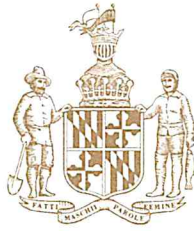


DANA M. STEIN
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The Maryland House of Delegates
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Delegate Stein Testimony In Support of House Bill 892

Seven years ago, the General Assembly enacted an authorization for second-tier driver's licenses. These licenses comply with federal law, which specifically permits the issuance of a second type of license that is not usable for federal purposes like entering federal buildings or getting on airplanes.

Most of those who apply for this license are undocumented immigrants. However, some are citizens who can't find their birth certificate or who don't want to go through the arduous process of contacting their birth state to get a copy.

When we approved this authorization, none of us considered that U.S. Immigration and Customs Enforcement (ICE) would have access to information on those driver's licenses, for purposes of civil immigration enforcement. But as it turns out, under State law, ICE can access that information. If ICE has the name of someone whom they suspect is undocumented, but who otherwise has committed no crime, ICE can get the person's address and photo, find that person, and then deport him or her.

We have no idea how often ICE is doing this. But there is significant suspicion that it is happening. And there is a confirmed case as recently as last month. Testimony has been submitted to you of other cases where the only possible way someone could have been found was through MVA data. And the *Baltimore Sun* conducted research on the matter in which they interviewed ICE officials who acknowledged that they use any source of information legally available to them to find people.

In Maryland, access to MVA data is through the Maryland Image Repository System (MIRS), which is supervised by the Department of Public Safety and Correctional Services (DPSCS). Federal and state agencies access MIRS data through the system maintained by DPSCS.

Prior to a visit to DPSCS last October, I thought that DPSCS could not determine when ICE was accessing MIRS. However, during a legislative visit last October, we were told DPSCS can determine when ICE accesses the system.

We followed up with DPSCS after our visit with several questions, including the number of MIRS requests originating from ICE in 2018 and 2019. We were told that ICE made 14 search requests in 2018 and 42 in 2019. (Letter is attached.)

So it is clear that ICE is accessing MIRS and DPSCS knows when this is taking place.

Research done by the Georgetown Law Center on Privacy & Technology found that Maryland appears to be the only state in the nation that allows ICE and other federal agencies to access its data without any meaningful checks.

To put this in context, when it came out last summer that ICE had requested face scans of driver's license photos in Utah, Vermont, and Washington, those states quickly clarified that ICE agents didn't have direct access; they had to request those searches from state officials. In Maryland, any ICE agent with a common federal login doesn't have to talk to any Maryland state official. They can just log on and directly scan and access photos and personal information for 7 million Marylanders.

Many states also have accountability measures in place to ensure that requests for personal identifying data from motor vehicle licensing agencies are for criminal cases and not just fishing expeditions by ICE. For example, Ohio requires that use of their database be audited by the State's Attorney General's office and independent outside auditors to ensure it is not being abused. Maryland has no such accountability measures.

House Bill 892 will prevent DPSCS from permitting access to MIRS by ICE unless DPSCS is presented with a warrant issued by a federal court or Maryland court. This can easily be done electronically.

I want to be clear, the concern is not about situations where there is a valid criminal investigation. No one would argue that ICE should not be allowed to access the MIRS system in those cases. But, then they would have a warrant, which would allow them access. The concern, not only in Maryland, but in other states that have created special driver's licenses, is that ICE is gaining access to this information for the purpose of deporting people who have committed no crime.

We should not allow that to happen.



Department of Public Safety and Correctional Services

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November 21, 2019

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241 House Office Building
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Dear Senators and Delegates:

Thank you for your letter regarding the Maryland Image Repository System (MIRS). The Department of Public Safety and Correctional Services (DPSCS) appreciates the time you took to visit with the agency's Information Technology and Communications Division (ITCD) in order to develop a better understanding of the MIRS system.

ITCD has housed and maintained the Maryland Image Repository System (MIRS) since 2011. MIRS is a digitized mug shot book designed used by law enforcement agencies throughout Maryland in the furtherance of their law enforcement investigation duties.

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As discussed during the demonstration, law enforcement officials can use MIRS to compare images of unidentified individuals to images from Motor Vehicle Administration (MVA) records, inmate case records, and mug shots. Law provides for the sharing and use of those photos for law enforcement. Uploaded images by members of law enforcement are not saved and any images uploaded are only used to determine the highest probability that the uploaded image may relate to an MVA and/or DPSCS image within MIRS. MIRS does not provide "hits" or "matches" to the uploaded image of the unidentified individual.

Similar to accessing the National Crime Information Center within the Federal Bureau of Investigation, only authorized users are able to access the MIRS for investigatory purposes. Local law enforcement agencies in the State are responsible for establishing a policy regarding the use of MIRS and decide when, where, and how it is used. All users must accept the terms of the legal disclaimer when accessing the system which, among other things, states that "[t]he unauthorized use of my Logon ID to access DPSCS, or a breach of any security procedures related to the use of my Logon ID may result in prosecution under the Criminal Law Article, Section 7-302 and Section 8-606, Annotated Code of Maryland."

In your letter, you requested additional information regarding MIRS. Please see below, responses to the inquiries contained in your letter.

1. The number of MIRS requests originating from ICE, over the past two 2 years

The user's search results are saved under their session and are not available to any other user. In 2018, 14 sessions were saved under one user, and in 2019, 42 sessions were saved; 41 sessions under one user and 1 session saved under another user.

2. The estimated costs to require and archive signed off affidavits certifying that a specific investigator is looking for a specific unidentified criminal suspect with reasonable suspicion before access is granted to MIRS, or after an authorized valid criminal warrant (not administrative) or subpoena is issued by a Maryland or Federal Court

DPSCS is unable to provide a cost estimate to require and archive such affidavits. It is incumbent upon the using agency to ensure that it is using information obtained from the MIRS lawfully and according to that agency's policies and procedures. In addition to warehousing and maintaining Maryland's Criminal Justice Repository,

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[Question 2 Cont'd]

DPSCS's primary mission is to oversee the Division of Correction, which houses inmates sentenced to terms of incarceration exceeding 18 months, the Division of Parole and Probation, and the Baltimore City Pretrial Complex. While DPSCS enjoys partnerships with both the Judiciary and law enforcement, DPSCS does not function as the intermediary between the Judiciary and law enforcement in terms of investigations and the issuance of criminal warrants or subpoenas. The Judiciary and State and local law enforcement agencies are best suited to provide input on this suggested process.

3. The purpose of including names, addresses, and other non-biometric indicators in the Maryland Image Repository System, and why that outweighs potential the concerns regarding whether the biometrics are the only features being examined during an identification process

The information provided via MIRS is information that law enforcement/criminal justice community is entitled to pursuant to current State laws and regulations. The MVA information incorporated with MIRS is the existing driver license information that is tied to the image.

4. The cost estimate to allow non-biometric data to be accessed only after an actual identification has been reduced to less than 5 potential hits, with probability > (0.700)?

The Department is unable to provide a cost estimate at this time to allow non-biometric data to be accessed only after an actual identification has been reduced to less than 5 potential hits, with probability > (0.700). However, any software modifications would be at a substantial cost.

It is important to reinforce that MIRS as an investigatory tool does not provide positive identification. As such, it does not meet the standard of evidence nor does it replace the investigative work of law enforcement.

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I hope this information is helpful. If the Department or I can be of further assistance, please do not hesitate to contact me or Rachel Sessa, Chief of Staff, at 410-339-5022.

Sincerely,



Kevin Combs
Chief Information Officer
Information Technology and Communications Division

cc: The Honorable Robert L. Green, Department of Public Safety and Correctional Services
Ms. Rachel Sessa, Chief of Staff, Department of Public Safety and Correctional Services