renewal of documentation evidencing their lawful status. The consequences also fall more heavily on rural North Carolinians who do not have ready access to public transportation.

In sum, NCDMV is violating the North Carolina and U.S. Constitutions, state law and its own policy and acting in conflict with the REAL ID Act by refusing to issue our clients full-term and when applicable, REAL ID-compliant licenses. On behalf of our Clients and similarly situated noncitizens, we request that NCDMV (1) immediately issue full-term and if applicable REAL-ID compliant licenses to Clients and others similarly situated (2) promptly issue clear policy and guidance to NCDMV license office staff directing the issuance of full term driver's licenses to lawfully present noncitizens with permanent or indefinite status for full-term driver's licenses,

regardless of any expiration date on their documentation; and (3) provide prompt, mandatory training on these policies for all DMV staff involved in reviewing noncitizen driver's license applications, with emphasis on identifying, correcting, and preventing recurrence of past errors.

In an effort to resolve this matter without resorting to litigation, we ask that you respond to this letter by August 31, 2022, to discuss the steps and timeline of implementing remedial measures. We look forward to hearing from you and may be reached by phone at 919-532-3686 (Muneeba Talukder), or by email at [kate@ncjustice.org](mailto:kate@ncjustice.org) (Kate Woomer-Deters) or [mtalukder@acluofnc.org](mailto:mtalukder@acluofnc.org) (Muneeba Talukder). Thank you for your attention to this matter.

Sincerely,

*/s/ Katharine Woomer-Deters, Daniel Melo, Sarah Laws*

Katharine Woomer-Deters  
Daniel Melo  
Sarah Laws  
North Carolina Justice Center  
P.O. Box 28068  
Raleigh, NC 27611  
(919) 861-2072

*/s/ Muneeba S. Talukder*

Muneeba S. Talukder  
Kristi Graunke  
ACLU of North Carolina  
Legal Foundation  
P.O. Box 28004  
Raleigh, NC 27611  
(919) 532-3686

# Exhibit G

## Clarification

Marsh, William A <wamarsh@ncdot.gov>

Fri 9/9/2022 11:03 AM

To: Kate Woomer-Deters <kate@ncjustice.org>

Cc: Goodwin, Wayne <gwgoodwin1@ncdot.gov>; Manley, Portia <pmanley@ncdot.gov>

Kate, in our post discussion, there seemed to be a point of clarification that needs to be made. That is, your hypothetical posited whether a person would need to show updated documentation from the US government if their green card expired in June. They still need to be verified under the SAVE system. The expired green card doesn't vault them from 20-7(f) (3). They don't need updated documentation if inside 2 years, rather they are treated the same as natural born US citizens for that **except**, SAVE verification. Unless and until they become a US citizen, regardless of an expired date for a Permanent Resident, they must be verified under SAVE.

Please know that this information is being conveyed to the DL examiners staff within 2 working days.

I would appreciate your sharing this communication with your colleagues.

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# Exhibit H

Re: [External] RE: Clarification

Marsh, William A <wamarsh@ncdot.gov>

Thu 9/15/2022 11:11 AM

To: Kate Woomer-Deters <kate@ncjustice.org>

Cc: Goodwin, Wayne <gwgoodwin1@ncdot.gov>; Manley, Portia <pmanley@ncdot.gov>; Muneeba Talukder <mtalukder@acluofnc.org>; Kristi Graunke <kgraunke@acluofnc.org>; Dan Melo <dan.melo@ncjustice.org>; Sarah Laws <sarahl@ncjustice.org>

I've received your message from Monday. Most of the senior DMV leadership is away at a conference this week. After they return, we will seek to share any internal policy which may apply. For now, here is what I wanted to let you know.

A LPR will not need to have current, immigration documentation to support the renewal of a drivers license for a period of time that is applicable to their respective age. DMV will conduct a verification (SAVE) for any non-U.S. Citizen issued or renewed a drivers license. We look forward to working with you on the concerns that you raised.

Drew Marsh

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**From:** Kate Woomer-Deters <kate@ncjustice.org>

**Sent:** Monday, September 12, 2022 11:41 AM

**To:** Marsh, William A

**Cc:** Goodwin, Wayne; Manley, Portia; Muneeba Talukder; Kristi Graunke; Dan Melo; Sarah Laws

**Subject:** [External] RE: Clarification

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Drew,

Thank you for the discussion on the call on Friday, and the follow up email. I am not fully understanding the clarification that you sent, especially in light of our conversation earlier, and was hoping for some further clarification.

1. Can you provide a specific statutory or regulatory cite for the proposition that all non-citizens, of any sort, must be verified by NCDMV under SAVE?
2. Can you explain the phrase, "They don't need updated documentation if inside 2 years," and provide a policy, statutory, or regulatory citation for that?
3. Can you provide a statutory or regulatory citation for the idea that, "the expired green card doesn't vault them from 20-7(f)(3)"? I had the clear understanding from our conversation that you took the position for DMV that 20-7(f)(3) did not apply to LPRs at all.

If you could please clarify and provide citations, we would greatly appreciate it, as I don't think we share a common understanding of each other's positions, at least regarding legal permanent residents.

Thank you,

Kate

---

**From:** Marsh, William A <wamarsh@ncdot.gov>  
**Sent:** Friday, September 9, 2022 11:03 AM  
**To:** Kate Woomer-Deters <kate@ncjustice.org>  
**Cc:** Goodwin, Wayne <gwgoodwin1@ncdot.gov>; Manley, Portia <pmanley@ncdot.gov>  
**Subject:** Clarification

Kate, in our post discussion, there seemed to be a point of clarification that needs to be made. That is, your hypothetical posited whether a person would need to show updated documentation from the US government if their green card expired in June. They still need to be verified under the SAVE system. The expired green card doesn't vault them from 20-7(f) (3). They don't need updated documentation if inside 2 years, rather they are treated the same as natural born US citizens for that ***except***, SAVE verification. Unless and until they become a US citizen, regardless of an expired date for a Permanent Resident, they must be verified under SAVE.

Please know that this information is being conveyed to the DL examiners staff within 2 working days.

I would appreciate your sharing this communication with your colleagues.

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