Drivers' Licenses, ID Cards, & Proof of Lawful Presence

"It is essential that public and private entities be able to rely on the legitimacy of driver licenses and identification cards issued by each of the states and territories of the U.S. as establishing a holder's true identity." -- State of Oregon Office of the Governor Theodore R. Kulongoski (D-OR) Executive Order 07-22 "STANDARDS FOR ISSUANCE OF OREGON DRIVER LICENSES AND IDENTIFICATION CARDS"[1]

Drivers' licenses and other state issued identification documents are the preferred means of confirming identity for everyday business and legal matters within the United States. However, the terrorist event known as "9/11" presented concrete evidence that the processes for issuing drivers' licenses and ID card at the state level have dangerous vulnerabilities. Terrorist leader Mohamed Atta's Florida driver's license expired in September 1, 2007 even though his authorized duration of stay expired on May 16, 2005[2]. He used that license as his ID card when he boarded a plane that later flew into the World Trade Center. The National Commission on Terrorist Attacks Upon the United States (commonly referred to as the "9/11 Commission), noting the variety of state issued documents in the possession of the 19 terrorists, stated that,

> "Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers' licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists[3]."

What is Lawful Presence?

To be lawfully present, "means that a person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States under federal immigration laws."[4] For example, when a foreign national enters the United States by obtaining a visa and enters through a federally regulated port-of-entry, then he/she is lawfully present for an authorized period of admission. If someone stays in the United States beyond the expiration

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[1] "Standards for Issuance of Oregon Driver Licenses and Identification Cards" Office of the Governor State of Oregon, Executive Order N. 07-22, November 16, 2007.

[2] 9/11 and Terrorist Travel Staff Report of the National Commission on Terrorist Attacks Upon the United States. The National Commission on Terrorist Attacks Upon the United States, August 21, 2004, p. 171, 188.

[3] The 9/11 Commission Report. The National Commission on Terrorist Attacks Upon the United States, July 22, 2004, p. 390.

[4] "SB 1080 External FAQs" http://www.oregon.gov/ODOT/DMV/faqs/sb1080.shtml

date of their visa, then he/she is no longer *lawfully present.* If a foreign national entered the United States without passing through a border port of entry or international airport of entry then he/she is NOT lawfully present in the United States. By circumventing immigration controls, he/she bypassed the legal means for entering the United States and is not lawfully present in the United States. Overstaying a visa or entering without approval is not only a violation of federal law, it is also a violation of the Vienna Convention, of which the United States, Mexico, and Canada are signatories.

SAVE: How the States Can Verify Lawful Presence

The Systematic Alien Verification for Entitlements (SAVE) is a system accessible by secure internet which is operated by the Department of Homeland Security. This system is available to the states and to federal agencies for on-line validation of immigration documents and/or claims of lawful presence made by non-U.S. citizens and naturalized U.S. citizens. It has no information regarding native born U.S. citizens.

Most states have signed agreements to use SAVE, and a few states uses SAVE for every applicant in which there is uncertainty about lawful presence. Typically, DMV counter personnel enter an applicant's alien registration number into SAVE and within seconds receive one of two possible responses: (1) confirmation of the applicant's immigration status, or (2) a request for additional information. If additional lawful presence information is required, DMVs often issue a temporary license and the DMV, the applicant or both send in the additional information required. Alternatively, the discrepancy may lead to denial of the application.

Some states charge applicants who are not U.S. citizens or lawful permanent residents a supplemental fee to recover the extra cost to the state of examining and validating visas or other immigration documents through SAVE. As of October 1, 2008, the U.S. Citizen and Immigration Services (USCIS) will charge $0.50 for each initial query of the SAVE system (twice as much previously). An additional $0.50 will be charged for each query requiring additional information. USCIS is increasing the charges in order to recover a "greater portion of the operating costs, fund technology upgrades and "provide customers [the states] with more tools and resources.[5]

Weak Links in the Chain....

States without lawful presence standards or weak standards for proving lawful presence are targeted by alien smugglers as points of destination and temporary residence for illegal immigrants smuggled into this country. Because most states accept 'out-of-state' drivers' licenses or ID cards as "Primary Documents the first state of destination is where it is easy to get a driver's license without proving lawful presence. Well known target states for alien smugglers are New Mexico and Maryland, because the Motor Vehicle Agencies in those states

[5] "Fact Sheet SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM Price Adjustment Effective October 1, 2008" US Citizenship and Immigration Services Office of Communications (Updated April 4 2008) http://www.uscis.gov/files/nativedocuments/save-billing-fact-sheet.pdf.

have low thresholds for authenticating identity, as well as NO requirement to present proof of lawful presence. "

Primary Documents" are documents that state motor vehicle agencies require as evidence from a person seeking to prove identity and lawful presence. More often than not, DMVs will accept out of state drivers' licenses and ID cards as primary documents. Illegal aliens and visa overstays routinely obtain drivers' licenses from states that do not require proof of lawful presence and then use them as IDs in the (different) states where they actually reside. States with no requirement for proof of lawful presence or weak standards represent a security threat to the other states. Connecticut and Georgia are among the states that do not accept out of state drivers' licenses or state issued identification cards as primary documents. Both states accept out of state drivers' licenses as *secondary documents to prove identity.*[6]

All States Should Require Proof of Lawful Presence for Identity Documents

Requiring lawful presence in all 50 states and other jurisdictions will reduce the identity fraud vulnerabilities arising from state reciprocal agreements. Requiring proof of lawful presence before issuing an identity document greatly reduces the ability of foreign terrorists who are visa overstays as well as other illegal aliens to remain undetected by law enforcement officers.

Those states that do not have a lawful presence requirement are more prone to fraud. Maryland State Transportation officials admitted that Maryland "[has become] a destination of choice for out-of-country applicants looking for driver's licenses - some 300,000 since 2006 - and fraud is on the upswing[7]." In 2007, Oregon passed legislation that required applicants to prove lawful presence. Oregon Governor Theodore Kulongoski stated in an Executive Order that,

> "Although the magnitude of these activities is not yet fully known, it appears that criminal organizations both inside and outside Oregon are using Oregon's permissive standards in order to assist persons to illegally obtain driver licenses and identification cards from DMV. These services are being advertised in foreign language news papers in states with more stringent standards. It appears that these organizations transport individuals into Oregon for a fee and provide them with false residency documents solely for the purpose of illegally obtaining an Oregon driver license or identification card. Investigations into these activities are ongoing[8]."

Terrorist Deterrent

State requirements for proof of lawful presence deter foreign terrorists from applying for a driver license, and make it much more difficult for terrorists regardless of nationality. Without

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[6] "Secondary documents" are used as auxiliary documents to prove identity. For example, a marriage certificate is used to prove that an individual may have changed his or her name and is considered a "Secondary document" by most motor vehicle licensing offices.

[7] Editorial, "Our Say: State to recreational crabbers: Give us your names Real ID stall ending" The Capital, December 17, 2008, http://www.hometownannapolis.com/cgi-bin/read/2008/12_17-28/OPN.

[8] "Standards for Issuance of Oregon Driver Licenses and Identification Cards" Office of the Governor State of Oregon, Executive Order N. 07-22, November 16, 2007.

state issued identification, foreign terrorists will find the United States considerably less inviting and hospitable.

Criminal Deterrent

Imposing proof of lawful presence as a driver license/ID card requirement can significantly impact a variety of criminal activities. Benefit fraud, tax evasion, illegal gun purchases, terrorist activities: all share the common necessary first step of providing credible identification in order to fulfill the criminal purpose. By making that crucial step more difficult, criminal imposters can be detected and their criminal purposes prevented. The inconsistencies of state processes to determine lawful immigration status create loopholes allowing criminal gangs such as MS-13 members, to remain anonymous to law enforcement.

A National Standard for Proving Lawful Presence

In May 2005, Public Law 109-13 became federal law, establishing minimum standards for driver's licenses and other state issued identification documents used for official (federal) purposes and assigning authority for implementing and enforcing the law to the Department of Homeland Security. Under PL 109-13, the Secretary of Homeland Security has the authority to require that a document that complies with PL 109-13 be submitted to gain access to any other federally regulated entity.

Among the regulatory requirements for compliance with PL109-13, states must require applicants to provide proof that they are U.S. citizens or lawful permanent residents, or alternatively that they are foreign nationals who are lawfully present in the United States. PL 109-13 regulations list which documents that are acceptable proof of lawful presence:

- Valid, unexpired U.S. passport;
- Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth;
- Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350, or FS-545;
- Valid, unexpired Permanent Resident Card (Form I-551) issued by DHS or INS;
- Certificate of Naturalization issued by DHS, Form N-550 or Form N-570 or;
- Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS.

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