



New York Green-Light Law Creates Serious and Unprecedented Hurdles for Immigration Enforcement

By Eric Kirkwood

Executive Summary

New York State has followed the lead of several other states to diminish the amount of documentary evidence needed to secure a driver's license in that state. On June 17, 2019, Governor Cuomo signed the Driver's License Access and Privacy Act, commonly known as the "Green-Light law".¹

Ostensibly, the N.Y. Green-Light law provides a way for certain residents of New York, primarily illegal aliens, to obtain valid N.Y. driver's licenses. This report will detail how this access to valid identification will shield illegal aliens from detection. In addition, this report will focus on the public safety danger this law presents, as it will be used by criminals to obtain valid documents for fictitious identities and for other forms of identity theft.

The vast majority of these new driver's licenses will be based on a document issued by any number of foreign governments. The information in this document, the consular identification document (CID or consular ID), cannot be verified by any U.S. entity.

Another component of the law prohibits Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) from accessing N.Y. Department of Motor Vehicles (NYDMV) records and information. This prohibition will disrupt CBP inspections at Ports of Entry (POE) as well as hinder ICE and Border Patrol in the course of their daily operations.

The Green-Light law undermines U.S. security in the following ways:

- It provides aliens illegally in the United States and/or others with nefarious intentions a method to obtain a legitimate, state-issued document for identification;
- It requires New York State to issue an identity document based upon information provided by a foreign government with no provision to verify the accuracy of the information;
- It prohibits Immigration and Customs Enforcement and Customs and Border Protection from using information maintained by NYDMV; and
- It creates numerous paradoxical law enforcement relationships that inhibit public safety and immigration enforcement.

The federal government should not simply surrender to the unreasonable and potentially unconstitutional limitations imposed on federal immigration and local law enforcement agencies by this law. This report identifies several ways to circumvent and counteract provisions in the Green-Light law. These include withholding relevant federal funding for the state; filing lawsuits against New York for attempting to preempt federal authority; and

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persistent litigation by the U.S. Attorney's Office, ICE, and CBP to obtain subpoena compliance. In addition, stakeholders in the public safety and immigration enforcement arenas should speak up about the public safety and immigration problems created by the law. In some cases, federal agencies may have to change the way they do business to mitigate the effects of this law.

Use of Identity Documents in the United States

As American society evolves, government-issued identification becomes more and more necessary to navigate everyday life. Sixty years ago, most Americans had four or five government IDs. These were infrequently needed to prove a status to some government official. Most had a birth certificate, Social Security card, and perhaps, a voter ID sitting at home in a shoebox set aside for important papers. Many had a state-issued driver's license and a registration certificate for their vehicle. These were required for any encounters with the law enforcement while driving. Young men were required to register for the draft and carry that registration with them. Aliens legally in the United States were issued documents recognizing that status. U.S. citizens wishing to travel outside of North America obtained a U.S. passport. Otherwise, most other documents were issued by private entities or quasi-public concerns such as schools, fraternal organizations, libraries, or in the form of credit cards or check-cashing privilege cards.

Contrast that with life in the United States today. In the course of a normal day, one might have to present valid state or federal government-issued identification several times a day. For example, one must show ID to accept a job, buy a firearm, open a bank account, enter the secure area of an airport, enter the country, buy alcohol or cigarettes, register in a hotel, take a proctored test, or apply for government benefits. Not having acceptable documents makes these tasks extremely difficult, if not impossible. Most of the ID requirements in the private sector are designed to detect and deter fraud. The public sector requirements for proper ID are in place to help ensure public safety and combat terrorism, as well as to prevent fraud.

What Makes The N.Y. Green-Light Documents Less Secure?

By the beginning of 2020, New York will issue "a non-commercial driver's license or learner's permit which does not meet federal standards for identification." The only limitation on this license is that it will be stamped "Not for Federal Purposes". These new licenses will be acceptable for identification for all but a few "federal purposes". As of today, the restricted federal purposes are boarding an aircraft or entering certain government buildings, military installations, and nuclear facilities.

A document's integrity is established by two key components: assurance that the identity information was authenticated prior to issuance, and trust in the entity that issued it. The Green-Light licenses fail on both counts.

First, the N.Y. law will no longer require the applicant to provide a valid Social Security number. In lieu of a Social Security number, New York will require the applicant to file an affidavit stating they do not have a Social Security number. This is a major vulnerability, because verifying an applicant's valid Social Security number is the main way to substantiate the applicant's identity. Through the Social Security Administration, N.Y. state officials can verify the validity of the number and the biographical data associated with the number. Failing to do so compromises the security of the licenses.

The licenses are issued by the state department of motor vehicles, which normally should inspire confidence that the information is valid. This confidence quickly disappears once licenses are issued that are based on information that is not verifiable. The Green-Light law specifically allows for foreign passports, foreign driver's licenses, and consular identification documents (CID) issued by an applicant's country of citizenship to be used to establish identity. By their very nature, foreign passports, foreign driver's licenses, and CIDs are not under the control or jurisdiction of any U.S. entity. Any information shared by the issuing country is solely at that nation's discretion. There is no way to compel a foreign government to disclose this information. There is no way for state officials to evaluate the integrity of the foreign countries' application process for any of the above-mentioned documents.

N.Y. Will Accept Hundreds of Types of Breeder Documents

The Green-Light law provides:

With respect to a non-commercial driver's license or learner's permit which does not meet federal standards for identification, in addition to the acceptable proofs of age and identity approved by the commissioner as of January first, two thousand nineteen, acceptable proof of identity shall also include, but not be limited to, a valid, unexpired foreign passport issued by the applicant's country of citizenship (which shall also be eligible as proof of age), a valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship, or a valid foreign driver's license that includes a photo image of the applicant and which is unexpired or expired for less than twenty- four months of its date of expiration, as primary forms of such proof.

New York will now accept any of three types of foreign identity documents to establish identity for the license. The Green-Light law does not specify which nations' documents it will accept, so one should infer that all foreign nations' documents will qualify.

The United States has diplomatic relations with approximately 180 nations. Each of these countries issues passports, and some issue more than one type. Each of these countries has the ability and authority to issue consular identification cards. Each of these nations issues at least one type of driver's license. At minimum, that is 540 different documents that NYDMV will accept.

The acceptance of foreign driver's licenses greatly adds to the number of breeder documents that can be used. Many nations, the United States included, allow political subdivisions to issue driver's licenses. For instance, Mexico and Australia allow their individual states to issue licenses.

By the time all variations of documents are counted, there will be over 600 documents acceptable to establish identity at NYDMV — but with no mechanism to verify these documents through the issuing authority. This is a recipe for fraud. It is absurd to expect that the average (or even exceptional) NYDMV employee will be able to detect counterfeit or improperly issued documents from this pool of 600 acceptable documents.

For simplicity, this report will focus on use of the consular identification card (CID) as the primary form of identification likely to be presented by aliens seeking licenses. The vulnerabilities of the foreign passport and foreign driver's licenses are similar to the CID and the potential for fraud is just as great. For a variety of reasons, consulates in the United States tend to issue CIDs instead of new passports or foreign licenses. Nevertheless, stolen foreign passports and foreign licenses also remain a threat, because imposters likely will attempt to use them to obtain Green-Light licenses.

The Consular Identification Document Is the “Mother” of All Breeder Documents

A “breeder document” is a document that is used to secure or obtain other valid documents. In turn, these newly procured documents are used to establish one's standing in our society. For example, now a CID can be used to obtain a valid N.Y. driver's license. While a business or financial services institution likely would balk at cashing a check when only a consular ID is proffered for identification, that same business or bank might accept the check when the bearer presents a Green-Light N.Y. driver's license, unaware that the information on the license is based directly on the unverifiable consular ID.

One of the possibly unforeseen issues of the new law is that many of the consular ID cards are issued in languages other than English. Many of these countries use alphabets that differ from the Latin alphabet used in English. How will state officials evaluate the validity of these documents? The procedure used by New York to verify U.S. documents from another state is straightforward; the clerks simply tap into the other state's database electronically to compare the information. If necessary, NYDMV employees can call a counterpart in the other state's DMV to ask questions. In contrast, there is no avenue to query a foreign government's record system or access their databases to authenticate an identity document.

Let's examine three scenarios on the mechanics of misuse of the consular ID issued by Mexico (known as the *matricula consular*), which is the most common CID in use.

Scenario 1. Abel Bravo-Cortez is a Mexican national and lawful permanent resident of the United States, who resides in Queens, N.Y. Abel had a valid N.Y. license under the name Abel B. Cortez, but it was suspended due to multiple, serious traffic violations. Abel obtains a valid Mexican consular ID by showing his Mexican birth certificate. He insists that his consular ID be issued in his full name, Abel Bravo-Cortez. Abel then applies for a Green-Light license with the slight name variation and uses a relative's address in Albany. He provides an affidavit that he does not have a Social Security number. Abel is back on the road.

Scenario 2. Carlos Fuentes-Diaz is a Mexican national living illegally in the United States. Carlos has a criminal record and is wanted by authorities in Arizona. Now living in New York City, Carlos asks a friend still residing in Mexico to lend him his birth certificate (or buys a stolen Mexican birth certificate). Carlos goes to the nearest Mexican consulate and obtains a consular ID under the name on the birth certificate, Marco Hernandez-Gomez. Carlos then obtains a N.Y. license in the Hernandez name. Carlos now has a false ID to rent an apartment and to hide behind if stopped by the police.

Scenario 3. An unnamed man with an unknown date of birth and of unknown nationality is determined to obtain a false identity. He works with a document counterfeiter. The counterfeiter manufactures a Mexican consular ID for \$400. The man assumes the name Marcos Gonzalez-Morales. Even though the document is counterfeit and its quality mediocre, the clerk at the DMV feels compelled to issue a Green-Light license based on it. The clerk doesn't have the skills or the training to declare it fraudulent, nor the ability to check its authenticity through a database or liaison with the Mexican government. "Marcos" uses his new identity to establish credit and open a bank account. He helps launder drug proceeds and rents vehicles to transport narcotics. In another scenario, the new "Marcos" rents vehicles and a safe house for a cell of terrorists.

On June 26, 2003, Steven C. McCraw, then assistant director of the FBI Office of Intelligence, testified before the House Immigration Subcommittee on the topic of consular ID Cards.² His testimony was informative, credible, and relevant even today, 16 years later. One statement sums up the role of the consular ID card perfectly today as it did then: "The first criminal threat stems from the fact that the Matricula Consular (consular ID) can be a perfect breeder document for establishing a false identity."

Who Benefits From the Green-Light Law?

The primary beneficiaries of this law are aliens living illegally in the United States. Identity documents such as driver's licenses, ease the lives of those illegally present by enabling them to hide in plain sight. License holders have something to show to open a bank account, apply for a job, cash a check, apply for a benefit, or rent an apartment. One of the proponents of this law, The New York Immigration Coalition, states in a "fact sheet" that "With State issued identification, unbanked immigrant [sic] New Yorkers will have the opportunity to financially integrate into the formal banking system and build their family's savings and economic security."³

Other beneficiaries include those who wish to obtain a government identification document in an assumed name in order to commit fraud, evade justice, avoid scrutiny (in the case of registered sex offenders, debtors, and deadbeat parents) or further other criminal or terrorist activity. Under the right circumstances, anyone can obtain a foreign-issued document of unknown veracity and establish an identity endorsed by the state of New York.

A third group that benefits is the subset of employers who are amenable to hiring aliens without work authorization. This new law will afford them plausible deniability in the hiring process: "Gee, they had documents!" It also makes the document holders more desirable as employees, since they now can use company vehicles at work. In addition, having the ability to drive to work often lessens the likelihood of absenteeism.

There is absolutely no benefit in the Green-Light law for law-abiding U.S. citizens or aliens legally in the United States.

Green-Light Law Shields Applicants from Immigration Authorities

In addition to licensing illegal aliens, the Green-Light law codifies New York's intent to shield the licensees from detection by immigration enforcement agencies. There are four elements to this section:

- ICE and CBP are statutorily prohibited from accessing information maintained by NYDMV.
- The only narrow exception is “unless the commissioner is presented with a lawful court order or judicial warrant signed by a judge appointed pursuant to article III of the United States constitution.”
- NYDMV is required to disclose to the license holder any court orders seeking information served on it.
- Other agencies receiving information from NYDMV must first certify that this information will not be shared with ICE or CBP or otherwise used to enforce the immigration laws.

The first two of the above-mentioned issues are covered by Section 12 (a) of the Green-Light law. Specifically, the law states:

Except as required for the commissioner to issue or renew a driver's license or learner's permit that meets federal standards for identification, the commissioner, and any agent or employee of the commissioner, shall not disclose or make accessible in any manner records or information that he or she maintains, to any agency that primarily enforces immigration law or to any employee or agent of such agency, unless the commissioner is presented with a lawful court order or judicial warrant signed by a judge appointed pursuant to article III of the United States constitution.

The new law is clear. The DMV commissioner is prohibited from disclosing to ICE or CBP anything from DMV records. This straightforward reading would include all vehicle and vessel registrations too.

Currently, ICE and CBP access NYDMV records numerous times a day, the vast majority through an ICE or CBP work station. The access is provided by the International Justice and Public Safety Network (NLETS). NLETS is a criminal justice and public safety information-sharing network. All 50 states are members. Federal agencies with a criminal justice component, such as CBP and ICE, are members as well.

At its simplest, NLETS is a computer-based messaging hub. The requesting agency sends an electronic message through an NLETS switch. NLETS forwards the message to the member that holds the requested information. The record-holder replies through the NLETS hub. NLETS then routes the information to the requesting agency.

What remains to be seen is whether New York has the technical capability to identify ICE and CBP requests and simply not answer them, and whether NLETS will allow one member to reject another member's request. If New York is unable to block ICE and CBP electronic requests, this portion of the Green-Light law will be ineffective and New York politicians will have been merely showboating for political rewards. There will not be a definitive answer until the law goes into effect in January 2020.

CBP Screening, ICE Investigations, Border Patrol Duties Affected

If New York is allowed to block access through NLETS, CBP will be the most affected. CBP has two main components, the Office of Field Operations (OFO) and Border Patrol (BP). OFO staffs the ports of entry (POE) at the land border, sea ports, and airports. OFO's major duties are to examine U.S. citizens returning to the United States, inspect aliens for admissibility, regulate the movement of goods through the border, intercept prohibited items and contraband, and inspect agricultural goods.

OFO sends inquiries to NYDMV thousands of times a day. In a typical scenario:

A vehicle with N.Y. plates arrives at the Niagara Falls, N.Y., POE from Canada. An automated license plate reader scans the plate, accesses the state's DMV records and identifies the owner, searches records for stolen vehicle information, and searches TECS and NCIC for warrant information and crossing history.

This procedure is to aid the CBP inspection process, so that those who are criminal or security threats can be interdicted and ordinary travelers can be admitted without undue hassle. If New York blocks CBP access, much of that information is absent. CBP will need to determine the steps necessary to fill in the gap of missing information. It may be time-consuming to obtain the missing information to the detriment of the traveler and to the efficiency of the agency.

ICE and Border Patrol use DMV records as an investigative tool. It should be noted that both CBP and ICE agents and officers are "peace officers" under N.Y. law. ICE uses the information to track fugitives and develop leads for cases ranging from drug smuggling to alien smuggling. Border Patrol agents perform uniformed patrol functions. They frequently make traffic stops. Border Patrol agents routinely provide back-up for local police in northern New York. CBP and ICE occasionally encounter people with arrest warrants from various New York jurisdictions. As N.Y. peace officers, they take these wanted persons into custody and turn them over to local authorities.

The following are examples of the types of situations ICE and Border Patrol would seek information about from NYDMV:

Scenario 1. An ICE special agent is investigating a suspected drug trafficker. Surveillance leads to an isolated section of a parking lot. The target pulls alongside two parked vehicles. One vehicle has a N.J. license plate and the other a N.Y. plate. A "real-time" check with the N.J. DMV shows the car is registered to the girlfriend of a trafficker in another organization. The agent's attempt to run a record check on the N.Y. plate is unsuccessful because New York will no longer share information.

Scenario 2. ICE is investigating a human trafficking organization. They believe they have located a drop house in an apartment complex. Agents notice different vehicles stopping at the drop house multiple times a day. Agents are blocked from acquiring vehicle registration information from vehicles with N.Y. license plates.

Scenario 3. A Border Patrol agent in a marked unit spots a suspicious vehicle near Constable, N.Y. The occupied vehicle is parked on the side of the road near a known smuggling route. Both the vehicle occupant and the Border Patrol agent notice each other. The agent parks behind the other vehicle. The suspect vehicle has a N.Y. license plate. The Border Patrol agent is blocked from receiving any information about the registered owner. Not being able to access vehicle information is an officer safety concern. This type of situation hasn't existed for police officers since the 1930s.

At first glance, New York provides a mechanism for CBP and ICE to obtain information from NYDMV. A closer look reveals that the process is so time-consuming and draconian that using it would be extremely cumbersome to pursue. The Green-Light mechanism requires an "article III judge" to issue a federal court order to obtain the information. These are federal judges at the district court level and higher. According to the Administrative Office of the Courts, there are 870 authorized Article III judges for the entire United States. This includes the U.S. Supreme Court and the various appeals courts. Federal courts are notoriously backlogged for all but criminal prosecutions and, even then, only for those defendants in custody. The notion that ICE or CBP would have access to an Article III judge on a routine and frequent basis is absurd.

Many (if not most) court orders at the federal level come from magistrate judges or from the clerk of courts for a particular district. Magistrate judges are not Article III judges. Nevertheless, they wield a high level of authority at the first stages of a government court action. Magistrate judges issue search and arrest warrants, set bail, conduct detention hearings, and set initial appearances among other duties. Despite that, New York doesn't believe they have the wisdom or discernment to decide if New York should turn over DMV material to ICE.

Grand jury subpoenas are often used in gathering documentary evidence in a case. Federal grand jury subpoenas are signed by the clerk of courts in each federal district. Clerks of the court are not Article III judges and New York will likely try to ignore these court orders.

One of the most common methods for a federal agency to obtain information is through the use of administrative subpoenas. Many federal criminal justice and regulatory agencies have this subpoena power by statute. ICE, CBP, and their predecessor,

INS, were granted this subpoena authority under Title 8 United States Code, Section 1225 (d)(4). This is an authority that has existed for decades. ICE and CBP subpoenas are issued by the agency. They specify the information requested and a date the information or testimony is required. If the custodian of records for the information fails to comply with the subpoena, the agency may seek judicial review at the district court level. Use of these subpoenas is the most efficient method to gather information for all involved. By statute, New York will no longer comply with these types of subpoenas.

By demanding this convoluted and complex process, New York ignores the federal court's authority to set its own rules of procedure. New York has no authority to tell the federal courts which orders they will obey. By that theory, New York could pass a law that declares that a magistrate judge no longer has the authority to issue search warrants for locations in New York.

The federal courts have ruled many times on matters this law seeks to impede. Starting with *Chy Lung v. Freeman* in 1876, the U.S. Supreme Court established that the federal government, not the states, is responsible for enforcing immigration laws. In addition, federal courts have regularly upheld the authority of federal agencies to issue administrative subpoenas and they expect the receiving entities to comply with them. Ultimately, the federal court system will determine the type of court order that New York will be required to comply with.

Sensitive Law Enforcement Queries to Become Public Under New Disclosure Provisions

The new law requires that New York notify the holder of a Green-Light license if ICE or CBP attempts to obtain information from NYDMV. The law requires NYDMV to inform the subject of the record request no later than three days after receipt. There seems to be only one reason for this notification requirement: to hinder the enforcement of the immigration laws. One function of NYDMV is that of a criminal justice agency. As a rule, criminal justice agencies do not hinder other criminal justice agencies. A criminal justice agency that warns the target of another agency is contrary to all the "best practices" of law enforcement.

At the same time, NYDMV is a regulatory agency. As such, it is expected to keep law enforcement inquiries confidential. Paradoxically, the New York law now demands the opposite. It is reasonable to ask, if such disclosures of investigative interest in motor vehicle information is somehow beneficial to the public, then shouldn't New York mandate that all N.Y. license-holders be warned when police or sheriffs seek their information from the DMV? Imagine the outrage, especially if a warned target were to later ambush a police officer arriving to make the arrest.

Lastly, the bill requires that any agency that receives information from NYDMV certify that it will not pass this information to either ICE or CBP, and certify that it will not use this information for immigration enforcement purposes. New York has not publicly disclosed what will happen if state agencies, such as those that work with federal immigration (think Texas and Florida), or federal agencies such as the Secret Service, FBI or ATF, refuse to certify that they will not share information with ICE. How will New York react; will the state then stop sharing information with other state or federal law enforcement agencies? What consequence will New York seek to impose on these third-party agencies that dare to share with ICE?

There is potentially a role for NLETS to play in such a situation. If NLETS intervenes to ensure information sharing is not disrupted, this issue should be resolved quickly. Requiring partner agencies to certify that their activities comply with N.Y. law is likely to be met with resistance. It will also spur discord among the member agencies by having them choose sides between ICE and New York.

Ironies and Unintended Consequences

The new law creates a number of paradoxical conditions for immigration agencies, New York law enforcement agencies, and the residents of New York:

- ICE and CBP officers are considered "peace officers" under N.Y. law. One of the "tools of the trade" for peace officers is DMV information, which they will not have access to.

- A foreign nation, Canada, freely shares its DMV information with CBP and ICE. The state of New York will refuse to do so.
- New York is advising its legal residents to upgrade their N.Y. licenses to be compliant with the Real ID Act, at extra cost. At the same time, New York is offering illegal alien residents of New York an opportunity to obtain a valid ID with virtually no safeguards.
- U.S. magistrate judges have the authority to issue criminal arrest warrants and search warrants; yet New York will exclude these officials from issuing judicial orders for DMV records.
- The N.Y. State Liquor Authority lists N.Y. driver's licenses as an acceptable document to buy alcohol. The consular ID card is not listed as acceptable. If the State of New York has confidence in the bona fides of the various consular IDs, then New York should list them as acceptable for alcohol purchases.
- The Border Patrol was instrumental in capturing two escaped murderers from New York's Clinton Correctional Facility in 2015. A short four years later, New York won't share information with the Border Patrol that may save these agents' lives.
- N.Y. law enforcement agencies would be livid if another criminal justice agency warned a target about the existence of an investigation. In many cases, the person who warned the target would be investigated for obstruction of justice. Now N.Y. law mandates such a warning to the subject of an immigration law enforcement investigation.

Applying the Brakes on the Green-Light Law

There are a few avenues for circumventing or counteracting all or parts of the Green-Light law. These include withholding relevant federal funding for the state, filing lawsuits against New York for attempting to preempt federal authority, and persistent litigation by the U.S. Attorney's Office, ICE, and CBP to obtain subpoena compliance. In addition, stakeholders in the public safety and immigration enforcement arenas should begin speaking up about the effects of the law. In some cases, agencies may have to change the way they do business to mitigate the effects of this law.

The Federal Government Should Not Reward New York for Bad Behavior. It should withhold federal highway subsidies from the state until the law is changed. This tactic has been successful in the past. In 1984, Congress passed the National Minimum Drinking Age Act, which required states to raise their drinking age to 21 or lose highway funds. This sanction was justified on the understanding that teen drinking was a highway safety issue. A similar argument can be made that allowing drivers on the roads with licenses based on unverifiable documents and unknown backgrounds is just as hazardous to highway safety. Providing an easy avenue for identity theft and false documents should be grounds for withholding subsidies or funding in a variety of public safety matters. The Trump administration has had some success in leading non-cooperative sanctuary jurisdictions to change their policies after certain federal funding was jeopardized.

Congress Should Put Some Real Teeth in the Real ID Act. The 9/11 Commission recommended that the federal government "set standards for the issuance of sources of identification, such as driver's licenses." The Real ID Act of 2005 did so. Identification that meets the law's minimum standards is "Real ID" for specific purposes. At present, these purposes are narrowly defined. Federal purposes are limited to boarding an aircraft and for entering certain federal facilities, military installations, and nuclear facilities. Government identification that does not meet Real ID standards is marked with the qualification "not for federal purposes".

If states like New York weaken the security of their documents, Congress should expand the Real ID Act by redefining "federal purposes". New York's Green-Light documents expose the public to national security threats, fraud, and other public safety threats. At minimum, in addition to boarding interstate transportation and entering federal buildings, "federal purposes" should also apply to financial transactions and services, purchasing a firearm, completing an I-9 form for employment, obtaining public welfare benefits, receiving a tax refund, or doing any business with the federal government. Green-Light licenses should not be acceptable identification for these and other purposes.

Don't Allow the Green-Light Law to Bog Down Federal Courts. The Green-Light law provision requiring “article III judges” is a transparent attempt to create a choke point in the federal court system. Those who crafted this law know that the 870 Article III judges are much too bogged down with federal criminal cases to spend more than a few moments a year issuing court orders for driver’s license information. If they were to have to assume the burden of adjudicating routine motor vehicle information requests, the system would become unmanageably clogged for all types of cases in the system.

New York’s arrogance in mandating that “Article III judges” preside over information requests should be challenged at multiple levels. In the U.S. federal system, individual states do not dictate which level of the federal judiciary they deem it legitimate to comply with. New York State has no authority to nullify or preempt lawful functions of the federal government.

While the U.S. DOJ should file suit insisting that the “Article III judge” portion of the law oversteps New York’s authority by setting standards it has no right to set, at the same time, CBP and ICE should continue serving administrative subpoenas and grand jury subpoenas on New York for requested information. If and when NYDMV does not comply with these subpoenas, DOJ should bring the refusals to federal court for compliance, as provided for by federal law. This would force New York to expend its resources to defend this dubious mandate.

The federal judiciary has a vested interest in keeping its authority intact. Federal judges have ruled time and again that immigration enforcement is the responsibility of the federal government and that administrative subpoenas and grand jury subpoenas are an appropriate method to obtain documents or information. Federal judges will tire quickly of hearing New York’s challenges to its authority and will soon tire of wasting their own time rehashing these challenges. Early and frequent challenges by DOJ in all four federal districts in New York should quickly invalidate this inefficient and overreaching procedure.

Work with NLETS. The Department of Homeland Security and the U.S. Department of Justice should engage with NLETS management. They should insist that NLETS enforce mutual information-sharing agreements among members. If states like New York are allowed to pick and choose which information to share, that is detrimental to law enforcement on the whole.

Force New York to Explain How It Will Vet Documents. Federal lawmakers, journalists, researchers, and members of the general public should demand that New York explain how the information used to issue the driver’s license is examined and validated. They should demand information to evaluate the training that DMV staff will receive in consular ID cards or foreign passports. These new licenses will be issued in January 2020. Before that date, New York should be expected to answer the following questions:

- Since there are potentially 180 different versions of consular IDs, and 180 different versions of foreign passports from 180 different countries, which documents will the training focus on?
- Will these foreign governments share the security features embedded in the documents with New York?
- How much will NYDMV spend on this training and how long will this fraud detection course last?
- Is there any method to verify the document presented with the country that purportedly issued it?
- Is there any provision to stop accepting a particular country’s document if/when fraud is detected?

Until New York can answer these questions to the satisfaction of the public, the state should not issue these licenses.

Modify Inspection Process for Cars with N.Y. License Plates. Since CBP will no longer have access to vehicle registration information from New York, CBP should modify its inspection process for vehicles with N.Y. plates. CBP provides three land border programs that speed the inspection process for frequent and trusted travelers: Nexus, Fast, and Sentri. These programs allow pre-approved travelers to enter via a dedicated lane at the U.S. port of entry. CBP should prohibit New York registered vehicles from using these lanes until the state restores CBP’s access to vehicle information. Additionally, CBP should refer all N.Y.-plated vehicles to a separate lane for a check of the physical registration documents relating to the vehicle, because CBP will not have access to the automated information, which impedes the inspection process. The result would be that New York drivers would be relegated to the slow lane at the border, due to the need for a different, slower security vetting.

Conclusion

New York's Green-Light law makes America less safe for many reasons, but two reasons stand out. First, it allows New York to issue a valid U.S. identity document based on unverifiable or fictional information. Second, it impedes the federal government's mission to enforce immigration laws.

The primary beneficiaries of this law are illegal aliens, who will be able to obtain a valid U.S. identification document.

A second beneficiary of this law will be unscrupulous employers. Workers with a valid ID are more desirable employees because they are more reliably mobile. In addition, the license will pass muster for the I-9 work authorization process.

The third group that benefits from this law is the set of individuals who seek a valid state ID for an illegal or deceitful purpose. Issuing a N.Y. driver's license on the basis of a consular ID will open the gates to those who seek a fictitious identity and to those who wish to engage in identity theft. The unintended consequence of this faulty process will be to establish New York as a gateway for those seeking a false identity. Illegal schemes as simple as teens obtaining fraudulent documents to buy liquor to the more complex retail fraud or money laundering crimes will become commonplace. Others, such as fugitives or terrorists, will obtain fresh and untraceable identities with the aid of New York State.

The law-abiding U.S. citizens and the aliens legally present in the United States get no benefit from this law, only problems created as a result of destroying the integrity of N.Y. driver's licenses.

The catastrophe of 9/11 was enabled by the lack of security vigilance in our immigration system. Will the next terrorist catastrophe be enabled by the deliberate weakening of vigilance at the NYDMV?

End Notes

¹ New York [“Drivers License Access and Privacy Act”](#), SO1747.

² “Consular ID Cards”, [testimony](#) of Steven C. McCraw before the House Judiciary Subcommittee on Immigration, Border Security, and Claims, June 26, 2003.

³ [“Green Light New York: Driving Together”](#), New York Immigration Coalition, undated.