Testimony in SUPPORT of HB892

Public Information Act – Motor Vehicle Administration – Warrant for Personal Information
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Dear Chairman Barve and Members of the Environment and Transportation Committee:

The Georgetown Law Federal Legislation Clinic, on behalf of CASA, writes in support of HB892. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region. The Georgetown Law Federal Legislation Clinic has worked extensively with CASA to uncover how Maryland entities share data with Immigration and Customs Enforcement ("ICE").

HB892 is essential to fulfill the Maryland General Assembly's promise to undocumented community members that they could safely get a driver's license.

In 2013 the Maryland General Assembly passed the Maryland Highway Safety Act to enable Maryland's undocumented residents to register with the Maryland Motor Vehicle Administration ("MVA") to obtain a valid driver's license.[1] Because of this law, undocumented residents can now drive to work, drop their kids off at school, go to the doctor, and undertake all the daily tasks of life that in modern society require driving, without being forced to break the law. The extension of drivers licenses regardless of immigration status has also made our roads safer, as many previously unlicensed drivers can now pass a driver's test and obtain insurance.

Unfortunately, ICE has decided to exploit Maryland's efforts to increase community safety by mining the information that the MVA collects about registered drivers to find people to detain and deport. The chilling effect is tremendous. Soon after the Maryland Highway Safety Act was passed, reports began to appear about ICE agents harassing and detaining undocumented residents in Catonsville.[2] The agents were pulling over vehicles near a particular apartment

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[1] *See* Md. Code Ann., Transp. § 16-122 (2016).

[2] John Fritze, *Raid spurs fear of driver's licenses among immigrants*, The Baltimore Sun (Sept. 20, 2014), https://perma.cc/S7V9-SS56.

complex, already knowing the name of the registered driver.[3] The only time these residents had provided their name or address to a government system was when registering for a Maryland driver's license.[4]

As this legislature well knows, the impact of ICE enforcement is often catastrophic not only for the person being deported and their loved ones, but for the extended community to which that family belongs. Those who are detained and deported will often be forced to return to countries that they left to escape violence, or where they have no ties. Detention and deportation take children from their parents, workers from the economy, and a sense of safety and security from the entire community.

In the course of our research we discovered that there is a myriad of avenues through which ICE obtains information about Maryland residents. Some of these avenues take the form of information sharing partnerships between various public entities; some take the form of (intentional or unintentional) automated sharing between different government databases; some take the form of mass data aggregation by private companies that then sell that information to the federal government. No single piece of legislation can prevent all of the potential violations of Maryland residents' privacy, but HB892 would at least prevent ICE from abusing the Maryland license law by requiring ICE to obtain a judicial warrant backed by probable cause in order to access MVA data.

ICE is granted carte blanche access to Maryland MVA information through the Criminal Justice Dashboard.

ICE conducts enforcement in Maryland by using the Maryland Criminal Justice Dashboard ("Dashboard"), a data-sharing network designed for criminal investigations. However, raids like those that occurred in Catonsville are not criminal enforcement, but *civil* immigration enforcement.[5] Dashboard connects over 100 State-owned databases, including one containing Maryland MVA information.[6] Despite being built by Maryland agencies,[7] Dashboard is open to *all* 16,000 federal and state users with an existing National Crime Information Center ("NCIC")

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[3] *Id.*

[4] *Id.*

[5] See *Arizona v. United States*, 567 U.S. 387 (2012).

[6] *Id.*

[7] Governor's Office of Crime Control & Prevention, *Criminal Justice Dashboard: Quick Reference Sheet for Users*, https://drive.google.com/file/d/0B-MxWJP0ZmePS1p0Z2FkakRGc1U/view?usp=sharing ("In 2009, the Governor's Office of Crime Control & Prevention (GOCCP) joined efforts with the Department of Public Safety & Correctional Services (DPSCS), as well as various state and public safety agencies to develop the Criminal Justice Dashboard . . . .")

login.[8] The Federal Bureau of Investigation ("FBI"), not Maryland, issues NCIC logins to ICE agents.[9]

After logging into Dashboard, an ICE agent can issue search requests that are automatically routed to and retrieved from the relevant agency.[10] No Maryland court or agency ever approves these requests or oversees the responses.[11] Maryland also does not conduct any audits of Dashboard to ensure it's being used ethically and in accordance with state and federal law, instead offloading that responsibility to routine audits conducted by the FBI's Criminal Justice Information Services ("CJIS") unit.[12] The problem is, there is no indication that CJIS audits currently label ICE's use of Dashboard for civil immigration enforcement as an improper use of the platform.[13] Relying on CJIS to control ICE's use of Dashboard is futile because CJIS doesn't view ICE's use for what it is—a direct attack on Maryland's desire to create a safe and welcoming community for immigrants.

Thus, Maryland is not in control of which users are authorized to access Dashboard, and does not monitor how they use it. While we do not have complete information due to the secrecy in which ICE operates, we know of no other state that provides ICE with such carte blanche access to its residents' driver's license information.[14]

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[8] The Council of State Governments, *2011 Innovations Awards Application*, https://drive.google.com/open?id=1nmPNHKb1w6Nx60F2maxuh4uu6x4j-qRa.

[9] *The Criminal Justice Dashboard (The Dashboard)*, State of Maryland (June 1, 2011), https://drive.google.com/open?id=1D8AlJO6q-pMptFSycG6khuZA3eqtRr3o.

[10] *Id.*

[11] Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services, *Testimony at the House Committee on Environment and Transportation HB 1626 (2018)* ("The inquiry is sent through us, a secured line, and that's the key, it is that we're the secured *conduit* by which it knows and pulls the data for which they're querying that information . . . .") (emphasis added).

[12] *Secure and Uncompromised Criminal Justice Information with Help from the CJIS Audit Unit*, CJIS Link (Aug. 30, 2017), https://perma.cc/G6BT-YEB5; Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services, *Testimony at the House Committee on Environment and Transportation HB 1626 (2018)* (where, in response to a question by Delegate Cory McCray, who asked, "So you're telling me that there's no umbrella organization that's keeping track of the usage and if something fraudulent . . . something like that is going on?" Sessa responded: "There is the national CJIS, Criminal Justice Information System that does audit to make sure that the users are using it accordingly . . . ."). There is also no indication that The Maryland Image Repository System, which is accessible through Dashboard, has ever been audited from its creation in 2011 through 2016. *See PIA Request – February 2016*, https://drive.google.com/file/d/0B-MxWJP0ZmePaFB6QXhaeGlFc0E/view?usp=sharing; Georgetown Law Center on Privacy and Technology, *The Perpetual Line-up*, https://www.perpetuallineup.org/jurisdiction/maryland; *The Criminal Justice Dashboard (The Dashboard)*, State of Maryland (June 1, 2011), https://drive.google.com/open?id=1D8AlJO6q-pMptFSycG6khuZA3eqtRr3o.

[13] *See id.* Despite DPSCS citing CJIS audits as a general safeguard against the misuse of Dashboard, we are aware of no occurrence of a CJIS audit ever labeling ICE's current usage in immigration enforcement as illegitimate.

[14] Even the implementers of Dashboard did not know of a state with such broad access, stating: "Maryland believes we are the only state that has real-time access to agency data and that uses existing user credentials to access the system." *The Criminal Justice Dashboard (The Dashboard)*, State of Maryland (June 1, 2011), https://drive.google.com/open?id=1D8AlJO6q-pMptFSycG6khuZA3eqtRr3o.

Every Maryland driver is in the MVA database on the Dashboard network, which means that every Maryland driver is now instantly searchable by ICE.[15] ICE agents can go on fishing expeditions by searching for all driver's license holders in a zip code.[16] Agents can also search for a specific individual using a last name or a driver's license number.[17] Agents can even take a picture of anyone and, using facial recognition technology, run that photo through all Maryland MVA photos until a match is found.[18] The personal information ICE receives through these searches is extensive. It can include an individual's home address, date of birth, and whether the individual provided proof of citizenship in obtaining the license or not.[19]

HB892 will restrict ICE's access to MVA information for non-criminal enforcement.

HB892 will ensure that ICE only uses Dashboard for the purposes it was designed, criminal, not civil, enforcement. It will do this by requiring ICE to first obtain a warrant issued by a federal or state court before accessing MVA information. This requirement adds a necessary check on ICE that balances the needs of the law enforcement community with the rights of Maryland residents. ICE will still be able to access MVA information when there is probable cause of criminality.[20] Meanwhile, HB892 will allow Maryland's undocumented residents to feel secure in receiving a driver's license without facing unnecessary persecution by ICE.

There are at least two avenues for ensuring ICE's compliance with HB892. First, Maryland could create its own credential system for Dashboard and only give logins to those that it wants to have access. Alternatively, rather than relying on the CJIS, Maryland could actively monitor Dashboard to ensure ICE is not accessing MVA information without first procuring a judicial warrant. Despite what some have argued in the past,[21] Maryland authorities should have the

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[15] Governor's Office of Crime Control & Prevention, *Criminal Justice Dashboard: Quick Reference Sheet for Users*, https://drive.google.com/file/d/0B-MxWJP0ZmePS1p0Z2FkakRGc1U/view?usp=sharing.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Nlets, *Section 13: Driver License Transactions*, https://wiki.nlets.org/index.php/Section_13:_Driver_License_Transactions; Maryland Department of Transportation Motor Vehicle Administration, *Non-Compliant Driver's Licenses & ID Cards*, http://www.mva.maryland.gov/announcements/non-compliant-driver-license-ID-cards.htm (Nlets is an alternate way ICE can access MVA information in Maryland, and we are using it as a guide to determine what MVA information is available over Dashboard. When an undocumented Maryland resident signs up for a driver's license, the Maryland MVA provides him or her with a different license type than a license that requires proof of citizenship).

[20] Although 8 U.S.C. § 13325 criminalizes illegal entry and 8 U.S.C. § 1326 criminalizes re-entry, this bill would still require that ICE officers show probable cause that the person they are looking for committed one of these crimes, and that the person they are looking for is the same person in the MVA database.

[21] Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services, *Testimony at the House Committee on Environment and Transportation HB 1626 (2018)* ("there is not . . . a way for us to discern precisely . . . who exactly is requesting that information or the number of times in which that information has been queried.").

ability to conduct this type of oversight of user activity because Dashboard "maintain[s] a log of user access" and can determine that a user is associated with ICE.[22]

If the system cannot track user activity, then Dashboard is likely violating its own policies. The implementers of Dashboard have stated that the "[i]nformation [in Dashboard] is for investigative purposes only" and "[t]he system . . . must be accessed for 'probable cause.'"[23] How did Dashboard's implementers expect to ensure compliance with these policies without having any access to what Dashboard users search for? If the answer is that this information is only available to the FBI for CJIS audits, and not saved in the infrastructure of Dashboard itself, then it is incredibly irresponsible to set up a system that hands over that information without leaving themselves access to it.

HB892 will lead with other states that have restricted ICE's access to driver's license information.

With HB892, Maryland can lead with other states in passing laws that restrict ICE's access to driver's license information. In 2019, the New York legislature passed The Driver's License Access and Privacy Act[24] (more commonly referred to as the "Green Light law") and the New Jersey legislature passed its own statute.[25] Both laws require a warrant (although New Jersey's law also allows for a subpoena) before driver's license information may be disclosed or made accessible to any immigration enforcement agency.[26] In 2017, the California legislature passed the California Values Act, which requires the California Attorney General to "publish guidance" to limit immigration enforcement's access to government databases.[27] As the state that seemingly offers ICE the most open access to driver's license information, Maryland must pass HB892 and join these other states in limiting that access.

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[22] *See* Governor's Office of Crime Control & Prevention, *Criminal Justice Dashboard: Quick Reference Sheet for Users*, https://drive.google.com/file/d/0B-MxWJP0ZmePS1p0Z2FkakRGc1U/view?usp=sharing; Department of Public Safety and Correctional Services, https://drive.google.com/file/d/1tus_FlmAevIytlja0SIU53qNpPVn3qc6/view?usp=sharing (where in response to a question which asked for "The number of MIRS ["Maryland Image Repository System"] requests originating from ICE, over the past two 2 [*sic*] years" the Department of Public Safety and Correctional Services detailed the number of sessions and users that made requests in 2018 and 2019). Law enforcement accesses MIRS through Dashboard. *See The Criminal Justice Dashboard (The Dashboard)*, State of Maryland (June 1, 2011), https://drive.google.com/open?id=1D8AlJO6q-pMptFSycG6khuZA3eqtRr3o ("Over 2.1 million photos have been uploaded into the Dashboard from the Maryland Image Repository System.").
[23] Governor's Office of Crime Control & Prevention, *Criminal Justice Dashboard: Quick Reference Sheet for Users*, https://drive.google.com/file/d/0B-MxWJP0ZmePS1p0Z2FkakRGc1U/view?usp=sharing.
[24] N.Y. Veh. & Traf. Law § 201 (2019).
[25] N.J. Stat. Ann. § 39:3-13.4 (2019).
[26] N.Y. Veh. & Traf. Law § 201 (2019); N.J. Stat. Ann. § 39:3-13.4 (2019).
[27] Cal. Gov't Code § 7284.8 (2018).

Some may be concerned that Maryland's choice to lead with these states in restricting ICE's access to MVA information will result in backlash like what New York has faced in recent weeks. Most notably, the Trump Administration has blocked New Yorkers from trusted traveler programs due to the state's Green Light law's interference with its information-gathering and has promised to solicit the help of "friendly" states to provide the driver's license information it seeks.[28]

Maryland's HB892, however, is different from New York's Green Light law in a critical way. While New York's law limits the access of *all* immigration enforcement agencies, including Customs and Border Protection ("CBP") and the Transportation Security Administration,[29] HB892 only limits ICE's access to Maryland MVA information. As CBP, not ICE, manages trusted traveler programs, there is simply no argument that HB892's restrictions on ICE would hinder information checks CBP must conduct for trusted traveler programs.[30]

Additionally, even assuming the Trump Administration can access protected driver's license information through "friendly" states, the fact that ICE has alternate, more burdensome ways to access Maryland MVA information is not a valid reason to not support HB892. ICE's directness of access to Maryland MVA data is unmatched by any state we are aware of. Passing HB892, at minimum, would remove this direct point of access and put Maryland's protections of MVA information on par with that of other states. HB892 is not a panacea, and no single piece of legislation can prevent all of ICE's abuses, but this bill is a crucial first step in protecting all Maryland residents from this rogue agency that tears apart families and terrorizes communities.

HB892 will likely not violate federal law.

Finally, concerns about whether HB892 conflicts with federal law are unfounded. Only two federal laws 8 U.S.C. §§ 1373[31] and 1644[32] discuss the extent to which states and localities must share information with federal immigration authorities. Sections 1373 and 1644 say that states cannot bar their own entities or officials from sharing with federal immigration officials (including ICE) information about citizenship or immigration status. The Ninth Circuit Court of Appeals recently affirmed a narrow reading of "citizenship or immigration status," which would

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[28] Hamed Aleaziz, *DHS Considered How To Punish States That Deny Access To Driver Records, A Memo Says*, Buzzfeed News (Feb. 10, 2020), https://perma.cc/2MNJ-G3YZ.

[29] N.Y. Veh. & Traf. Law § 201 (2019).

[30] U.S. Customs and Border Protection, *Global Entry*, https://www.cbp.gov/travel/trusted-traveler-programs/global-entry ("Global Entry is a U.S. Customs and Border Protection (CBP) program . . . .")

[31] A government entity "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

[32] No government entity "may be prohibited, or in any way restricted, from sending to or receiving from [federal immigration officers] information regarding the immigration status, lawful or unlawful, of an alien in the [US]."

almost certainly exclude proxies for these characteristics, like whether a license was obtained using proof of citizenship or not.[33] Because the MVA does not store information about immigration status,[34] we see no argument that HB892 would run afoul §§ 1373 and 1644.

For all these reasons, CASA supports HB892 and urges a favorable report from the committee.

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[33] *U.S. v. California*, 921 F.3d 865, 893 (9th Cir. 2019) (*cert. pending*) (regarding a California law restricting information-sharing with immigration officials). Note the Supreme Court may take this case soon.

[34] Tom Curtin, Chief of Staff, The Maryland Department of Transportation, *Testimony at the House Committee on Environment and Transportation HB 1626 (2018)* ("One thing that's important to note is that immigration status is not tied to that . . . license [obtained without proof of citizenship] in anyway . . . nor is it shown, or country of origin, captured in any of our systems.").