

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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,

*Appellants,*

v.

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

*Appellee.*

Case No. 12-\_\_\_\_\_

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 1:12-CV-22282-WJZ**

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**APPELLANTS' MOTION TO EXPEDITE APPEAL**

## CERTIFICATE OF INTERESTED PARTIES

Pursuant to 11th Circuit Rule 26.1-1, Appellants, Karla Vanessa Arcia, Melande Antoine, 1199SEIU United Healthcare Workers East, National Congress for Puerto Rican Rights, Florida Immigrant Coalition, Inc., Florida New Majority, Inc., and Veye Yo, furnish a complete list of the following:

1. The Honorable William J. Zloch, U.S. District Court for the Southern District of Florida
2. Karla Vanessa Arcia, Appellant
3. Melande Antoine, Appellant
4. Veye Yo, Appellant
5. Florida Immigrant Coalition, Inc., Appellant
6. National Congress for Puerto Rican Rights, Appellant
7. Florida New Majority, Inc., Appellant
8. 1199SEIU United Healthcare Workers East, Appellant
9. Florida Secretary of State Ken Detzner, Appellee
10. Fair Elections Legal Network, Attorneys for Appellants
11. Ben Hovland, Attorney for Appellants
12. Project Vote, Attorneys for Appellants
13. Catherine M. Flanagan, Attorney for Appellants
14. Michelle Kanter Cohen, Attorney for Appellants
15. LatinoJustice PRLDEF, Attorneys for Appellants
16. Diana Sen, Attorney for Appellants
17. Jose Perez, Attorney for Appellants

18. Juan Cartagena, Attorney for Appellants
19. Jenner & Block, LLP, Attorneys for Appellants
20. Joshua N. Friedman, Attorney for Appellants
21. Kristen M. Rogers, Attorney for Appellants
22. Lindsay Eyler Kaplan, Attorney for Appellants
23. Lorelie S. Masters, Attorney for Appellants
24. Marc A. Goldman, Attorney for Appellants
25. Marina K. Jenkins, Attorney for Appellants
26. Bharat R. Ramamurti, Attorney for Appellants
27. Advancement Project, Attorneys for Appellants
28. Katherine Culliton-Gonzalez, Attorney for Appellants
29. Penda Hair, Attorney for Appellants
30. Uzoma Nkwonta, Attorney for Appellants
31. Katherine Roberson-Young, Attorney for Appellants
32. Chavez & De Leon, Attorneys for Appellants
33. John De Leon, Attorney for Appellants
34. Ashley Davis, Attorney for Appellee
35. Daniel Elden Nordby, Attorney for Appellee
36. Jones Day, Attorneys for Appellee
37. John M. Gore, Attorney for Appellee
38. Michael A. Carvin, Attorney for Appellee
39. Warren D. Postman, Attorney for Appellee

## **MOTION TO EXPEDITE APPEAL**

Appellants, Karla Vanessa Arcia, Melande Antoine, 1199SEIU United Healthcare Workers East, National Congress for Puerto Rican Rights, Florida Immigrant Coalition, Inc., Florida New Majority, Inc., and Veye Yo (collectively, “Appellants”), respectfully ask this Court to expedite this appeal.

### **Background and Procedural History**

The National Voter Registration Act (“NVRA”) prohibits “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) (the “90-day provision”). The November 6, 2012 general election is just 28 days away. Appellee Secretary of State Ken Detzner is nevertheless continuing to pursue the systematic removal of registered voters from Florida’s voter rolls with the goal of removing non-citizens, the very sort of last-minute purge that Congress barred because of the high risk that it would erroneously remove *eligible* voters without leaving time to correct errors. It was only on September 10, 2012, that the State began training Supervisors of Elections (“SOEs”) on implementation of this program using a new database, and some SOEs have already expressed concern that the purge will result in the removal of eligible voters from the rolls. *See* Ex. A (Decl. of Ion V. Sancho), ¶¶ 17-24; Josh Israel, *Florida Supervisors of Elections*

*Speak Out Against New Voter Purge* (Sept. 13, 2012), at [thinkprogress.org/election/2012/.../florida-supervisors-of-elections-speak-out-against-new-voter-purge](http://thinkprogress.org/election/2012/.../florida-supervisors-of-elections-speak-out-against-new-voter-purge) (last accessed Sept. 19, 2012).

Appellants are individuals and organizations whose rights and whose members' rights are affected by Florida's program to carry out a systematic purge of alleged non-citizens from the State's voter rolls within 90 days of the November 6 election. Ms. Arcia and Ms. Antoine are "United States citizens who are registered to vote in the State of Florida and were included on the Secretary's initial list of potential non-citizens." *Arcia v. Detzner*, No. 12-cv-22282, slip op. at \*2 (S.D. Fla. Oct. 4, 2012) (order denying preliminary injunction and summary judgment) ("Order"). Appellants, 1199SEIU United Healthcare Workers East, National Congress for Puerto Rican Rights, Florida Immigrant Coalition, Inc., Florida New Majority, Inc., and Veye Yo, are a labor union, non-profit corporations, and civic organizations whose missions include ensuring that their citizen-members who are eligible to vote are registered and able to do so.

Appellants initiated this action for declaratory and injunctive relief in the District Court on June 19, 2012 (DE 1), and alleged claims under the Voting Rights Act ("VRA") and two provisions of the NVRA. At that time, Appellee had been proceeding with a systematic removal program within 90-days of the primary election but claimed to have stopped that purge. On September 10, 2012, when the

State conducted a new training for SOEs, it became apparent that Appellee was definitely proceeding with a purge using a new methodology, this time within 90 days of the general election. Simultaneously, and until September 12, Appellants were negotiating with Appellee with the hope of resolving as many of the claims in this case as possible. On September 12, the parties settled all claims except for Appellants' claim under the NVRA's 90-day provision, 42 U.S.C. § 1973gg-6(c)(2)(A). That same day, Appellants filed an Amended Complaint (DE 57) focused on Appellee's renewed efforts to purge the rolls, this time within 90 days of the general election using a new methodology.

One week later, on September 19, Appellants filed their Motion for Preliminary Injunction and Summary Judgment (DE 65) – the motion at issue in this appeal. The District Court ordered an expedited briefing schedule (DE 74). Appellee filed his Opposition on September 26 (DE 79), and Appellants filed their Reply on September 28 (DE 88). The District Court heard argument on the Motion on October 1, 2012. On October 4, 2012, the District Court denied Appellants' Motion (DE 111). Appellants timely filed their Notice of Appeal (DE 114) (Exhibit A).

### **The Need for Expedited Treatment**

Unless this Court hears and decides the instant appeal quickly, lawfully registered U.S. citizens are at risk of being purged from Florida's voting rolls

without time to remedy the error, and consequently being denied their right to vote in the approaching general election.

In the NVRA, Congress recognized that the risk of disenfranchising eligible voters was too high to permit such purges within 90 days of a federal election to go forward. As the Sixth Circuit found in denying a state's request to stay a preliminary injunction shortly before the 2008 general election, "[t]hough the public certainly has an interest in a state being able to maintain a list of electors that does not contain any false or erroneous entries, a state cannot remove those entries in a way which risks invalidation of properly registered voters." *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 388 (6th Cir. 2008); *see also Montana Democratic Party v. Eaton*, 581 F. Supp. 2d 1077, 1080 (D. Mont. 2008) (concluding that a defendant's steps to challenge the voter eligibility of 6000 voters on the basis of change in address, within the 90-day quiet period, created an "unacceptable risk that eligible voters will be denied the right to vote"). The District Court's decision to the contrary ignores the plain language of the NVRA.

Given the short amount of time remaining before Election Day, and the significant constitutional harm eligible Florida voters will likely suffer if Florida is allowed to continue its voter roll purge, Appellants urge the Court to impose an expedited briefing and hearing schedule for this appeal.

Courts have consistently recognized that cases affecting elections merit expedited attention. Just last year in *Brown v. State of Florida*, this Court granted a motion for an expedited appeal in a case involving Florida’s congressional redistricting plan. No. 11-14554-EE (11th Cir. Oct. 25, 2011) (order granting expedited appeal). Similarly, in *Delgado v. Smith*, 861 F.2d 1489, 1490 (11th Cir. 1988), this Court expedited the appeal of an order dismissing a complaint that sought to enjoin an election on a citizen initiative to amend the Florida Constitution. *See also U.S. Dep’t of Commerce v. Montana*, 503 U.S. 442, 445 (1992) (“In view of the importance of the issue and its significance in this year’s congressional and Presidential elections, we noted probable jurisdiction and ordered expedited briefing and argument.”); *Page v. Bartels*, 248 F.3d 175, 184 (3d Cir. 2001) (“In light of New Jersey’s impending legislative elections . . . we agreed to hear this appeal on an expedited basis.”).

Additionally, by imposing such an expedited schedule, this Court would respect the policy of the State of Florida, which encourages courts to prioritize matters affecting elections in order to ensure that Florida’s elections are administered smoothly. Under Florida’s Rule of Judicial Administration 2.215(g), state court judges have a “duty to expedite priority cases to the extent reasonably possible.” Rule 2.215(g) further provides that “[p]articular attention shall be given to . . . challenges involving elections.” While this Court is of course not bound by



Florida's Rules of Judicial Administration, the State's determination that legal challenges involving elections warrant expeditious consideration are equally applicable in the present case.

**The Proposed Schedule**

Based on their need for expedited treatment, Appellants respectfully propose the following schedule:

<b>Initial brief deadline:</b>	<b>October 15, 2012</b>
<b>Answer brief deadline:</b>	<b>October 22, 2012</b>
<b>Reply brief deadline:</b>	<b>October 26, 2012</b>
<b>Argument (if ordered):</b>	<b>Shortly after the completion of briefing, based on the Court's availability.</b>

**Conference with Opposing Counsel**

Before filing this Motion, counsel for Appellants conferred with counsel for Appellee, who does not consent to this Motion.

**WHEREFORE**, Appellants respectfully ask the Court to expedite the resolution of this appeal.

Dated: October 9, 2012

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 9, 2012, a true and correct copy of the foregoing was served on counsel for Appellee via overnight UPS at the following address:

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# **EXHIBIT A**

**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.

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiffs Karla Vanessa Arcia, Melande Antoine, 1199SEIU United Healthcare Workers East, National Congress for Puerto Rican Rights, Florida Immigrant Coalition, Inc., Florida New Majority, Inc., and Veye Yo hereby appeal to the United States Court of Appeals for the Eleventh Circuit from this Court's October 4, 2012 Order (DE 111) denying Plaintiffs' Motion for Preliminary Injunction and Summary Judgment (DE 65).

Dated: October 5, 2012

Respectfully submitted,

/s/ John De Leon

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on October 5, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: October 5, 2012

By: /s/ John De Leon  
John De Leon