January 21, 2021

Chairman Luke Clippinger
Chair, Judiciary Committee
Maryland House of Delegates
Annapolis, MD 21401

Re: Testimony in Support of HB 23 – "Personal Information - State and Local Agencies - Restrictions on Access"

Dear Chairman Clippinger and Committee Members:

The National Immigration Law Center submits the following testimony in support of HB 23, which bars disclosure of driver's license records containing personal information or photographs to federal agencies for civil immigration enforcement and requires federal agencies to obtain a valid federal or state court warrant to obtain driver's license records containing personal information or photographs for use in criminal immigration enforcement. The bill also bars federal agencies' use of facial recognition software on driver's license photographs for civil immigration enforcement and for criminal immigration enforcement without a valid federal or state court warrant.

Established in 1979, NILC is one of the leading organizations in the U.S. exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. NILC has developed unique expertise in the laws and policies affecting access to services, including driver's licenses, for low-income immigrants. We have decades of experience providing technical assistance, training and publications to government agencies, legal services and non-profit organizations across the country.

We urge you to support HB 23 for the following reasons:

<u>Federal Agencies' Access to Personal Information and Photographs in Driver's License Records Undermines the Goals of Maryland's Driver's License Law</u>

In 2013 Maryland joined a growing number of states (currently 16, plus the District of Columbia and Puerto Rico) that issue driver's licenses to eligible residents, regardless of

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their immigration status.[1] Laws like Maryland's that restored access to driver's licenses enhance public safety, by ensuring that drivers are trained, tested and have greater access to insurance. Drivers with licenses have a means to identify themselves and may be more willing to report accidents and interact with government agencies.[2]

Many immigrants are concerned, however, that information and photographs provided to state driver's license agencies will be shared with federal immigration authorities and used for immigration enforcement, or that rogue police officers or state agency employees or agents will contact immigration authorities about drivers with licenses marked as not acceptable for federal purposes, because they assume these individuals are undocumented.

Immigrants' fears have proven to be well-founded. In Maryland, for example, "U.S. Immigration and Customs Enforcement officials have been permitted to run facial-recognition searches on millions of Maryland driver's license photos without first seeking state or court approval, state officials said — access that goes far beyond what other states allow."[3] And searches such as these yield far more than a photo match. The Maryland Image Repository System database "includes the photos, names, addresses and other personal information of approximately 7 million drivers statewide."[4]

These searches are not benign, as they "threatened to deeply undermine the program by forcing a chilling effect on undocumented immigrants, who may seek instead to ignore the requirements for driver licensing, insurance and education."[5] In addition, the technology is notoriously unreliable for people with darker skin, especially black women, seniors, and children.[6]

Exacerbating this effect, the driver's license information and photographs that federal agencies collect for immigration enforcement will become part of the Department of Homeland Security's vast database called Homeland Advanced Recognition Technology

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[1] *State Laws Providing Access to Driver's Licenses or Cards, Regardless of Immigration Status* (NILC, April 2020), https://www.nilc.org/wp-content/uploads/2015/11/drivers-license-access-table.pdf
[2] *Empirical Studies Support Issuance of Driver's Licenses Without Regard to Immigration Status* (NILC 217) https://www.nilc.org/wp-content/uploads/2017/10/driver-license-research.pdf

[3] *ICE has run facial-recognition searches on millions of Maryland drivers* (Drew Harwell and Erin Cox, The Washington Post, Feb. 26, 2020) https://www.washingtonpost.com/technology/2020/02/26/ice-has-run-facial-recognition-searches-millions-maryland-drivers/
[4] *Id.*
[5] *Id.*
[6] Comments of the Electronic Frontier Foundation Regarding Notice of Proposed Rulemaking on the Collection and Use of Biometrics by U.S. Citizenship and Immigration Services USCIS, Docket No. USCIS–2019–0007, https://beta.regulations.gov/comment/USCIS-2019-0007-5370

(HART).[7]   This database, which DHS is creating under-the-radar, will replace DHS' current biometrics database IDENT[8] (Automated Biometric Identification System).[9]

HB 23 Promotes Privacy Rights and Due Process by Protecting Driver's License Information and Photographs

Analyses conducted in other states reveal multiple mechanisms for federal agencies to obtain sensitive personal information and photographs of driver's license holders.[10]   Those mechanisms often operate without clear disclosure to the public or the consent of drivers. And they operate without clear federal policies about how their agencies obtain and use driver's license information.[11]

Therefore, sensible measures, like HB 23, that protect drivers' personal information and photographs are necessary. The bill helps ensure that drivers' information will not be shared with federal authorities for civil immigration enforcement purposes. The bill's requirement of a valid federal or state warrant promotes due process by requiring federal authorities to present evidence that there is probable cause to believe a crime was committed and that the requested information is necessary for the investigation of the crime.

The Constitution imposes limits on the government's ability to seize personal "papers and effects." Requiring a warrant issued by a federal or state court adopts a familiar and clear standard that is simple to implement and protects against the "unreasonable seizure" of personal information of Maryland's residents. The measure does not prevent federal authorities from obtaining personal information for criminal investigations. It simply ensures that an independent authority will determine that doing so is warranted.

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[7] Supplemental Programmatic Environmental Assessment (SPEA) for the Proposed Establishment and Operations of the Office of Biometric Identity Management and the Homeland Advanced Biometric Technology (HART), 81 Fed. Reg. 90862 (Dec. 15, 2016), https://www.govinfo.gov/content/pkg/FR-2016-12-15/pdf/2016-30187.pdf

[8] Notice of Updated Privacy Act System of Records Notice, IDENT System of Records (DHS, June 5, 2007) https://www.govinfo.gov/content/pkg/FR-2007-06-05/html/07-2781.htm

[9] *HART: Homeland Security's Massive New Database Will Include Face Recognition, DNA, and Peoples' "Non-Obvious Relationships"* (Jennifer Lynch, Electronic Frontier Foundation, June 7, 2018) https://www.eff.org/deeplinks/2018/06/hart-homeland-securitys-massive-new-database-will-include-face-recognition-dna-and

[10] See, e.g. *Secure Our Data: Protecting the Privacy of Pennsylvania Residents and Drivers* (Driving Pennsylvania Forward and the Farmworker Legal Advocacy Clinic at the Villanova University Charles Widger School of Law, Sept. 2020) https://drivingpaforward.org/wp-content/uploads/2020/09/Secure-Our-Data-Hit-the-Brakes-on-Information-Sharing.-Driving-PA-Forward-2020-1.pdf

[11] *Documents Obtained Under Freedom of Information Act: How U.S. Immigration & Customs Enforcement and State Motor Vehicle Departments Share Information* (NILC, May 2106) https://www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information/

The bill also provides a measure of accountability and transparency by requiring documentation of the purposes for which information from the driver's license database is sought or obtained by law enforcement agencies, and a report on such requests.

With passage of HB 23, Maryland will join several other states, Including New York, New Jersey and California, that have taken significant steps to protect the privacy of personal information in driver's license records.[12]

Conclusion

For the reasons described above, we urge you to provide a favorable report on HB 23.

Sincerely,

Shiu-Ming Cheer
Director of Movement Building & Strategic Partnerships

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[12] *Protecting State Driver's License Information* (NILC, June 2020), https://www.nilc.org/issues/drivers-licenses/protecting-state-drivers-license-information/