

The Identity Project

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Subcommittee 5 on Corrections, Public Safety, Judiciary, Labor, and Transportation
Senate Budget and Fiscal Review Committee
1020 N Street, Room 502
Sacramento, CA 95814

Assembly Member Steve Bennett, Chair
Subcommittee No. 4 on Climate Crisis, Resources, Energy, and Transportation
Assembly Committee on the Budget
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“State-to-State Verification System (S2S) Project” – OPPOSE

The Identity Project¹ OPPOSES the Budget Change Proposal, “State-to-State Verification System (S2S) Project”. The legislature should neither fund this project nor approve the proposed changes in California law which would be needed to authorize it.

1. Overview of the REAL-ID Act, the SPEXS database, and AAMVA.

This Budget Change Proposal (BCP) would appropriate \$56 million over two years for the costs of uploading information extracted from California DMV records to the national REAL-ID database, the “State Pointer Exchange System” (SPEXS) operated by the Association of American Motor Vehicle Administrators (AAMVA).

1. The Identity Project (PapersPlease.org) is an independent, nonpartisan, nonprofit project which 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 including freedom of movement, travel, and assembly. Since the enactment of the REAL ID Act of 2005, we have participated in DHS and TSA rulemakings related to the REAL ID Act and testified before state legislative and regulatory bodies in California and numerous other states.

The REAL-ID Act provides that, “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 [and] maintain a State motor vehicle database that contains, at a minimum... all data fields printed on drivers’ licenses and identification cards issued by the State.”²

The purpose of this provision of the REAL-ID Act was to pressure states to upload information about all their residents to a central database, creating the first-ever national ID database by aggregating data from drivers’ licenses and state-issued ID cards.³ That database – the key element of the REAL-ID Act – is SPEXS.⁴

Since no other data-sharing mechanism has been established, there is no way for a state to comply with the REAL-ID Act without uploading its residents’ data to SPEXS.

States use the AAMVA’s “State-to-State” (S2S) network to connect to SPEXS and AAMVA’s central site. According to AAMVA’s specifications for the SPEXS database, “The AAMVAnet network is set up as a spoke-hub network so that all traffic between sender and destination passes through the hub. The Network Control Software (NCS) performs several functions, such as the network security center (which validates sender/sender/receiver and routing traffic), message traffic converter (which converts the message protocol of the sender to that of the receiver), and message translator (which converts message data as needed between release versions).”⁵

Despite the “State-to-State” name, no information is transmitted directly between states by the S2S network. All data sent to, from, or between states is relayed by AAMVA and can be read or retained by AAMVA as a “man in the middle” between states.

By outsourcing the national REAL-ID database to a private nongovernmental entity, AAMVA, the Federal government is able to claim that there is no “Federal” database of drivers’ license records because AAMVA isn’t a Federal agency. But a privately-held national ID database is actually much worse than a Federal one would be, since AAMVA isn’t subject to the Federal Privacy Act, Freedom of Information Act, Administrative Procedure Act, or any of the state privacy, public records, open meetings, or notice-and-comment laws that apply to either Federal or state government agencies.

2. REAL-ID Act of 2005, Sections 202(d)(12) and 202(d)(13), <<https://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf>>.
3. The Identity Project, “The REAL-ID Act of 2005”, <<https://papersplease.org/wp/real-id/>>.
4. The Identity Project, “How the REAL-ID Act is creating a national ID database”, February 11, 2016, <<https://papersplease.org/wp/2016/02/11/how-the-real-id-act-is-creating-a-national-id-database/>>.
5. AAMVA, “SPEXS State Pointer Exchange Services System Specification”.

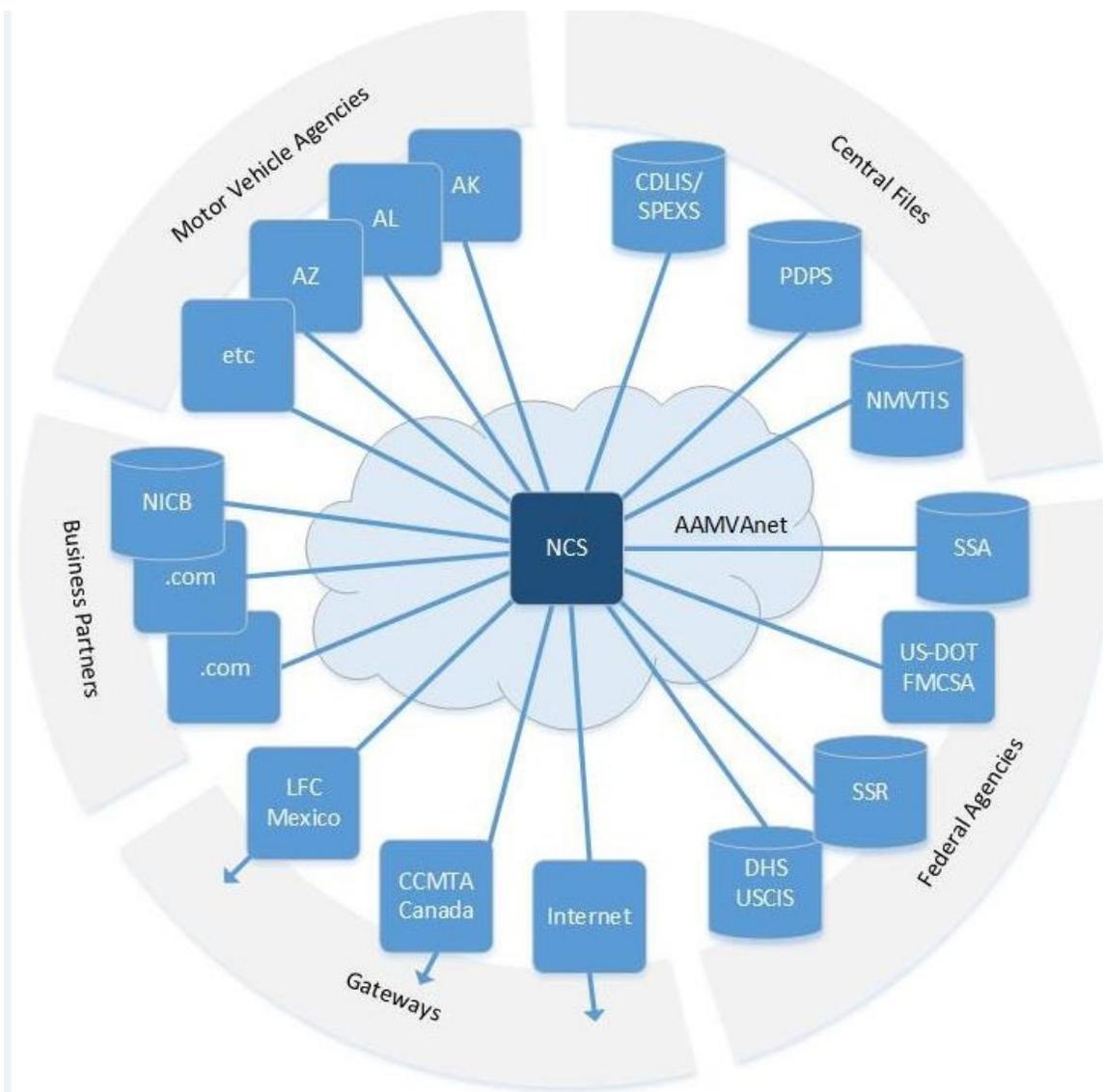


Diagram: Architecture of connections between AAMVA’s central site, including the SPEXS database, and state, Federal, and private entities. From “AAMVA SPEXS Master Specification (AMIE), r6.0.8”, page 5, previously available on AAMVA’s public website.

Note connections to DHS, USCIS, and other Federal agencies routed via AAMVA’s hub-and-spoke network and controlled by AAMVA’s Network Control Software (NCS).

After the Identity Project included a copy of this network diagram in an article about SPEXS, AAMVA changed the diagram in later versions of the SPEXS specifications by replacing “SPEXS” by “S2S”. By characterizing the SPEXS database as a component of the more benign-sounding S2S network, AAMVA apparently hoped to avoid calling attention to the existence of a national ID database as part of its “Central Files”.

2. Compliance with the REAL-ID Act

Statements as to what a state is “required” to do to comply with the REAL-ID Act can easily be misunderstood. It’s essential to keep in mind that the REAL-ID Act does not require or purport to require any state to take any action. Whether California or any state chooses to comply with the REAL-ID Act is, explicitly, an entirely voluntary state choice.

“Voluntarily” compliance by states with the REAL-ID Act has been induced (extorted) by threats from the U.S. Department of Homeland Security (DHS) that the DHS will retaliate against residents of states that the DHS determines (in its sole and often arbitrary discretion) not to be sufficiently compliant with the REAL-ID Act.

Like other DHS threats of retaliation or harassment against California residents – many of which have proven to be lawless and vulnerable to legal challenge by the state – these DHS threats need to be carefully and critically assessed before the state decides whether to comply with the wishes of the DHS, to challenge DHS threats in court, or to prepare to defend individual Californians who are wrongfully harassed, discriminated against, or have their rights – including the right to freedom of intrastate and interstate travel by airlines and other common carriers – interfered with, restricted, or denied by the DHS because the state of California has not acceded to DHS threats and demands.

An assessment of the legal basis for these DHS threats and the options for legal resistance by the state of California and individual Californians is the prerequisite to informed consideration of how California can or should respond to these threats.

The details and “deadlines” of these threats and ultimatums from the DHS have changed repeatedly over the twenty years since the enactment of the REAL-Act. That’s unsurprising, since many of these threats have been detached from the statutory text and the dates have been set and changed at the discretion of the DHS.

But it has been apparent since 2005 that California would eventually need to decide whether to upload information about every California drivers’ license and state-issued ID to a national database, if it wanted to comply with the REAL-ID Act.

We reminded the DMV and the legislature of this fact in our testimony to the DMV in 2017⁶ and to the legislature in 2019⁷.

6. Comments of the Identity Project to the California Department of Motor Vehicles re: OAL File Number 2017-0822-06 ("Driver's Licenses and Identification Cards: Real ID"), October 11, 2017, <<https://papersplease.org/wp/wp-content/uploads/2017/10/IDP-CA-DMV-REAL-ID-11OCT2017.pdf>>.
7. Testimony of the Identity Project, California Assembly, Committee on the Budget, Subcommittee No. 3 on Resources and Transportation, hearing on “Update on REAL-ID Implementation”, Los Angeles, November 20, 2019, <<https://papersplease.org/wp/wp-content/uploads/2019/11/IDP-CA-assembly-budget-20NOV2019.pdf> >.

On each of these occasions, we noted in our testimony the upload to the SPEXS database that would eventually be required if California chose to comply with the REAL-ID Act, and the dubious legal basis for the DHS threats. We also urged that the Office of the Attorney General of California be consulted concerning the validity of these threats, legal alternatives to capitulation, and possible legal challenges or defenses.

The eventual need for this decision and this research on the possibilities for legal resistance is no surprise. The office of the Attorney General has had years to prepare.

Unfortunately, we've seen no evidence that there has been any assessment by the state's legal experts, much less an in-depth one, of the issues raised by these DHS threats.

Equally or more unfortunately, the DMV appears to be relying solely on AAMVA for legal advice, rather than consulting the state's own legal experts or working to consider options and craft a legal response in consultation with other California individuals and organizations who have expertise in this subject.

The Senate Budget Committee's consultant's report on this item says that, "According to the DMV, the AAMVA S2S Governance Committee has informed DMV there are no alternative options and DMV must provide the required SSN data to participate in S2S and comply with the federal REAL ID Act."

Does the state of California have to submit to DHS demands just because AAMVA says we have no choice? Has California abdicated to AAMVA as well the DHS?

AAMVA isn't the arbiter of Federal law, and AAMVA's opinion certainly shouldn't be taken by the state of California as the final answer with respect to what legal options are available to the state to comply with optional provisions of Federal law – if the state chooses to do so – or for litigation or legal resistance to DHS threats.

Preemptive capitulation isn't the only possible legal response to DHS threats, as discussed further below. This proposal for the SPEXS upload project shouldn't be considered until the alternatives are carefully assessed and considered.

3. What do Sections 202(d)(12) and 202(d)(13) of the REAL-ID Act require?

The stated justification for this Budget Change Proposal (BCP) is "to continue compliance with the REAL ID Act of 2005."⁸

But California is not now in compliance with the REAL-ID Act, and this project would not bring the state into compliance (unless the project is intended to encompass an upload of data far exceeding that proposed to be authorized by state law).

8. State of California, Budget Change Proposal, "State-to-State Verification System (S2S) Project", <https://bcp.dof.ca.gov/2627/FY2627_ORG2740_BCP8804.pdf>.

This error in the BCP, and the underlying misunderstanding of what a state must do if it wants to comply with the REAL-ID Act, may result from failure to analyze the statutory criteria for compliance, which aren't mentioned in the BCP.

As noted earlier, the relevant sections of the REAL-ID Act provide that, “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 [and] maintain a State motor vehicle database that contains, at a minimum... all data fields printed on drivers' licenses and identification cards issued by the State.”⁹

This statutory language is unambiguous. To be compliant with the REAL-ID Act, a state must share all data fields¹⁰ printed on all drivers' licenses with all other states.

A compliant state can – as California does – issue some licenses and IDs through procedures that do not satisfy the criteria for REAL-ID Act compliance. Those licenses will not be compliant. But in order for the state to be compliant and to be able to issue any compliant licenses, the state will have to include all licenses in the SPEXS upload.

Because California doesn't share all this data, the state is not now compliant with the REAL-ID Act. No California drivers' licenses or state-issued ID cards are now compliant, regardless of how they are labeled or what arbitrary and capricious “determinations” have been made by the DHS without regard for the statutory criteria.

Legislators need to understand the choice presented by the REAL-ID Act:

California must choose between uploading information about all noncompliant licenses to SPEXS, and sharing all data in the DMV database about those noncompliant licenses with all other states, or not being able to issue any compliant licenses.

Legislators and the public need a clear answer from the DMV: Will information about noncompliant licenses, including licenses issued pursuant to AB-60¹¹, be uploaded to SPEXS if this BCP is approved?

9. REAL-ID Act of 2005, Sections 202(d)(12) and 202(d)(13), <https://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf>.
10. Because no state has yet challenged a “compliance” or “noncompliance” determination by the DHS, or any sanctions against a state or its residents for alleged noncompliance, no court has yet ruled on whether facial images constitute “data fields printed on drivers' licenses and ID cards” and therefore included in this data sharing mandate. It seems likely, however, that AAMVA could decide to add digital photos to the required fields in SPEXS records, thereby creating a national database of drivers' license photos.
11. AB-60, approved by the Governor October 3, 2013, https://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0051-0100/ab_60_bill_20131003_chaptered.pdf.

In the past, the DMV has deferred a decision on this question. According to a 2018 report by the National Immigration Law Center (NILC) and the ACLU of Northern California based in part on public records obtained by those organizations and by the Identity Project, “DMV stated that a decision has not yet been made on whether information about non-REAL ID license holders will be made available through that exchange, nor do they yet know the timeline for making that decision. The State-to-State (S2S) Governance Committee has taken the position that information regarding all licenses, not just REAL ID licenses, must be entered into the system.”¹²

The BCP and the related legislative proposal, AB-2156¹³, suggest opposite answers as to which choice is now being proposed for California.

The BCP includes no explicit statement with respect to whether information about AB-60 licenses or other noncompliant licenses will be uploaded to SPEXS. But the BCP says that the project will “satisfy the requirements of the REAL ID Act”, which would require the SPEXS upload to include AB-60 and other noncompliant licenses.

AB-2156, however, would provide that “Information disclosed pursuant to this paragraph shall only pertain to individuals who have been issued a REAL ID-compliant driver’s license or identification card”. That would leave the state still noncompliant, and would leave all of those “compliant” licenses and IDs still actually noncompliant.

Compliance with the plain statutory language of the REAL-ID Act or issuance of any licenses or IDs that satisfy the statutory criteria for compliance will require the DMV to upload information about AB-60 licenses and other noncompliant licenses to SPEXS, endangering and violating the privacy of Californians who obtained those licenses without any warning that they would be included in a national ID database.

On the other hand, if the point of the S2S/SPEXS project and upload is to enable the state to issue compliant licenses, but the upload would exclude noncompliant licenses and thus wouldn’t make the state compliant or eligible to issue any compliant licenses, what’s the point of the \$55 million expenditure or the sell-out of Californians’ privacy?

The public remains in the dark as to the DMV’s intentions. We need an answer, and the legislature needs to make a choice: upload data about all of us or none of us.

12. National Immigration Law Center and ACLU of Northern California, “How California driver’s license records are shared with the Department of Homeland Security: Documents obtained under Public Records Act requests to the California Department of Justice and the California Department of Motor Vehicles”, December 2018, <<https://media.nilc.org/wp-content/uploads/2019/01/DMV-PRA-report-2018-12.pdf>>

13. AB-2156, <https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=202520260AB2156>.

4. Who's driving this project: California or AAMVA?

It's important for the legislature to distinguish between (1) what's required if the state chooses to comply with the REAL-ID statute (as discussed above), (2) what might be required to comply with the arbitrary, capricious, and often lawless demands of the DHS (a moving target that could keep expanding endlessly once the state starts trying to comply), and (3) what would be required to comply with decisions made by AAMVA.

The BCP appears to use the term "compliance" in each of these three senses interchangeably, without making clear which meaning is intended in each case.

The Budget Request Summary says that, "California's compliance date for State to State (S2S) is February 16, 2027", which suggests some sort of *legal* deadline. But further on, the BCP says that, "California's deadline to implement S2S is February 16, 2027. This is the last date on AAMVA's calendar for a state to implement S2S."

Why does AAMVA's desired calendar set a "deadline" for California? This is not a deadline set by law. Nothing in the REAL-ID Act will change on that date.

California should not be, and needed not be, stamped into hasty and irrevocable action by arbitrary dates picked by AAMVA for unspecified reasons. Once data is uploaded to SPEXS, California will have no way to get it back or insure its expungement.

This date is significant, if at all, only as some sort of ultimatum given by AAMVA and/or the DHS. Without a clear analysis of the legal basis, if any, for these threats, there's no justification for allowing them to dictate the calendar of California legislation.

Both the substance and schedule of this project appear to have set by AAMVA, based on AAMVA's interests, AAMVA's opinions, AAMVA's predictions of DHS actions, and/or other non-public reasons. But AAMVA is a private nongovernmental entity. AAMVA's opinions and predictions are no more authoritative with respect to what the DHS may do in the future, or when, than with respect to the interpretation of Federal law. AAMVA's staff are neither California's bosses nor our lawyers.

Like the DHS, AAMVA has earned our distrust – especially on this issue.

AAMVA has actively worked to suppress public knowledge of information needed for informed debate about whether states should upload data to SPEXS.

In 2016, the Identity Project published the first detailed analysis of the SPEXS database, based in part on the SPEXS specifications and other documents available on the public AAMVA.org website.¹⁴

14. The Identity Project, "How the REAL-ID Act is creating a national ID database", February 11, 2016, <<https://papersplease.org/wp/2016/02/11/how-the-real-id-act-is-creating-a-national->

Less than two weeks later, AAMVA moved the SPEXS specifications from the public to the “members-only” section of the its website and added a line to its “robots.txt” file excluding Web crawlers and search engines from the entire “S2S” section of its site.

AAMVA later threatened to sue us for copyright infringement unless we removed from our website the copy of the SPEXS specifications we had legally downloaded from AAMVA’s own public website and had posted as a primary source for our reporting.¹⁵

AAMVA has made clear by these actions that it doesn’t want the public to know what the SPEXS database is, what data it contains, how it works, or what other systems and entities it is connected to as part of AAMVA’s Central Site.

As a private, nongovernmental entity, AAMVA is subject to none of the rules that would apply to decision-making by a state or Federal government agency. AAMVA isn’t subject to the Freedom Of Information Act or to California public records or open meeting laws. AAMVA can and does try to shape public debate and public perception of its actions by selective withholding or release of documents, and release of self-serving and unverifiable claims without the primary sources that might falsify them.

AAMVA’s policies are available only to AAMVA members, not to the public. AAMVA provides no public notice or opportunity for public comment on proposed policies. Members of the public aren’t welcome at AAMVA decision-making meetings, even if they can find out when and where they are to be held. No agendas or minutes of AAMVA meetings are made public, even when AAMVA’s decisions are treated by the California DMV as binding not just on the DMV but on the California legislature.

None of this makes it appropriate for the DMV or the California legislature to delegate decision-making to AAMVA or rely on AAMVA to reflect California values.

AAMVA has no publicly-disclosed privacy policy for the SPEXS national ID database or any of the other records it holds about individuals. Even when, after months of inquiries, one of AAMVA’s contractors sent us a copy of AAMVA’s internal privacy policy, we found that it provided no procedure for an individual to find out from AAMVA what information AAMVA has about them in SPEXS or other records.¹⁶

We say again: AAMVA, like the DHS, has earned our mistrust.

15. Letter from Anne S. Ferro, President & CEO, AAMVA, June 1, 2018, reproduced in full in article by the Identity Project, “What AAMVA doesn’t want you to know about the national REAL-ID database”, October 10, 2018, <<https://papersplease.org/wp/2018/10/10/what-aamva-doesnt-want-you-to-know-about-the-national-real-id-database/>>.

16. The Identity Project, “National REAL-ID database replicates problems with FBI rap sheets”, June 30, 2016, <<https://papersplease.org/wp/2016/06/30/real-id-national-id-database-replicates-problems-with-fbi-rap-sheets/>>.

5. The potential for weaponization of SPEXS data against vulnerable Californians

Once data from the DMV database is uploaded to SPEXS, it will be out of California's custody and vulnerable to abuse by any entity that obtains it from AAMVA.

According to the Senate Budget Committee's consultant, "According to the DMV, the exchange is solely limited to the driver's license and identification card administrative processes between participating state motor vehicle agencies, and federal agencies do not have access to the data."

This claim by the DMV is incorrect.

First, AAMVA itself, in addition to participating states, has access to all data uploaded to SPEXS or shared by any state via AAMVA's S2S network.

Second, a Federal or state law enforcement agency could obtain a warrant or court order requiring AAMVA to hand over all or any portion of the SPEXS database. A sealed warrant or other court order could include a "gag order" prohibiting AAMVA from disclosing the existence of the warrant or court order to any of the states that uploaded the data or to the individuals to whom the information handed over by AAMVA pertains.

There is no way for California or any other state to know whether a Federal law enforcement agency has already obtained access to all or part of the SPEXS database, whether that data has been passed on to DOGE or other Federal agencies, or if is already being weaponized against residents of states that have uploaded data to SPEXS.

Each SPEXS record must contain the last five digits of the license holder's Social Security Account Number, or all 9s if the license holder has no SSAN. SPEXS records with all 9s are immediately distinguishable and could be treated by Federal immigration agencies as providing a basis for suspicion of possible immigration violations. Other possible violations providing a basis for targeting of immigration enforcement could be obtained through DOGE-style matching of the SPEXS database against other databases.

For example, each SPEXS record also contains a data of birth, which is one of the elements determining whether an individual is required to register with the Selective Service System (SSS) for a possible military draft. The Oversight Project of the Heritage Foundation has suggested that threats of prosecution for failure to register with the SSS could be used to induce draft-aged immigrants to "self-deport"¹⁷.

17. "Heritage Foundation project wants to weaponize Selective Service registration against immigrants", Antiwar.com, February 2, 2025, <https://www.antiwar.com/blog/2025/02/02/heritage-foundation-project-wants-to-weaponize-selective-service-registration-against-immigrants/> >

Prosecutions would likely be unsuccessful in the absence of evidence that the violation was “knowing and willful”, an element of any offense under the Military Selective Service Act (MSSA). But a Federal prosecutor could use the claim that, matched against SSS records, SPEXS records could identify and provide evidence of violations of the MSSA, in order to obtain a search warrant or other court order directed to AAMVA. And DOGE already has access to the SSS database of potential draftees.¹⁸

These are just examples of the many ways that SPEXS data, once obtained by a Federal agency, could be weaponized against California residents, especially immigrants.

SPEXS data held by AAMVA, AAMVA’s contractor(s), or the commercial cloud service that hosts the SPEXS database will have the same protection or lack thereof as any data held by private, out-of-state nongovernmental entities. If law enforcement agencies come knocking, will AAMVA say, “Come back with a warrant”? Or will AAMVA say, “How can we help?” If they show a warrant or administrative order, will AAMVA contest it or presume that it’s valid? Those decisions won’t be in California’s control.

Although AAMVA is a private entity, not a government agency, it has a history of close voluntary collaboration with law enforcement agencies, including Federal ones.

Many private companies that host sensitive personal data – even data less sensitive than the SPEXS national ID database – publish regular “transparency reports” on the number and nature of the requests they have received from government agencies for access to data they hold, and how they have responded to those requests.

AAMVA has never published any such “transparency report” or disclosed how it responds to law enforcement requests for SPEXS data or other personal data it holds.

We can find no case law or other evidence that AAMVA has ever challenged a request or demand from a law enforcement agency for access to data it holds.

AAMVA’s actions to date give us no confidence that AAMVA would put up any fight to protect SPEXS data against access by immigration or law enforcement agencies.

6. Californians weren’t given notice, didn’t consent, and aren’t being given a chance to opt out of having their data uploaded to SPEXS.

The DMV has known for more than a decade that, if the legislature decided that California would try to comply with the requirements of the REAL-ID Act, that would require the DMV to upload information extracted from each driver’s license record to the SPEXS database.

18. Jackie Singh, “DOGE Has the Draft List”, Hacking but Legal, March 8, 2026, <<https://www.hackingbutlegal.com/p/doge-has-the-draft-list>>.

The DMV has apparently been planning this upload for years, even though it is not yet funded and would violate current state law.¹⁹

But despite knowing about and planning this upload, the DMV has never mentioned it to applicants for drivers' licenses, including those trying to make an informed decision as to whether to apply for a "compliant" or noncompliant license.

If the DMV had decided (erroneously, we believe) that it had no choice but to plan for and proceed with an upload of state residents' data to SPEXS, it should have informed applicants for drivers' licenses and ID cards as prominently and as soon as possible, as part of the application and renewal process, so that they would be able to make informed choices of whether to get a license or ID card or what type of license or ID card to get.

Even now, the DMV could have, but hasn't, planned to give license and ID-card holders notice of the planned upload and time to opt out before the initial bulk upload takes place. For example, they might switch to a noncompliant license or ID card, if those won't be included in the SPEXS upload, or cancel their license or ID card.

Presumably, the DMV has kept quiet about its plans for the SPEXS upload because it knows that Californians wouldn't consent and would be outraged.

But Californians are going to be more outraged at both the DMV and the legislature if they first find out about the planned SPEXS upload from investigative journalism, rather than from the state agencies that are involved. And they will be even more outraged if they find out only after the fact, when their data has already been sent to a private, nongovernmental, out-of-state entity they've never heard of, to be aggregated into a national ID database the DMV has been telling them doesn't exist.

7. Lawless DHS threats and California's legal alternatives to capitulation

According to the BCP, the primary reason for the proposed project is that, "California must comply with the S2S provisions... for the existing California-issued REAL IDs to remain valid for federal purposes (i.e. boarding domestic flights, accessing federal facilities, etc.).... In the absence of a valid REAL ID, Californians would be required to show a valid federal identification such as a United States Passport."

This isn't a statement of the law. This is a statement of a DHS threat.

19. This is the reason for the changes to state law proposed in AB-2156. AB-2156 does not, however, address the potential incompatibility of the SPEXS upload with the right to privacy recognized by Article 1, Section 1 of the California constitution. Neither the DMV nor the legislature has yet considered this constitutional question, which is likely to lead to litigation if the DMV proceeds with its plans for the SPEXS upload, even if AB-2156 is enacted.

DHS claims should not be presumed to have any basis in law. Many current DHS actions and threats are lawless, and many DHS statements are false.

The first question for the legislature, in deciding whether to submit to this DHS threat, should be whether there is a legal basis for the threat. The second question, if the threat is unfounded or dubious, should be what legal avenues are available to challenge it.

It would be premature for us to try to suggest a complete or final answer to either of these questions, particularly the second one, before the Office of the Attorney General has conducted a thorough review of the substantive issues and possible litigation tactics.

But it would be equally premature to capitulate to such a DHS threat before the legislature has requested, received, and reviewed a report from the office of the Attorney General, and public responses to it, on the legal alternatives available to the state.

As a preliminary matter, there is no legal basis for the statement in the BCP, “In the absence of a valid REAL ID, Californians would be required to show a valid federal identification such as a United States Passport.” In fact, no ID is required for domestic flights, either by law or in practice. People fly without ID every day.

Federal law provides that, “A citizen of the United States has a public right of transit through the navigable airspace”²⁰, and requires the Transportation Security Administration (TSA), in issuing regulations and carrying out its operations, to consider “the public right of freedom of transit through the navigable airspace”²¹.

No court has ruled on whether a requirement to have or show ID to travel by air would be consistent with this statutory right or any other provisions of the U.S. Constitution or Federal law. This issue has never been addressed, because the TSA has never, when the issue gets to court, asserted authority to require passengers on domestic airline flights to show any ID.

In litigation, the consistent position of the and DHS has been that no Federal law or regulation requires passengers on domestic airline flights to show any ID.

The clearest statement of this position came in the decision of the 9th Circuit Court of Appeals in *Gilmore v. Gonzales* (2006): “The identification policy requires airline passengers to present identification to airline personnel before boarding or be subjected to a search that is more exacting than the routine search that passengers who present identification encounter.”²² This finding was based on the TSA’s own evidence of its procedures for passengers without ID, submitted to the court under seal.

20. 49 U.S. Code § 40103 (a)(2).

21. 49 U.S. Code § 40101 (c)(2).

22. 435 F. 3d 1141. John Gilmore, the plaintiff in this case, is the founder of the Identity Project.

Responses to Freedom Of Information Act (FOIA) requests by the Identity Project showed that as of 2016, almost 2,000 people a day were allowed through TSA checkpoints at U.S. airports either without showing any ID at all, or with other forms of ID that the TSA or its contractors initially considered “unacceptable”.²³ To be clear, these were people who flew with no ID, not people without “compliant” REAL-ID. Some were people whose ID was lost or stolen. Some were people who don’t have any ID.

More recently, in the weeks after the TSA claimed to have begun “enforcement” of the REAL-ID Act at airports on May 7, 2025²⁴, roughly 200,000 people a day passed through TSA checkpoints and boarded flights without showing compliant REAL-ID.²⁵

Nothing is scheduled to change in the laws that protect the right to travel, and that have led the TSA to continue to recognize (at airports and in court) the right to fly without ID even while continuing to issue press releases claiming that ID is required.

The REAL-ID Act only affects which IDs can be accepted by Federal agencies, in situations where ID is required by some other law (such as for crew members, rather than passengers, boarding airline flights). The REAL-ID did not impose a new requirement to show ID in any circumstance where ID was not already required.

There is simply no basis for any claim or threat that any law is about to be magically changed to impose a new legal requirement to show ID to fly.

If the TSA were to begin trying to enforce a new ID requirement to fly without a basis in law, especially if such a requirement were enforced selectively against California residents and not residents of other states, the state would likely have a cause of action for denial of its residents’ right to equal protection of the law.

Since February 1, 2026, the TSA has been demanding that air travelers without ID or with ID the TSA deems noncompliant pay a \$45 per person fee.²⁶ This fee is flagrantly illegal. It has no basis in law or regulation, and was imposed by fiat rather than than

23. The Identity Project, “How many people fly without REAL-ID?”, March 15, 2022, <<https://papersplease.org/wp/2022/03/15/how-many-people-fly-without-real-id/>>.

24. The Identity Project, “REAL-ID FAQ: What will happen at US airports on May 7, 2025?”, April 22, 2025, <<https://papersplease.org/wp/2025/04/22/real-id-faq-what-will-happen-at-us-airports-on-may-7-2025/>>.

25. The Identity Project, “200,000 people a day fly without REAL-ID”, May 28, 2025, <<https://papersplease.org/wp/2025/05/28/200000-people-a-day-fly-without-real-id/>>.

26. The Identity Project, “TSA plans illegal ID and fee shakedown starting Feb. 1, 2026”, January 29, 2026, <<https://papersplease.org/wp/2026/01/29/tsa-plans-illegal-id-and-fee-shakedown-starting-feb-1-2026/>>.

through valid rulemaking.²⁷

The TSA complied with none of the notice-and-comment or approval procedures required by Federal laws before trying to collect this fee.²⁸

The TSA also has, for many years, demanded that some arbitrarily selected subset of air travelers without ID complete an unapproved and unlawful “TSA Form 415”²⁹ and/or answer a battery of unapproved and unlawful questions about the information contained in the file about them held by the Accurint data brokerage.³⁰

The TSA has twice, in 2016 and again in 2020, given notice of its intent to request approval for TSA Form 415, which had already been in use without approval for many years. Each time, the Identity Project and other organizations submitted comments pointing out the lack of any legal basis for this form.³¹ In neither case did the TSA complete the process to request, much less receive, approval for Form 415.

The TSA has never given notice of any intent to request the required approval for its “ID verification” questions, even though they’ve been in use for many years.

No court has yet ruled on the legality of TSA Form 415, the TSA’s “identity verification” questioning, or the new \$45 fee, but all of these are vulnerable to challenge. The only real question is whether a challenge would have to be brought by an individual traveler, or whether the state of California also has standing to challenge these

27. The Identity Project, “TSA Confirm.ID: TSA plans to charge air travelers without ID or without REAL-ID \$3B a year in extra fees for extra questioning”, December 5, 2025, <<https://papersplease.org/wp/2025/12/05/tsa-confirm-id-tsa-plans-to-charge-air-travelers-3b-a-year-in-extra-fees-for-extra-questioning/>>.
28. The Identity Project, “TSA extorts \$45 from each air traveler without REAL-ID”, January 15, 2026, <<https://papersplease.org/wp/2026/01/15/tsa-extorts-45-from-each-air-traveler-without-real-id/>>.
29. The Identity Project, “DHS Ignores OMB Government Approval Process on TSA’s Questionnaire Form for Travelers Without ID”, July 28, 2008, <<https://papersplease.org/wp/2008/07/28/dhs-ignores-omb-government-approval-process-on-tsa%E2%80%99s-questionnaire-form-for-travelers-without-id/>>.
30. The Identity Project, “How does the TSA decide if you are who you say you are?”, June 9, 2016, <<https://papersplease.org/wp/2016/06/09/how-does-the-tsa-decide-if-you-are-who-you-say-you-are/>>.
31. Comments of the Identity Project, *et al.*, “Certification of Identity Form (TSA Form 415)”, TSA-2013-0001-0075 (January 9, 2017), <<https://papersplease.org/wp/wp-content/uploads/2017/01/IDP-form-415-9JAN2017.pdf>>; Comments of the Identity Project, *et al.*, “Certification of Identity Form (TSA Form 415)”, TSA-2013-0001-0075 (May 19, 2020), <<https://papersplease.org/wp/wp-content/uploads/2020/05/IDP-form-415-19MAY2020.pdf>>.

lawless acts of interference by the TSA with the right of California residents to intrastate and interstate travel by air.

We believe that the state of California has many potential legal avenues by which to challenge DHS threats to interfere with Californians' right to travel. The state should not preemptively capitulate to those threats and sacrifice Californians' rights. We would welcome the opportunity to assist the office of the Attorney General in those challenges.

The more data is centralized, the more vulnerable it is to weaponization. We urge the legislature to stand up for California residents' rights and expectations of privacy, and say no to this proposal to upload our personal information to AAMVA's SPEXS database.

We would be happy to discuss these comments and our recommendations with members of the Subcommittees and Committees and/or your consultants.

Sincerely,

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