

DOCUMENTS OBTAINED UNDER FREEDOM OF INFORMATION ACT

How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information

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States have taken major strides in enacting laws that make people eligible to obtain driver's licenses or driving privilege cards regardless of their immigration status.¹ The new laws allow for a distinct, marked license to be issued to drivers who cannot satisfy the immigration, Social Security number, or other document-related requirements for obtaining a regular license under the state's driver's license laws. The number of people expected to apply for licenses under the new laws is substantial. In California alone, over 605,000 people obtained a new driver's license during the first year that the state made the new type of license available.

But many immigrants are concerned that any information provided to state driver's license agencies will be shared with U.S. Immigration and Customs Enforcement (ICE), or that rogue police officers or state agency employees or agents will contact immigration authorities about people who have such a marked license, because they assume such people are undocumented.

FOIA Request and Lawsuit

In response to these concerns, NILC submitted a Freedom of Information Act (FOIA) request, in April 2014, to the U.S. Department of Homeland Security (DHS) and ICE seeking documents pertaining to information-sharing between ICE and state departments of motor vehicles (DMVs). Because ICE produced so few documents in response, NILC [filed a lawsuit](#) against the agencies.² As a result, NILC received hundreds of pages of additional documents. NILC also researched the limited number of publicly available documents concerning this matter to try to understand what kind of information-sharing occurs in practice.

What We've Learned So Far: *Generally*

What we have learned so far is that there is a complex network of relationships and systems of communication between state driver's license agencies and law enforcement agencies, including ICE. We know that ICE is able to use a network called Nlets (described below) to

¹ Since 2013, nine states, plus the District of Columbia and Puerto Rico, have enacted such laws. Utah has issued a driving privilege card since 2005. For many years, Washington and New Mexico have issued the same driver's license to citizens and immigrants alike. But beginning this year, drivers in New Mexico who cannot prove that they have a lawful immigration or citizenship status (as defined in the federal REAL ID Act) will be eligible only for a driving authorization card (DAC). Citizens and most lawfully present immigrants will be able to choose whether to obtain a DAC or a driver's license that is acceptable as identification for certain official federal purposes. Vermont, similarly, allows citizens and lawfully present immigrants to obtain the same marked license that is available to undocumented immigrants.

² *National Immigration Law Center v. U.S. Dept. of Homeland Security, et al.*, www.nilc.org/wp-content/uploads/2015/12/NILC-v-DHS-DLs-FOIA-complaint-2014-12-17.pdf. A complete set of the documents obtained from DHS and ICE as a result of the FOIA request and lawsuit is available from www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information/#docs.

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obtain certain information provided in driver’s license applications and subsequent driver history (e.g., accidents and traffic offenses). If ICE is interested in particular individuals, it can use this information to locate them. In addition, in a decentralized manner, ICE Enforcement and Removal Operations (ERO) field offices are in regular contact through email and other forms of communication with state DMVs outside of the formal networks, to obtain information and photos in driver’s license and vehicle registration databases and to collaborate with the state agencies in immigration enforcement.

ICE admits that no federal policy governs how and when it obtains information from DMVs. The agency has also denied that it will “troll” driver’s licenses databases to obtain bulk information about people with marked licenses. At the same time, in its online FAQ about the REAL ID Act,³ DHS “[cautions](#)” against assuming that a driver with a marked license is undocumented, since these licenses are available to U.S. citizens and lawfully present people in many states, and there are many reasons why a person may choose to obtain a non–REAL ID-compliant license.⁴ Another reason why people who have a non–REAL ID-compliant license should not be assumed to be undocumented is that, though they may not have had an authorized immigration status when they got the license, their immigration status may have changed since then. Nevertheless, there is evidence that, in some instances, ERO field offices have requested bulk information from DMVs about drivers with particular kinds of licenses or anybody whose vehicle is registered at a particular address.

What We’ve Learned So Far: *Specifics*

Here are some specifics about what we’ve learned from the documents obtained through the FOIA request and lawsuit—and links to some of those documents.⁵

■ **DMV databases are a longstanding, important source of information for ICE and other law enforcement agencies.** This has been true since long before states started issuing “marked” licenses.

■ **DHS collaborates with DMVs and uses DMV databases in multiple ways:**

- **To locate people for immigration enforcement purposes.** DHS uses DMV databases to locate particular individuals. According to immigration expert [Margaret Stock](#), “When DHS wants to find someone, the primary government database it relies upon is the driver license database.”⁶ And, according to the [U.S. Government](#)

³ *REAL ID Frequently Asked Questions for the Public*, <https://www.dhs.gov/real-id-public-faqs>. “Passed by Congress in 2005, the REAL ID Act enacted the 9/11 Commission’s recommendation that the Federal Government ‘set standards for the issuance of sources of identification, such as driver’s licenses.’ The Act established minimum security standards for state-issued driver’s licenses and identification cards and prohibits Federal agencies from accepting for official purposes licenses and identification cards from states that do not meet these standards.”

⁴ *Id.* See the answer to “How does REAL ID implementation impact states that provide driver’s licenses and IDs to certain non-citizens/undocumented immigrants?”

⁵ Each link to a document or set of documents is accompanied by a citation to Bates page numbers that appear in the bottom-right corner of each page obtained under the FOIA request and lawsuit. The last three digits of each Bates number constitute that page’s Bates page number. In the set of documents obtained by NILC under the FOIA, the pages are Bates-numbered 001 through 541.

⁶ *Driver Licenses and National Security*, www.drivers.com/article/971/.

[Accountability Office](#), ICE agents consider the data in DMV records, among others, to be more current and reliable than the DHS address database.⁷

- **To use the DMVs’ technological capacities.** ICE relies on DMVs’ use of [facial recognition software](#) to identify and locate targets,⁸ and has asked DMVs to “run” the [vehicles at a particular address](#) to determine who lives there.⁹
- **To ensure that the license a particular person is issued is marked.** For example, in Nevada an ICE ERO office wanted to provide immigration information to the state [so that the DMV would revoke a person’s regular license](#), requiring the person to obtain a driver authorization card instead.¹⁰
- **To collaborate in immigration enforcement.** ICE and DMVs have in some cases collaborated to [draw certain people to a DMV office](#) so that ICE can arrest them,¹¹ and DMV employees have in some instances [reported to ICE](#) people they suspect are undocumented.¹²
- **To obtain or try to obtain bulk information.** For example, DHS has [asked for information about people with temporary visas](#) in order to identify individuals who could be deported.¹³

■ **But no federal policies appear to govern ICE access to or use of DMV data.**

- As a DHS staffer [admits](#) in an email message obtained through the FOIA request, “We don’t have any specific policy guidance on when or how to request DMV data and I’m not aware of anything in the works to document beyond the common thread of having an information need based on a need-to-know, which flows from an ongoing investigation or seeking a particular wanted individual.”¹⁴
- At the same time, in its FAQ (“for the Public”) about REAL ID, DHS “[cautions against assuming](#) that possession of a noncompliant card indicates the holder is an undocumented individual, given that several states issue noncompliant licenses for

⁷ *Alien Registration: Usefulness of a Nonimmigrant Alien Annual Address Reporting Requirement Is Questionable*, www.gao.gov/products/GAO-05-204.

⁸ Bates pp. 263, 461.

⁹ Bates pp. 358–59.

¹⁰ Bates pp. 204; 206–07.

¹¹ Bates pp. 47–48.

¹² Bates pp. 392–96. In Illinois, an employee of the Office of the Secretary of State (the state’s motor vehicles department) contacted ICE regarding an applicant, who was then arrested by ICE when he went for a license appointment. In response to public exposure of the incident and pressure from advocates, the Illinois Secretary of State Department of Police instituted a policy limiting such contacts. “For those who have only a “detainer warrant, notice of action or removal order, with no other indication of felony criminal activity, we will continue to process the applicant for a TVDL [Temporary Visitor Driver’s License] without notifying ICE. ... By making the inquiry on LEADS [Law Enforcement Automated Database System], ICE will become aware we have information regarding the individual. If ICE makes a valid request for that information, we will provide it, but we will not initiate the contact or volunteer the information.”

¹³ Bates pp. 27–28; 124–25; 140; 289.

¹⁴ Bates p. 406.

reasons unrelated to lawful presence.”¹⁵ But this cautionary note is not reflected in official policies.

- As a result of the failure to provide guidelines, at least some [ERO field offices have developed their own “initiatives”](#) aimed at targeting people for immigration enforcement by using information submitted to DMVs.¹⁶

■ **ICE has not been forthcoming about how it obtains DMV information.**

- ICE claims that it obtains DMV data primarily [through an entity called Nlets](#),¹⁷ which stands for “National Law Enforcement Telecommunications System.” According to its [website](#), Nlets is “a private not for profit corporation owned by the States that was created over 45 years ago by the 50 state law enforcement agencies.”¹⁸
- But ICE did not produce documents showing how or when it uses Nlets.¹⁹
- In fact, ICE ERO field offices appear to communicate regularly with state DMVs by email or other informal means that are unregulated and unaccountable. Despite any [claim to the contrary](#),²⁰ email exchanges appear to occur whether or not an automated system has been used. The communications have included: [obtaining driver’s license photos](#),²¹ obtaining a range of information about the license-holder or vehicle registration, and offering to help in the apprehension of a person sought by ICE. The information provided by DMV employees [includes materials that would not be available through Nlets](#).²²

¹⁵ *REAL ID Frequently Asked Questions for the Public*, *supra* note 3 (see the answer to “How does REAL ID implementation impact states that provide driver’s licenses and IDs to certain non-citizens/undocumented immigrants?”; hyperlink added).

¹⁶ Bates pp. 534–41. A previously submitted FOIA request also uncovered details about the Atlanta ERO field office’s initiative, available at www.documentcloud.org/documents/603861-ice-documents.html.

¹⁷ Bates p. 413.

¹⁸ *Nlets: Who We Are: Mission & Vision*, www.nlets.org/about/who-we-are. The Nlets website describes Nlets as “the premiere interstate justice and public safety network in the nation for the exchange of law enforcement-, criminal justice-, and public safety–related information. ... The user population is made up of all of the United States and its territories, all Federal agencies with a justice component, selected international agencies, and a variety of strategic partners that serve the law enforcement community—cooperatively exchanging data.” *Id.*

¹⁹ Screenshots of the state’s automated responses to a driver’s license query contained in the Nlets *User Policy Manual* (December 2013), https://www.dropbox.com/s/anb7ah55hpptasv/3%20%20NLETS%20User%20Policy%20Manual_Redacted.pdf, include information on the license (such as the driver’s name, address, date of birth, description, license type, such as commercial or noncommercial, restrictions, license number, and issuance and expiration dates) and subsequent driver history, such as accidents or citations. The automated responses do not reveal whether the individual possesses a marked license.

²⁰ Bates p. 401.

²¹ Driver’s license photos have greater protection than other DMV information, and ICE does not have automatic access to them. See Bates pp. 401; 423–32.

²² Bates pp. 276–77.

■ **ICE’s explanations of when and how it uses DMV information are incomplete or misleading.**

- ICE claims that it uses DMV data primarily to locate [already-identified priority targets](#),²³ and that it does not [troll DMV records](#) to identify enforcement targets.²⁴
- But that claim is inconsistent with documents revealing that ICE asked a DMV to “run” all the vehicles at an address, encouraged DMVs to force undocumented drivers to obtain a “marked” license, or sought bulk data.

■ **If ICE tracks information-sharing with DMVs, it hasn’t made those records public, and it didn’t provide them in response to the FOIA request.**

- At least some ERO field offices have signed an information use agreement or [memorandum of understanding](#) with state DMVs allowing them electronic access to driver’s license and motor vehicle data.²⁵
- Under those agreements, [users must keep logs](#) of users, dates and times accessed, purpose accessed, subject of inquiry, name of user obtaining access, and copy of use agreement.²⁶
- But ICE did not produce any such records in response to the FOIA request, and they are not publicly available.
- ICE ERO records of communications with DMVs are episodic, random, and unsystematic. ICE produced no documents at all from many ERO field offices and widely varying numbers of documents from others, providing no reasonable explanation for the inconsistencies.

RECOMMENDATIONS

For the Department of Homeland Security and U.S. Immigration & Customs Enforcement

■ **ICE must establish clear and public policies** binding on ICE Enforcement and Removal field offices regarding when and how its agents can obtain information from state DMVs. Under these policies:

- ICE should not be permitted to make bulk requests for state DMV information (such as information regarding all the drivers with particular visas or particular kinds of licenses, or the registrations of all the vehicles at a particular address), whether through national or state criminal justice networks or through informal means such as emails or phone requests.
- ICE should not seek or obtain DMV driver or vehicle registration information on individuals without providing a court order or subpoena.

²³ Bates p. 401.

²⁴ See “Raid Spurs Fear of Driver’s Licenses Among Immigrants,” *Baltimore Sun*, Sept. 20, 2014, www.baltimoresun.com/news/maryland/bs-md-immigrant-licenses-20140920-story.html.

²⁵ Bates pp. 297–303.

²⁶ Bates p. 319.

- ICE should not ask a state to use, or rely upon a state's use of, facial recognition software for driver's license photos.

■ **DHS should review and make public ICE's use of DMV information** on an ongoing basis.

■ **The DHS Office of Inspector General should regularly audit, investigate, and publicly report** on ICE's use of DMV information.

■ **The DHS Privacy Office should conduct a privacy impact assessment** on the systems used and effects of information-sharing between DMVs and ICE.

For States

■ **States should adopt policies**

- requiring ICE to present a subpoena or court order in order to obtain DMV driver and vehicle registration information
- ensuring that ICE access to driver and vehicle registration information through national or state criminal justice networks is regulated to the extent possible
- restricting DMV personnel from providing driver's license and vehicle registration information to ICE through informal means, such as emails or phone calls
- limiting the use of facial recognition software and photo-sharing for immigration enforcement purposes

■ **States should audit and make public any information** regarding DMV disclosure of driver or vehicle registration information.

■ **States should adopt the broadest possible confidentiality and antidiscrimination protections**, audit whether these protections are being observed, and limit collection and retention of information that might reveal immigration status or be used for immigration enforcement.

■ **States should make public their current practices and policies** regarding sharing of DMV driver and vehicle registration information with ICE.