

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>Ruby Bell; Robert Patterson; Eddie Mae Binion;</b>	)	
<b>Alocia Brown, by her legal guardian Robert F.</b>	)	
<b>Harris; Kevin Harris, by his legal guardian</b>	)	
<b>Robert F. Harris; George Crawford, by his</b>	)	
<b>trustee Art Huenkemeier; A.L., by her mother</b>	)	
<b>and next friend, Diane Bauknight; Ruby</b>	)	
<b>Trammell; Della Otis; Mary West; Betty Jo</b>	)	<b>No. 06 C 3520</b>
<b>Watkins; T. W., Jo. N. and Ja. N., by their next</b>	)	
<b>friend Janie Cook; Jerome Windley, individually</b>	)	<b>Judge Ronald Guzman</b>
<b>and on behalf of all similarly situated persons,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>Michael Leavitt, Secretary of the United States</b>	)	
<b>Department of Health and Human Services,</b>	)	
	)	
<b>Defendant.</b>	)	

**FIRST AMENDED COMPLAINT**

**I. INTRODUCTION**

1. Plaintiffs, individually and on behalf of three plaintiff classes of similarly situated persons (collectively "plaintiffs"), challenge Section 6036 of the Deficit Reduction Act of 2005, Pub.L. No. 109-171 ("Section 6036") as applied to them by the defendant effective July 1, 2006. Plaintiffs are low income persons, predominantly aged, blind, disabled, pregnant women, minor children and minor children's caretaker relatives, who receive or are applying for health coverage under Title XIX of the Social Security Act, the federal Medicaid Program, 42 U.S.C. §§1396, *et seq.* (the "Medicaid Act"). Defendant is the federal official responsible for the Medicaid program. Federal law establishes that a United States citizen is eligible for the Medicaid program's health coverage if he declares

under penalty of perjury that he is a citizen. Section 6036 amends federal law to improve documentation in the Medicaid program with respect to declarations of citizenship, but the defendant is implementing it to create unauthorized new eligibility requirements that threaten plaintiffs' Medicaid health coverage unless they can produce specific types of documentation of their citizenship.

2. Under Section 6036, as implemented by the defendant, Medicaid recipients who have already established their citizenship under current law will have that determination undone and will be forced to prove their citizenship again under the new law, despite the fact that there has been no indication that their circumstances have changed, or that the original determination of citizenship in their cases was mistaken or obtained by misrepresentation. Further, both Medicaid recipients and applicants will be terminated from or denied health coverage or have that coverage delayed or threatened if they cannot produce the specialized proof required by defendant's implementation of the new law, even though they can prove that they are citizens through other forms of proof. In addition, the defendant is applying Section 6036 to threaten, terminate or deny Medicaid health coverage of plaintiffs to whom Section 6036 by its terms does not apply. Plaintiffs, who are otherwise eligible for Medicaid, are thus threatened with denial of access to medication and doctors, inability to secure preventive and well-child services, and many other crucial health care services. Plaintiffs seek a declaration that defendant's implementation of Section 6036 violates plaintiffs' rights under the Medicaid Act and the Due Process Clause of the Fifth Amendment to the United States Constitution, or, in the alternative, that Section 6036 is unconstitutional. Plaintiffs seek preliminary and permanent relief to stop these violations and the resulting harm.

## II. JURISDICTION

3. Plaintiffs bring this action pursuant to the Fifth Amendment to the United States Constitution and under the Administrative Procedure Act, 5 U.S.C. §701, *et seq.*

4. This Court has jurisdiction under 28 U.S.C. §§1331, 1361 and the Administrative Procedure Act, 5 U.S.C. §701, *et seq.*

## III. PARTIES

5. Plaintiff Ruby Bell is a citizen of the United States and a resident of Winnebago County, Illinois and a current Medicaid recipient, who prior to July 1, 2006 declared her citizenship to establish eligibility for Medicaid under 42 U.S.C. §§1320b-7(b)(2) and (d)(1)(A).

6. Plaintiff Robert Patterson is a citizen of the United States and a resident of Sacramento, California and is a current Medicaid recipient, who was determined eligible for Medicaid automatically as a result of the prior determination that he is eligible for means-tested cash assistance for the aged, blind or disabled under the Supplemental Security Income program, Title XVI of the Social Security Act.

7. Plaintiff Eddie Mae Binion is a citizen of the United States and a resident of St. Louis, Missouri and a current Medicaid recipient, who prior to July 1, 2006 declared her citizenship to establish eligibility for Medicaid under 42 U.S.C. §§ 1320b-7(b)(2) and (d)(1)(A).

8. Plaintiff Alocia Brown, who appears by her legal guardian, Robert F. Harris, the Public Guardian of Cook County, Illinois, is a citizen of the United States and a resident of Chicago, Illinois, who has applied for Medicaid health coverage and

has declared on her application that she is a citizen of the United States, and who, as of the date of the filing of this action, has not received a determination of her eligibility.

9. Plaintiff Kevin Harris, who appears by his legal guardian, Robert F. Harris, the Public Guardian of Cook County, Illinois, is a citizen of the United States and a resident of Cook County, Illinois and a current Medicaid recipient, who prior to July 1, 2006 declared his citizenship to establish eligibility for Medicaid under 42 U.S.C. §§ 1320b-7(b)(2) and (d)(1)(A).

10. Plaintiff George Crawford, who appears by his trustee, Art Huenkemeier, is a citizen of the United States and a resident of Winnebago County, Illinois and a current Medicaid recipient, who prior to July 1, 2006 declared his citizenship to establish eligibility for Medicaid under 42 U.S.C. §§ 1320b-7(b)(2) and (d)(1)(A).

11. Plaintiff A.L., a minor, who appears by her mother and next friend, Diane Bauknight, is a citizen of the United States and lives in Kennesaw, Georgia and is a current Medicaid recipient under North Carolina's Medicaid program, who was determined eligible for Medicaid automatically as a result of the prior determination that she was an adoptee under the state of North Carolina's Adoption Assistance Program administered under Title IV-E of the Social Security Act.

12. Plaintiff Ruby Trammell is a citizen of the United States and a resident of Winnebago County, Illinois and a current Medicaid recipient, who prior to July 1, 2006 declared his citizenship to establish eligibility for Medicaid under 42 U.S.C. §§ 1320b-7(b)(2) and (d)(1)(A).

13. Plaintiff Della Otis is a citizen of the United States and a resident of Charlotte, North Carolina and a current Medicaid recipient, who was determined eligible for

Medicaid automatically as a result of the prior determination that she is eligible for means-tested cash assistance for the aged, blind or disabled under the Supplemental Security Insurance program, Title XVI of the Social Security Act.

14. Plaintiff Mary West is a citizen of the United States and a resident of Chicago, Illinois who has applied for Medicaid health coverage and who, as of the date of the filing of this amended complaint, has not received a determination of her eligibility. Ms. West does not receive SSI or Medicare.

15. Plaintiff Betty Jo Watkins is a citizen of the United States and a resident of Swartz Creek, Michigan who has applied for Medicaid health coverage and who as of the date of the filing of this amended complaint, has not received a determination of her eligibility. Ms. Watkins does not receive SSI or Medicare although she does have an application for benefits under the Supplemental Security Income Program, Title XVI of the Social Security Act, that is pending as of the date of filing of this amended complaint.

16. Plaintiffs T.W., Jo.N., and Ja.N., who appear by their grandmother and next friend, Janie Cook, are citizens of the United States and live in Los Angeles, California, and are current Medicaid recipients under California's Medicaid program, who prior to July 1, 2006 declared their citizenship to establish eligibility for Medicaid under 42 U.S.C. §§13206-7(b)(2) and (d)(1)(a).

17. Plaintiff Jerome Windley is a citizen of the United States and a resident of Charlotte, North Carolina, and a current Medicaid recipient who, prior to July 1, 2006, declared his citizenship to establish his eligibility for Medicaid under 42 U.S.C. §§13206-7(b)(2) and (d)(1)(a).

18. Plaintiffs Bell, Patterson, Binion, Harris, Crawford, A.L., Trammell, Otis, T.W., Ja. N. and Jo. N., and Windley bring this action individually and on behalf of a plaintiff class ("Class A"), defined as

All persons who, prior to July 1, 2006, have been determined eligible for health coverage under the Medicaid Program, 42 U.S.C. §1396 *et seq.*, and who declared on their applications for Medicaid coverage or otherwise that they are citizens or nationals of the United States, or who were made eligible for Medicaid without the need for a declaration of citizenship or eligible alien status under 42 U.S.C. §1320b-7.

19. All named plaintiffs bring this action individually and on behalf of a plaintiff class ("Class B") defined as

All persons who, on or after July 1, 2006, are receiving or will receive, or are applying or will apply for health coverage under the Medicaid Program, 42 U.S.C. §1396 *et seq.*, and who on their applications for Medicaid health coverage or otherwise have declared or will declare that they are United States citizens.

20. Plaintiffs Patterson, A.L. and Otis bring this action individually and on behalf of a plaintiff class ("Class C"), defined as

All persons who are receiving or will receive health coverage under the Medicaid Program, 42 U.S.C. §1396 *et seq.*, and who are not required to make a declaration of citizenship under 42 U.S.C. §1320b-7 in connection with an application for Medicaid because they acquire their eligibility for Medicaid coverage as a result of the determination of their eligibility for Foster Care and Adoption Assistance under Title IV-E of the Social Security Act or any other program listed in 42 U.S.C. §1396a(a)(10)(A)(i)(I) and (II).

21. As to each of Class A, B, and C, the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of the named plaintiffs are typical of the claims of the class; and the named plaintiffs will fairly and adequately protect the interests of the class. The defendant has acted or refused to act on grounds generally applicable to each class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each class as a whole.

22. Defendant Michael Leavitt is the Secretary of the United States Department of Health and Human Services (the "Secretary"), and as such he has responsibility for administering the Medicaid Program and for implementing Section 6036.

#### **IV. STATUTORY FRAMEWORK**

23. The Medicaid Program is a federal-state program of health coverage for low income people, under which the states that opt to participate administer the program and pay for its costs, and the federal government reimburses the states for a percentage of those costs undertaken in compliance with governing federal Medicaid laws and regulations. See 42 U.S.C. §1396b (federal reimbursement to states).

24. Under the Medicaid Act, there are various mandatory conditions that participating states must comply with to receive federal reimbursement, and there are various options that states are free to take or reject. All of the mandatory provisions and options taken by the state are to be included in a state plan that is filed with and approved by defendant Leavitt. 42 U.S.C. §1396a (state plan requirements).

25. All otherwise eligible United States citizens, who declare under penalty of perjury that they are citizens, are eligible for Medicaid health coverage. 42 U.S.C. §§1320b-7(b)(2) and (d)(1)(A). The Medicaid Act further provides that "The Secretary ... shall not approve any [state] plan which imposes, as a condition of eligibility for medical assistance under the plan ... any citizenship requirement which excludes any citizen of the United States." 42 U.S.C. §1396a(b)(3).

26. In addition, and subject to certain waiting periods, time limits, and other restrictions, non-citizens who have an immigration status that meets the statutory definition of "qualified alien" are eligible for Medicaid. 8 U.S.C. §§ 1611 (barring all aliens

who are not "qualified"); 1612-13 (establishing time limits and waiting periods); 1641 (setting forth categories of immigration status for "qualified alien"). Qualified aliens must make a declaration in connection with their Medicaid applications that they have a qualifying status and produce documentation of that status. 42 U.S.C. §1320b-7(b)(2) and (d). States must give aliens a reasonable opportunity to produce documentation of their status and provide timely Medicaid health coverage to the aliens who have declared that they have qualifying status during the time that it takes for them to seek and secure documentation. 42 U.S.C. §1320b-7(d)(4)(A)(ii) and (B)(ii). States are not penalized or denied federal matching funds for health coverage provided to people who later turn out to have been unable to document that they are qualified aliens. 42 U.S.C. §1320b-7(e).

27. Under 42 U.S.C. §1396a(a)(10)(A)(i)(I), states must make eligible for Medicaid any child eligible for Foster Care and Adoption Assistance under Title IV-E of the Social Security Act. Children who are placed for adoption or in foster care by a state agency in charge of state wards (who have often been abused and/or neglected before entering state custody) are granted automatic Medicaid eligibility. These children need not file a separate Medicaid application and do not make a declaration of citizenship under 42 U.S.C. §1320b-7. States have the option to provide Medicaid in this fashion, without a separate Medicaid application, to persons eligible for additional programs under the Social Security Act, including the program under subchapter IV-A (Temporary Assistance to Needy Families). 42 U.S.C. §1396a(a)(10)(A)(i)(I).

28. Under 42 U.S.C. §1396a(a)(10)(A)(i)(II), states must make eligible for Medicaid anyone who has been determined eligible for means-tested cash assistance under the Supplemental Security Income (SSI) program for the aged, blind and disabled, which is

established under Title XVI of the Social Security Act. States can choose to enter into an agreement with the federal government for the latter to administer the eligibility determinations for SSI. 42 U.S.C. §1383c(a) (which codifies "Section 1634" of the Social Security Act). In states that have adopted this option and entered into the agreement with the federal government ("Section 1634 states"), SSI applicants and recipients are not required to undergo any separate application process for Medicaid. See, 42 C.F.R. §435.909 (prohibiting states from requiring a separate application). The SSI program has its own procedure for determining citizenship. Persons found eligible for SSI in Section 1634 states are automatically eligible for and enrolled in Medicaid.

29. Persons receiving Medicaid have their eligibility reviewed, or "redetermined," at least annually. During the redetermination process, the state agency verifies the status of only those eligibility factors that are subject to change. 42 C.F.R. §435.916(a). Recipients of Medicaid do not have any specific time limit on eligibility, but remain eligible for the program until it is determined that they no longer meet the eligibility requirements. 42 C.F.R. §435.930(b).

#### **V. SECTION 6036 AND ITS IMPLEMENTATION**

30. Section 6036 amends the financial reimbursement section of the Medicaid Act, 42 U.S.C. §1396b, which defines the administrative arrangements between the federal and state governments with respect to the amount of federal financial participation (FFP) that will be paid for services provided by a state to its Medicaid beneficiaries.

31. Section 6036 does not amend the FFP relationship between HHS and the states with regard to all Medicaid recipients. Rather, in subsection 6036(a)(1), Congress stated that the amendment only applies with regard to:

"an individual who declares under section 1137d(d)(1)(A) [42 U.S.C. §1320b-7(d)(1)(A)] to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title [i.e. Medicaid], . . ."

32. For any beneficiary covered by the terms of Section 6036, a state must now have in that person's file documentation that supports the beneficiary's declaration of citizenship. Otherwise, the state will not receive federal financial participation for the cost of medical assistance afforded that beneficiary. Section 6036(a)(1) and (2).

33. As to specific documentation that the states should seek, Section 6036 requires that affected persons should present some form of documentation of both citizenship and personal identity. 42 U.S.C. §1396b(x)(3)(A) (2006). These factors may be verified by documents of the following types:

(a) Both citizenship and personal identity may be supported by submission of a United States passport, a Certificate of Naturalization, a Certificate of United States Citizenship, a valid state driver's license from a state that requires proof of citizenship for issuance of the license, or any other document the Secretary identifies by rule that provides both proof of citizenship or nationality and proof of personal identity, 42 U.S.C. §1396b(x)(3)(B) (2006), or

(b) Citizenship (but not personal identity) may be supported by submission of a United States birth certificate, a Certification of Birth Abroad, a United States Citizen Identification Card, a Report of Birth Abroad of a Citizen of the United States, or any other document that the Secretary may identify by rule that establishes United States citizenship or nationality, 42 U.S.C. §1396b(x)(3)(C) (2006); and personal identity may be supported by submission of "any identity document described in section 274A(b)(1)(D) of the Immigration

and Nationality Act," or any other reliable documentation of personal identity that the Secretary specifies by rule. 42 U.S.C. §1396b(x)(3)(D) (2006).

34. Section 6036(b) makes the amendments effective with respect to all initial determinations of eligibility for Medicaid made on or after July 1, 2006, all redeterminations of eligibility for existing beneficiaries of Medicaid made on or after July 1, 2006, as to whom the new documentation standards have not already been met.

35. Section 6036(c) requires the Secretary to establish an outreach program prior to applying the new documentation rules so as "to educate individuals who are likely to be affected by [the new requirements]. . . and how they may be satisfied."

36. The Secretary has not established the outreach program required by Section 6036(a).

37. The Secretary has promulgated "interim final" regulations to implement Section 6036. 71 Fed. Reg. 39214 (July 12, 2006). While the Secretary will be taking comments on the regulations and possibly amending them, the regulations are currently effective and govern all initial or ongoing Medicaid eligibility determinations made on or after July 6, 2006. As relevant here, the regulations make identical changes to 42 C.F.R., Parts 435 and 436. Plaintiffs attach to this First Amended Complaint and cite herein the implementing regulations in 42 C.F.R. Part 435, but in so doing intend to refer also to the identical implementing regulations in 42 C.F.R. Part 436.

(a) The Interim Final Regulations impermissibly turn Section 6036 into a provision that alters eligibility for Medicaid by prohibiting states from providing medical assistance to people who have met the eligibility requirement of attesting to their citizenship

under the penalty of perjury until such people have also provided documentation supporting that declaration.

(b) While recognizing that "[t]he statute . . . gives us authority to exempt . . . individuals who declare themselves to be citizens . . . from the documentation requirements if satisfactory documentary evidence of citizenship ... has been previously presented," the Secretary nonetheless declares that, "[w]e are not currently exercising this authority." 71 Fed. Reg. 39216. The Secretary is making all current Medicaid recipients comply with the new documentation requirements regardless of the fact that they have already established their citizenship for Medicaid purposes and without any requirement that there be a new fact or circumstance indicating that the original determination of citizenship was mistaken, fraudulently induced, or changed (e.g., the person has renounced citizenship).

(c) The regulations ignore the plain language of Section 6036 by imposing documentation requirements on those who receive Medicaid as a result of receiving Foster Care and Adoption Assistance under Title IV-E of the Social Security Act Id. at 39216. The regulations fail to exempt any other program from the documentation requirement as to which the states do not require a separate Medicaid application under 42 U.S.C. §1396a(a)(10)(A)(i)(II).

38. While the regulations exempt from the documentation requirement persons who qualify for SSI in Section 1634 states, the Secretary is taking comments and considering the regulations further, so this position is not yet fully final.

39. The regulations establish a mandatory hierarchy of documents that states may use to document citizenship and personal identity, thus denying or delaying medical assistance to citizens who only have or can acquire documentation further down the

hierarchical list, or who can only produce documentation that is not on the list, or who in spite of every good faith effort cannot produce documentation of any kind other than their sworn declaration. 42 C.F.R. 435.407, 71 Fed.Reg. at 39222-25.

40. The regulations do provide that states may, as a last resort, accept affidavits supporting a person's declaration of citizenship. 42 C.F.R. 435.407(d)(5); 71 Fed.Reg. at 39223. However, the requirements for such affidavits are very restrictive. The affidavits must be "by two individuals of whom one is not related to the applicant/recipient and who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship." 42 C.F.R. 435.407(d)(5)(i). In addition, the two affiants themselves "must be able to provide proof of their own citizenship and identity." 42 C.F.R. 435.407(d)(5)(iii).

(a) Despite the absence of any such requirement in Section 6036, the regulations specify that "[a]ll documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted." 42 C.F.R. 435.407(h)(1).

(b) The regulations explicitly threaten states' federal matching funds for Medicaid "with respect to expenditures for medical assistance furnished to individuals unless the State has obtained satisfactory documentary evidence of citizenship" under the regulations. 42 C.F.R. 435.1008; 71 Fed. Reg. at 39225. The regulations therefore decline to follow the same procedure for citizens as is followed for qualified aliens, in which states are instructed to provide health coverage while the applicants are attempting to procure documentation and the states are held harmless if persons eventually unsuccessful in procuring documentation.

## VI. STATEMENT OF FACTS

41. (a) Ruby Bell is a United States citizen who is 95 years old and lives in the River Bluff Nursing Home in Winnebago County, Illinois.

(b) She is a current Medicaid recipient, which covers the costs of necessary health care and living costs at the nursing home. She declared herself to be a citizen of the United States on her Medicaid application. She also receives Social Security cash benefits and Medicare health coverage. Bell does not have a United States passport.

(c) Bell was born in Arkansas on November 11, 1911. She does not have a birth certificate. The county of her birth in Arkansas only has birth certificates going back to 1914. There are no living witnesses to Bell's birth. She does not have, nor does she have the ability to attain, any other documentation required by the regulation that would establish her citizenship.

(d) Bell cannot care for herself or help in any way to get documentation of her citizenship. Bell needs Medicaid to pay for her medical care, medicines and nursing home bills. Medicare does not cover most of these health care costs.

42. (a) Robert Patterson is United States citizen who resides in Sacramento, California. He was born in either 1932 or 1934, making him 72 or 74 years old.

(b) Patterson receives Medicaid health coverage from the state of California to cover the costs of necessary health care.

(c) Patterson also receives Supplemental Security Income (SSI) cash benefits. He was automatically approved for Medicaid eligibility as a result of his being eligible for SSI benefits, because California is a state that has opted for that path to Medicaid

eligibility. Patterson believed he was not required to and thus did not file a separate application for Medicaid eligibility.

(d) Patterson does not have a United States passport. He does not have a driver's license but does have a state identification card. He does not have a birth certificate. He does not know whether a birth certificate recording his birth exists, and is not aware of any document required by the regulation that would establish his citizenship.

(e) To the best of his knowledge, Patterson was born in a farmhouse in Jackson, Mississippi. When he was too young to remember, his mother passed away. His father did not care for him, and he spent most of his early life moving from foster home to foster home. He ran away as a teenager. He has no known family or anyone else with personal knowledge of the circumstances of his birth. The oldest evidence of his birth that Patterson has is a prison record from 1953 to 1969 that states that he was born in Mississippi.

(f) Patterson has several severe health problems, including a bad leg that has required multiple operations. He also has high blood pressure and a number of other health problems and takes needed medication every day.

43. (a) Eddie Mae Binion is a citizen of the United States who resides in St. Louis, Missouri. She believes her birth date is May 10, 1934, and that she is 72 years old. She is registered to vote in Missouri and regularly votes.

(b) Binion receives health coverage under the Medicaid program operated by the State of Missouri. She established her citizenship when she applied for Medicaid coverage many years ago. Binion also receives cash benefits from the Social Security program and partial health coverage under the Medicare program based on her earnings record. She receives a cash supplement from the Supplemental Security Income program.

Missouri has not opted to derive Medicaid eligibility from SSI eligibility, so Binion separately applied for Medicaid.

(c) Binion does not have a United States passport. She does not have a birth certificate. She does not know if her birth certificate exists. She does not know where she was born or exactly what her name was at birth. She believes it is possible she was named Fannie Louvina Drew, but it is also possible she was not.

(d) Binion has been told that her mother gave her away soon after her birth, and then her mother died about a year later. A great grandmother traveled to Chicago and took custody of Binion when she was about two years old, and took her to live in Mississippi. The great grandmother named her Eddie Mae. Binion lived in the vicinity of Swan Lake but does not remember the name of the town, if there was one, that she lived in. She went to school but does not remember the name of the school. At 14, she married Mr. Binion in Mississippi, and she has the marriage certificate.

(e) Binion has no known living blood relatives older than she. She does not know of any living witness to the circumstances of her birth. When she applied for benefits from the Social Security Administration, that agency searched for a birth certificate and could not locate one. She does not have any other documentation required by the regulation that would establish her citizenship.

(f) Binion has several severe health problems requiring continuous treatment and care. These include kidney dialysis and recent hospitalizations for mini-strokes.

44. (a) Alocia Brown is a citizen of the United States and a resident of the Renaissance at Midway Nursing Facility, Chicago, Illinois. Ms. Brown appears in this

case through her legal guardian, Robert F. Harris, the Public Guardian of Cook County, Illinois.

(b) Brown is approximately 75 years old, and her birth date is either November 7, 1930, or February 1, 1931. Mr. Harris believes her maiden name was Alocia McEwen.

(c) Brown has applied for health coverage from the Medicaid program in Illinois. That application is pending. Brown receives Social Security benefits and partial health coverage under the Medicare program based upon her earnings record.

(d) Brown does not have a United States passport. Brown does not have a birth certificate. Mr. Harris requested a birth certificate from Little Rock, Arkansas, where Brown's niece thinks she was born. The vital records department in Little Rock has responded that they have checked different years and locations and found no birth certificate for Brown.

(e) Brown has an expired driver's license and a social security number, but no current government-issued identification with a photo. Additionally, she does not have any other documentation required by the regulation that would establish her citizenship.

(f) Brown has several severe health problems, including severe dementia and (End Stage) Alzheimer's, and is completely incoherent. She cannot care for herself or assist in any way in securing documentation.

45. (a) Kevin Harris is a citizen of the United States and a resident of the Beverly Center for Independent Living in Cook County, Illinois. Kevin Harris appears in this case through his legal guardian, Robert F. Harris (no relation), the Public Guardian of Cook County, Illinois.

(b) Kevin Harris is 42 years old, and believes his birth date is January 17, 1964.

(c) Kevin Harris was adopted by an Illinois family in 1964 under a sealed adoption, and does not know where he was born. He has a cousin who formerly was his guardian who also does not know where Kevin Harris was born. Kevin Harris has no relatives who know where he was born.

(d) Kevin Harris receives Medicaid. He also receives cash benefits from the Supplemental Security Income program.

(e) Kevin Harris does not have a birth certificate, nor does he know if one recording his birth exists. He has requested a birth certificate from the Cook County and State of Illinois Bureaus of Vital Statistics but they responded that they have no record of his birth.

(f) Kevin Harris does not have a United States passport. He had a state identification card but it was stolen in a robbery and he now has no current government issued photo identification. He is not in possession of any other documentation required by the regulation that would establish his citizenship or identity.

(g) Kevin Harris has severe disabilities and relies on Medicaid to cover the costs of health care and his living facility. He is legally blind and mentally impaired such that he cannot assist in securing necessary document.

46. (a) George Crawford is a citizen of the United States and resident of the River Bluff Nursing Home in Winnebago County, Illinois. Crawford appears in this case through Art Huenkemeier, who is his Trustee and has his Power of Attorney. Crawford does

not have any relatives to care for him, and the members of his church asked fellow member Huenkemeier to be trustee and have power of attorney.

(b) Crawford was born in the United States on July 31, 1926.

(c) Crawford is receiving Medicaid health coverage from the State of Illinois to cover the costs of necessary health care including nursing home care. Crawford also receives Social Security benefits and partial health coverage under Medicare based on his earnings record.

(d) Crawford does not have a United States passport. Crawford does not have a birth certificate. Huenkemeier does not know whether a birth certificate exists. He has looked through all paperwork that he took from Crawford's house when he needed to be moved into the nursing home and cannot find any birth certificate or government photo identification card, or any other document required by the regulation that would establish his citizenship or identity.

(e) Crawford has several serious health problems. He has had two strokes and cannot swallow or communicate verbally. It is very difficult to communicate with him in any way. He cannot care for himself or assist in any way to secure documentation that he needs.

47. (a) A.L. is a citizen of the United States and a resident of a psychiatric residential treatment facility in Kennesaw, Georgia. A.L. is a minor, and she appears in this case through her adoptive mother, Diane Bauknight, a resident of North Carolina.

(b) A.L. was born in North Carolina on February 25, 1989.

(c) A.L. was a special needs foster child whom the Bauknights adopted pursuant to an adoption agreement under Title IV-E of the Social Security Act. A.L. was automatically eligible under that agreement for health coverage under the North Carolina Medicaid program, and she did not need to make a separate application for Medicaid.

(d) A.L. suffers from numerous mental disorders that stem in part from neglect and abuse she suffered while in the custody of her biological parents, including rage disorder, Fetal Alcohol Syndrome, bipolar disorder, and post traumatic stress disorder. She is a danger to herself and requires 24-hours crisis intervention and stabilization services, among other medical care. The closest facility with those services is the one where she resides in Georgia.

(e) A.L. has an "adoption birth certificate" that was issued at the time of the adoption when she was ten or eleven years old. Bauknight once had a photocopy of the birth certificate that was issued when A.L. was born, but she has lost it.

(f) A.L. does not have a passport, driver's license or any other form of official identification with a photograph.

48. (a) Ruby Trammell is a citizen of the United States and a resident of the River Bluff Nursing Home in Winnebago County, Illinois.

(b) Trammell receives Medicaid to cover the costs of necessary health care and her living costs at the nursing home. She also receives Medicare and Social Security. Trammell is legally blind and cannot care for herself.

(c) Trammell was born in Bluff City, Arkansas on July 4, 1920 in a rural house and not in a hospital. There is no one alive who witnessed her birth.

(d) Trammell does not have a birth certificate. She does not think she was ever issued a birth certificate because she was not born in a hospital. Trammell does not know how she can obtain a birth certificate. She has no other records of her birth.

(e) Trammell does not have a U.S. passport or any other document required by the regulation that would establish her citizenship. She does not know how she will be able to show that she is a U.S. citizen under the new requirements.

49. (a) Della Otis is a citizen of the United States and a resident of North Carolina.

(b) Otis receives Medicaid to cover her necessary health care for the treatment of several severe health problems, including pancreatitis, hypertension, and diabetes. Otis takes over eight different prescription medications a day.

(c) Otis has been receiving Medicaid benefits since 2003 when she met the citizenship eligibility requirement of the Medicaid program.

(d) Otis also receives SSI benefits. Otis does not remember if she was asked to provide a birth certificate when she applied for SSI. If she was asked for one, she could not have supplied it.

(e) Otis was told by her mother that she was born on May 14, 1943 at home in Sumter County, South Carolina. Both of her parents are dead and Otis knows of no one alive who was a witness to her birth, except for her aunt, who is in a coma and cannot communicate.

(f) Otis does not have a U.S. passport. She does not have a driver's license or a state-issued identification card. She does not know of any written evidence of the date or place of her birth.

50. (a) Mary West is a citizen of the United States and a resident of Illinois.

(b) West has applied for Medicaid to cover the costs of necessary health care, including medicines, hospital bills, and a recent stay at Cook County Hospital.

(c) West does not receive SSI benefits or Medicare.

(d) West was born in Georgia on August 8, 1935. She does not have a birth certificate. Her son requested a birth certificate on her behalf from the county clerk in Louisville, Georgia, under her married name, Mary West, and her maiden name, Mary Atkins. The county clerk informed West and her son that there is no record of her birth under either name.

(e) West knows of no one alive who was a witness to her birth, and has no written evidence of the place of her birth. West has no U.S. passport.

51. (a) Betty Jo Atkins is a citizen of the United States and a resident of Michigan.

(b) Watkins has applied for Medicaid to cover the costs of necessary health care.

(c) Watkins does not receive SSI or Medicare, though she has an application for SSI that is pending as of the date of filing of this amended complaint.

(d) Watkins was born in Baltimore, Maryland on June 9, 1950. She does not have a birth certificate. She has requested a birth certificate from the City of Baltimore, Anne Arundel County in Maryland, and the State of Maryland, and has not been able to obtain one.

(e) Watkins was raised by Ed and Hazel Brooks, who are not her birth parents. She does not know whether she was adopted by the Brooks, and she does not have any legal adoption papers.

(f) Watkins has requested school records from Brooklyn Park High School and the City of Baltimore Board of Education and has been unable to obtain any.

(g) Watkins knows of no one alive who was a witness to her birth and has no written evidence of the place of her birth. Watkins has no U.S. passport.

52. (a) Jerome Windley is a citizen of the United States and a resident of North Carolina.

(b) Windley lives in an assisted living facility, and receives Medicaid to cover the costs of necessary healthcare, including four daily insulin injections for diabetes and care for high blood pressure and arthritis.

(c) Windley does not receive SSI benefits or Medicare.

(d) Windley believes his birthday is September 19, 1954, and he believes he was born in a hospital in Kings County, New York. He once had a birth certificate but lost it, and does not know how to obtain another one. He lacks the money to pay for another birth certificate, or for long distance phone calls to attempt to obtain another one. He has no U.S. Passport.

(e) Windley's parents are both dead. He knows of no other living family members who were present at the time of his birth.

(f) Windley does not have a drivers license or state-issued photo ID from North Carolina. He at one time had a drivers license but does not know what happened to it.

53. Plaintiffs and the members of the classes they represent will experience difficulties and emotional stress, incur costs in time and money and effort, and/or be prevented from establishing their citizenship for Medicaid eligibility purposes under Section 6036, as implemented by the Secretary's regulations, in at least the following ways:

(a) Plaintiffs and the members of Class A will experience a reversal of the final administrative decisions that established their citizenship for Medicaid purposes, and they will be put through a complex, costly, and difficult administrative process to prove the same thing all over again. They will suffer hardship, expense, uncertainty, and emotional stress associated with the threat to their health care whether or not they ultimately succeed in the documentation.

(b) Plaintiffs and the members of Class B are threatened with loss of health coverage because, even though they are declared citizens and even though they may be able to submit various forms of corroborating documents or testimony, and even though there may be no fact or reason indicating that they may not be citizens, they may not be able to meet the documentation requirements set forth in the Secretary's regulations. These situations include, but are not limited to the following:

(i) There are many, probably most, class members who never have owned or do not currently have a U.S. passport, and passports cost over \$90;

(ii) Many class members were not born in hospitals for a variety of reasons, including racial exclusion from hospitals in the South that prevailed through the first half of the 20th century, and therefore have never had birth certificates;

(iii) Many class members are mentally impaired for a variety of reasons and cannot locate records, identify their origins or maintain links with people who know their origins, and some class members have outlived their own families and generational contemporaries;

(iv) Many class members, because they are disaster victims or evictees or otherwise, have lost any documentation that they had and are in disorganized and destitute condition with little ability to complete the documentation requirements satisfactorily;

(v) The acceptable documentation in the Secretary's regulations is not comprehensive, and there will be class members who cannot find any documentation that satisfies it, even though they were born in the United States;

(vi) The personal identity documentation allowed in the Secretary's regulations only allows for official government identity documents, and does not allow for the full range of other documents or proof. Incapacitated or elderly people, among others, will not be able to quickly obtain something like a state photo identification card.

(vii) Most of the documentation allowed under the Secretary's regulations requires cooperation by other bureaucracies or companies, or defunct companies, that class members cannot control and expenses that class members cannot easily afford. There will be uncontrollable delays. There will be additional difficulty associated with the requirement that class members submit only original or "authentic" documentation and not copies. This

difficulty will be particularly acute with respect to the hospital, medical provider and insurance company records allowed under the third and fourth levels of documentation, which may involve defunct or reorganized entities.

(viii) Class members and state agencies will be severely taxed by the administrative burdens associated with implementing the documentation requirement. When caseload-wide changes are implemented, there is always an attrition factor that impacts even those who could meet the requirements, caused by mail problems, literacy and language issues, understaffing, misunderstandings, training failures, honest mistakes, lost documents, computer glitches and the like.

(c) According to the Secretary's regulations, plaintiffs and the members of Class C are impermissibly included in the new documentation requirement even though, by the terms of Section 6036, the statute does not apply to them, because their Medicaid eligibility is determined through the separate Adoption Assistance process.

54. Most states are experiencing financial difficulties and struggling to contain health care costs. Many states are understaffed in their Medicaid agencies or at best staffed only to cope with current administrative demands; there is no excess administrative capacity to cope with major new administrative burdens. The Secretary's regulations simultaneously threaten states' Medicaid federal funding and impose major and costly new administrative tasks. The Secretary's regulations give the states powerful incentives to construe any unclear federal requirements in the way most likely to protect their federal funding, terminating and denying health coverage rather than running any financial risk.

55. There is no reliable evidence that there is significant abuse, inaccuracy or inefficiency with the current system of establishing citizenship for Medicaid purposes, that is, declaration under penalty of perjury and documentation where warranted case-by-case. The system was studied by the Office of the Inspector General of the defendant Secretary's Department of Health and Human Services, and in a report issued in July 2005, the Office of the Inspector General ("OIG") did not find any evidence of any significant number of unauthorized non-citizens impersonating citizens in order to obtain Medicaid coverage. DHHS, Office of the Inspector General, "Self-Declaration of U.S. Citizenship for Medicaid," OEI-02-03-00190 (July 2005). The report recommends stronger post-eligibility quality control measures to guard against potential problems. In agreeing with the recommendation, the Centers for Medicare and Medicaid Services (which is the responsible sub-agency for Medicaid), stated, "The [OIG] report does not find particular problems regarding false allegations of citizenship, nor are we aware of any." Id. at 27.

56. Section 6036 does not change the eligibility requirements for Medicaid that applicants and recipients declare that they are citizens of the United States. However, as a result of the Secretary's regulations, states will implement the documentation requirements as if they are eligibility requirements. They will demand documentation of citizenship from applicants and recipients according to the hierarchy and limiting rules set forth in the Secretary's regulations. States will delay, threaten, deny and/or terminate Medicaid health coverage to plaintiffs and the classes they represent based on the Secretary's regulations.

57. The Secretary has implemented his version of Section 6036 without establishing the outreach program required by Section 6036(c).

58. Plaintiffs will be irreparably injured by the Secretary's regulations implementing Section 6036, and they have no adequate remedy at law.

## VII CLAIMS

59. The Secretary's regulations implementing Section 6036 improperly construe Section 6036 to deny to plaintiffs and the members of Class A the finality of the final administrative determinations in their Medicaid cases that they are citizens, arbitrarily and capriciously overturning those determinations without any indication that there has been a change of circumstances or that the original determination was the result of mistake, fraud or misrepresentation, thereby forcing upon them burdensome administrative proceedings and threatening or terminating health coverage they are eligible for under the Medicaid program, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D) and the Due Process Clause of the Fifth Amendment of the United States Constitution. In the alternative, if the Secretary's interpretation of Section 6036 to affect Class A in this manner is the only permissible interpretation then Section 6036 violates the Due Process Clause of the Fifth Amendment of the United States Constitution.

60. By threatening to deny federal reimbursement to states that provide medical assistance to citizen applicants for Medicaid during the "reasonable opportunity" period for providing documentation, while providing federal reimbursement to the states for medical assistance provided to non-citizen applicants for Medicaid during their "reasonable opportunity" period for providing documentation, the Secretary has deprived plaintiffs and the members of Class B of the equal protection of law guaranteed them by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

61. By requiring that states acquire documentation of citizenship before providing medical assistance to the plaintiff applicants and the class they seek to represent, the Secretary has converted Section 6036 into an eligibility requirement for Medicaid, in violation of Section 6036 itself, of the other provisions of the Medicaid Act establishing eligibility for the program, and of 5 U.S.C. § 706(2)(A) and (C).

62. The Secretary, under his regulations implementing Section 6036, is applying the new documentation requirement to plaintiffs and the members of Class C, whose Medicaid eligibility is derived from their Foster Care and Adoption Assistance eligibility under Title IV-E of the Social Security Act or eligibility for other programs listed in §1396a(a)(10)(A)(i)(I) and (II), contrary to the plain language of Section 6036, which only applies to people who establish their citizenship for Medicaid purposes by declaration under 42 U.S.C. §1320b-7, in violation of the Medicaid Act, 42 U.S.C. §1396a(a)(10)(A)(i), Section 6036 itself, and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

63. The Secretary has implemented Section 6036 prior to establishing an outreach and education program, in violation of Section 6036(c) and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

### **VIII. PRAYER FOR RELIEF**

Wherefore, plaintiffs pray that this Court:

- A. Certify the plaintiff class as soon as practicable;
- B. Declare that the Secretary's regulations implementing Section 6036 violate, or in the alternative Section 6036 itself violates, plaintiffs' rights under the Administrative Procedure Act and/or the Due Process Clause of the Fifth Amendment to the United States Constitution;

C. Preliminarily and permanently enjoin the Secretary from applying, implementing or effectuating in any way Section 6036 in a manner that violates plaintiffs' rights;

D. Award plaintiffs their attorneys fees and costs; and

E. Enter such other further or ancillary relief as the Court deems just.

Respectfully submitted,

RUBY Bell, et al.

By /s/ Mary E. Anderson  
One of Their Attorneys

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Attorneys for Plaintiff:

John M. Bouman  
Margaret Stapleton  
SARGENT SHRIVER NATIONAL CENTER ON  
POVERTY LAW  
50 E. Washington, Suite 500  
Chicago, IL 60602  
312-263-3830

David E. Morrison  
Mary E. Anderson  
GOLDBERG KOHN BELL BLACK  
ROSENBLUM & MORITZ, LTD.  
55 East Monroe Street  
Suite 3700  
Chicago, Illinois 60603  
312-201-4000

Stephanie Altman  
Thomas Yates  
HEALTH & DISABILITY ADVOCATES  
205 W. Monroe, Third Floor  
Chicago, IL 60606-5013  
312-223-9600

Sarah Somers  
NATIONAL HEALTH LAW PROGRAM  
211 N. Columbia Street  
Chapel Hill, NC 27514  
919-968-6771

Gene Coffey  
NATIONAL SENIOR CITIZENS LAW CENTER  
1101 14th Street, NW, Suite 400  
Washington, DC 20005  
202-289-6976