

**UNITED STATES DISTRICT COURT OF EASTERN KENTUCKY**

CASE No: \_\_\_\_\_

**Dr. DAVID DUNCAN, WENDY DEVIER,  
AND JENEAN MCBREARTY,**

Plaintiffs/Petitioners

**PETITION FOR WRIT OF  
MANDATE FOR ENFORCEMENT  
OF US 8 CHAPTER 14 Sec. 1621 (d)**

v.

**LEXINGTON FAYETTE URBAN  
COUNTY GOVERNMENT; LEXINGTON-  
FAYETTE COUNTY HEALTH DEPARTMENT;  
COMMONWEALTH OF KENTUCKY OFFICE OF  
VOCATIONAL REHABILITATION KMDEP,**

Defendants/Respondents

The Writ of Mandate is appropriate in cases where government has a duty, and fails to execute that duty, where citizens have an interest in government performing that duty, where there is no other speedy and effective remedy available to citizens to compel the government to perform its duty, and where irrevocable harm will result if government does not perform its duty. This Court has jurisdiction because only a federal court can compel state and local governments to comply with federal law, when that law pertains to state and local governments and provides for no immunity. Petitioners come now to

request that this Court enforce federal Immigration Law as codified in US 8, Chapter 14, Section 1621(d), which pertains to public benefits given to illegal aliens.

## **DUTY**

### **According to US 8 1101: VERIFICATION OF ELIGIBILITY FOR BENEFITS**

The law denies most government benefits to illegal aliens. The government has a duty to assure that taxpayer-supported public assistance programs are not abused. As with work authorization, enforcement of eligibility requirements relies upon a credible system of verification. The INS, working with the White House Interagency Working Group on Immigration as appropriate, shall review means of improving the existing benefits verification program. In addition, we will seek new mechanisms – including increased penalties for false information used to qualify for benefits - to protect the integrity of public programs.

The Commonwealth of Kentucky, and its governmental entities and agencies, has a non-discretionary duty to withhold state and local benefits to illegal aliens unless it enacts a law that affirmatively grants eligibility to illegal aliens as stated in US Title 8 Aliens and Nationality (EXHIBIT 1):

### **CHAPTER 14--RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS - SUBCHAPTER II--ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS**

Sec. 1621. Aliens who are not qualified aliens or non immigrants are ineligible for State and local public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not--

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits. (See Footnote 1 for definition of public benefits):

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

Respondents, Lexington Fayette Urban County Government (LFUCG), Lexington-Fayette County Health Department and State of Kentucky Office of Vocational Rehabilitation are government entities that receive federal money for a variety of purposes, are subject to federal law regarding illegal immigration, and the Commonwealth of Kentucky has not enacted a state law that affirmatively provides for such eligibility for public services to illegal aliens. Respondents provide no mechanisms for determining eligibility for public benefits to non-eligible aliens through the following agencies.

## **BREACH OF DUTY**

### **LEXINGTON-FAYETTE COUNTY HEALTH DEPARTMENT**

Immigration law clearly defines the kinds of services Health Departments are allowed to give to ineligible aliens: emergency services, immunizations, and the testing and treatment of communicable diseases.

Footnote (1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means - (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

**Sec. 1611. Aliens who are not qualified aliens ineligible for Federal public benefits**

(1) Subsection (a) of this section shall not apply with respect to the following Federal public benefits:

(A) Medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] (or any successor program to such

title) for care and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of such Act [42 U.S.C. 1396b(v)(3)]) of the alien involved and are not related to an organ transplant procedure, if the alien involved otherwise meets the eligibility requirements for medical assistance under the State plan ....

(C) Public health assistance (not including any assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

The Lexington-Fayette Health Department, provides a number of non-emergency services as such as Community Health staff home visitation for education and support of newborns, cancer testing ( a non-communicable disease), pregnancy tests, and WIC benefits. (EXHIBIT 2 p- 4) And, on June 29, 2007, Melinda Rowe stated that:

The Divisions are not required to report patients by race and ethnicity as a condition of participating in various grant programs. (EXHIBIT 2, p-1)

On June 25, 2007, Rice C. Leach MD, Executive Director of Lexington-Fayette County Health stated:

The center is required to report patients by Race, Ethnicity, and Language as a condition of participating in the HRSA grant program, but is not required to determine whether these patients are immigrants, citizens, or undocumented

aliens. (EXHIBIT 2, p-2) ....Some patients decline to report social security numbers for whatever reason.

HRSA grant money is from the United States Department of Health and Human Services, a federal agency, and thus Leach's position is clearly erroneous. Illegal aliens, as noted above are not entitled to federal benefits, and the Lexington-Fayette governmental personnel are used to provide services and their wages are paid by the taxpayers of Lexington-Fayette. (See Declarations of David Duncan and Wendy DeVier attached as EXHIBITS 4 & 5)

**COMMONWEALTH OF KENTUCKY OFFICE OF VOCATIONAL REHABILITATION KMDEP**

The KMDEP literature of the clearly identifies migrant workers as its target population, and will not reveal what, if any, mechanisms are in place to determine eligibility for Commonwealth rehabilitative services. (EXHIBIT 3) Additionally, the KMDEP states that no undocumented workers are provided services even though the KMDEP relies on individuals to "indicate" that they do not have the legal ability to work in the United States rather than to prove themselves eligible.

Petitioners David Duncan and Jenean McBrearty are both 100% disabled and have applied for rehabilitative services through Vocational Rehabilitation. Duncan was denied and McBrearty has received limited services. The application process included producing a valid picture ID (Driver's license) and a Social Security card/number to be eligible for benefits. Thus, petitioners were required to prove eligibility, whereas the applicants in the MDEP program are not.

This is clearly a violation of equal protection and due process as there exists a double standard for proving eligibility for services. If citizens must prove they are

eligible, then all applicants must prove there are eligible through a uniform and reliable system.

Such a system exists for employers and can be accessed by governments and their agencies:

E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

**NO OTHER SPEEDY EFFECTIVE REMEDY AND IRREPARABLE HARM**

The Petitioners state by filing this petition, they assert they have no other speedy and effective way to compel the LFUCG and its agencies to stop providing public benefits and services to illegal aliens, and that they have suffered and continue to suffer damages in the form of higher taxes, and fewer services for legal Kentuckians from the provision of these benefits and services to ineligible illegal aliens. The Commonwealth of Kentucky is facing a 225 million dollar deficit in its budget, LFUCG a 5-7 million dollar deficit in FY2008, and a 25-30 million deficit in FY 2009. Removing illegal aliens from the rosters of eligibility will save the Petitioners, and other Kentuckians taxes, and provide more services to legal Kentucky citizens.

It is impossible for Petitioners to force the Lexington-Fayette Urban County Government and its agencies to comply with federal immigration laws as the LFUCG maintains a “sanctuary city” policy by having no policy at all, and refusing to work with ICE to curb illegal immigration. As evidence of this, Petitioners point to the Mayor’s Commission that issued a report, with findings and recommendations that was paid for by taxpayers and then shelved by the Mayor.

**REMEDY**

**WHEREFORE:** Petitioners ask the Court to provide the following remedies:

1. Order the Lexington-Fayette Urban County Government immediately to halt all non-exempt and/or non-emergency state and local public benefits and services to all persons unable to verify their citizenship by presenting documents all legal citizens are required to present to obtain services. That is – a valid driver’s license and a social security card/number that is processed through E-verify.

2. Order the Lexington-Fayette Urban County Government immediately to re-certify persons now receiving state and/or local public benefits under social security numbers through the E-verify system; and

3. Order that, If any fraudulent social security numbers have been or are being used, the persons to whom services have been rendered with fraudulent documents or no documentation, and are found to be in the United States illegally, the illegal aliens are to be immediately arrested, detained, and turned over to ICE for further proceedings.

(Note: **Sec. 1644. Communication between State and local government agencies and Immigration and Naturalization Service** Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.)

4. Order Lexington-Fayette Urban County Governments and its agencies to use E-verify henceforth to determine eligibility for services; and

5. Order the halt of all federal funds to the Lexington-Fayette Urban County

Governments and its agencies until they come into compliance with the US 8, Chapter 14 1621 (d).

6. Impose a fine on the Lexington-Fayette Urban County Government of \$75.00 per day for every day it is not in compliance and fails to take immediate steps to correct its errors, and cannot prove either compliance or steps towards compliance, and pay that fine to Petitioners at the rate of \$25.00 per day per petitioner – the same amount allowed by Kentucky law for delinquent responses to Open Records Requests.

Petitioners further request their court costs and fees.

Respectfully submitted this \_\_\_\_\_ day of July, 2008.

---

Dr. David Duncan,  
Petitioner Pro Se  
3608 Ilex Pl  
Lexington KY 40515  
859-245-0745

---

Jenean McBrearty,  
Petitioner Pro Se  
685 Ben Ali Dr #407  
Danville KY 40422  
859-236-4815

---

Wendy DeVier  
Petitioner Pro Se  
2156 Winterberry Dr.  
Lexington, KY 40504  
859-278-4184