No. 15-40238

In the United States Court of Appeals for the Fifth Circuit

STATE OF TEXAS; STATE OF ALABAMA; STATE OF GEORGIA; STATE OF IDAHO; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PAUL R. LEPAGE, Governor, State of Maine; PATRICK L. MCCRORY, Governor, State of North Carolina; C.L. "BUTCH" OTTER, Governor, State of Idaho; PHIL BRYANT, Governor, State of Mississippi; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF FLORIDA; STATE OF ARIZONA; STATE OF ARKANSAS; ATTORNEY GENERAL BILL SCHUETTE; STATE OF NEVADA; STATE OF TENNESSEE, *Plaintiffs-Appellees*

v.

UNITED STATES OF AMERICA; JEH CHARLES JOHNSON, Secretary, Department of Homeland Security; R. GIL KERLIKOWSKE, Commissioner of U.S. Customs and Border Protection; RONALD D. VITIELLO, Deputy Chief of U.S. Border Patrol, U.S. Customs and Border of Protection; SARAH R. SALDANA, Director of U.S. Immigration and Customs Enforcement; LEON RODRIGUEZ, Director of U.S. Citizenship and Immigration Services, *Defendants-Appellants*

On Appeal from the U.S. District Court for the
Southern District of Texas, Brownsville Division, No. 14-cv-00254

AMICI CURIAE BRIEF FOR THE GOVERNORS OF TEXAS, LOUISIANA, NEW JERSEY, AND SOUTH DAKOTA IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Governors of Texas, Louisiana, New Jersey, and South Dakota ("*Amici* Governors"). Pursuant to Federal Rule of Appellate Procedure 29(a), counsel for all parties have consented to this filing.

The *Amici* Governors have two important interests in defending the preliminary injunction correctly entered by the district court. First, the injunction protects the executive branches in the Governors' States from irreparable injuries. In Texas, for example, the executive branch led by the Governor would be responsible for issuing driver's licenses, administering the healthcare system, and managing law-enforcement efforts in response to Defendants' unlawful and unilateral Directive.[1]

[1] *See* Mem. from Jeh Charles Johnson to León Rodriguez, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (Nov. 20, 2014); Mem. from Jeh Charles Johnson to Thomas S. Winkowski, *Policies for the Apprehension, Detention and Removal of Undocumented Immigrants* (Nov. 20, 2014) (collectively "DAPA," "Directive," or "DAPA Directive"). Pursuant to Fed. R. App. P. 29(c)(5), *amici* state that no party's counsel authored the brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief, and no person—other than *amici* and *amici*'s counsel—contributed money that was intended to fund preparing or submitting this brief. Prior to authoring this brief, counsel for *amicus* Governor of Texas previously served as counsel for plaintiff State of Texas.

Second, the *Amici* Governors have an interest in rebutting the arguments offered by the State of Washington on behalf of 14 other States. The question presented is whether the President can unilaterally legalize the presence of millions of people and unilaterally give them myriad legal benefits, including work permits, Medicare, Social Security, and tax credits. This is *not* a debate over "federal immigration directives"; it does not matter whether one State or another is "unhappy" with the consequences of the Defendants' unilateral decrees; and it is irrelevant whether the State of Washington "welcome[s] the immigration directives and expect[s] to benefit from them." Washington Br. at 1, 14. Regardless whether the DAPA Directive pleases policymakers in Washington State, it squarely violates statutes enacted in Washington, D.C. And it is striking that for all of the ink Washington spills "welcom[ing]" the effects of DAPA, that State cannot spare one word to identify the legal basis for unilaterally issuing 5 million or more federal work permits and other entitlements.

ARGUMENT

I. WASHINGTON'S BRIEF IGNORES THE QUESTION PRESENTED

A. Like the Defendants, the State of Washington does its best to distract the court from the question presented. For example, Washington argues that this is merely a "policy" dispute that implicates the wisdom of policy papers by immigration activists and "Washington's leading liberal think tank."[2] But it is unclear what more the district court could have done to disabuse Washington of that misapprehension. The court below began "by emphasizing what is not involved in this case." PI Order at 4. "First," the court explained, "this case does not involve the wisdom, or the lack thereof, underlying [DAPA]." *Ibid.* Nor does this case "require the Court to consider the public popularity, public acceptance, public acquiescence, or public disdain for the DAPA program." *Id.* at 5-6.

Likewise, the Defendants argue at length that the injunction will interfere with the Department of Homeland Security's ability to "effectively allocat[e] its resources" and to "prioritize the removal of

[2] Ken Silverstein, *The Secret Donors Behind the Center for American Progress and Other Think Tanks*, THE NATION (June 10, 2013) (describing the Center for American Progress); *see* Washington Br. at 4-8 (collecting policy papers, including those by the Center for American Progress).

aliens." Appellants' Br. 1, 52. But no one ever has challenged DHS's ability to prioritize the removal of aliens. In fact, the district court expressly did *not* "enjoin or impair the [DHS] Secretary's ability to marshal his assets or deploy the resources of the DHS," nor did it "enjoin the Secretary's ability to set priorities for the DHS." PI Order at 123. Moreover, the court did not enjoin the Defendants' "non-enforcement" of the immigration laws; rather, when the Defendants grant legal benefits to millions of people, that "is actually affirmative *action* rather than inaction." *Id.* at 85.

B. The real question presented is a straightforward legal one: Does the Immigration and Nationality Act ("INA") authorize the Defendants to dispense with the law for 40% of the Nation's undocumented population, to grant "deferred action" to 40% of the undocumented population, and to hand out work permits, Social Security cards, and a slew of federal and state benefits to 40% of the undocumented population—all without any input from Congress and any review by any court ever? On that legal question, the most Washington can offer is an *ipse dixit*—"the directives are lawful," Br. at 1—and a bald assertion that the federal government can grant legal

benefits to whomever it wants, whenever it wants, and without any limitation.

1. Take for example federal work permits. Defendants argue that 8 U.S.C. § 1324a(h)(3) gives DHS the power to issue a work permit for anyone it thinks needs one, without limitation. Appellants' Br. 8. But that reading of the INA makes surplusage of large swaths of the statute. Indeed, if the definition of "unauthorized alien" in Section 1324a(h)(3) gave DHS such limitless power, there would be no reason for Congress to authorize work permits in particular circumstances. *But see, e.g.*, 8 U.S.C. § 1184(p)(6) (authorizing work permits for "any alien who has a pending, bona fide [U-visa] application"); *id.* § 1105a(a) (authorizing work permits for battered spouses of certain nonimmigrants); *id.* § 1154(a)(1)(D)(i)(II), (IV), 1154(a)(1)(K) (authorizing work permits for VAWA self-petitioners and children); *id.* § 1158(d)(2) (authorizing work permits for asylum applicants); *id.* § 1226(a)(3) (authorizing work permits for certain LPRs); *id.* § 1231(a)(7) (authorizing work permits for certain unremovable individuals). While the Plaintiffs and their *amici* have emphasized these provisions for months, neither the Defendants nor the State of

Washington offers a single word to explain why Congress would enact a slew of meaningless provisions that do not add to the already limitless power that DHS supposedly has to grant work permits to whomever it pleases.

2. Or take Social Security Numbers ("SSNs"). If the Defendants can unilaterally authorize anyone to work in the United States whenever they please, then the Defendants also can unilaterally confer membership in the crown jewel of American entitlement programs: Social Security. That is because the Social Security Administration will give a SSN to anyone who can lawfully work in the United States. *See* 42 U.S.C. § 405(c)(2)(B)(i)(I). That SSN entitles an undocumented immigrant to Social Security benefits. *See id.* § 1382.

The SSN also unlocks a host of other entitlements. To take just one example, SSN holders qualify for the earned income tax credit. *See id.* § 32. And if an undocumented immigrant receives a SSN under Defendants' unilateral DAPA Directive in 2015, he or she can use that SSN to claim tax credits for *2014, 2013, and 2012*—long before Defendants unilaterally legalized the immigrant's presence. *See* Mem. from Mary Oppenheimer, Acting Assistant Chief Counsel, IRS, for

Candice V. Cromling, Earned Income Tax Credit Program Manager, *Claiming Previously Denied Earned Income Credit due to Invalid Social Security Numbers* (June 9, 2000), *available at* www.irs.gov/pub/irs-wd/0028034.pdf. If only a small fraction of eligible individuals apply for those tax credits, it will cost the federal fisc $2 billion. *See* Senators Introduce Bill Disallowing Tax Credit Under 2014 Executive Actions (Mar. 10, 2015), *available at* http://www.grassley.senate.gov/news/news-releases/senators-introduce-bill-disallowing-tax-credit-under-2014-executive-actions.[3]

It is wrong to claim that these are mere "policy" questions, and that the 26 Plaintiff States want to "dictate" the answers. Washington Br. in Support of Stay at 1. Congress passed the INA in 1952, and Harry Truman signed it into law. Since then, it has been amended by 31 Congresses and 11 Presidential administrations. The rule of law means nothing if it allows one President to unilaterally dispense with those statutes, unilaterally create a new immigration system,

[3] And the tax consequences do not end there. As the Plaintiffs explained in the district court, if the current President can suspend the INA for 40% or more of the population, then the next President can suspend the Internal Revenue Code for 40% or more of the population. *See* ECF No. 5, *Texas v. United States*, No. 14-254 (S.D. Tex. Feb. 2, 2015). Defendants and their *amici* have not even tried to respond to that point—presumably because they agree that their conception of executive power is unbounded by a limiting principle.

unilaterally create new employment and social welfare programs, and then claim that no plaintiff and no court can challenge his unilateralism.

II. WASHINGTON'S LEGAL ARGUMENTS ARE WRONG

Washington does offer three legal arguments. But all of them are wrong.

A. First, Washington cannot claim that the Plaintiff States made free choices to issue driver's licenses to deferred-action beneficiaries. *See* Washington Br. at 4. Arizona *tried* to make a free choice, and it chose not to give licenses to *any* deferred-action beneficiaries. *See* ECF No. 132, *Texas v. United States*, No. 14-254 (S.D. Tex. Feb. 2, 2015) (collecting sources); *cf.* Washington Br. at 4 (counterfactually claiming that Arizona denied licenses to only "some" deferred-action recipients). But the federal government successfully convinced the Ninth Circuit to hold that Arizona's choice was preempted. *See Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1062 (9th Cir. 2014) (Arizona's choice conflicts with the obstacles and purposes of DHS's decision to give work permits to deferred-action beneficiaries because "the ability to drive may be a virtual necessity for

people who want to work in Arizona"). Today, Arizona is issuing driver's licenses to deferred-action beneficiaries because the federal government won an injunction requiring that result; Defendants and their *amici* cannot pretend the State made a "free choice."

Nor can Washington justify its "free choice" theory on 8 U.S.C. § 1621. *See* Washington Br. at 4. Congress enacted Section 1621 in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105—more commonly known as the Welfare Reform Act. And Section 1621 makes certain types of immigrants ineligible for defined types of welfare programs, like public housing and unemployment insurance. *See* 8 U.S.C. § 1621(c). While Congress gave States flexibility not to extend some benefits to some immigrants, Congress notably did *not* exclude immigrants from driver's license programs. *See ibid.*; *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (Court "must presume that [the] legislature says in a statute what it means and means in a statute what it says there."). Thus, neither the federal government nor the State of Washington can avoid the fact that it is federal law as interpreted by

the Ninth Circuit—not the States' "choices"—that would force the Plaintiffs to give driver's licenses to DAPA beneficiaries.

B. Second, the State of Washington cites no case to suggest that an Article III injury (like the injuries to the States' driver's license programs) disappears if it is offset by countervailing benefits (like increased tax revenue). *See* Washington Br. 4-7 (baldly asserting the point). That is because the law is decidedly to the contrary. *See, e.g.*, *Nat'l Collegiate Athletic Ass'n v. Governor of New Jersey*, 730 F.3d 208, 223 (3d Cir. 2013) ("A plaintiff does not lose standing to challenge an otherwise injurious action simply because he may also derive some benefit from it."), *cert. denied sub nom. Christie v. Nat'l Collegiate Athletic Ass'n*, 134 S. Ct. 2866 (2014); *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 657 (9th Cir. 2011) ("[W]e disagree with the Secretary's premise that a hospice provider may be found to have standing to mount a facial challenge to the hospice cap regulation only if it suffered a "net" increase in its overpayment liability within the accounting year at issue in its administrative appeal."); *Denney v. Deutsche Bank AG*, 443 F.3d 253, 265 (2d Cir. 2006) ("[T]he fact that an injury may be outweighed by other benefits, while often sufficient to

defeat a claim for damages, does not negate standing."); *Sutton v. St. Jude Med. S.C., Inc.*, 419 F.3d 568, 574-75 (6th Cir. 2005) (increased risk from faulty medical device creates injury-in-fact, even if class members' own devices had not malfunctioned and may have been beneficial); *Aluminum Co. of America v. Bonneville Power Admin.*, 903 F.2d 585, 590 (9th Cir. 1989) (rejecting agency's standing argument because "[t]here is harm in paying rates that may be excessive, no matter what the California utilities may have saved"). As the leading treatise explains:

> Once injury is shown, no attempt is made to ask whether the injury is outweighed by benefits the plaintiff has enjoyed from the relationship with the defendant. Standing is recognized to complain that some particular aspect of the relationship is unlawful and has caused injury.

13A CHARLES A. WRIGHT & ARTHUR MILLER, FED. PRAC. & PROC. JURIS. 3d § 3531.4 (3d ed. & 2014 Supp.).

Indeed, it is hard to imagine how the Article III standing inquiry would work were the law as Washington imagines it. For example, the Supreme Court held that Massachusetts has standing to challenge EPA's refusal to regulate new-car carbon emissions that might contribute to global warming—notwithstanding the fact that everyone

(including Massachusetts) would benefit financially from new-car sales. *See Massachusetts v. EPA*, 549 U.S. 497 (2007). All that matters is that the Plaintiff States have pointed to Article III injuries that are concrete, traceable, and redressable; whether and to what extent those injuries could be netted out by other benefits is legally irrelevant.

And even if those benefits were legally relevant, the policy papers cited by Washington are not. It is well settled that a party cannot avoid summary judgment by offering "conclusory statements, speculation, and unsubstantiated assertions," *Pfau v. Gilger*, 211 F. App'x 271, 272 (5th Cir. 2006); it is *a fortiori* true that a party cannot prove that a district court's factual findings are erroneous because they allegedly conflict with advocacy papers from interest groups. The *Amici* Governors are proud of the economic and cultural benefits that hardworking immigrant families bring to our States. The way to evaluate the legal relevance of those contributions, however, is through the crucible of litigation—as the Plaintiff States did by offering more than 1,000 pages

of record material before a preliminary-injunction hearing. It is not by citing handpicked articles in the footnotes of an amicus brief.[4]

Nor can Washington undo the district court's factual findings by relying on a "fiscal note" from Nevada. *See* Washington Br. 5. Washington claims that the "fiscal note" proves that Nevada's fisc would "increase[]" if federal law required that State to give driver's licenses to undocumented immigrants. *Ibid.* A "fiscal note" is a notoriously unreliable *ex ante* estimate of the cost of implementing a statute. *See, e.g.*, *Hedgepeth v. Tennessee*, 215 F.3d 608, 613 (6th Cir. 2000) (rejecting the "fiscal note" as sheer "speculation"). Indeed, the fiscal note that Washington relies on as the lynchpin of its entire argument underestimated the costs of Nevada's licensing program by a factor of three. Far from saving Nevada a half-million dollars, *see* Washington Br. 5 (so claiming), the new licensing program actually required an affirmative appropriation of more than *$1.63 million*. *See* 2013 Nevada Laws Ch. 282, § 12 (S.B. 303) (attached as App.). That is

[4] To take just one illustration of the problem, Washington asserts that the DAPA Directive would "grow[] the tax base." Br. at 9. But the State does not explain whether and to what extent the tax base would be *reduced* by new claims for earned income tax credits and other claims for publicly provided services. *See supra* pp. 5-7. Of course, Washington would have had to answer those questions if it had intervened in this lawsuit and actually tried to prove its claims, rather than asserting them in an *amicus* brief.

the exact opposite of the "savings" and "benefits" that Washington claims.

C. Finally, the scope of the preliminary injunction is unimpeachable. "A court must find prospective relief that fits the remedy to the wrong or injury that has been established." *Salazar v. Buono*, 559 U.S. 700, 718 (2010) (opinion of Kennedy, J.). Here, the district court had jurisdiction over the Defendants and found that at least the State of Texas had satisfied all of the requirements for a preliminary injunction. It is entirely appropriate for the district court to use its equitable powers over the Defendants to protect Texas from irreparable injuries—regardless of where Defendants would try to inflict them:

> Once a court has obtained personal jurisdiction over a defendant, that court has the power to command the defendant to perform acts outside the territorial jurisdiction of the court. Thus, the district court has the power to order nationwide relief where it is required.

Extraterritorial Effect of an Injunction, 19 Fed. Proc., L. Ed. § 47:38 (collecting cases); *see also United States v. Dinwiddie*, 76 F.3d 913, 929 (8th Cir. 1996) (affirming nationwide injunction against an anti-abortion protester who "could easily frustrate the purpose and spirit of

the permanent injunction simply by stepping over state lines and engaging in similar activity at another reproductive health facility"). The Defendants in this case want to issue deferred-action documents and federal work permits that have nationwide effect; it would make no sense for the injunction not to apply nationwide.

CONCLUSION

The preliminary injunction should be affirmed.

Respectfully submitted.

/s/ James D. Blacklock

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CERTIFICATE OF COMPLIANCE

Certificate of Compliance With Type-Volume Limitation,
Type-Face Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 2,922 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Century Schoolbook.

/s/ James D. Blacklock
JAMES D. BLACKLOCK
Counsel for Amici Governors

CERTIFICATE OF SERVICE

I certify that on May 11, 2015, I served a copy of the foregoing on all counsel of record via this Court's CM/ECF system.

/s/ James D. Blacklock
JAMES D. BLACKLOCK
Counsel for Amici Governors

APPENDIX

2013 Nevada Laws Ch. 282 (S.B. 303)

Senate Bill No. 303–Senators Denis, Kihuen, Roberson, Ford, Segerblom; Atkinson, Hammond, Hardy, Hutchison, Jones, Manendo, Parks, Smith, Spearman and Woodhouse

Joint Sponsors: Assemblymen Bustamante Adams, Diaz, Flores, Elliot Anderson, Spiegel; Aizley, Benitez-Thompson, Bobzien, Dondero Loop, Eisen, Frierson, Hickey, Kirkpatrick, Munford, Neal and Pierce

CHAPTER.....

AN ACT relating to motor vehicles; providing for the issuance of a driver authorization card; establishing the contents of an application for a driver authorization card and certain instruction permits; establishing the information that must be contained on a driver authorization card and similarly obtained instruction permits; providing for the expiration and renewal of a driver authorization card; providing that certain provisions of state law which apply to drivers' licenses also apply to a driver authorization card and similarly obtained instruction permits; making an appropriation; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Department of Motor Vehicles issues multiple licenses that confer to a person the privilege of operating a vehicle, including a driver's license, instruction permit, commercial driver's license and certain limited or restricted driver's licenses or instruction permits. (NRS 483.2521, 483.267, 483.270, 483.280, 483.340, 483.360, 483.908) The federal Real ID Act of 2005 requires any driver's license or identification card issued by a state to meet certain standards to be used for federal identification or other official purposes and allows for a state to issue driver's licenses or identification cards that do not meet such standards if such licenses or cards are of a unique design and clearly state that they may not be used for federal identification or other official purposes. (Real ID Act of 2005 § 202, Pub. Law No. 109-13, 119 Stat. 302, 312-15, 49 U.S.C. 30301 note)

Section 5 of this bill sets forth requirements for applications for driver authorization cards and alternative requirements for applications for instruction permits. **Section 5** establishes the information that must be included in such applications, including, without limitation, documents that must be submitted to prove the applicant's name, age and residence in this State. **Section 5** allows an applicant to present various documents, including, without limitation, a birth certificate or passport issued by a foreign government, as proof of his or her name and age. **Section 5** provides that a driver authorization card expires 1 year after issuance or renewal. **Section 5** requires that a driver authorization card and an instruction permit obtained in accordance with **section 5** be of the same design as a driver's license with only the minimum number of changes necessary to comply with the federal Real ID Act of 2005. **Section 5** provides that any provision of title 43 of NRS that applies to a driver's license is deemed also to apply to a driver authorization card and an instruction permit obtained in accordance with **section 5**.

Section 1 of this bill prohibits the Director of the Department from releasing any information from the files and records of the Department relating to legal presence to any person or federal, state or local governmental entity for any purpose relating to the enforcement of immigration laws.

Section 12 of this bill makes an appropriation from the State Highway Fund to the Department of Motor Vehicles to pay the costs of developing and issuing driver authorization cards and similarly obtained instruction permits.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 481.063 is hereby amended to read as follows:

481.063 1. The Director may charge and collect reasonable fees for official publications of the Department and from persons making use of files and records of the Department or its various divisions for a private purpose. All money so collected must be deposited in the State Treasury for credit to the Motor Vehicle Fund.

2. Except as otherwise provided in subsection 6, the Director may release personal information, except a photograph, from a file or record relating to the driver's license, identification card, or title or registration of a vehicle of a person if the requester submits a written release from the person who holds a lien on the vehicle, or an agent of that person, or the person about whom the information is requested which is dated not more than 90 days before the date of the request. The written release must be in a form required by the Director.

3. Except as otherwise provided in subsections 2 and 4, the Director shall not release to any person who is not a representative of the Division of Welfare and Supportive Services of the Department of Health and Human Services or an officer, employee or agent of a law enforcement agency, an agent of the public defender's office or an agency of a local government which collects fines imposed for parking violations, who is not conducting an investigation pursuant to NRS 253.0415 or 253.220, who is not authorized to transact insurance pursuant to chapter 680A of NRS or who is not licensed as a private investigator pursuant to chapter 648 of NRS and conducting an investigation of an insurance claim:

(a) A list which includes license plate numbers combined with any other information in the records or files of the Department;

(b) The social security number of any person, if it is requested to facilitate the solicitation of that person to purchase a product or service; or

(c) The name, address, telephone number or any other personally identifiable information if the information is requested by the presentation of a license plate number.

➥ When such personally identifiable information is requested of a law enforcement agency by the presentation of a license plate number, the law enforcement agency shall conduct an investigation regarding the person about whom information is being requested or, as soon as practicable, provide the requester with the requested information if the requester officially reports that the motor vehicle bearing that license plate was used in a violation of NRS 205.240, 205.345, 205.380 or 205.445.

4. If a person is authorized to obtain such information pursuant to a contract entered into with the Department and if such information is requested for the purpose of an advisory notice relating to a motor vehicle or the recall of a motor vehicle or for the purpose of providing information concerning the history of a vehicle, the Director may release:

(a) A list which includes license plate numbers combined with any other information in the records or files of the Department; or

(b) The name, address, telephone number or any other personally identifiable information if the information is requested by the presentation of a license plate number.

5. Except as otherwise provided in subsections 2, 4 and 6 and NRS 483.294, 483.855 and 483.937, the Director shall not release any personal information from a file or record relating to a driver's license, identification card, or title or registration of a vehicle.

6. Except as otherwise provided in paragraph (a) and subsection 7, if a person or governmental entity provides a description of the information requested and its proposed use and signs an affidavit to that effect, the Director may release any personal information, except a photograph, from a file or record relating to a driver's license, identification card, or title or registration of a vehicle for use:

(a) By any governmental entity, including, but not limited to, any court or law enforcement agency, in carrying out its functions, or any person acting on behalf of a federal, state or local governmental agency in carrying out its functions. The personal information may include a photograph from a file or record relating to a driver's license, identification card, or title or registration of a vehicle.

(b) In connection with any civil, criminal, administrative or arbitration proceeding before any federal or state court, regulatory body, board, commission or agency, including, but not limited to,

use for service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal or state court.

(c) In connection with matters relating to:

(1) The safety of drivers of motor vehicles;

(2) Safety and thefts of motor vehicles;

(3) Emissions from motor vehicles;

(4) Alterations of products related to motor vehicles;

(5) An advisory notice relating to a motor vehicle or the recall of a motor vehicle;

(6) Monitoring the performance of motor vehicles;

(7) Parts or accessories of motor vehicles;

(8) Dealers of motor vehicles; or

(9) Removal of nonowner records from the original records of motor vehicle manufacturers.

(d) By any insurer, self-insurer or organization that provides assistance or support to an insurer or self-insurer or its agents, employees or contractors, in connection with activities relating to the rating, underwriting or investigation of claims or the prevention of fraud.

(e) In providing notice to the owners of vehicles that have been towed, repossessed or impounded.

(f) By an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license who is employed by or has applied for employment with the employer.

(g) By a private investigator, private patrol officer or security consultant who is licensed pursuant to chapter 648 of NRS, for any use permitted pursuant to this section.

(h) By a reporter or editorial employee who is employed by or affiliated with any newspaper, press association or commercially operated, federally licensed radio or television station for a journalistic purpose. The Department may not make any inquiries regarding the use of or reason for the information requested other than whether the information will be used for a journalistic purpose.

(i) In connection with an investigation conducted pursuant to NRS 253.0415 or 253.220.

(j) In activities relating to research and the production of statistical reports, if the personal information will not be published or otherwise redisclosed, or used to contact any person.

(k) In the bulk distribution of surveys, marketing material or solicitations, if the Director has adopted policies and procedures to ensure that:

(1) The information will be used or sold only for use in the bulk distribution of surveys, marketing material or solicitations;

(2) Each person about whom the information is requested has clearly been provided with an opportunity to authorize such a use; and

(3) If the person about whom the information is requested does not authorize such a use, the bulk distribution will not be directed toward that person.

7. Except as otherwise provided in paragraph (j) of subsection 6, a person who requests and receives personal information may sell or disclose that information only for a use permitted pursuant to subsection 6. Such a person shall keep and maintain for 5 years a record of:

(a) Each person to whom the information is provided; and

(b) The purpose for which that person will use the information.

➥ The record must be made available for examination by the Department at all reasonable times upon request.

8. Except as otherwise provided in subsection 2, the Director may deny any use of the files and records if the Director reasonably believes that the information taken may be used for an unwarranted invasion of a particular person's privacy.

9. Except as otherwise provided in NRS 485.316, the Director shall not allow any person to make use of information retrieved from the system created pursuant to NRS 485.313 for a private purpose and shall not in any other way release any information retrieved from that system.

10. ***The Director shall not release any information relating to legal presence or any other information relating to or describing immigration status, nationality or citizenship from a file or record relating to a request for or the issuance of a license, identification card or title or registration of a vehicle to any person or to any federal, state or local governmental entity for any purpose relating to the enforcement of immigration laws.***

11. The Director shall adopt such regulations as the Director deems necessary to carry out the purposes of this section. In addition, the Director shall, by regulation, establish a procedure whereby a person who is requesting personal information may establish an account with the Department to facilitate the person's ability to request information electronically or by written request if the person has submitted to the Department proof of employment or licensure, as applicable, and a signed and notarized affidavit acknowledging that the person:

(a) Has read and fully understands the current laws and regulations regarding the manner in which information from the Department's files and records may be obtained and the limited uses which are permitted;

(b) Understands that any sale or disclosure of information so obtained must be in accordance with the provisions of this section;

(c) Understands that a record will be maintained by the Department of any information he or she requests; and

(d) Understands that a violation of the provisions of this section is a criminal offense.

~~[11.]~~ ***12.*** It is unlawful for any person to:

(a) Make a false representation to obtain any information from the files or records of the Department.

(b) Knowingly obtain or disclose any information from the files or records of the Department for any use not permitted by the provisions of this chapter.

~~[12.]~~ ***13.*** As used in this section:

(a) ***"Information relating to legal presence" means information that may reveal whether a person is legally present in the United States, including, without limitation, whether the driver's license that a person possesses is a driver authorization card, whether the person applied for a driver's license pursuant to NRS 483.290 or section 5 of this act and the documentation used to prove name, age and residence that was provided by the person with his or her application for a driver's license.***

(b) "Personal information" means information that reveals the identity of a person, including, without limitation, his or her photograph, social security number, ***individual taxpayer identification number,*** driver's license number, identification card number, name, address, telephone number or information regarding a medical condition or disability. The term does not include the zip code of a person when separate from his or her full address, information regarding vehicular accidents or driving violations in which he or she has been involved or other information otherwise affecting his or her status as a driver.

~~[(b)]~~ ***(c)*** "Vehicle" includes, without limitation, an off-highway vehicle as defined in NRS 490.060.

Sec. 2. Chapter 483 of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. ***"Driver authorization card" means a card obtained in accordance with section 5 of this act.***

Sec. 4. *1. A person who wishes to obtain an instruction permit or a driver's license may apply using the provisions of NRS 483.290 or section 5 of this act.*

2. A person who wishes to apply for any restricted or limited license issued pursuant to this chapter may do so by:

(a) Submitting an application using the provisions of NRS 483.290 or section 5 of this act; and

(b) Fulfilling the requirements for the issuance of the restricted or limited license.

Sec. 5. *1. An application for an instruction permit or for a driver authorization card must:*

(a) Be made upon a form furnished by the Department.

(b) Be verified by the applicant before a person authorized to administer oaths. Officers and employees of the Department may administer those oaths without charge.

(c) Be accompanied by the required fee.

(d) State the name, date of birth, sex and residence address of the applicant and briefly describe the applicant.

(e) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for the suspension, revocation or refusal.

(f) Include such other information as the Department may require to determine the competency and eligibility of the applicant.

2. Every applicant must furnish proof of his or her name and age by displaying an original or certified copy of:

(a) Any one of the following documents:

(1) A birth certificate issued by a state, a political subdivision of a state, the District of Columbia or any territory of the United States;

(2) A driver's license issued by another state, the District of Columbia or any territory of the United States which is issued pursuant to the standards established by 6 C.F.R. Part 37, Subparts A to E, inclusive, and which contains a security mark approved by the United States Department of Homeland Security in accordance with 6 C.F.R. § 37.17;

(3) A passport issued by the United States Government;

(4) A military identification card or military dependent identification card issued by any branch of the Armed Forces of the United States;

(5) For persons who served in any branch of the Armed Forces of the United States, a report of separation;

(6) A Certificate of Degree of Indian Blood issued by the United States Government;

(7) A Certificate of Citizenship, Certificate of Naturalization, Permanent Resident Card or Temporary Resident Card issued by the United States Citizenship and Immigration Services of the Department of Homeland Security;

(8) A Consular Report of Birth Abroad issued by the Department of State; or

(9) Such other documentation as specified by the Department by regulation; or

(b) Any two of the following documents:

(1) A driver's license issued by another state, the District of Columbia or any territory of the United States other than such a driver's license described in subparagraph (2) of paragraph (a);

(2) A passport issued by a foreign government;

(3) A birth certificate issued by a foreign government;

(4) A consular identification card issued by the Government of Mexico or a document issued by another government that the Department determines is substantially similar; or

(5) Any other proof acceptable to the Department.

➥ No document which is written in a language other than English may be accepted by the Department pursuant to this subsection unless it is accompanied by a verified translation of the document in the English language.

3. Every applicant must prove his or her residence in this State by displaying an original or certified copy of any two of the following documents:

(a) A receipt from the rent or lease of a residence located in this State;

(b) A record from a public utility for a service address located in this State which is dated within the previous 60 days;

(c) A bank or credit card statement indicating a residential address located in this State which is dated within the previous 60 days;

(d) A stub from an employment check indicating a residential address located in this State;

(e) A document issued by an insurance company or its agent, including, without limitation, an insurance card, binder or bill, indicating a residential address located in this State;

(f) A record, receipt of bill from a medical provider indicating a residential address located in this State; or

(g) Any other document as prescribed by the Department by regulation.

4. Except as otherwise provided in subsection 5, a driver authorization card or instruction permit obtained in accordance with this section must:

(a) Contain the same information as prescribed for a driver's license pursuant to NRS 483.340 and any regulations adopted pursuant thereto;

(b) Be of the same design as a driver's license and contain only the minimum number of changes from that design that are necessary to comply with subsection 5; and

(c) Be numbered from the same sequence of numbers as a driver's license.

5. A driver authorization card or instruction permit obtained in accordance with this section must comply with the requirements of section 202(d)(11) of the Real ID Act of 2005, Public Law 109-13, Division B, Title II, 119 Stat. 302, 312-15, 49 U.S.C. § 30301 note.

6. Notwithstanding the provisions of NRS 483.380, every driver authorization card expires on the anniversary of its issuance or renewal. Every driver authorization card is renewable at any time before its expiration upon application and payment of the required fee. The Department may, by regulation, defer the expiration of the driver authorization card of a person who is on active duty in the Armed Forces of the United States upon such terms and conditions as it may prescribe. The Department may similarly defer the expiration of the driver authorization card of the spouse or dependent son or daughter of that person if the spouse or child is residing with the person.

7. A driver authorization card shall not be used to determine eligibility for any benefits, licenses or services issued or provided by this State or its political subdivisions.

8. Except as otherwise provided in this section or by specific statute, any provision of this title that applies to drivers' licenses shall be deemed to apply to a driver authorization card and an instruction permit obtained in accordance with this section.

Sec. 6. NRS 483.015 is hereby amended to read as follows:

483.015 Except as otherwise provided in NRS 483.330, the provisions of NRS 483.010 to 483.630, inclusive, ***and sections 3, 4 and 5 of this act*** apply only with respect to noncommercial drivers' licenses.

Sec. 7. NRS 483.020 is hereby amended to read as follows:

483.020 As used in NRS 483.010 to 483.630, inclusive, ***and sections 3, 4 and 5 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 483.030 to 483.190, inclusive, ***and section 3 of this act*** have the meanings ascribed to them in those sections.

Sec. 8. NRS 483.083 is hereby amended to read as follows:

483.083 "License" means any driver's license or permit to operate a vehicle issued under or granted by the laws of this State, including:

1. Any temporary license ~~[or]~~ ***;***

2. Any instruction permit ~~[; and~~

~~2.]~~ ***obtained in accordance with NRS 483.290; and***

3. The future privilege to drive a vehicle by a person who does not hold a driver's license.

Sec. 9. NRS 483.290 is hereby amended to read as follows:

483.290 1. ~~[Every]~~ ***An*** application for an instruction permit or for a driver's license must:

(a) Be made upon a form furnished by the Department.

(b) Be verified by the applicant before a person authorized to administer oaths. Officers and employees of the Department may administer those oaths without charge.

(c) Be accompanied by the required fee.

(d) State the full legal name, date of birth, sex, address of principal residence and mailing address, if different from the address of principal residence, of the applicant and briefly describe the applicant.

(e) State whether the applicant has theretofore been licensed as a driver, and, if so, when and by what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for the suspension, revocation or refusal.

(f) Include such other information as the Department may require to determine the competency and eligibility of the applicant.

2. Every applicant must furnish proof of his or her full legal name and age by displaying an original or certified copy of the required documents as prescribed by regulation.

3. The Department shall adopt regulations prescribing the documents an applicant may use to furnish proof of his or her full legal name and age to the Department.

4. At the time of applying for a driver's license, an applicant may, if eligible, register to vote pursuant to NRS 293.524.

5. Every applicant who has been assigned a social security number must furnish proof of his or her social security number by displaying:

(a) An original card issued to the applicant by the Social Security Administration bearing the social security number of the applicant; or

(b) Other proof acceptable to the Department, including, without limitation, records of employment or federal income tax returns.

6. The Department may refuse to accept a driver's license issued by another state, the District of Columbia or any territory of the United States if the Department determines that the other state, the District of Columbia or the territory of the United States has less stringent standards than the State of Nevada for the issuance of a driver's license.

7. With respect to any document presented by a person who was born outside of the United States to prove his or her full legal name and age, the Department:

(a) May, if the document has expired, refuse to accept the document or refuse to issue a driver's license to the person presenting the document, or both; and

(b) Shall issue to the person presenting the document a driver's license that is valid only during the time the applicant is authorized to stay in the United States, or if there is no definite end to the time the applicant is authorized to stay, the driver's license is valid for 1 year beginning on the date of issuance.

8. The Administrator shall adopt regulations setting forth criteria pursuant to which the Department will issue or refuse to issue a driver's license in accordance with this section to a person who is a citizen of any state, the District of Columbia, any territory of the United States or a foreign country. The criteria pursuant to which the Department shall issue or refuse to issue a driver's license to a citizen of a foreign country must be based upon the purpose for which that person is present within the United States.

9. Notwithstanding any other provision of this section, the Department shall not accept a consular identification card as proof of the age or identity of an applicant for an instruction permit or for a driver's license. As used in this subsection, "consular identification card" has the meaning ascribed to it in NRS 232.006.

Sec. 10. NRS 483.292 is hereby amended to read as follows:

483.292 1. When a person applies to the Department for an instruction permit or driver's license pursuant to NRS 483.290 ~~[,]~~ ***or section 5 of this act,*** the Department shall inquire whether the

person desires to declare that he or she is a veteran of the Armed Forces of the United States.

2. If the person desires to declare pursuant to subsection 1 that he or she is a veteran of the Armed Forces of the United States, the person shall provide evidence satisfactory to the Department that he or she has been honorably discharged from the Armed Forces of the United States.

3. If the person declares pursuant to subsection 1 that he or she is a veteran of the Armed Forces of the United States, the Department shall count the declaration and maintain it only numerically in a record kept by the Department for that purpose.

4. The Department shall, at least once each quarter:

(a) Compile the aggregate number of persons who have, during the immediately preceding quarter, declared pursuant to subsection 1 that they are veterans of the Armed Forces of the United States; and

(b) Transmit that number to the Office of Veterans Services to be used for statistical purposes.

Sec. 11. NRS 483.620 is hereby amended to read as follows:

483.620 It is a misdemeanor for any person to violate any of the provisions of NRS 483.010 to 483.630, inclusive, ***and sections 3, 4 and 5 of this act,*** unless such violation is, by NRS 483.010 to 483.630, inclusive, ***and sections 3, 4 and 5 of this act,*** or other law of this State, declared to be a felony.

Sec. 12. 1. There is hereby appropriated from the State Highway Fund to the Department of Motor Vehicles the following sums to pay the costs of developing and issuing driver authorization cards and instruction permits pursuant to the provisions of this act:

For the Fiscal Year 2013-2014 ..... $739,110

For the Fiscal Year 2014-2015 ..... $893,852

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 19, 2014, and September 18, 2015, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State Highway Fund on or before September 19, 2014, and September 18, 2015, respectively.

Sec. 13. 1. This section becomes effective upon passage and approval.

2. Section 12 of this act becomes effective on July 1, 2013.

3. Sections 1 to 11, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2014, for all other purposes.