AMERICAN CIVIL LIBERTIES UNION of COLORADO FOUNDATION

Rehan Hasan, Chair • Mark Silverstein, Legal Director

January 19, 2010

Roxy Huber, Executive Director
Colorado Department of Revenue
1375 Sherman St.
Denver, CO 80261
By email to edo@spike.dor.state.co.us and United States mail

Dear Director Huber:

We write regarding a Department of Revenue policy that is unreasonably interfering with the ability of thousands of young persons to obtain Colorado state identification cards and driver's licenses. The policy discriminates unjustifiably against American-born children who are Colorado residents and United States citizens, but whose immigrant parents may not be in compliance with federal immigration laws. Thus, the policy unjustly punishes children because of their parents' immigration status. We ask that that you reconsider that policy and that you meet with us to discuss possible changes.

The Department of Revenue requires applicants for state identification cards ("ID's") or driver's licenses ("DL's") to prove four "elements": identity, age, name, and lawful presence in the United States. Applicants can meet this requirement either through a single "stand alone" document that contains proof of all four elements, or through a combination of documents, each one of which might satisfy one or more of the four elements.

The "stand alone" documents accepted by the Department include previously-issued Colorado DL's and ID's, passports, or immigration documents. Young persons born in the United States who are seeking their first driver's license or first state-issued identification card rarely will have any of these "stand alone" documents. Thus, young citizens usually must rely on a combination of documents to prove their identity, age, name, and lawful presence.

Minors born in the United States can usually demonstrate their age, name, and lawful presence by presenting a birth certificate. The Department makes it much harder, however, for minors to prove their "identity." The Department's list of documents acceptable for proving "identity" includes expired DL's or ID's, military ID cards, veteran's cards, or prison ID cards. Minors will not have any of these cards. For most minors, the Department provides only one option to prove their "identity": a parent or guardian must appear in person at a DMV office to fill out and sign an affidavit attesting to the "identity" of the minor.

The problem is that the Department unreasonably and unjustifiably refuses to accept the affidavits of a large category parents—probably numbering in the thousands—whose children meet all the statutory requirements for ID's or DL's. The Department rejects the parents' affidavits based on a Department regulation which states: "The affiant [the parent] must provide

identification consistent with these rules." 1 CCR 204-13, Section 2.3.2.7. While that requirement may sound innocuous, it is not. The forms of identification that are "consistent with these rules" are limited to forms of identification that can be obtained only by demonstrating proof of lawful presence in the United States.

When the parents cannot prove their lawful presence, they cannot obtain the specific types of identification the Department requires. As a result, the Department refuses to accept the parents' affidavits as proof of their child's "identity." In these cases, because of their parents' immigration status, the citizen children are denied an identification card or a driver's license.

The ACLU has received complaints and multiple reports of high-school-age citizens who were denied ID cards or driver's licenses on these grounds. The minors were born in the United States and have lived here their entire lives. Their parents' affidavits were rejected, not because there was any doubt that the affidavit accurately established the child's "identity," but solely on the ground that the parents provided "unacceptable" identification for themselves, such as a photo ID provided by the Mexican consulate. We have also received reports that DMV workers have treated such parents with hostility and have threatened to call federal immigration authorities.

The Department must relax its unjustified requirements and stop discriminating against American citizen teenagers because of their parents' immigration status. There is no justification for rejecting the parents' affidavits simply because the parents cannot produce a certain type of ID card. An affidavit is a sworn statement made under penalty of perjury. It is the paper equivalent of testimony in court. Our courts accept testimony without regard to immigration status. Our courts cannot and do not exclude testimony simply because the witnesses may be unable to obtain certain forms of ID. There is no reason why the Department should reject the sworn testimony of parents who attest, in affidavit form, to the identity of their citizen children, simply because the parents cannot provide a particular form of identification that appears on a narrowly circumscribed list.

Under the Department's regulations, minors who fail to prove their identity to the Department's satisfaction are eligible to invoke a procedure called "exception processing," which is described in section 5.0 of regulation 1 CCR 204-13. The availability of that procedure is inadequate, however, for several reasons.

First, when parents' affidavits have been rejected for the reasons discussed above, it appears that personnel at the Division of Motor Vehicles have not consistently advised the applicants that exception processing was an available procedure. The ACLU has interviewed young persons who left the DMV office thinking they had reached a dead end.

Second, "exception processing" should be reserved for the exceptional case. It should be reserved for cases that merit individual attention because the generally-applied procedures may result in an unjust denial of an application. In this case, however, there are thousands of young citizens in Colorado whose parents are not able to meet the Department's unjustifiably strict requirements for signing the required affidavits. The Department must revise the generally-applied requirements instead of putting thousands of applicants through the extra inconvenience and uncertainty of a special procedure.

Finally, because the Department's regulations governing "exception processing" are vague, they leave room to doubt whether the young applicants discussed in this letter will be able to provide the kind of proof of their identity that will satisfy the Department. Although the regulation recognizes a wider range of information as *evidence* of identity, it does not explain when that evidence will be deemed sufficient. For example, the regulation provides that the Department can consider an applicant's tax return and an employee W-2 form, or a school-issued ID card, but the regulation does not state that such evidence is conclusive. 1 CCR 204-13, Section 5.2.1. Accordingly, applicants attempting to prove their own identity in "exception processing" cannot confidently rely on any particular form of evidence. Instead, they must devote the considerable time and expense required to gather up each and every scrap of potential evidence of identity that is mentioned in the Department's regulations, including "expired documents, court documents, religious records, early school records, hospital records, municipal records, and insurance records." 1 CCR 204-13, Section 5.2.7. It is not fair to force thousands of young citizens to submit to this daunting, time-consuming, uncertain, and anxiety-prone procedure simply because of their parents' immigration status.

The Department of Revenue should change its policy, and, if necessary, its published regulation. Parents who come to the Department to sign affidavits attesting to the "identity" of their children should not be turned away as long as they can present "satisfactory evidence" of their own identity. *See* Colo. Rev. Stat. § 12-55-110(4)(b) (setting out "satisfactory evidence" of identity as the standard for a sworn and notarized document). Such "satisfactory evidence" is not and should not be limited to identification documents that require proof of legal presence. Indeed, the Department recognizes as much in its regulation regarding "exception processing," which contemplates numerous alternative means to satisfy the Department's standards. *See* 1 CCR 204-13, Section 5.2 *et seq*. In the alternative, or in addition, the Department could allow "identity" to be established by an affidavit from a close relative or family friend who has known the applicant for many years.

We are convinced that there are potential solutions that would alleviate the problem we identify in this letter without compromising the Department's standards and objectives. We would like to meet with you to discuss the Department's policy and the possibility of revision. We look forward to your reply.

Sincerely,

Mark Silverstein,
Legal Director

Taylor Pendergrass,
Staff Attorney