Driver Licenses and National Security: Myths and Reality

By Margaret D. Stock

The national debate about the connection between driver licenses and security has been characterized by misinformation, and a lack of appreciation of the role that driver license and state identification databases play in national security and law enforcement.

The collective DMV databases are the largest law enforcement databases in the country, with records on more individual adults than any other law enforcement databases. The collective DMV databases are the only comprehensive internal security database. The Department of Homeland Security (DHS) does not yet have a comprehensive database on all adult residents of the United States;[1] it maintains records only on a few categories of citizens and some aliens—aliens who have provided biometric information to DHS through US VISIT,[2] aliens who have applied for visas or benefits with DHS, some aliens who have been arrested by DHS, or aliens who have voluntarily reported their information to DHS. Even DHS admits that its own databases are inferior to the DMV databases: When DHS wants to find someone, the primary government database it relies upon is the driver license database.[3]

When a person appears at a state DMV and applies for a driver license, that person voluntarily provides the DMV with a variety of valuable personal information—including a key identifier, the digital photo.[4] DMV databases thus contain biometric information, and a wealth of other valuable information that is updated on a regular basis, voluntarily, by the individual who has the license. It is easy to see how valuable this data is by comparing the data available in a DMV database to other available government databases. The state birth certificate databases, for example, contain information only on those born or adopted in the United States, usually have no usable biometric information, and rarely have updated information, since most people do not notify vital statistics bureaus when they move. The federal Social Security databases contain records only on those persons who have Social Security numbers, have no biometric information, and may or may not have current address information; furthermore, their usefulness in providing information on the adult population is dropping rapidly as Social Security has tightened rules regarding the issuance of numbers. Internal Revenue Service databases contain information only on those persons who pay taxes; these databases have no biometric information at all, and no updated information unless the person files a tax return. The State Department's passport database contains biometric record, but only on US citizens and nationals who have applied for passports.

The U.S. Government does not know how many "illegal immigrants"[5] are present in the United States. Estimates have ranged from 8-15 million,[6] but recently Bear

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[1] While a more comprehensive database is planned, it does not yet exist—and would have to incorporate DMV databases if it intends to be comprehensive. The Enhanced Border Security and Visa Entry Reform Act of 2002 required the integration of all data systems related to visa issuance and monitoring into "Chimera," an interoperable, interagency computer-based data management system. This system does not yet exist. Cynics will note that "chimera" is defined as "a foolish fancy" in the dictionary. Webster's II New Riverside University Dictionary at 256 (1984 ed.).

[2] U.S. Visitor and Immigrant Status Indicator Technology (US VISIT) is an integrated, automated entry-exit security system that tracks the arrival and departure of aliens, verifies their identities, and authenticates their travel documents using biometric identifiers such as fingerprints and photographs.

[3] U.S. Gov't Accountability Office, *Alien Registration: Usefulness of a Nonimmigrant Alien Annual Address Reporting Requirement is Questionable*, GAO-05-204 (January 2005) ("ICE agents said that they consider the data found in existing public source database systems such as *department of motor vehicle records*, credit bureaus, court filings, and Internet search engines that compile address and other information to be more current and reliable [than the DHS address database]") (emphasis added).

[4] American Ass'n of Motor Vehicle Administrators, *Access to Drivers License & Identification Card Data by Law Enforcement*, October 2003 ("Typically, the digital images (signature and photograph) are reliable, of good quality and in most cases provide the most recent image of a criminal suspect. The images embedded in driver license records have proven to be a valuable resource for law enforcement and today represents [] one of the most valuable resources to investigators.").

[5] Some advocates prefer the term "undocumented aliens," but I use the term "illegal immigrants" because many aliens who are unlawfully present in the United States do in fact have documents—albeit foreign documents, fraudulent documents, or expired documents.

[6] *See, e.g.*, Jeffrey Passel, *New Estimates of the Undocumented Population, Migration Policy Institute*, May 22, 2002, available at http://www.migrationinformation.org/

Stearns reported that there are likely 20 million illegal immigrants in the United States.[7]

Those who are opposed to illegal immigration view the granting of driver licenses to illegal immigrants as a sort of reward and acknowledgement of complicity in their violation of the law. In fact, their opposition to granting licenses (and identification documents) to illegal immigrants is quite puzzling if one views the matter from a law enforcement and security perspective. Refusing to give driver licenses to illegal immigrants means taking 20 million illegal immigrants out of the largest law enforcement database in the country. Thus, denial of licenses is a policy prescription that hampers law enforcement far more than it enhances it. If those who oppose granting driver licenses and state identification documents to illegal immigrants have their way, only US citizens and legal aliens will be in the largest law enforcement database in the country. Thus, when a law enforcement official needs to find someone who happens to be an illegal immigrant, she will have no government database in which to look. Such a policy is likely to make it harder to enforce laws, not easier.

Except perhaps for pro-immigrant libertarians, taking illegal migrants out of these databases makes no sense. There is certainly no security rationale for doing this. Denying licenses to illegal migrants creates a larger haystack of people who are not in any government database—but who are in the country, living and working here.

What happens when people can't get US driver licenses or state identification cards? If they are illegal migrants, they do not go home. They stay in the United States. They take public transportation; they walk; they hitch a ride. They use fake licenses; they use foreign licenses; they pay money to corrupt DMV employees to get real licenses when they are not legally entitled to them.[8]

Sometimes they steal someone else's identity in order to obtain a license; this corrupts the existing database information, but also makes it difficult to locate them and prosecute them. They give their data to private entrepreneurs who sell them so-called "international drivers licenses;" when they purchase such non-governmental identification, their data does not end up in the government's DMV database system, and cannot be accessed by US law enforcement officials.

Anyone even slightly familiar with US immigration law knows how complicated it is; in the words of a government spokesperson, immigration law is "a mystery and a mastery of obfuscation."[9] It is not possible today for a state or local law enforcement official to pick up the telephone and find out immediately if a given person is "legal"; it can take hours or even days to figure this out, and often the immediate information provided by DHS about a person's status can be wrong. Because state DMV officials are not immigration experts, when they cannot issue a license or identification document without confirming someone's status, they will inevitably issue some licenses to people who should not have them, and deny licenses to others who are entitled to them. In addition to harming security by making it harder for law enforcement to find and identify people, such a policy will inevitably lead to an increase in lawsuits brought by people who are entitled to have a license but are wrongfully denied one.[10] Given the level of misinformation in some immigrant communities, it is also highly likely that fewer migrants will apply for a license, even if they are legally entitled to them.

A policy of denying licenses and state identification documents to illegal migrants will inevitably hurt law enforcement. A multitude of state, local, and federal law enforcement agencies access this data on a daily basis to investigate crimes, track down suspects, and prove crimes.[11] Immigration enforcement authorities rely on

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[7] Robert Justich & Betty Ng, *The Underground Labor Force Is Rising to the Surface*, Bear Stearns Asset Management, Jan. 3, 2005, available at http://www.bearstearns.com/bear/bsportal/CorporateHome.do.

[8] In states that have instituted policies to bar licenses to illegal immigrants, the incidence of DMV employees selling licenses to unauthorized persons has increased significantly. *See, e.g.*, Michael Riley & Alicia Caldwell, *Fierce Demand Drives Illegal-License Market*, Denver Post, Jan. 30, 2005, at A1 (describing the booming market for driver licenses purchased from corrupt DMV employees in Colorado, California, and elsewhere); Avi Salzman, *Governor Considers a Delay in Issuing Licenses*, N.Y.Times, Dec. 26, 2004, Section 14CN, at 2 (describing investigations into driver license fraud at

Connecticut DMV).

[9] *Metro: In Brief*, Washington Post, April 24, 2001, at B1 (quoting INS spokeswoman Karen Kraushaar as stating "Immigration is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold").

[10] For example, one is likely to see NAFTA discrimination claims from Canadians and Mexicans who are wrongly denied licenses, since NAFTA requires them to be treated equally with US residents when it comes to such matters.

[11] Law enforcement agencies that rely on DMV databases daily include the US Department of State; the US Department of Justice; the US Department of Homeland Security; the Postal

this data heavily. For example, driver license data is frequently used to prosecute illegal immigrants for such things as criminal reentry after deportation. DMV data is also used to confirm aliens' eligibility for government benefits, as when an alien must prove that he was present in the United States at a particular point in time. Having DMV data on illegal migrants not only helps law enforcement, but it cuts down on fraud in benefits applications.

Here are five myths about driver licenses and security:

Myth #1: Terrorists can't get on airplanes if they don't have drivers licenses.

Reality: A potential terrorist could get on an airplane today using a wide variety of government-issued identification documents, including a US or foreign passport.

Myth #2: The 9/11 terrorists were able to obtain a total of 63 drivers licenses between them.

Reality: According to a Staff Report of the 9/11 Commission, the 19 hijackers had 13 driver licenses.[12]

Inspection Service; the Department of Defense; the US Secret Service; the Department of the Army; the US Coast Guard; the National Center for Missing and Exploited Children; the Department of the Interior; the Veterans Administration; the National Insurance Crime Bureau; the Federal Protective Service; the Royal Canadian Mounted Police; Amtrak; and many others.

[12] For a detailed and public list of all the hijackers and the various driver licenses and identification documents that they had, see *9/11 & Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States*, at 44 (Hillsboro ed. 2004). In determining this total, I counted twelve original licenses and a duplicate license obtained with a different address; I did not count actual duplicates. Thus, it is possible for a reasonable person to argue that the hijackers carried twelve, thirteen, or seventeen driver licenses, depending on how one counts the duplicates. The hijackers carried a total of thirty-seven (37) domestically-obtained "identity" documents, including thirty-one (31) issued by state DMVs, and six obtained from a private company that issues "ID Cards" to anyone who is willing to pay for one. Eleven terrorists had state driver licenses, and of these, five had obtained some form of duplicate license; one had obtained two separate driver licenses, one from California and one from Florida. The licenses they had came from Arizona, California, and Florida. Eleven terrorists had state identification cards; their state identification cards came from Florida, Maryland, and Virginia. The Staff Report notes that hijacker Satam al Suqami "the only hijacker who did not have a state-issued identification, used his Saudi passport as a check-in identification for American Airlines." *Id.* at 43.

The hijackers also had state IDs, and identification cards purchased from a private company[13] that apparently issued "identification cards" to anyone willing to pay for one. One hijacker had neither a state ID nor a drivers license, and he boarded his target airplane with his foreign passport. It is important to note that information from the driver license records of the hijackers was invaluable after 9/11 in tracking where the terrorists had been in the United States and with whom they had associated. This information was also used to prosecute many individuals who would not have been discovered otherwise.

Myth #3: Our illegal immigrant problem will be solved if we just deny driver licenses to people who can't prove that they are lawfully in the United States.

Reality: Illegal immigrants do not leave the United States because they cannot get a driver license.

Myth #4: It's easy for state DMVs to determine whether someone is legal or illegal.

Reality: It's difficult even for DHS to tell whether someone is legal or illegal at any given moment. Immigration law is extremely complicated, and immigration status is a moving target. A person can be legal one day and illegal the next; illegal one day and legal the next. DHS often tries to deport US citizens under the mistaken belief that these US citizens are illegal immigrants. If DHS can't figure out whether someone is a citizen or an alien, or whether someone is legal or illegal, how is a state DMV employee going to do so?

Myth #5: Denying driver licenses to illegal immigrants will improve our national security.

Reality: Denying drivers licenses to illegal immigrants will hurt our national security by depriving law enforcement officials of critical information on substantial numbers of adults who are physically present in the United States. Law enforcement officials will be less able to find persons who may be security threats, and will have less information with which to prevent and solve crimes. When a terrorist incident happens, it will be harder afterwards to determine what happened, and

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[13] For example, Salem Alhazmi had a "USA ID" card issued by "USA ID Systems" "in accordance with US law." *Id.* at A-21. "USA ID Systems" is an "Internetionel Corp" [sic] operating in various places in the United States, but it is not a government agency; this ID was not government-issued, and should not have been valid for any government purpose. See http://www.toursrus.net/USA%20ID%20%20application.htm.

when.

The 9/11 terrorists did not need driver licenses to get on the airplanes they used as weapons on September 11. On the other hand, law enforcement needed the driver license data after the fact to figure out where the terrorists had been, how they moved, and who helped them. As the American Association of Motor Vehicle Administrators stated in its October 2003 report, "Access to Drivers License & Identification Card Data by Law Enforcement:"

> Law enforcement agencies, federal, state and local, use the driver license image on a frequent basis to identify victims, criminal suspects, missing children and the elderly. *Digital images from driver records have significantly aided law enforcement agencies charged with homeland security. The events of September 11, 2001 clearly demonstrate the value of the driver record photograph.* The 19 terrorists obtained driver licenses from several states and *federal authorities relied heavily on those images for the identification of the individuals responsible* for the horrific criminal acts on that fateful day.[14]

Rather than trying to deny licenses and state identification cards to illegal immigrants, we should be encouraging every adult present in America to get a license or identification card. We should also be improving the computer systems that allow law enforcement officials in one jurisdiction to verify driving history and identification information from other jurisdictions quickly and accurately. Systems exist today to share certain data between jurisdictions, but they can be slow and inefficient, and different states use different standards for inputting the data. Additionally, states are not yet able to share digital photograph information easily across jurisdictions.[15]

People should be prosecuted for providing false information about themselves to DMV—but whether they get a driver license or a state ID should not be linked to their immigration status. In fact, to enhance law enforcement and security efforts, immigration status should be irrelevant. People should be required to prove their identity, using secure documents that can be verified. In turn, the driver license or state identification document should be a secure document that can be verified easily. Our security will be enhanced by allowing all adults in the United States to obtain a driver license or state identification document from the DMV with jurisdiction over their domicile.

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[14]American Ass'n of Motor Vehicle Administrators, *Access to Drivers License & Identification Card Data by Law Enforcement*, October 2003, available at http://www.aamva.org/Documents/idsIDSecurityFramework Appendices278303.pdf (emphasis added).

[15]The Interstate Digital Image Exchange, an initiative to share such images, promises to be a worthwhile way to enhance security by making it easier for law enforcement officials to identify all persons present in the United States.