



December 18, 2014

Via Facsimile and U.S. Mail

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Re: Final Concerns and Proposals for AB 60 Implementation

Dear Secretary Kelly and Director Shiomoto:

The undersigned advocacy organizations have participated as stakeholders in the process to develop regulations and implementation plans under AB 60 (2013). We have appreciated your agencies' efforts to be responsive to community concerns and would like to continue working with you. We particularly appreciated our meeting with representatives from the California State Transportation Agency ("CalSta") and Department of Motor Vehicles ("DMV") on December 5, 2014. In that meeting, we identified several concerns and questions. We learned important details about the plans to implement AB 60, and left with a few outstanding questions and policy requests. We write to confirm our understanding of these plans and to set forth additional recommendations to ensure AB 60's success.

In addition, we include a request under the California Public Records Act to help us understand how community interests will be affected by this program.

A. Privacy: Protecting Against the Use of the AB 60 License Program for Immigration Enforcement

As you may know, there is real concern among community members that applying for an AB 60 driver's license may result in the sharing of information with Immigration and Customs Enforcement ("ICE"), leading to immigration enforcement against the Californians who seek to benefit from this new program. Unfortunately, these fears are not entirely without a basis in fact. Lessons from

other states that have already implemented driver's licenses for residents regardless of their immigration status reveal that the U.S. Department of Homeland Security ("DHS") has used other state department of motor vehicles' databases to find individuals for the purpose of seeking their deportation.¹

1. Law Enforcement Requests for Information Submitted in Application Process

AB 1660 protects underlying documents submitted to obtain a California driver's license, including those issued under AB 60 "**except when requested by a law enforcement agency as part of an investigation.**" (AB 1660, section 3, amending Veh. Code § 12800.7) (emphasis added). These documents may show foreign birth or other factual elements that could be used against people in removal proceedings. We were reassured by statements made at our December 5 meeting by DMV representatives. We understand, based on that meeting, that the underlying documents submitted to obtain a California driver's licenses will not be disclosed in response to a law enforcement request unless the request is accompanied by a search warrant, subpoena, or other court order. We also understand that such requests are processed in a centralized location and field offices do not process such requests or have authority to disclose these personal records. We will be pleased to share this information with community-based organizations and community members through our networks and in public education materials. We are interested in reviewing any records that memorialize this standing policy and practice of the DMV. Accordingly, a request for such records is included below. If there are no such written policies, we urge you to commit the policy and practice to writing, and make it available to the public. This would increase confidence that the documents submitted in support of driver's licenses applications will remain confidential.

2. Protecting Privacy of Driver's License Holders in Shared Databases.

We are informed that DHS has access to many states' driver's license databases and has used such databases to locate individuals for the purpose of seeking their deportation. Allowing DHS to gain access to the DMV database on the same terms it has employed in the past will put many AB 60 license holders – the intended beneficiaries of the law – at risk of deportation. It could also severely chill participation, undermining California's ability to achieve the law's important public safety goals. It is critical to the successful implementation of AB 60 that you protect California driver's license holders' information from being misused for immigration enforcement, including any information accessible through automated queries.

¹ John Frize, "Raid spurs fear of driver's license among immigrants, Leading advocacy group warns that agents can access data," *The Baltimore Sun*, Sept. 20, 2014, available at <http://articles.baltimoresun.com/2014-09-20/news/bs-md-immigrant-licenses-20140920> 1 [immigrants-mva-advocacy-group](#).

During our December 5 meeting, we learned that some protections are already in place. In particular, we were informed that requestors can make queries by providing a particular name, but cannot simply browse a list of drivers. We also learned that the type of license issued to a driver will not be directly identified in response to CLETs or other electronic queries. Please confirm that no codes are accessible through government requestor queries that could be used to ascertain what type of license has been issued to a person.²

In addition, because ICE's use of DMV information pursuant to a Government Requester Application and Agreement (Form INF 40) includes queries for the purpose of locating and deporting Californians based purely on immigration violations, CalSTA and DMV should terminate, or seek to amend, that agreement to preclude the use of DMV information for immigration enforcement. If there are obstacles to treating DHS differently from other government requestors, we suggest a general change to all current and future Government Requester Agreements. For example, DMV could amend all Government Requester Agreements to provide that "information shall not be used for the purpose of enforcing civil immigration law or prosecuting entry or re-entry offenses under immigration law." Alternatively the agreement could provide that, "information shall not be used to identify or target any person for immigration enforcement for offenses that are based primarily on the target's unauthorized presence."³

3. Ensuring that California Agencies will not Refer Driver's License Applicants to DHS for Immigration Enforcement

CalSTA and DMV should adopt policies and make assurances to California's immigrant communities that the DMV will not under any circumstances refer any applicants to DHS for immigration enforcement, regardless of the information they present in the application process. Any such referral would work at cross purposes with the goals of AB 60.⁴

² In order to have a complete understanding of the fields provided in response to law enforcement requests, we include a records request for blank query responses in the Public Records Act request portion of this letter.

³ We understand that ICE may seek to obtain information through its government requester agreement as part of an investigation that could *potentially* result in its referring a case for criminal prosecution of an immigration offenses such as illegal entry or re-entry into the U.S. However, we urge that California avoid entangling its drivers' license program in the enforcement of entry and re-entry immigration offenses, which are overwhelmingly handled as civil matters, and which have no bearing on California's interest in ensuring that all drivers are trained, tested, licensed and insured.

⁴ This was not a topic of discussion at our December 5 meeting, but it is our general understanding that DMV and CalSTA do not intend to refer AB 60 driver's license applicants to ICE for immigration enforcement. The recommendations here are for the purpose of effectuating that general intent.

It is also important that DMV and CalSTA employees understand that admissions made regarding any past use of false documents can put applicants at risk of deportation.

In order to accomplish these goals, your agencies should:

- Issue a policy and conduct training to reinforce the policy that under ***no circumstances*** shall a driver's license applicant be referred to ICE by a DMV employee.
- Train DMV employees, including fraud investigators and their staff, not to inquire about use of false documents and social security numbers in a way that solicits admissions.
- Limit record keeping and maintain strict confidentiality of records from the secondary review process and any fraud investigations that arise from driver's license applications.

B. Past License Holders; Policies to Support DMV's True Name Policy

Half of the nation's undocumented immigrants have lived in the United States for at least thirteen years. Most Californians who are eligible for AB 60 licenses have therefore navigated life and work in California without legal access to a driver's license for many years. Some may have been driving under a false name or with a license procured with false documents, validly issued documents that did not belong to them, or a social security number ("SSN") that does not match the applicant's true name and identity. The risk of prosecution for fraud and denial of a new AB 60 license would discourage individuals from coming forward to get proper AB 60 licenses under their correct names, which is not in California's interest. In order to support DMV's True Name policy, CalSTA and DMV should adopt specific policies for processing applications from Californians who were previously unable to obtain a license due to their immigration status. Those policies should include:

1. Some driver's license applicants may have previously used false documents, documents that did not belong to them, or SSNs that were not issued to them to obtain a driver's license when they were unable to prove lawful presence in the United States. Absent evidence that the person used such documents or the driver's license in furtherance of some other criminal activity, DMV will not refer such applicants to any law enforcement agency for investigation or prosecution based on such circumstances.
2. Likewise, some driver's license applicants may have previously used, or presented as their own, driver's licenses that did not belong to them, when they were ineligible for a license because they were ineligible to obtain a SSN or unable to prove lawful presence in the United States. DMV will not refer such applicants to any law enforcement agency for investigation or prosecution based on such circumstances.

3. DMV will not deny a new driver's license to any applicant based on his or her past use of identity documents or a SSN that were not properly issued to him or her, where that past use was due to the applicant's inability to obtain a SSN or to prove lawful presence in the United States.
4. DMV will not require admission of use of false documents or documents or a SSN that did not belong to the person who presented them as condition of issuing a new driver's license to an applicant who was previously ineligible due to inability to obtain a SSN or to prove lawful presence in the United States.
5. DMV will harmonize a person's former driving record under a falsely-obtained driver's license or a license that did not belong to the person under the person's True Name upon issuance of a new driver's license.

In our December 5 meeting, DMV and CalSTA identified at least two obstacles to these proposals. First, we understand that California seeks to treat all driver's license applicants the same and that other applicants may have compelling reasons for having used false documents to obtain driving privileges in the past. Although we understand this concern, we nevertheless urge that special consideration be made for this class of applicants because (1) their inability to obtain a license in the past was based on state law excluding unauthorized immigrants from obtaining licenses, (2) the state has changed its policy in recognition of Congress' protracted failure to fix the broken federal immigration system and the importance of offering licenses to all Californians regardless of immigration status, and (3) exercising prosecutorial discretion for this class of driver's applicants will allow individuals to correct their records, promoting the integrity of the records and DMV's One True Name policy.

Second, we understand that there may be resource limitations on the ability of DMV investigators to determine whether past fraud was due to inability to prove lawful presence or some other reason (such as child support arrears, DUIs, or failure to pay income taxes). We urge DMV and CalSTA to consider this further. It is likely that reasons other than immigration status that lead to suspension or revocation of a license would appear on the applicant's DMV records, and therefore be easy to identify.⁵ Finally, if needed, we urge the DMV and CalSTA to consider a period during which it would not refer driver's license applicants for fraud if they are seeking to correct their records, regardless of the reason for prior fraud. Such a policy could include an additional a fee, as long as the department does not require

⁵ DMV can also contact the Social Security Administration to check whether an applicant has been issued a social security number, as most people who have obtained licenses using improperly issued documents who *are or were* lawfully present will have a social security number, and most people eligible for AB 60 licenses will not.

the applicant to make admissions about his/her past behavior (this helps avoid serious immigration consequences for unauthorized immigrants).

C. Request for Records under the California Public Records Act.

The above suggestions aim to strengthen the AB 60 driver's license program. In some cases, they are hindered by a lack of information about internal processes. In order to work more effectively with the agency to promote a successful program, protect the community members who will apply for a license, and to ensure that the information obtained by the agency is accurate, we seek the following records under the California Public Records Act:

1. Records describing specifications, scope, function, content, and use of databases containing California DMV information that are accessible by law enforcement agencies, including ICE and/or DHS;
2. Blank screen shots of all database screens containing California DMV information that are accessible by law enforcement agencies, including ICE and/or DHS;
3. Blank screen shots of sample requests by law enforcement agencies, including ICE and/or DHS, for California DMV information and the response thereto.
4. Records describing the mechanisms by which law enforcement agencies, including ICE and/or DHS, obtain California DMV information.
5. Records describing the agencies or other entities that have access to California DMV information;
6. Records describing DMV and driver information that is associated to particular license plate numbers that can be read through Automatic License Plate Readers ("ALPR"), including driver information that can be obtained through an ALPR and information that can be obtained by a government requester by using a driver's license plate number to begin a query;
7. All current or pending Government Requester Account Applications and Agreements (or any other applications and agreements) for access to DMV information with DHS and any of its components, including ICE.
8. All policies, guidance documents, and training material concerning DMV responses to law enforcement requests for California DMV information generally, including but not limited to requests for documents submitted to prove identity in the application process;

9. All policies, guidance documents, and training material concerning confidentiality and privacy of driver records and information;
10. All policies, guidance documents, and training material concerning fraud referrals, investigations, prosecutions, and penalties;
11. All policies, guidance documents, and training material concerning processing of driver's license applications, including materials describing any background check system that is used in the application process and any existing or contemplated appeals processes;
12. All policies, guidance documents, training material, correspondence, memoranda, letters, and emails concerning AB 60 applicants who have a driving record under a different name or a driver's license obtained with false documents or documents that did not belong to them;
13. All records, including policies, correspondence, memoranda, email, and training material about the intended scope and use of AB 60 licenses for law enforcement identification purposes; and
14. All training material for DMV employees related to AB 60 implementation.

Thank you, in advance, for your attention to this letter. Please let us know if you have any questions, if we can provide more information, or if it would be helpful to continue our conversations on these proposals. For these further contacts and to respond to our request for information, please contact Julia Harumi Mass at the American Civil Liberties Union of Northern California at (415) 293-6339 or jmass@aclunc.org.

Sincerely,

American Civil Liberties Union of California
California Immigrant Policy Center
Coalition for Human Immigrant and Refugee Rights
Mexican American Legal Defense and Educational Fund
National Immigration Law Center