

Why the Federal Government Should Not Place Immigration Status Restrictions on Driver's Licenses

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Background

To combat fraud, the *9/11 Commission Report* called for federal standards for the issuance of identity documents, including driver's licenses. Congress implemented that recommendation in December 2004 when it included provisions in the Intelligence Reform and Terrorism Prevention Act of 2004 requiring the U.S. Dept. of Transportation, through a negotiated rulemaking process that is to include input from the states and other interested parties, to set standards regarding (1) acceptance of identity documents that applicants present when they apply for a driver's license, (2) the verifiability of such documents' authenticity, (3) fraud prevention, and (4) security feature standards for license cards. Congress should not back away from that law and incautiously make changes that would undermine national security, encourage a black market in fraudulent documents, deny law enforcement an important tool for preventing and investigating terrorism, and deny drivers the ability to learn the rules of the road and obtain car insurance.

General Principles for Driver's License Standards

1. The driver's license provisions in the intelligence reform law already follow the recommendations of the 9/11 Commission by improving the security of driver's licenses and creating measures to protect against identity theft. The law also establishes an open and deliberative process that requires input from governmental and nongovernmental stakeholders.
2. National security is enhanced when people have access to lawful documents and are able to identify themselves, and when law enforcement can use scarce resources wisely in investigating and preventing terrorism.
3. Issuing driver's licenses is a state matter, and federal legislation should not undermine the states' ability to set the criteria for deciding which of their own residents is eligible for a driver's license.



National
Immigration
Law Center
www.nilc.org

NATIONAL IMMIGRATION LAW CENTER

Los Angeles (Headquarters)
3435 Wilshire Blvd
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

Washington, DC
1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

Oakland, CA
405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028

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1. Congress just passed a law designed to implement the 9/11 Commission's recommendations.

- ◆ Congress has already addressed state driver's license vulnerabilities by writing the 9/11 Commission's recommendations into the Intelligence Reform Act and passing it. That law includes important measures to protect against identify theft and strengthen the process of verifying the authenticity of documents that license applicants present to establish their identity.
- ◆ The 9/11 Commission did not recommend that immigrants should be denied driver's licenses, and it did not argue that states should be relieved of their traditional role in determining who is eligible for a driver's license.
- ◆ The Intelligence Reform Act respects the role of states in determining who is eligible for a driver's license, does not impose unfunded mandates on the states, and recognizes the need for states and other interested parties to participate in establishing rules that make sense.
- ◆ Overturning a significant portion of the Intelligence Reform Act within months of its passage in order to add immigration status-based restrictions on who can obtain a driver's license is reckless.

2. National security will be undermined if the federal government imposes immigration status restrictions on state driver's license issuance.

- ◆ National security experts make clear that imposing immigration status-based restrictions on who can obtain a driver's license actually undermines national security.¹
 - a. Immigration status-based restrictions will create a larger "haystack" in which terrorists can hide. Effective counterterrorism strategy is based on sorting potential terrorists out from the general population so that security resources can be focused on this smaller pool of suspects. The fewer the people who are identified through the licensing process, the larger the population of unidentified people that law enforcement must sort through.
 - b. Immigration status-based restrictions will increase the incentive for noncitizens to buy fraudulent documents on the black market.
- ◆ The best way to help terrorists is to stigmatize and marginalize ordinary immigrants, making law enforcement less available to them.
- ◆ Immigration status-based restrictions on who can obtain a driver's license clog courts and divert scarce law-enforcement resources from saving lives and preventing terrorism, and make it harder for police to do their job of protecting the community.

¹ See statement released by the Center for Advanced Studies in Science and Technology Policy on Dec. 17, 2004, at <http://releases.usnewswire.com/printing.asp?id=40902>.

3. Proposing immigration status–based driver's license restrictions as a means to fight terrorism is a red herring.

- ◆ As stated in a fact sheet created by the 9/11 Public Discourse Project, which is a public education campaign created by members of the 9/11 Commission, immigration status–based driver's license restrictions would not have prevented the terrorist attacks of Sept. 11, 2001. All of the hijackers who committed the attacks were in the United States lawfully when they were issued the driver's licenses they were found to have obtained.²
- ◆ The fraud the 9/11 hijackers committed in obtaining their licenses did not arise from the fact that they were undocumented immigrants. Some of them obtained licenses by submitting false affidavits stating that they were residents of the state that issued the licenses, or on their applications they provided a hotel address as their residence address.
- ◆ In fact, state driver's license records provided critical information about where the hijackers had traveled and stayed in the U.S.
- ◆ Unlike the majority of immigrants who work hard at low-wage jobs, sophisticated terrorists have the resources to travel. They aren't deterred by lawful presence restrictions but can use their foreign passports to prove identity for almost any purpose, and they have access to technology to produce fake identity documents.
- ◆ The focus since Sept. 11, 2001, on immigrants' eligibility for driver's licenses has diverted attention from real security lapses that should be addressed. These include lack of adequate funding for state and local homeland security efforts and public health departments, lack of security at ports and other critical infrastructure facilities, chaos at the Dept. of Homeland Security, and international intelligence–gathering failures.

4. States will lose control over driver's license rules even though they will continue to administer licenses.

- ◆ The issuance of driver's licenses and driver's rules has always been within the purview of the states.
- ◆ That is the way it should be: the states administer the licenses, are closer to their citizens, and are better positioned to balance public safety, service, and other issues.
- ◆ While Congress should have a role in assisting states in crafting state-led solutions and coordinating efforts to ensure that driver's licenses are reliable and secure documents, immigration status–based restrictions imposed by the federal government clearly strip power from the states and create additional and extremely onerous requirements.

² For a copy of the fact sheet, see www.nilc.org/immspbs/DLs/PDPfactsheet_DLs_9-11&intel_reform.pdf.

5. Driver's licenses protect lives. It is important that all drivers be licensed.

- ◆ Licensed drivers take classes and pass tests. They are also registered, photographed, and insured.
- ◆ Licensing drivers helps to prevent accidents. An AAA Foundation for Traffic Safety report, *Unlicensed to Kill*, found that unlicensed drivers are almost five times more likely to be in a fatal crash than are validly licensed drivers.
- ◆ Unlicensed drivers can't get insurance and are less likely to stick around after an accident. An average of 14 percent of all accidents are caused by uninsured drivers. Nationally, uninsured motorists cause over \$4.1 billion in insurance losses per year.
- ◆ After Utah and New Mexico eliminated lawful presence requirements, state uninsurance rates dropped by one-third.

FOR MORE INFORMATION, CONTACT

Joan Friedland, National Immigration Law Center | friedland@nilc-dc.org | 202.216.0261

Tyler Moran, National Immigration Law Center | moran@nilc.org | 208.333.1424

Michele Waslin, National Council of La Raza | mwaslin@nclr.org | 202.776.1735