

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI CIVIL DIVISION**

**Case No. 1:12-cv-22282-WJZ**  
Honorable Judge William J. Zloch

KARLA VANESSA ARCIA, an individual,  
MELANDE ANTOINE, an individual, VEYE  
YO, a civic organization based in Miami-  
Dade County, FLORIDA IMMIGRANT  
COALITION, INC., a Florida non-profit  
corporation, NATIONAL CONGRESS FOR  
PUERTO RICAN RIGHTS, a Pennsylvania  
non-profit corporation, FLORIDA NEW  
MAJORITY, INC., a Florida non-profit  
corporation, and 1199SEIU UNITED  
HEALTHCARE WORKERS EAST, a Labor  
Union,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as  
Florida Secretary of State,

Defendant.

**JOINT PRETRIAL STIPULATION**

As noted below, all parties agree that the issue in this action presents a pure legal question and that a trial is unnecessary. This Joint Pretrial Stipulation is nonetheless filed in accordance with this Court's Order (ECF No. 36).

**(1) a. Plaintiffs' Statement of the Case**

This is a case of statutory construction. Defendant Ken Detzner, Florida's Secretary of State, has initiated a process that is attempting to systematically purge non-citizens from the voter rolls in Florida within 90 days of a federal election. Because of the risks that systematic purges like this one will erroneously remove *eligible* voters without time to correct the errors,

Congress prohibited such systematic purges . It thus prohibited “*any* program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters” fewer than “90 days prior to the date of a primary or general election for Federal office.” 42 U.S.C. § 1973gg-6(c)(2)(A). Based on that provision, Plaintiffs are entitled to an injunction to stop Defendants’ systematic purge.

**b. Defendant’s Statement of the Case**

This is a case of statutory construction. Both state and federal law require Defendant to safeguard the integrity of Florida’s electoral process by identifying ineligible individuals on Florida’s voter rolls, including individuals ineligible to vote because they are not United States citizens. If the Secretary receives information that a registered voter may be ineligible, state law requires a county supervisor of elections to follow a careful notice-and-hearing process before making a determination regarding whether the person should be removed from the voter rolls.

Plaintiffs claim that the National Voter Registration Act (NVRA) prohibits the Secretary from engaging in efforts to identify and remove non-citizens from the voter rolls within 90 days of an election for federal office. This interpretation fundamentally misconstrues the NVRA. As found by District Judge Robert Hinkle in a case raising an identical claim earlier this year, the NVRA “does not prohibit a state from systematically removing improperly registered noncitizens during the quiet period.” *United States of America v. State of Florida et al.*, Case No. 12-CV-0285) (N.D. Fla. June 28, 2012). Judge Hinkle’s Order denying the Justice Department’s motion for a temporary restraining order continued:

For noncitizens, the state’s duty is to maintain an accurate voting list *See, e.g.*, 42 U.S.C. § 1973gg-6(b).A state can and should do that on the front end, blocking a noncitizen from registering in the first place. And if a state finds it has made an error—or a number of errors—and wishes to correct the problem, it should do so well in advance. But the NVRA does not require a state to allow a

noncitizen to vote just because the state did not catch the error more than 90 days in advance.

*See id.* Accordingly, Plaintiffs' are not entitled to relief. Judgment should be entered in favor of the Defendant.

**(2) Jurisdiction**

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as a case arising under the laws of the United States; and under 28 U.S.C. § 1343(a)(4), as a case seeking equitable and other relief pursuant to an act of Congress providing for the protection of the right to vote. Section 11(b) of the NVRA, 42 U.S.C. § 1973gg-9(b), creates a private right of action for parties who are aggrieved by a violation of the Act.

**(3) Pleadings Raising the Issue**

- Plaintiffs' First Amended Complaint

**(4) Undisposed Motions**

- Plaintiffs' Motion for Preliminary Injunction, or, in the Alternative, Motion for Summary Judgment
- Motion to Expedite Preliminary Injunction Proceedings and for Temporary Restraining Order
- Motion to Vacate Order Referring Case to Mediation
- Motion of Bipartisan Group of Voters Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, and Barbara A. Dereuil for Intervention Under Federal Rule of Civil Procedure 24

**(5) Uncontested Facts** (For purposes of this pre-trial stipulation, the parties stipulate to the following facts; for purpose of summary judgment, Defendant will respond to Plaintiff's statement of undisputed facts and there may be additional facts that are undisputed).

1. Defendant KEN DETZNER is Florida's Secretary of State. In his capacity as Secretary, Detzner is the chief election officer of the State. He is responsible for the

administration of state laws that affect voting and for ensuring that elections in Florida are conducted according to law. Fla. Stat. § 92.012. He is responsible for coordinating Florida's duties and responsibilities under the National Voter Registration Act of 1993 (NVRA).

2. The individual Plaintiffs, Karla Vanessa Arcia and Melande Antoine, are registered to vote and have voted in Florida. They were on the list of 2,625 potential non-citizens that Defendant sent to the SOEs in April.

3. Plaintiff VEYE YO ("VEYE YO"), is a Miami-Dade County-based civic organization that is affiliated with the Haitian-American Grassroots Coalition. It has an office in Miami-Dade County, Florida, and individual members throughout South Florida. .

4. Plaintiff FLORIDA IMMIGRANT COALITION, INC. ("FLIC"), is a Florida non-profit corporation with its principal office in Miami-Dade County, Florida, and with member organizations located throughout the State of Florida.

5. Plaintiff the NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS ("NCPRR") is a Pennsylvania non-profit corporation and membership organization. NCPRR has chapters across the United States, including Central and Southern Florida.

6. Plaintiff FLORIDA NEW MAJORITY, INC. ("FNM"), is a Florida non-profit corporation and membership organization with its principal office in Miami-Dade County, Florida.

7. Plaintiff 1199SEIU UNITED HEALTHCARE WORKERS EAST ("1199SEIU") is a labor union that represents 25,000 healthcare workers, as well as an additional 7,400 retired members, in the State of Florida. 1199SEIU has members in 43 out of the 67 counties in Florida, including, but not limited to, the counties in this District.

8. Plaintiffs filed this lawsuit on June 19, 2012, and filed their First Amended Complaint on September 12, 2012, alleging a violation of Section 8(c)(2)(A) of the NVRA, 42 U.S.C. § 1973gg-6(c)(2)(A).

9. The next federal election in Florida will take place on November 6, 2012, which is fewer than 90 days from the date of this filing.

**(6) Disputed Issues of Fact**

The parties agree that this action involves a pure question of law under Section 8(c)(2)(A) of the NVRA, 42 U.S.C. § 1973gg-6(c)(2)(A).

**(7) Uncontested Issues of Law**

- None.

**(8) Disputed Issues of Law**

Whether Defendant's identification of and notice to supervisors of elections of potential noncitizens, specifically including identification and notice based on use of the SAVE database, is a "program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" fewer than "90 days prior to the date of a primary or general election for Federal office." 42 U.S.C. § 1973gg-6(c)(2)(A)..

**(9) Trial Exhibits**

**a. Plaintiffs**

Exhibits Plaintiffs Expect to Offer

1. National Voter Registration Act ("Motor Voter law"), 42 U.S.C. 1973gg to 1973gg-10.
2. List of 180,506 names of potential non-citizens prepared by Florida Department of State, received in the mail on a CD rom as .txt file ("PR\_Redacted\_HSMV\_IMMIGRANT\_180506.txt"), created by DOS and received as a public records request from Chris Cate on 9/7/2012. Objection: R
3. List of 2,625 names of potential non-citizens prepared by Florida Department of State, received as two Excel files ("DHSMV Potential Non-Citizen File A.xlsx" and "DHSMV Potential Non-Citizen File B.xlsx"), created by DOS and received as a forwarded public records request from Chris Cate on 5/10/2012. Objection: R
4. "6.14.2012 Voters Removed for Being a NonCitizen.xls," created by DOS on 6/7/2012 and last modified by Chris Cate on 6/14/2012, received as a public records request from Chris Cate on 6/19/2012. Objection: R
5. List of potential Miami-Dade non-citizens, received as an Excel file ("noncitizenlistfromDade.xlsx," created by Michelle McClain, as a forwarded public records request from Mami-Dade County Supervisor of Elections on 6/1/2012. Objection: R
6. December 31, 2011 Florida voter file. "Voter File 1/2012 (Data as of 12/31/2011)," CD rom received as a "hand pick-up" from FDOS in Tallahassee on 1/27/2012. Objection: R
7. Brennan Center Report, Voting Purges, Myrna Perez (Sept. 30, 2008), available at [http://brennan.3cdn.net/5de1bb5cbe2c40cb0c\\_s0m6bqskv.pdf](http://brennan.3cdn.net/5de1bb5cbe2c40cb0c_s0m6bqskv.pdf) (accessed last September 18, 2012). Objection: R, H
8. Ken Detzner, Secretary of State, Florida Department of State, "Letter to The Honorable Janet Napolitano, U.S. Department of Homeland Security," June 19, 2012, available [http://www.dos.state.fl.us/news/communications/pressRelease/pdf/6-19-2012\\_Sec\\_Detzner\\_Letter\\_to\\_DHS\\_Sec\\_Napolitano.pdf](http://www.dos.state.fl.us/news/communications/pressRelease/pdf/6-19-2012_Sec_Detzner_Letter_to_DHS_Sec_Napolitano.pdf) (last accessed August 31, 2012). Objection: R, H
9. Secretary of State Detzner and Dr. Gisela Salas, Florida Department of State, PowerPoint Presentation, "Processing Ineligible Registered Voters-

Non-Immigrants,” Presented by Dr. Christopher Sharp, Chief Bureau of Voter Registration Services, April 2012. Objection: R, H

10. Email from Eddie Phillips to Supervisors of Elections, re List Maintenance of Potential Non-Citizen Matches, April 23, 2012. Objection: R, H
11. Florida Department of State, Model Letter, Notification of Alleged Non-Citizenship, as emailed to Supervisors of Elections, April 23, 2012. Objection: R, H
12. Florida Department of State, Model Voter Eligibility Form, as emailed to Supervisors of Elections, April 23, 2012. Objection: R, H
13. Florida Department of State Presentation, List Maintenance Categories and Procedures, Dr. Gisela Salas and Maria Matthews, May 2012. Objection: R, H
14. U.S. Citizenship and Immigration Services, Systematic Alien Verification for Entitlements Program, Web 3 Presentation. Objection: R, H
15. Ken Detzner, Secretary of State, Florida Department of State, “Letter to Florida Supervisors of Elections,” July 14, 2014. Available at <http://electionsmith.files.wordpress.com/2012/07/7-14-2012-letter-to-supervisors-regarding-save1.pdf> (Accessed last September 18, 2012). Objection: R, H
16. Secretary of State Detzner and Maria Matthews, PowerPoint Presentation, Identification Process of Potential Non-U.S. Citizens and SAVE Verification and Access, September 2012. Objection: R, H
17. AP, “Florida: Voter Purge Results in Countersuits,” June 11, 2012. Available at [http://www.nytimes.com/2012/06/12/us/florida-voter-purge-results-in-countersuits.html?\\_r=0](http://www.nytimes.com/2012/06/12/us/florida-voter-purge-results-in-countersuits.html?_r=0) (last accessed September 9, 2012). Objection: R, H
18. Steve Bousquet, “12,165 now on Florida's 'no match' vote list,” Tampa Bay Times, October 28, 2008. Available at <http://www.tampabay.com/news/politics/state/article877094.ece> (last accessed September 18, 2012). Objection: R, H
19. Steve Bousquet, “State won't release larger list of possible non-citizen voters,” *Tampa Bay Times*, June 26, 2012. Available at <http://www.tampabay.com/news/politics/elections/state-wont-release-larger-list-of-possible-noncitizen-voters/1237192> (last accessed September 9, 2012). Objection: R, H

20. Robbie Brown, *Florida Halts Its Search for Violations of Voter Law*, NY TIMES, A13 (Jun. 9, 2012), available at <http://www.nytimes.com/2012/06/09/us/politics/florida-stops-search-for-ineligible-voters-on-list.html> (accessed last September 18, 2012).  
Objection: R, H
21. Marc Caputo, "Florida voters roll listed Gov. Rick Scott as dead in 2006," Miami Herald, June 15, 2012. Available at <http://www.miamiherald.com/2012/06/15/2850710/florida-voter-roll-listed-gov.html#storylink=cpy> (accessed last September 18, 2012).  
Objection: R, H
22. Florida Department of State Press Office, "Florida's Voter Eligibility Initiative Confirms 207 Non-citizens on Voter Rolls Using SAVE Database, Around 8 Percent of Voters Checked," September 12, 2012 (email sent by DOSPressOffice@dos.myflorida.com at 2:46 PM). Objection: R, H
23. Barbara Geddes, "How the cases you choose affect the answers you get: Selection bias in comparative politics," *Political Analysis*, 2 (1990): pp. 131-150. Objection: R, H
24. Lisa Getter, "Florida Net Too Wide in Purge of Voter Rolls," The Los Angeles Times, May 21, 2012. Available at <http://articles.latimes.com/2001/may/21/news/mn-620> (last accessed September 18, 2012). Objection: R, H
25. Paul Koring, "Canadian the only illegal alien caught in U.S. fake-voter dragnet," The Globe and Mail, September 10, 2012. Available at <http://www.theglobeandmail.com/news/world/us-election/canadian-the-only-illegal-alien-caught-in-us-fake-voter-dragnet/article4531032/> (accessed last September 18, 2012). Objection: R, H
26. Lynn Hatter, *Florida Moves Forward with Voter Purge After Feds Grant Access to Database*, WFSU (August 16, 2012), available at <http://news.wfsu.org/post/florida-moves-forward-voter-purge-after-feds-grant-access-database> (last accessed Aug. 30, 2012)). Objection: R, H
27. Janet Buttolph Johnson and H.T. Reynolds (with Jason D. Mycoff), *Political Science Research Methods*, 6th ed. Washington, D.C.: CQ Press, 2008, pp. 217-19. Objection: R, H
28. Gary King, Robert O. Keohane, and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, NJ: Princeton University Press, 1994. Objection: R, H



29. Michael P. McDonald and Justin Levitt, "Seeing Double Voting: An Extension of the Birthday Problem," *Election Law Journal* 7 (2008): 111-22. Objection: R, H
30. Tweet® of Daniel A. Smith (@electionsmith) to @brianjburgess, June 20, 2012, 5:56 p.m., available at <http://de.twitter.com/electionsmith/status/215605407777959936> (last accessed September 9, 2012). Objection: R, H
31. Tweet® of Brian J. Burgess (@brianjburgess) to @electionsmith, June 20, 2012, 5:56pm, available at <http://de.twitter.com/brianjburgess/status/215609141799026688> (last accessed September 9, 2012). Objection: R, H
32. Letter from Miami-Dade County Supervisor of Elections to Melande Antoine notifying her of her alleged non-citizenship. Objection: R, H
33. Memorandum of Agreement between Florida Department of State and U.S. Department of Homeland Security, August 14, 2012.

Exhibits Plaintiffs May Offer if the Need Arises

34. Florida Voter Registration Application, available at <http://election.dos.state.fl.us/pdf/webappform.pdf> (last accessed September 18, 2012)
35. Stipulation of the Parties, *Arcia v. Detzner*, No. 1:12-cv-22282-WJZ (S.D. Fla. 2012), September 12, 2012.
36. Letter from Marc Goldman *et al.* to Secretary Ken Detzner re: *Arcia v. Florida Secretary of State*, No. 12-cv-22282 (S.D. Fla. filed June 19, 2012), August 3, 2012.
37. Any and all exhibits, papers, records, or writings attached to, filed with, or referenced in Plaintiffs' prior filings in this case. Objection: R
38. Any and all exhibits, papers, records, or writings filed with the Court in *United States v. Florida*, No. 4:12-cv-00285-RH-CAS (N.D. Fla. 2012), or *Mia Familia Vota Education Fund v. Detzner*, No. 8:12-cv-01294-JDW-MAP (M.D. Fla. 2012). Objection: R
39. All expert witness reports and materials generated in preparation for trial of this lawsuit.
40. Any newly discovered evidence, records, reports, and exhibits. Objection: UP

41. Applicable Florida Statutes, Federal statutes, and all applicable ordinances, including but not limited to the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (2002).
42. All papers, records, and writings provided by Defendant to Plaintiffs in this case and/or attached to pleadings, papers, motions or other filings in this case.

Plaintiffs reserve the right to supplement and/or amend this Exhibit List. Plaintiffs further reserve the right to use any exhibits listed by any other party.

**b. Defendant**

As described above, this action presents a pure legal question on which no trial is warranted. Accordingly, Defendant does not intend to offer any exhibits. Defendant reserves the right, however, to introduce rebuttal exhibits as necessary in the event of a trial.

**(10) Trial Witnesses**

**a. Plaintiffs**

Witnesses/Affiants Plaintiffs Expect to Present

1. Professor Daniel A. Smith, ElectionSmith, Inc., 1614 NW 14th Ave, Gainesville, Florida 32605, 352-283-6482 (expert witness)
2. Ion V. Sancho, Supervisor of Elections, Leon County, 315 South Calhoun Street, Suite 110, Tallahassee, Florida 32301, 850- 606-8683

Witnesses Plaintiffs May Call if the Need Arises

Plaintiffs may and hereby reserve the right to call as witnesses the parties to this lawsuit and/or their authorized representatives, including but not limited to the following.

3. Badili Jones, Political Alliance Officer, Florida New Majority, 8330 Biscayne Blvd, Suite 1, Miami, Florida 33138, 305-754-0118.
4. Maria del Rosario Rodriguez, Executive Director, Florida Immigrant Coalition, 2800 Biscayne Blvd, Suite 800, Miami, Florida 33137, 305-571-7254.
5. Tony Jeanthenor, Vice Chairman, Veye Yo, 39 NW 54th Street, Miami, Florida 33137, 305-759-1126.

6. Wilfredo Seda, Chair, National Congress for Puerto Rican Rights, 4322 North 5th Street, Philadelphia, PA 19140, 305-401-5612
7. Dale Ewart, Assistant Regional Director, 1199SEIU, United Healthcare East, Florida Region, 14645 NW 77th Avenue, Suite 201, Miami Lakes, FL 33014, 305-785-1951
8. Plaintiff Karla Vanessa Arcia, 9967 NW 25th Ave, Miami, FL 33147, 786-879-4752
9. Plaintiff Melande Antoine, 301 NE 152nd Street, Miami, FL 33162, 305-409-6194

Plaintiffs reserve the right to call any and all expert witnesses and fact witnesses listed by any parties of this lawsuit. Plaintiffs reserve the right to call any and all witnesses arising out of discovery not completed to date. Plaintiffs reserve the right to call impeachment and rebuttal witnesses, as necessary. Plaintiffs reserve the right to amend and/or supplement this Witness List as any time in the future.

**b. Defendant**

As described above, this action presents a pure legal question on which no trial is warranted. Accordingly, Defendant does not intend to offer any witnesses. Defendant reserves the right, however, to offer rebuttal witnesses as necessary in the event of a trial and to cross-examine any witnesses Plaintiffs offer.

**(11) Estimated Trial Time**

The parties do not believe that a trial is necessary in this case. If there were to be a trial, Plaintiffs estimate that it would take two days.

**(12) Attorneys' Fees**

Plaintiffs represent that if they are the prevailing party under their NVRA claim, the maximum amount they would be entitled to by way of attorneys' fees would be \$550,000.

Dated: September 21, 2012

Respectfully submitted,

/s/ Daniel E. Nordby

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on September 21, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: September 21, 2012

By: /s/ Daniel E. Nordby  
Daniel E. Nordby