

The Identity Project

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Testimony before the Legislative Working Group on REAL-ID Compliance
Minnesota House of Representatives, St. Paul, MN, January 7, 2016

As a national civil liberties project focused on the right to travel and on government demands for ID, we are concerned that the US Department of Homeland Security is trying to mislead the legislature and the people of Minnesota about the REAL-ID Act, in order to frighten you into “compliance” with Federal requests that have no legal basis.

It's about the database. A new FAQ posted last week on DHS.gov¹ claims that “REAL ID does not ... grant the Federal Government or another state access to a state’s driver’s license data. States and territories will continue to ... determine who may access those records.” But that’s directly contradicted by the plain language of the law: “To meet the requirements of this section, a State shall ... Provide electronic access to all other States to information contained in the motor vehicle database of the State.”²

The goal of the REAL-ID Act is a distributed national ID database in which a single query routed through the AAMVA “hub” can retrieve data from every state ID database. If you agree to “comply” with the REAL-ID Act, you are committing Minnesota to open up its drivers license and ID database to every other state and territory, without restricting the purposes for which this data can be used by any agency of any other state.

No law or regulation requires airline travelers to show ID. The DHS implies that the TSA will prevent people with “non-compliant” IDs from traveling by air, or subject them to harassment and delay. But before you capitulate to this threat, ask the DHS to show you what law or regulation requires anyone to show ID to fly, and what court has upheld such a requirement. They can’t. No law and no publicly-disclosed rule requires anyone to have or show any ID to travel by air within the US.³ No court has ever reviewed, much less upheld, any claim of TSA authority to require ID from air travelers. In court, the TSA has repeatedly said that it does not require ID to fly.⁴ “People fly without ID every day. We have a procedure for that.” TSA responses to our FOIA request confirm this is true.⁵

1 “REAL ID and You: Rumor Control”, <<http://www.dhs.gov/real-id-and-you-rumor-control>>.

2 REAL-ID Act of 2005, P.L. 109-13, Title II, Section 202(d)(12).

3 The Identity Project, “You don’t have to show any ID to fly”, <<http://www.papersplease.org/wp/2015/12/28/you-dont-have-to-show-any-id-to-fly/>>.

4 See e.g. *Gilmore v. Gonzales* <<http://papersplease.org/gilmore/>>, *State of New Mexico v. Mocek*, <<http://www.papersplease.org/wp/2011/01/22/phil-mocek-found-not-guilty-by-albuquerque-jury/>>.

5 See <<http://www.papersplease.org/wp/2015/04/09/why-did-the-tsa-prevent-these-people-from-flying/>>.

It's not about security. The FBI already has a national database of information about people who are subject to arrest warrants or court orders restricting their movement. And those people are unlikely to use ID in their own names, rather than stolen identities. The reason to integrate state databases of information about innocent people into a national system is to enable dragnet surveillance and “precrime” profiling based on secret “black box” algorithms that violates due process and the presumption of innocence.⁶

Travel is a right. Federal law explicitly recognizes “the public right of transit through the navigable airspace,”⁷ and explicitly requires the DHS and TSA to consider that right in their rulemaking and other operations. The First Amendment to the U.S. Constitution protects “the right of the people... peaceably to assemble.” Article 12 of the International Covenant on Civil and Political Rights⁸ protects the right to freedom of movement, including the right of anyone legally within the US to move freely within the country. Any attempt by the DHS or TSA to interfere with the right of Minnesotans or other US citizens and residents to travel by common carrier would face popular resistance, legal challenge, and strict scrutiny by the courts which we do not believe it would survive.

That backlash would be directed at the Federal agencies responsible for interfering with travelers' rights, and at the U.S. Congress which approved the REAL-ID Act – not at state legislatures or state officials, especially those who defend their residents' rights. States should be prepared to side with their residents in the inevitable litigation that will result if the TSA tries to prevent people from flying, or to harass air travelers, without a lawful, Constitutional basis for denying or restricting their fundamental right to travel.

Rather than agreeing to plug Minnesota's ID database into the national REAL-ID “hub” in response to deceptive and probably illegal Federal threats to violate Minnesotans' right to travel, we encourage you to uphold Minnesota's existing commitment against the REAL-ID Act by (1) directing state officials to prepare to intervene in defense of any Minnesota resident whose right to travel is violated by Federal agents, and/or to initiate litigation to establish the lack of Federal authority for interference with your residents' right to travel, and (2) working with your Congressional delegation to get legislation to repeal the REAL-ID Act introduced in, and approved by, the US Congress.

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6 The Identity Project, “GAO audit confirms TSA shift to pre-crime profiling of all air travelers”, <<http://www.papersplease.org/wp/2014/09/22/gao-audit-confirms-tsa-shift-to-pre-crime-profiling-of-all-air-travelers/>>

7 Airline Deregulation Act of 1978, 49 US Code § 40101.

8 Signed by the US October 5, 1977; ratified June 8, 1992; entered into force September 8, 1992.