

Immigrants' Access to Driver's Licenses: A Matter of Safety and Security

The Issue: The question of whether to tie immigration status to driver's licenses has been debated often in recent years, and the issue reemerged during Congress's consideration of legislation to implement the recommendations of the 9-11 Commission. The Commission recommended setting standards for the issuance of birth certificates and driver's licenses. The House and Senate adopted very different approaches to this recommendation in their respective intelligence reform bills. The Senate provision more closely mirrored the 9-11 Commission recommendations by setting minimum standards targeted at securing the integrity of identification documents. The House measure, by contrast, pushed well beyond the parameters of the Commission's recommendation by explicitly tying immigration status to driver's license eligibility. The House measure sought to bar federal agencies from accepting for any official purpose a state-issued driver's license, or other comparable identification document, unless the state required noncitizens to prove their immigration status. The Senate approach carried the day, however, and was included in the measure that became law, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).

At the beginning of the 109th Congress, Representative F. James Sensenbrenner (R-WI) reintroduced the House driver's license provision as part of the REAL ID Act (H.R. 418). Without any hearings or debate, Congress passed the REAL ID Act as part of the Emergency Supplemental Military Appropriations bill (P.L. 109-13). The new law, signed by the President on May 11, 2005, repealed the driver's license provisions contained in the intelligence reform legislation, included immigration status eligibility requirements, and created the architecture of a de facto national ID card.

Supporters of the REAL ID Act argue that denying driver's licenses to undocumented immigrants is critical to combat terrorism. To support this dubious claim, they point out that driver's licenses obtained by the 9-11 terrorists facilitated their activities. This argument misses the mark; none of the 9-11 terrorists would have been prevented from obtaining driver's licenses under REAL ID's provisions since all of them had lawful status when they applied for their licenses. Moreover, they did not even need driver's licenses to board planes on that fateful day because they had foreign passports that would have authorized them to board.

REAL ID proponents' national security claims notwithstanding, linking license eligibility to immigration status will not make us safer, but will instead interfere with effective law enforcement. The 9-11 Commission recommendations focused on secure identity documentation and enhanced intelligence: "The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. . . . Sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." By conditioning license issuance on immigration status, REAL ID will *limit* the identity data available to the government on persons present in the United States. And by alienating the very immigrant communities that we need to enlist in the war on terror, we further undercut the national security goal of enhancing our intelligence sources.

AILA's Position: AILA opposes tying immigration status to driver's license eligibility because:

Restrictive Licensing Will Impede Law Enforcement and National Security. Many local law enforcement officials oppose restrictive licensing proposals because driver's license databases play a critical role in enforcement. In fact, a recent GAO report noted that agents of ICE find public source databases, such as the DMV database, to be more current and reliable than the DHS database. Licensing noncitizens enriches our domestic intelligence by allowing law enforcement authorities to verify and obtain the identities, residences, and addresses of millions of foreign nationals. Restrictive licensing will deprive authorities of this information. Moreover, the proliferation of fraudulent documents that will result from restrictive licensing will contaminate intelligence regarding who is present in the United States.

State Driver's License Agencies Have Neither the Authorization nor Knowledge to Interpret Immigration Laws and Documents. Restrictive licensing will require state motor vehicle administrators to become immigration law and document experts in order to evaluate properly an applicant's immigration status and determine when such status expires. Our immigration laws recognize approximately 60 ever-changing nonimmigrant visa categories in addition to myriad classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, as well as applicants for extension, change, or adjustment of status, to name a few. The array of documents issued by U.S. Citizenship and Immigration Services (USCIS), the State Department, and other agencies as evidence of these classifications is even more perplexing and includes visa stamps, laminated cards, unlaminated handwritten cards, forms, letters, and many other documents or combinations of documents, which, even to the trained eye, often do not clearly show an applicant's status or duration of lawful admission. Additionally, due to extensive USCIS delays in application processing, many immigrants and lawful nonimmigrants will be unable to present documentation of their status. It is highly unlikely that motor vehicle administrators will be able to determine correctly whether a particular document or combination of documents establishes lawful status. This task requires the interpretation and application of a complex body of law. Requiring DMV personnel to understand and enforce immigration laws will most likely result in legal U.S. residents facing wrongful license denials and revocations for reasons that are wholly unrelated to driver competence.

Restrictive Licensing Will Severely Jeopardize Highway Safety. Proposals to restrict immigrants' access to driver's licenses will result in more unlicensed drivers operating vehicles on U.S. roads. Whether licensed or not, many individuals will have no choice but to drive—to work, to school, to doctors, and to many other destinations—to meet basic everyday needs. Thus, restrictive licensing has the potential to reduce the safety of Americans and all drivers on our roads because it will:

- Remove an entire segment of the driving population from the reach of administrators charged with testing and certifying driver competence, which will contribute to the national highway mortality rate;
- Deprive motor vehicle administrators of the driving records of millions of drivers;
- Discourage or prevent millions of drivers from registering their vehicles;
- Eliminate incentives for foreign nationals to attend driver education schools;
- Increase the rate of minor traffic violations for unlicensed driving, which will divert law enforcement and judicial resources from truly serious offenses; and
- Create incentives for unlicensed drivers to flee accident scenes.

Current Legislation: There is no significant pending federal legislation that would address immigrants' access to driver's licenses. Various states, however, are presently considering how and whether to comply with the REAL ID mandates.