

Before the
DEPARTMENT OF HOMELAND SECURITY
Washington, DC 20528

Minimum Standards for Driver's Licenses and Identification Cards Acceptable to Federal Agencies for Official Purposes. REAL ID. Notice of Proposed Rule Making (NPRM))	DHS-2006-0030
DHS Docket No. 2006-0030)	

**COMMENTS OF
THE IDENTITY
PROJECT (IDP) AND
JOHN GILMORE**

The Identity Project submits these comments in response to the Notice of Proposed Rule Making for minimum standards for driver's licenses and identification cards acceptable by Federal agencies for official purposes ("Real ID") published at 72 Federal Register 10819-10858 (March 9, 2007), docket number DHS-2006-0030.

The Identity Project respectfully recommends that the Real ID program be abandoned in its entirety.

I. ABOUT THE IDENTITY PROJECT

The Identity Project (IDP), <<http://www.PapersPlease.org>>, provides advice, assistance, publicity, and legal defense to those who find their rights infringed, or their legitimate activities curtailed, by demands for identification, and builds public awareness about the effects of ID requirements on fundamental rights. IDP is a program of the First Amendment Project, a

nonprofit organization providing legal and educational resources dedicated to protecting and promoting First Amendment rights.

II. THE IDENTITY PROJECT'S COMMENTS

Real ID requires states to act as Federal agents in the unwise policy of turning our transportation systems into a dragnet for law enforcement. Americans must increasingly prove they are not on secret government lists in order to travel or generally function in their own country. This is wrong. Contrary to DHS' mantra that "we must do everything to prevent terrorism," we must not surrender our hard won liberty and then falsely believe ourselves safer or patriotic in doing so.

Other have addressed the financial cost and inconvenience this program imposes upon the states and their citizens, the violation of state sovereignty and the commandeering of their resources by the federal government, and the privacy and security concerns surrounding the gathering, maintaining, and sharing this huge amount of data.¹ Briefly addressed here is whether the intended use of Real ID achieves its goals, and a warning that the path we are on is a dangerous one.

Real ID is a National ID Card program. By dictating the standards by which an ID is issued, and then requiring citizens to apply for, carry, and present this ID for "official" purposes, the federal government is conducting a National ID Card program. That it remains a state administered issuance system does not change the fact that its operational standards are federally dictated. DHS' argument that Real ID is not a National ID Card program is disingenuous.

¹ It cannot go without being mentioned that the recent revelation of TSA's breach of data security involving the personal and financial information pertaining to its own employees is a timely and not very unusual example of exactly what every state and citizen will eventually encounter with the data Real ID requires the states to collect, maintain, and share.

All of the arguments traditionally made against National IDs therefore apply. A cursory review of history shows that National IDs are a tool and a hallmark of repressive governments. Historically, they have been used with devastating effectiveness to cull undesirable segments of a population.² While the envisioned Real IDs may not contain on its face the dreaded group classification, used to round up the Jews and Tutsi, the identification verification documents that are digitally collected and stored in the process of its issuance could all too easily be put to the purpose of generating lists of names and addresses of people based on ethnic, racial, or religious groups. Showing an ID to travel could then result in arrest. Technology would not be your friend here. The National ID is truly something that can be used for terrible purposes and it is unwise to create it and have it available for use by what the future may bring. Humans can be brutal, particularly in times of economic or environmental strife or religious fervor. In short, it's smart to hedge our bets against catastrophe by maintaining a degree of anonymity. To believe that this country is somehow immune from the repetitious nature of history is hubris.

The pertinent phrase "your papers, please" appropriately and instantly evokes strong negative feeling in Americans. It is antithetical to our basic notion of freedom. Collectively, our response to Real ID should be as Montana's Governor Schweitzer stated last month when signing his state's legislation, which passed both houses unanimously, forbidding Montana's DMV from complying with Real ID: "No. Nope. No way and hell no."

Identification based travel security programs do not work.³ They are operationally dependent upon the use of lists of known or suspected terrorists and all one needs to do to see if one is on the list is to try to travel. Certainly, one who is prepared for martyrdom would take

² See: <http://www.preventgenocide.org/prevent/removing-facilitating-factors/IDcards/>

³ We speak of blacklists, such as the no-fly list, as opposed to whitelists, such as that used for the trusted traveler program. Whitelists are themselves despicable, as they attempt to convert our public nation into some sort of "gated community."

such a risk. If that individual is not prevented from traveling, then that person can reasonably assume he is not on the list. The system is then “gamed” and he can travel at a later time with bad intent. This proposition, identified by M.I.T., is called the “Carnival Booth” algorithm. The huge amounts of money spent on identity based security programs would be much better directed to increased and improved random physical searches. Identification based security programs are but a feel good “Security Theater” with the cost of admission being too high.

While DHS constantly uses aviation security to justify Real ID, it is unlikely that a commercial aircraft will ever be successfully used as a weapon again. TSA’s training, technology, and procedures for conducting physical screenings for weapons and explosives have markedly improved. The combination of hardened cockpit doors, truncated shoot-down authorization procedures, armed pilots and air marshals, and the reality that the crew and passengers will now fight back against hijackers, probably to the death, make the prospect of a successful reoccurrence of 911 very remote.

DHS contends that a state’s compliance with Real ID is “voluntary” while simultaneously declaring that a non-complying state’s citizens won’t be able clear airport security using their driver’s license to satisfy the ID requirement to fly. However, DHS is silent on what Department of Justice attorneys explained for them to the Federal Judiciary last year when it examined the constitutionality of requiring an ID to fly domestically. There they informed the 9th Circuit Court of Appeals, by filing TSA’s identification policy under seal as it is SSI, that you need not show ID to fly domestically as one can opt to become a “selectee” instead. See: *Gilmore v. Gonzales*, 435 F.3d 1125, 1131, 1133, 1138, 1139 (2006). That the airport identification policy is now inaccurately being used by DHS to bully states into compliance with Real ID standards is reprehensible.

Real ID, and our identification based national security program in general, involves enormous amounts of funding. The corporate world, particularly the companies DHS intends to tap to help make operational their data aggregating security programs such as Secure Flight, hungrily eye what looks to be an inexhaustible trough of federal money. Eisenhower warned us of the inherent dangers of the military industrial complex. Those very same dangers to liberty and democracy exist here with the personal information industrial complex. Similarly ominous, the public's perceptions of a foreign threat, whether real or imagined, will serve the interests of someone. DHS will always argue for more power, and its successive administrators will continuously look for new ways to exert it. Mission creep for the Real ID program is inevitable.

Having to constantly prove that one is not a wanted terrorist in order to function in our country reverses the acceptable government paradigm, is demeaning, quietly repeals the presumption of innocence, and chills the free exercise of First Amendment rights for fear of ending up on a government list. Generations of Americans have given their lives and devoted their careers to establish those rights and preserve the systematic democratic process that in turn prevents rash changes to those rights. The Real ID Act received absolutely no legislative review as it was shamefully tacked on last minute to an unrelated spending bill. To make such inroads on these rights without open debate by Congress doubly disrespects our forefathers' sacrifice, service, and memory.

America can never be absolutely certain of its security, but it can be certain that DHS is taking away its citizens liberty in an attempt to deliver on that goal. No law requires citizens to get an ID of any kind – but there are dozens of regulations and laws penalizing those who do not. These should be repealed instead of expanded.

Finally, our reliance on technological quick fixes to our social problems allows us to not address their root cause and permits us to not nurture, and in fact to suppress, the better part of our humanity. This is a very real problem and America needs to have an honest talk with itself about it.

III. CONCLUSION AND RECOMMENDATIONS

Real ID is a program for rulers, servants, cowards, and the weak minded. At best it is a program to protect property, not freedom, and it is patently wrong. Deliberation, openness, and wide political participation here would be an excellent exercise in what truly makes America unbeatable – its bedrock dedication to liberty and democracy. To even momentarily abandon our free society, in a grasping reach for security, is playing with fire and may well sow the seeds of our nation's destruction.

The Identity Project respectfully recommends that the Real ID program be abandoned in its entirety.

Respectfully submitted,

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