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March 21, 2012

Secure Identification: The REAL ID Act's
Minimum Standards for Driver's Licenses and
Identification Cards

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Standards for Driver's Licenses and Identification Cards**

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**Before the Judiciary Subcommittee on
Crime, Terrorism and Homeland Security
United States House of Representatives**

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Chairman Sensenbrenner, Ranking Member Scott, Members of the Subcommittee, I am pleased to testify today about the importance of improving the security of drivers' licenses, the identity documents on whose security Americans rely daily.

Why we need more secure drivers' licenses

It shouldn't be necessary to say that we need secure identification documents in the United States. Ten years ago, the 9/11 hijackers exploited the security weaknesses of state DMVs to obtain nearly 30 licenses, many of them by fraud. And twenty years ago, Timothy McVeigh used a fake South Dakota license to rent the truck he filled with fertilizer and fuel oil; South Dakota's license security was so weak that McVeigh made his fake license with a typewriter and a clothes iron.

That's not the end of it. Last year, the FBI arrested a Saudi student in Texas whose notes showed that he had devoted much of his young life to winning a scholarship to the United States, where he planned emulate Osama bin Laden by killing large numbers of Americans. His plans included casing the home of George W. Bush and preparing a chronology for the attacks listing these key steps in his plan: "obtaining a forged US birth certificate, applying for a US passport and driver's license; ... using a different drivers' license for each car he rents; ... putting the bombs into the cars and taking them to different places during rush hour."

Some things never change. Terrorists hoping to attack us at home will keep exploiting the insecurity of our drivers' license system for as long as we fail to improve that system.

So will criminals. Identity theft is a fast-growing and disturbingly common crime; one household in 14 suffered an identity theft in 2010, according to the U.S. Justice Department, up from one in 18 just five years earlier. Some of the most intrusive and devastating forms of identity theft – forged checks, for example, or employment fraud – require a fraudulent drivers' license or similar identification document to accomplish. Bad drivers' license security has victimized millions of Americans.

It could even get some of them killed. I am still appalled by the story of Kevin Wehner. Having

his wallet stolen on vacation was the beginning a nightmare. The thief used Wehner's documents, along with a forged Virgin Islands birth certificate, to obtain a Florida license in Wehner's name. When Wehner moved to Florida, the DMV refused to give him a license. "You've already got one," they told him. He sent them his picture to straighten out the mess. That only made things worse. Because the identity thief had moved on to stealing cars and killing police officers. To catch the killer, Florida police circulated the photo that the real Kevin Wehner had recently supplied to the DMV. Luckily, a friend who saw the photo on TV called Wehner before a nervous police officer pulled him over. Shortly thereafter, police located the fake Kevin Wehner and shot him dead in a gun battle. Florida's inability to check a forged birth certificate could have killed the real Kevin Wehner just as easily.

Why REAL ID has not yet been implemented

Unfortunately, not everyone agrees with the need for better drivers' license security. Opposition to REAL ID unites the nations' governors and the ACLU. As a candidate, President Obama campaigned against REAL ID. And as a governor, Secretary Napolitano did the same. So it was no surprise that the Obama administration supported repeal of REAL ID and adoption of a softer approach, called PASS ID. Expecting PASS ID to be adopted, the administration soft-pedaled the states' obligations under REAL ID.

But PASS ID did not pass, and REAL ID is still the law. Unfortunately, however, it's not being treated like a real law. In 2009, the Secretary of Homeland Security permanently stayed the deadline for states to come into material compliance, on the grounds that the Department was pursuing PASS ID. By March 2011, with the deadline for full compliance with REAL ID just two months away, that reasoning wouldn't work anymore; everyone recognized that PASS ID was dead. But the Secretary nonetheless postponed the deadline for full compliance to January 2013 without taking comments. The remarkable justification for the delay was that the administration had encouraged the states to hope that the law would change, so they didn't take steps to comply with the law as it stands:

[S]ome States delayed investing in new technology and process changes because of uncertainty associated with Congressional action on the PASS ID Act. PASS ID, which was supported by the Administration as well as State associations, including the National Governor's Association and the American Association of Motor Vehicle Administrators, would have modified certain requirements of REAL ID to facilitate State compliance. States delayed making investments to implement REAL ID to ensure they were not making expenditures to comply with requirements that would have been undone had PASS ID been enacted into law. Now that PASS ID seems unlikely to be enacted, DHS anticipates States will refocus on achieving compliance with the REAL ID requirements.

Wow. I only wish I could get an extension on my tax return by saying I was hoping the law would change before the returns were due but that I'm now ready to "refocus on achieving compliance" with the requirements of the tax code.

In fact, apart from hoping that the states will refocus, the Department does not seem to be doing

much to encourage them to meet the new deadline. As far as I can see, it hasn't audited state compliance; it hasn't processed the submissions of states that want to certify their compliance with REAL ID; and it hasn't pressed the states that are lagging far behind to step up their efforts.

The 9/11 Commission is right: we can't afford more delay

That approach will mean years of delay in improving drivers' license security, millions more victims of identity theft, and perhaps more victims of terrorism. It will mean negating not just a federal law but one of the last unimplemented recommendations of the 9/11 commission. The members of that commission recently reassembled for a tenth anniversary review of the nation's progress in adopting its recommendations. They were blunt in their criticism of the administration's delay in implementing REAL ID:

Recommendation: "The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses."

....

[T]he deadlines for compliance have been pushed back twice ... until January 2013. The delay in compliance creates vulnerabilities and makes us less safe. No further delay should be authorized; rather, compliance should be accelerated. The delay in compliance creates vulnerabilities and makes us less safe. *No further delay should be authorized; rather, compliance should be accelerated.* (Emphasis added.)

The 9/11 Commission members are right. The foot-dragging should stop, in Washington and in the states.

Most states are ready to meet the requirements of REAL ID

This is particularly true because, despite all the public outcry and political posturing, most motor vehicle departments are making good progress toward the goals set out in the REAL ID act. Janice Kephart of the Center for Immigration Studies has done invaluable work in surveying the states' progress toward achieving compliance with the standards set by REAL ID. Her most recent study estimates that nine states are on track to achieve full compliance with all REAL ID requirements by January 2013, and that another 27 will have achieved material compliance with the act by then. That means that the great majority of states can meet the deadline, at least for material compliance, if they simply keep on doing what they have been doing.

In saying that, I do not mean to overlook the distinction between material compliance and full compliance. The principal difference is that states can achieve material compliance without having in place an electronic verification system for birth certificates. To achieve full compliance, they must check birth certificates with the issuing jurisdiction.

Now, as you might guess from my early remarks, I think that checking birth certificates is crucial to achieving a more secure license system. Birth certificates are much easier to forge and much

harder to check than licenses, so it's no wonder that everyone from aspiring terrorists to cop-killing car thieves views a forged birth certificate as the key to building a fake identity.

And so, having an electronic system for checking birth certificates is crucial. It too should be in place as soon as possible.

Birth records can be checked electronically today

Once again, there is good news on this front in the Kephart report, which says that by February of this year, 37 states had already entered their birth records into a system that allows other agencies to conduct verification online. This system, called Electronic Verification of Vital Events (or EVVE), is administered by the National Association for Public Health Statistics and Information Systems (or NAPHSIS). The network is still growing; NAPHSIS tells me that they've added another state since February; EVVE now covers 38 states. And the system isn't just theoretically available. It's actually being used on a daily basis by several US government agencies, such as the State Department's passport fraud investigators, the Office of Personnel Management, and the Social Security Administration.

The really good news, then, is that there are no technical barriers to nearly immediate implementation of electronic birth certificate checks. Any state that can achieve material compliance by 2013 can also achieve the most important element of full compliance by that date; it just has to hook up its DMV to EVVE. In short, nearly 40 jurisdictions are on track to do what the 9/11 Commission recently urged them to do: implement drivers' license security without delay.

Why Congress needs to act

Now let me turn to three pieces of bad news, and the reason that the 9/11 Commission's goal will remain unfulfilled unless Congress acts.

1. Everyone's security is set by the weakest states, not the strongest. First, the efforts of nearly 40 jurisdictions to improve their license security won't do us much good unless the remaining states get on board. It's become quite obvious that identity thieves – whether they're illegal workers or fraudsters – keep a close eye on the license security practices of the states. When they need a fraudulent document, they always manage to find the states with the weakest security.

This is why REAL ID was needed in the first place. Many states did a good job, and a few did not; but those few undermined the efforts of all the others. We have to bring the laggard states up to the same standards that most states are on track to meet. Only a firm deadline, with penalties, will do that. And, since the administration has made clear its reluctance to enforce REAL ID, Congress needs to impose its own deadline.

2. We need new penalties for noncompliance. That brings me to the second piece of bad news. The main penalty for states that miss deadlines is that TSA will refuse to accept the licenses they issue, meaning that residents of those states won't be able to fly without a U.S. passport or other

strong ID. The problem with this penalty is not that it's too weak.

Rather, it's too strong. It's like a nuclear weapon – so big and so damaging to so many innocent people that whoever sets it off is likely to be judged harshly. With both sides aware of the risks, REAL ID penalties are at best a game of chicken between recalcitrant states and DHS. If the states convince DHS that they will not meet the deadline, DHS will probably cave and issue an extension. If DHS convinces the states that real penalties will be imposed and the deadline will not be extended, then the states will probably cave and come into compliance. But to be candid, having granted two extensions already, I don't think this administration can persuade the states that this time is different.

That's why Congress should act. REAL ID needs a statutory deadline with penalties that are credible. Here's one idea. Remember that the states, almost without exception, have accepted more than \$220 million in grants to comply with REAL ID or improve license security; they accepted grants during fiscal years 2005, 2007, 2008, 2009, and 2011. Many of those grants required the states to affirm that they were in the process of complying with REAL ID. Yet years later some of them still are not on track to meet the much-delayed implementation deadline. This raises the question whether the lagging states took federal grant funds in good faith and whether they spent the funds prudently. If they lag so badly that they miss even the January 2013 deadline, perhaps it's time for them to give the money back.

So here's one idea for changing the dynamic of REAL ID enforcement: perhaps any future appropriations or authorization bill dealing with homeland security, terrorism, or immigration should include a provision requiring that states failing to meet the REAL ID deadline must return any funds received to improve drivers' license security. The paybacks could be cumulative, increasing over time so that the states have a growing incentive to comply. While imposing fines on states or a requirement to disgorge grant funds would raise legal concerns, I see no bar to automatically reducing by the amount of the penalty any future payments that would otherwise be due to states under other programs. Such a penalty would also respond to the current budget climate by reserving scarce federal funds for states that live up to their obligations under federal law. It could be implemented either through appropriations or authorization bills. That's the kind of modest but credible penalty that is likely to finally break the last logjam of lagging states and bring about nationwide license security.

3. Electronic birth certificate checks probably won't happen without enforcement of the deadline. Finally, the last piece of bad news concerns the birth certificate network, EVVE. As I said, it is available and ready for states to use. But the states are not in fact using it, at least not to check birth certificates from other states. (Some states do use the system to check their own birth records.) Indeed, a pilot in which three states were using EVVE to do cross-border birth record checks has recently ended, and the states involved decided not to continue the checks – a troubling bit of backsliding, given the importance of birth certificates as breeder documents for false IDs.

Why are states reluctant to use EVVE for drivers' license checks? I suspect the problem is the cost of the service. When the system is running at low volumes, as it is now, the cost of an electronic record check on EVVE is nearly two dollars. That's a lot of money for states that

issue tens of millions of licenses and may charge only \$20 or \$30 for each one. States have an incentive to hang back and let other states pay the high cost of being an early adopter.

This Alfonse-and-Gaston problem is easy to solve. If all state motor vehicle agencies join EVVE at the same time, its volume pricing will bring the cost of each check down to less than a dollar – 94 cents, I’m told by NAPHSIS. We can achieve this goal if DHS simply enforces the existing deadline of January 2013. Overnight, the cost of the service will drop. That is another reason to impose a deadline and to include birth record checks.

I know the states have complained about the costs of REAL ID. That complaint makes no sense in the context of EVVE, however, because most of the 94-cent cost goes to state vital records agencies to cover their costs of maintaining EVVE records. Let me say that again; roughly 87 cents of the 94-cent EVVE fee is simply a transfer between state agencies – from state DMVs to state vital records offices. Even when those transfers cross state boundaries, they go in both directions and are likely to roughly balance out.

It turns out that the states will be literally paying the great bulk of EVVE fees to themselves, and their reluctance to make these payments is simply a disguised turf war between the DMVs and the vital records offices. Surely we should not leave future victims of future identity thefts and terrorist acts unprotected simply because two state agencies do not agree on which of them will pay to maintain digitized birth records.

Still, if Congress wants to help the states achieve compliance by further lowering the cost of birth record checks, there is a way to do that while also making the country more secure. As I understand EVVE’s pricing, its lowest fees will be charged to all comers once volume in the system exceeds 1.2 million checks a month. Bringing all the states on board through REAL ID will achieve that end. But so will requiring that the State Department check all birth certificates through EVVE before issuing a passport. Today, I believe, State only checks a limited number of certificates through EVVE, as part of its fraud prevention program. If it checked all certificates through EVVE, it would likely uncover more fraud, and it would lower the cost of such checks dramatically for all. This would add to the State Department’s costs, but not to the deficit, because the cost of passport processing measures is recovered by passport fees.

Conclusion

Making sure that Americans can rely on the security of their drivers' licenses is a vital national priority. It has been stalled for too long, and this hearing serves an important purpose in drawing attention to how much has been achieved and how much still remains to be done.

Thank you for the opportunity to testify here today.