

**Statement on behalf of the  
American Civil Liberties Union of the Nation's Capital**

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Before the  
Committee on Transportation and the Environment  
of the  
Council of the District of Columbia  
on  
Bill 20-275, the "District of Columbia Driver's Safety Amendment Act of 2013"

June 6, 2013

Thank you for the opportunity to present information on the District of Columbia Driver's Safety Amendment Act of 2013, Bill 20-275. The American Civil Liberties Union (ACLU) of the Nation's Capital commends the Mayor for drafting a bill that we believe can be modified to achieve its stated purpose of allowing undocumented immigrants to obtain driver's licenses here in the District while ensuring adequate protections for all. The ACLU of the Nation's Capital urges the DC Council to include the following amendment to Bill 20-275:

- Remove Section 8c(d), which requires that a driver's license issued under Section 8c clearly state on its face and in its machine-readable zone that it is not acceptable by federal agencies for official purposes.

**I. Introduction**

The ACLU of the Nation's Capital supports the right of undocumented immigrants to enjoy the protections and freedoms provided by the U.S. Constitution. Bill 20-275 creates the opportunity for undocumented DC residents to obtain driver's licenses, but Section 8c(d) would make those licenses distinguishable from the driver's licenses issued to DC citizen residents. Distinguishable driver's licenses establish a lower-tier ID for undocumented immigrants, rendering them vulnerable to discrimination and harassment by businesses, landlords, security guards, police officers, and other government agents. Venturing into another state with a distinguishable driver's license would be particularly dangerous: since police elsewhere may investigate undocumented persons more aggressively than police do in DC, a routine interaction with law enforcement could trigger a full-blown investigation by United States Immigration and Customs Enforcement.

Section 8c(d) attempts to comply with the federal REAL ID Act, but that is unnecessary as the law's burdensome licensing standards may never be enforced. The District of Columbia should stand with the two dozen states that have refused to comply with the excessive and costly requirements of the federal REAL ID Act and seize this opportunity to serve as a model for smart, principled license reform. Indistinguishable IDs would increase safety on the roads, minimize administrative costs, and make a dangerous and vulnerable situation safer and more equitable for DC residents and their families.

## II. Remove Section 8c(d), which creates a second-tier driver's license for undocumented immigrants.

Bill 20-275 creates a driver's license for undocumented immigrants which readily distinguishes those license holders from all other license holders through Section 8c(d), which requires that a driver's license issued under Section 8c clearly state on its face and in its machine-readable zone that it is not acceptable by federal agencies for official purposes. This appears to be proposed in order to comply with the Real ID Act of 2005. REAL ID and its implementing regulations prohibit federal agencies from accepting state-issued licenses for federal purposes unless DHS determines that the state meets the following standards<sup>1</sup>:

- License cards must include the driver's full legal name, date of birth, gender, and residential address; a photograph of the driver; the driver's license or ID card number; and the driver's signature<sup>2</sup>
- License cards must incorporate physical security features designed to prevent tampering, counterfeiting, or duplication for fraudulent purposes, as well as certain common machine-readable technology with defined minimum elements<sup>3</sup>
- When issuing license cards, states must require and verify the following documents<sup>4</sup>:
  - A photo identity document
  - Documentation showing the applicant's date of birth
  - Proof of the applicant's Social Security number (SSN) or verification that the applicant is not eligible for a SSN
  - Documentation showing the applicant's name and address of principal residence
  - Documentation showing that the applicant is lawfully present in the United States
- States must enter into a Memorandum of Understanding with DHS to use the Systematic Alien Verification for Entitlements (SAVE) system to verify the lawful status of an applicant other than a U.S. citizen<sup>5</sup>
- States must ensure the physical security of facilities where driver's licenses and ID cards are produced.<sup>6</sup>

Official purposes, as defined in statute and regulation, are accessing a federal facility, entering nuclear power plants, and boarding federally regulated commercial aircraft.<sup>7</sup> Distinguishable licenses, however, threaten to ðoutö undocumented immigrants and thus discourage immigrants from applying for licenses. DC residents carrying distinguishable licenses would be vulnerable to discriminatory treatment by businesses, retail establishments, and law enforcement officials. Even more disturbing are the potential consequences from U.S. Immigration and Customs Enforcement (ICE): jurisdictions in both Virginia and Maryland deputize local police as immigration enforcement officials,<sup>8</sup> so DC drivers with distinguishable licenses who cross into those states ð as DC drivers frequently do ð would risk triggering

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<sup>1</sup> <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>

<sup>2</sup> Dept. Homeland Security, REAL ID Final Rule, Federal Register Vol. 73, No. 19 at 5273, Jan. 29, 2008, available at [http://www.tsa.gov/sites/default/files/assets/pdf/ssi/2008\\_real\\_idfinalrule.pdf](http://www.tsa.gov/sites/default/files/assets/pdf/ssi/2008_real_idfinalrule.pdf).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>

<sup>8</sup> <http://www.ice.gov/news/releases/0802/080204federickcounty.htm>

an investigation by police working with ICE every time they interact with local police or highway patrolmen. Travel in other jurisdictions may trigger similar risks for drivers with distinguishable licenses. Such a risk obviously will deter many undocumented DC residents from becoming licensed, which in turn means DC will gain fewer tested and insured drivers.

### **III. The federal government would have to overcome tremendous obstacles to force compliance with Real ID and it is unlikely to do so in the near future.**

The federal REAL ID Act, Public Law 109-13, signed by President Bush May 11, 2005, forbids states from issuing licenses to undocumented immigrants. At present 31 states do not comply, and 25 states have passed statutes or resolutions explicitly opposing REAL ID and condemning it as an unworkable federal overreach.<sup>9</sup> The DC Council voted unanimously in favor of a resolution urging the repeal of the REAL ID Act.<sup>10</sup> Indeed, the Department of Homeland Security (DHS) has repeatedly pushed back its REAL ID compliance deadline,<sup>11</sup> citing the difficulty of enforcement during a period of declining state revenues.<sup>12</sup> As early as 2009, DHS Secretary Janet Napolitano called the Act dead on arrival.<sup>13</sup> No wonder DHS is reluctant to enforce REAL ID: it would require them to turn away air travelers from 31 states.

#### **A. 31 states are not in compliance with REAL ID: forced compliance would place tremendous financial burdens on states.**

Widespread resistance by states in complying with REAL ID reflects the reality that REAL ID is simply too costly and complicated to enforce. State legislatures continue to express serious concern that REAL ID would cripple state budgets, increase bureaucratic headaches and wait times at DMV offices, and endanger drivers' privacy and data security. Compliance with REAL ID would involve extensive technological renovation and staff training, creating enormous initial and ongoing administrative costs and burdens for states. Compliance would also burden individual citizens with extra costs for compiling needed records and longer wait-times when applying for or renewing a license.

States do not comply with REAL ID in a variety of ways. Some states do not conduct name-based and fingerprint-based criminal history and employment eligibility checks on all DMV employees in federally specified positions; other states do not verify applicants' immigration status through the federal SAVE system.<sup>14</sup> Barely half of the states have agreed to mark compliant licenses with a DHS-approved stamp of compliance, and a DHS report from August 2012 notes that this requirement has been

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<sup>9</sup> See AAMVA report, attached.

<sup>10</sup> DC Council Resolution 17-905, Dec. 16, 2008, available at <http://dcclims1.dccouncil.us/images/00001/20090115095845.pdf>

<sup>11</sup> <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>. DHS expects to publish a schedule by early fall 2013 and begin implementation at a suitable date thereafter. Until the schedule is implemented, Federal agencies may continue to accept for official purposes driver's licenses and identity cards issued by all states.

<sup>12</sup> <http://www.dhs.gov/news/2012/12/20/dhs-determines-13-states-meet-real-id-standards>

<sup>13</sup> <http://m.npr.org/story/111177446>

<sup>14</sup> DHS Office of Policy, Secure Identification State Progress, Fiscal Year 2012 Report to Congress at 10-11 (August 28, 2012), available at <http://www.aamva.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=3018&libID=3004>.

superseded by indefinite stay of material compliance.<sup>15</sup> The most common form of noncompliance, however, is refusing to mark noncompliant licenses with a statement that the license is not to be used for official purposes: only 54% of states meet this requirement.<sup>16</sup> If the federal government were to demand compliance, DC would be among the majority of states that refuse to create a two-tiered license system for the sake of REAL ID compliance.

**B. Council’s compliance with REAL ID could create privacy concerns for all those who obtain driver’s licenses in the District of Columbia.**

REAL ID’s national database of highly personal information would endanger the privacy of the average American and increase every driver’s vulnerability to identity theft. Recently, news coverage of government surveillance of internet activity and phone records has reflected Americans’ discomfort with the government tracking their daily movements and interactions. REAL ID would greatly enhance the government’s ability to monitor Americans’ lives. Nationwide compliance with REAL ID could allow access to personal data from thousands of locations across the country. Worse yet, REAL ID would allow private businesses to collect highly personal data with the simple swipe of a license, turning our private lives into profit.

**IV. Best practices in driver’s licenses for undocumented immigrants.**

The District of Columbia should stand with the majority of American states in declining to comply with REAL ID. It should seize this opportunity to pursue sensible license reform by following the lead of those states that allow all residents to apply for a common driver’s license regardless of immigration status.

**A. New Mexico and Washington issue a single type of driver’s license to all applicants who prove their identity and their state residence—provided that the applicant has passed a road safety test.**

In New Mexico, an applicant who is unable to obtain a Social Security number must prove her identity by producing documentary proof of a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso, or a valid passport issued by her country of citizenship.<sup>17</sup> In Washington, an applicant without a Social Security number may present documentation of identity issued by a foreign country and proof of Washington residence.<sup>18</sup>

**B. Indistinguishable driver’s licenses for undocumented immigrants improve public safety and better the lives of undocumented immigrants.**

According to AAA, unlicensed drivers are nearly five times more likely to be involved in a fatal car crash than licensed drivers.<sup>19</sup> Since 2003, when New Mexico passed its license reform, the state has

<sup>15</sup> DHS Office of Policy, Secure Identification State Progress, Fiscal Year 2012 Report to Congress at 5 (August 28, 2012)

<sup>16</sup> DHS Office of Policy, Secure Identification State Progress, Fiscal Year 2012 Report to Congress at 10-11 (August 28, 2012)

<sup>17</sup> NM ADC 18.19.5

<sup>18</sup> <http://www.dol.wa.gov/driverslicense/idproof.html#documentation>

<sup>19</sup> <https://www.aaafoundation.org/sites/default/files/DDFS.pdf>.

seen a dramatic increase both in road safety and in the percentage of insured drivers: the rate of uninsured vehicles decreased from 33 percent in December 2002 to less than 9.1 percent in 2011.<sup>20</sup> From 2003 to 2009, New Mexico had a 24 percent decline in alcohol-involved crashes, from 3,566 in 2003 to 2,698 in 2009.<sup>21</sup> The logic is crystal clear: when more drivers have the chance to obtain licenses, more drivers take safety tests. Further, drivers without licenses are unable to purchase car insurance. Allowing more drivers to become licensed allows more drivers to become insured.

## **V. Conclusion**

The District of Columbia has a distinguished history of enacting principled reform. Though in the past Congress has overturned groundbreaking DC policies decriminalizing sodomy, establishing needle-exchange programs, requiring contraceptive coverage in health insurance plans, and strengthening gun safety regulations. DC can be proud of the fact that, in each case, it was on the right side of the fight. Today, DC can continue its tradition of standing with its residents against those who would marginalize, discriminate, and stigmatize. The nation is in the process of modernizing its approach to immigration, and the District should take this opportunity to act as a model for smart, principled reform.

Attachments: American Association of Motor Vehicle Administrators REAL ID Compliance Report.

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<sup>20</sup> <http://www.aclu-ia.org/why-drivers-licenses-for-all-immigrants-makes-sense/>

<sup>21</sup> <http://www.aclu-ia.org/why-drivers-licenses-for-all-immigrants-makes-sense/>