

# **CASA - Nana Abrefah\_FAV\_SB649**

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Position: FAV



## Testimony in SUPPORT of SB649:

Public Information Act – Motor Vehicle Administration – Warrant for Personal Information  
Nana Abrefah, The Georgetown Law Federal Legislation Clinic, on behalf of CASA de  
Maryland

February 27, 2020

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

The Georgetown Law Federal Legislation Clinic, on behalf of CASA, writes in support of SB649. 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”).

**SB649 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.<sup>1</sup> 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.<sup>2</sup> The agents were pulling over vehicles near a particular apartment

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

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 SB649 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.<sup>5</sup> Dashboard connects over 100 State-owned databases, including one containing Maryland MVA information.<sup>6</sup> Despite being built by Maryland agencies,<sup>7</sup> Dashboard is open to *all* 16,000 federal and state users with an existing National Crime Information Center ("NCIC")

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login.<sup>8</sup> The Federal Bureau of Investigation (“FBI”), not Maryland, issues NCIC logins to ICE agents.<sup>9</sup>

After logging into Dashboard, an ICE agent can issue search requests that are automatically routed to and retrieved from the relevant agency.<sup>10</sup> No Maryland court or agency ever approves these requests or oversees the responses.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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<sup>14</sup> 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=1D8AIJO6q-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.<sup>15</sup> ICE agents can go on fishing expeditions by searching for all driver's license holders in a zip code.<sup>16</sup> Agents can also search for a specific individual using a last name or a driver's license number.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

### **SB649 will restrict ICE's access to MVA information for non-criminal enforcement.**

SB649 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.<sup>20</sup> Meanwhile, SB649 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 SB649. 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,<sup>21</sup> Maryland authorities should have the

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<sup>20</sup> 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.

<sup>21</sup> 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.<sup>22</sup>

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.’”<sup>23</sup> 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.

### **SB649 will lead with other states that have restricted ICE’s access to driver’s license information.**

With SB649, 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<sup>24</sup> (more commonly referred to as the “Green Light law”) and the New Jersey legislature passed its own statute.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> As the state that seemingly offers ICE the most open access to driver’s license information, Maryland must pass SB649 and join these other states in limiting that access.

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<sup>24</sup> N.Y. Veh. & Traf. Law § 201 (2019).

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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.<sup>28</sup>

Maryland's SB649, 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,<sup>29</sup> SB649 only limits ICE's access to Maryland MVA information. As CBP, not ICE, manages trusted traveler programs, there is simply no argument that SB649's restrictions on ICE would hinder information checks CBP must conduct for trusted traveler programs.<sup>30</sup>

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 SB649. ICE's directness of access to Maryland MVA data is unmatched by any state we are aware of. Passing SB649, at minimum, would remove this direct point of access and put Maryland's protections of MVA information on par with that of other states. SB649 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.

### **SB649 will likely not violate federal law.**

Finally, concerns about whether SB649 conflicts with federal law are unfounded. Only two federal laws 8 U.S.C. §§ 1373<sup>31</sup> and 1644<sup>32</sup> 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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<sup>28</sup> 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>.

<sup>29</sup> N.Y. Veh. & Traf. Law § 201 (2019).

<sup>30</sup> 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 . . . .")

<sup>31</sup> 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."

<sup>32</sup> 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.<sup>33</sup> Because the MVA does not store information about immigration status,<sup>34</sup> we see no argument that SB649 would run afoul §§ 1373 and 1644.

For all these reasons, CASA supports SB649 and urges a favorable report from the committee.

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<sup>33</sup> *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.

<sup>34</sup> 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.”).



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<sup>19</sup> Nlets, *Section 13: Driver License Transactions*, [https://wiki.nlets.org/index.php/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).

<sup>20</sup> 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.

<sup>21</sup> 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.<sup>22</sup>

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.’”<sup>23</sup> 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.

### **SB649 will lead with other states that have restricted ICE’s access to driver’s license information.**

With SB649, 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<sup>24</sup> (more commonly referred to as the “Green Light law”) and the New Jersey legislature passed its own statute.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> As the state that seemingly offers ICE the most open access to driver’s license information, Maryland must pass SB649 and join these other states in limiting that access.

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<sup>22</sup> 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](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=1D8AIJO6q-pMptFSycG6khuZA3eqtRr3o> (“Over 2.1 million photos have been uploaded into the Dashboard from the Maryland Image Repository System.”).

<sup>23</sup> 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>.

<sup>24</sup> N.Y. Veh. & Traf. Law § 201 (2019).

<sup>25</sup> N.J. Stat. Ann. § 39:3-13.4 (2019).

<sup>26</sup> N.Y. Veh. & Traf. Law § 201 (2019); N.J. Stat. Ann. § 39:3-13.4 (2019).

<sup>27</sup> 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.<sup>28</sup>

Maryland's SB649, 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,<sup>29</sup> SB649 only limits ICE's access to Maryland MVA information. As CBP, not ICE, manages trusted traveler programs, there is simply no argument that SB649's restrictions on ICE would hinder information checks CBP must conduct for trusted traveler programs.<sup>30</sup>

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 SB649. ICE's directness of access to Maryland MVA data is unmatched by any state we are aware of. Passing SB649, at minimum, would remove this direct point of access and put Maryland's protections of MVA information on par with that of other states. SB649 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.

### **SB649 will likely not violate federal law.**

Finally, concerns about whether SB649 conflicts with federal law are unfounded. Only two federal laws 8 U.S.C. §§ 1373<sup>31</sup> and 1644<sup>32</sup> 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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<sup>28</sup> 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>.

<sup>29</sup> N.Y. Veh. & Traf. Law § 201 (2019).

<sup>30</sup> 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 . . . .")

<sup>31</sup> 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."

<sup>32</sup> 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.<sup>33</sup> Because the MVA does not store information about immigration status,<sup>34</sup> we see no argument that SB649 would run afoul §§ 1373 and 1644.

For all these reasons, CASA supports SB649 and urges a favorable report from the committee.

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<sup>33</sup> *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.

<sup>34</sup> 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.”).



**Blank\_FAV\_SB649**

Uploaded by: Blank, Emily

Position: FAV

February 27, 2020

Emily Blank  
3718 Shepherd St  
Brentwood, MD 20712  
emilyblank@gmail.com / (301) 277-5842

**TESTIMONY IN SUPPORT OF SB649**  
**Public Information Act – Motor Vehicle Administration – Warrant for Personal  
Information and Reporting**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Emily Blank

*“When strangers reside with you in your land, you shall not wrong them. The sojourners who reside with you shall be to you as your citizens; you shall love each one as yourself, for you were strangers in the land of Egypt.” – Leviticus 19:33-34*

My name is Emily Blank, and I am a resident of District 47A. I am writing in support of SB649, which would prohibit ICE from searching the MVA database and records.

I am an economics professor at Howard University in Washington, DC and a lay cantor. As a professor, I know that when students share private information with me, it is my responsibility to keep that information private, not to turn it over to federal authorities. I do not know whether I currently teach any students who are undocumented, but all of my students should be able to drive and to go about their daily lives without fear of deportation.

Maryland granted drivers licenses to undocumented residents with assurances that their information would not be used against them. Yet, the Motor Vehicle Administration’s database and records can be and are searched by all federal law enforcement agencies, including ICE. Allowing undocumented residents licenses entails inclusion in these databases; allowing them to be therefore captured by ICE is cruel — a kind of entrapment. This bill would prohibit ICE from accessing MVA records for civil immigration enforcement purposes.

Living within the borders of the United States without proper documentation is not a felony. There is no reason to cause undocumented persons, some of whom have lived in this country for years and are members of our community, to live in terror. **I urge a favorable report on SB649.**

Sincerely,  
Emily C. Blank

Do justice, love mercy, and walk humbly with your God. -Micah 6:8

## **Frosh\_fav\_sb649**

Uploaded by: Frosh, Brian

Position: FAV

**BRIAN E. FROSH**  
*Attorney General*

**ELIZABETH HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*



STATE OF MARYLAND  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

February 27, 2020

To: The Honorable William C. Smith, Jr.  
Chair, Environment and Transportation Committee

From: The Office of the Attorney General

Re: Senate Bill 649 – Public Information Act – Motor Vehicle Administration – Warrant for  
Personal Information and Reporting

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The Office of the Attorney General is deeply concerned that U.S. Immigration and Customs Enforcement (ICE) seems to be using driver's license records to identify law abiding individuals who lack documentation of lawful status. In 2013, the General Assembly passed the Maryland Highway Safety Act authorizing the Motor Vehicle Administration (MVA) to issue driver's licenses to individuals who did not provide Social Security numbers or proof of lawful status, joining the now 15 states and the District of Columbia that license undocumented immigrants.<sup>1</sup> Within the Act's first year, MVA issued more than 38,000 driver's licenses and learner's permits to people who did not submit proof of U.S. citizenship.<sup>2</sup> Although not eligible for federal identification purposes, these limited use or "non-compliant" licenses are widely seen as an effective strategy for reducing the number of uninsured drivers and highway accidents, particularly hit and run collisions.<sup>3</sup> They also reduce the law enforcement and corrections resources expended on investigating and detaining individuals solely for driving without a valid license. Not surprisingly, undocumented immigrants who obtain non-compliant licenses have for years expressed concerns that their personal information is accessible to federal and other government officials for purposes of civil immigration enforcement.

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<sup>1</sup> Chapter 309 (2013); <https://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx> for

<sup>2</sup> <http://www.baltimoresun.com/maryland/bs-md-immigrant-licenses-20140920-story.html> Recent reports suggest that this number is now exceeds more than 275,000.

<https://www.washingtonpost.com/technology/2020/02/26/ice-has-run-facial-recognition-searches-millions-maryland-drivers/>

<sup>3</sup> See e.g., <https://www.pnas.org/content/114/16/4111>.



Although it is unclear how often Maryland MVA data has been accessed by ICE solely for civil immigration enforcement purposes, recent reports by the Baltimore Sun and Washington Post indicate that since 2018 ICE officials have logged into the State's driver's license database between 50 and 100 times employing facial recognition technology.<sup>4</sup> Nationwide, the National Immigration Law Center has documented several trends regarding the use of Department of Motor Vehicle (DMV) data by federal immigration officials:<sup>5</sup>

- DMV databases are a longstanding, important source of information for ICE and other law enforcement agencies.
- The Department of Homeland Security uses DMV databases in multiple ways, including to locate people for immigration enforcement purposes and to obtain bulk information in order to identify individuals who could be deported.
- ICE has not been transparent about how it obtains DMV information.

As our Office has consistently advised, the federal government may not force State and local officials to carry out immigration law and there are considerable risks to doing so.<sup>6</sup> We agree that driver's license data is a critical and appropriate resource for criminal law enforcement efforts. However, when ICE accesses the personal data of licensed drivers solely for civil immigration enforcement purposes, it discourages compliance with the licensing laws and undermines the State's transportation safety goals. We write to share the Office's concern about that practice and to generally support efforts to stop it.

cc: Members of the Judicial Proceedings Committee

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<sup>4</sup> <https://www.washingtonpost.com/technology/2020/02/26/ice-has-run-facial-recognition-searches-millions-maryland-drivers/>; <http://www.baltimoresun.com/politics/bs-md-pol-ice-mva-bill-20200227-rsgqqajmwne4hollsz4svgpa6m-story.html>

<sup>5</sup> <https://www.nilc.org/issues/drivers-licenses/ice-dmvs-share-information/>.

<sup>6</sup> Local Enforcement of Federal Immigration Law: Legal Guidance for State and Local Law Enforcement Officials, updated December 2018, available online at: [http://www.marylandattorneygeneral.gov/Reports/Immigration\\_Law\\_Guidance.pdf](http://www.marylandattorneygeneral.gov/Reports/Immigration_Law_Guidance.pdf)

**Kickenson\_FAV\_SB649**

Uploaded by: Kickenson, Jerry

Position: FAV

February 27, 2020

Jerry Kickenson  
1701 Ladd St, Silver Spring, MD 20902  
jerry@kickenson.info / (240) 839-1075

**TESTIMONY IN SUPPORT OF SB649**  
**Public Information Act – Motor Vehicle Administration – Warrant for Personal  
Information and Reporting**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Jerry Kickenson

I am writing in support of Senate Bill 649, Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting, as a resident of Montgomery County's District 18. .

Jewish sacred text and tradition teach us to welcome the stranger, for we were strangers in the land of Egypt. Leviticus 19:34 explicitly instructs us to treat the immigrant in our land the same as native citizens. Maryland granted drivers licenses to undocumented residents with assurances that their information would not be used against them. Many of my neighbors have obtained these licenses. Yet, the Motor Vehicle Administration's database and records can be and are searched by all federal law enforcement agencies, including ICE. If Maryland shared my personal information with federal authorities so that I could be arrested, incarcerated and potentially deported, I would not consider that being treated fairly as a native citizen.

How does sharing this information with ICE contribute to public safety in Maryland? It does not. Rather, the current situation deters undocumented residents from becoming licensed drivers, making the roads less safe for everyone, not more. It is also grossly unfair and a perversion to offer this kind of license, and then turn around and let ICE use information collected against those who in good faith obtain that license. SB649 will fix this unjust and unsafe practice by prohibiting ICE from accessing MVA records without a judicial warrant.

The problem this bill addresses is not theoretical. ICE has searched through motor vehicle administration databases in several states, including Maryland's, searching for possible undocumented residents.

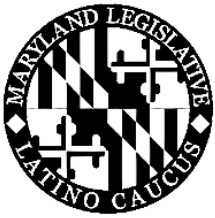
**I strongly urge you to reach a favorable report for SB649.**

# **MLLC\_Fav\_SB649**

Uploaded by: Latino Caucus, MD

Position: FAV





## MARYLAND LEGISLATIVE LATINO CAUCUS

Lowe House Office Building, 6 Bladen Street, Room 200 · Annapolis, Maryland 21401  
Phone 410-841-3374 | 301-858-3374 · 800-492-7122 Ext. 3374 · Fax 410-841-3342 | 301-858-3342  
latino.caucus@house.state.md.us · www.mdlatinocaucus.org

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TO: Senator William C. Smith, Jr., Chair  
Senator Jeff Waldstreicher, Vice Chair  
Judicial Proceedings Committee Members

FROM: Maryland Legislative Latino Caucus (MLLC)

RE: SB649 Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting

### **The MLLC supports SB649 Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting.**

The MLLC is a bipartisan group of Senators and Delegates committed to supporting legislation which improves the lives of Latinos throughout our state. The MLLC is a voice in the development of public policy affecting the Latino community and the state of Maryland. Thank you for allowing us the opportunity to express our support of SB649.

In 2013, the General Assembly did the right thing and passed legislation to grant our undocumented immigrants access to driver's licenses. This law addressed road safety issues, so that regardless of an individual's status, people could take their driving test, acquire a driver's license, and obtain car insurance. Undocumented immigrants trusted the state's process, but now many are dealing with unforeseen consequences.

Recent reports indicate that U.S. Immigration and Customs Enforcement (ICE) has been retrieving personal information of millions of Marylanders through facial-recognition searches of the state's Motor Vehicle Administration's (MVA) database. ICE officials can run a photograph, without state or court approval, through the MVA system and receive information of potentially matched undocumented immigrants. This is a betrayal of our community's trust—something that we have tried to build up for years. Furthermore, the National Institute of Standards and Technology, a federal laboratory, has stated that these facial-recognition algorithms are more likely to misidentify people of color, women, elderly, and children. It is an unreliable tool that if it must be used, requires proper regulation.

SB649 requires ICE officials to present a valid warrant issued by a federal or state court to the MVA for database searches. Without a warrant, the MVA may deny their search request. The legislature made the right decision for Marylanders in 2013, it should do it again this year.

The MLLC supports this bill and urges a favorable report on SB649.

# **Georgetown Law - Harrison Rudolph\_FAV\_SB649**

Uploaded by: Rudolph, Harrison

Position: FAV



**Statement of Harrison Rudolph, Senior Associate**

**Center on Privacy & Technology at Georgetown Law**

*Before the*

**Maryland General Assembly**

*Hearing on*

**HB 892/SB 649**

Thursday, February 27, 2020

For more information, contact Harrison Rudolph at [hsr11@georgetown.edu](mailto:hsr11@georgetown.edu) or (202) 661-6709.

## Executive Summary

My name is Harrison Rudolph and I am a senior associate at the Center on Privacy & Technology at Georgetown Law. The Center is a think tank focused on privacy and surveillance law and policy—and the communities they affect. We have studied face recognition technology in earnest since 2015. Our four reports on face recognition, including our seminal report on the subject, *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, are available at <https://www.law.georgetown.edu/privacy-technology-center/publications>.

A few key takeaways from my testimony are below:

**U.S. Immigration and Customs Enforcement (ICE) has used face recognition technology to scan the face of every Maryland driver.** According to Maryland officials, ICE agents have repeatedly conducted warrantless scans of the Motor Vehicle Administration's (MVA) driver's license photo database.

### **Warrantless ICE face scans of MVA photos—**

- **create a bait-and-switch for immigrants.** Immigrants provide a photograph to the MVA in order to obtain a driver's license. It is a betrayal of immigrants' trust for the MVA, without warning, to allow ICE agents to conduct warrantless face scans on immigrants' photographs to identify people for deportation.
- **subvert state will and harm public safety.** Maryland enacted the *Maryland Highway Safety Act of 2013* to expand driver's license eligibility and promote public safety. Warrantless ICE face scans will have the opposite effect, leading to fewer licensed drivers and more dangerous roads. The Maryland General Assembly never expressly authorized ICE's use of face recognition on driver's license photos in the first place.
- **affect everyone, not just immigrants.** With face recognition, the question is not whether you are an immigrant, but whether an error-prone technology thinks you *look* like an immigrant. Research shows that everyone is at risk of misidentification and false investigation, particularly women and people of color.

**Maryland should pass HB 892/SB 649 in order to protect the public from warrantless ICE face scans.**

**I. Access to the Maryland MVA’s face recognition system is likely the most unrestricted in the United States.**

**Face recognition is the automated process of comparing images of faces to determine whether they represent the same individual.<sup>i</sup> Using a driver’s license photo database, face recognition can reveal a person’s identity.** The Maryland Department of Public Safety and Correctional Services (DPSCS) has housed Maryland’s face recognition system since 2011.<sup>ii</sup> The face recognition system has access to more than 7 million photographs in the MVA driver’s license database.<sup>iii</sup>

**Federal law enforcement has virtually unlimited access to Maryland’s face recognition system.** Twenty other states allow Federal Bureau of Investigation (FBI) agents to request scans of driver’s license photographs.<sup>iv</sup> From our review of documents from dozens of public records requests, Maryland, however, appears to be unique in allowing *any* law enforcement officer, anywhere in the country, to login *directly* and scan drivers’ faces so long as they hold National Crime Information Center (NCIC) credentials.<sup>v</sup> That is an unprecedented level of access for federal agents—including ICE deportation agents.

**DPSCS does not audit access to or use of its face recognition system.** As of December 2017, DPSCS did not have an audit or review process for its face recognition system.<sup>vi</sup> DPSCS could not even identify how many law enforcement agents had access to its system or how many times law enforcement agents had used it.<sup>vii</sup> DPSCS has only stated that a “user’s search results are saved under their session and are not available to any other user.”<sup>viii</sup> These minimal controls leave the door open for misuse and abuse.

**Federal law enforcement can use Maryland’s face recognition system for virtually any purpose.** The only limitation on use of the DPSCS system is that a user must have “certain [NCIC] credentials to access [the Maryland Image Repository System] for law enforcement investigatory purposes.”<sup>ix</sup> However, DPSCS does not have any way to enforce this *de minimis* “law enforcement investigatory purpose” standard.

**II. Warrantless ICE face scans create a bait-and-switch for immigrants.**

**Over the last two years, ICE has repeatedly conducted warrantless scans of MVA driver’s faces.** DPSCS disclosed that between 2018 and 2019, ICE agents logged 56 sessions inside the MVA system.<sup>x</sup> DPSCS did not disclose the number of face scans conducted during each of these sessions.

**Vulnerable immigrants are at risk of deportation when ICE uses face recognition to scan the MVA driver’s license database.** In 2013, the Maryland General Assembly passed,<sup>xi</sup> and

Governor O'Malley signed into law, the *Maryland Highway Safety Act of 2013*,<sup>xii</sup> extending eligibility for driver's licenses and identification cards to undocumented residents.<sup>xiii</sup> At the time, the MVA projected that more than 100,000 people without documentation would receive a license under the law within one year.<sup>xiv</sup> The legal status of these undocumented drivers makes them uniquely vulnerable to ICE face scans intended to identify people to deport.

**Inviting immigrants to apply for a driver's license and then turning over their private data to ICE is a deeply cruel bait-and-switch.** Maryland has a duty to protect immigrants' privacy at the MVA. Then-Sen. Victor Ramirez, who introduced the *Maryland Highway Safety Act of 2013*, said that Maryland would no longer "drive people underground."<sup>xv</sup> That is impossible if people are unsafe coming out into the light.

### **III. Warrantless ICE face scans subvert the will of the people of Maryland.**

**The General Assembly has never expressly authorized ICE to conduct warrantless face scans of the MVA driver's license database.** It is unclear whether Maryland has even considered the issue. According to DPSCS, law enforcement may use face recognition to scan driver's license photographs because Maryland law requires that the MVA "disclose personal information ... for use by a ... a law enforcement agency."<sup>xvi</sup> That is not express authorization for ICE face scans of Maryland drivers' faces.

**Warrantless ICE face scans will deter immigrants from getting a driver's license. That will subvert the legislature's intent and harm public safety.** Maryland decided to offer driver's licenses to undocumented people for strong public policy reasons. For example, the MVA itself supported the *Maryland Highway Safety Act of 2013* because licensed drivers can purchase insurance and tend to get into fewer car accidents.<sup>xvii</sup> Revelations that ICE is using face recognition to scan undocumented drivers' faces without a warrant will have a predictable chilling effect on immigrants applying for licenses. That will subvert the legislature's intent and harm public safety.

### **IV. Warrantless ICE face scans affect everyone, not just immigrants.**

**Face recognition technology can falsely identify Maryland citizens as deportable people. That could lead to false investigations.** When face recognition fails to identify a person, it may actually misidentify *another* person. For example, Sri Lankan authorities relying on face recognition technology mistook an innocent Marylander for a woman suspected of participating in the 2019 Sri Lanka Easter bombings.<sup>xviii</sup> Similarly, Maryland's face recognition system provides ICE agents with a measurement of the "highest probability that the uploaded image may" be a match to an MVA image within the database.<sup>xix</sup> That could mean false investigations of U.S. citizens.

**Face recognition technology tends to make more errors—more misidentifications—on women and people of color. The degree of bias varies based on image quality.** A recent study conducted by ICE’s parent agency, the Department of Homeland Security (DHS), found that face recognition “performance is strongly affected by demographic factors, notably skin [color],” and that image “differences can strongly affect (magnify or eliminate)” bias issues.<sup>xx</sup> ICE face scans likely suffer from the bias amplifying effects of image quality differences; some older immigration photographs were “photographed at an angle,” and photos from prior encounters with ICE, for example, might be “obscured by hats or scarves.”<sup>xxi</sup> That could be a recipe for misidentifications of women and people of color.

## **V. Conclusion**

**Maryland should pass HB 892/SB 649 in order to protect the public from warrantless ICE face scans.** Vulnerable Marylanders deserve to feel safe getting a driver’s license at the MVA. Until the General Assembly acts to protect Marylanders from the threats posed by warrantless ICE face scans, many Marylanders may instead feel put at risk.

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<sup>i</sup> For a more complete discussion of this, see Clare Garvie, Alvaro Bedoya, and Jonathan Frankle, *The Perpetual Line-Up: Unregulated Police Face Recognition in America*, 28 (2016), available at <https://www.perpetuallineup.org/report> (hereinafter “The Perpetual Line-Up”).

<sup>ii</sup> See The Perpetual-Lineup, Maryland Backgrounder, available at <https://www.perpetuallineup.org/jurisdiction/maryland>.

<sup>iii</sup> *Id.*

<sup>iv</sup> These states include Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Nebraska, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, Tennessee, Texas, and Utah.

<sup>v</sup> *Supra*, note ii.

<sup>vi</sup> See DPSCS Letter to Chairman Kasemeyer and Chairman McIntosh, December 1, 2017, available at <https://www.mylaw.org/uploads/1/7/7/6/17760533/md-image-repository-system.pdf>.

<sup>vii</sup> *Id.* (“DPSCS/ITCD does not have this information.”)

<sup>viii</sup> *Id.*

<sup>ix</sup> *Id.*

<sup>x</sup> See DPSCS Letter to Senators Lee and Lam and Delegates Stein and Pena-Melnyk, November 21, 2019.

<sup>xi</sup> The Maryland Highway Safety Act of 2013 passed 29 to 18 in the Senate and 82 to 55 in the House of Delegates.

<sup>xii</sup> Legiscan, *Maryland Senate Bill 715 (Prior Session Legislation)*, available at <https://legiscan.com/MD/bill/SB715/2013>.

<sup>xiii</sup> See Horace Holmes, *Thousands of immigrants apply for driver's licenses in Maryland*, WJLA, January 2, 2014, available at <https://wjla.com/news/local/thousands-of-immigrants-apply-for-driver-s-licenses-in-maryland-98779>.

<sup>xiv</sup> *Id.*

<sup>xv</sup> See Erin Cox, *Two-tier Maryland licenses approved for illegal immigrants*, The Baltimore Sun, April 5, 2013, available at <https://www.baltimoresun.com/politics/bs-md-drivers-license-illegal-immigrant-20130405-story.html>.

<sup>xvi</sup> MD GEN PROVIS § 4-320.

<sup>xvii</sup> *Supra* note xv.

<sup>xviii</sup> See Jeremy C. Fox, *Brown University Student Mistakenly Identified as Sri Lanka Bombing Suspect*, Boston Globe, April 28, 2019, <https://www.bostonglobe.com/metro/2019/04/28/brown-student-mistaken-identified-sri-lanka-bombings-suspect/0hP2YwyYi4qrCEdxKZCpZM/story.html>.

<sup>xix</sup> *Supra* note vi.

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<sup>xx</sup> C. M. Cook, J. J. Howard, Y. B. Sirotin, J. L. Tipton and A. R. Vemury, *Demographic Effects in Facial Recognition and Their Dependence on Image Acquisition: An Evaluation of Eleven Commercial Systems*, IEEE Transactions on Biometrics, Behavior, and Identity Science, vol. 1, no. 1, pp. 32-41, January 2019.

<sup>xxi</sup> DHS Office of Inspector General, *Progress Made, but CBP Faces Challenges Implementing a Biometric Capability to Track Air Passenger Departures Nationwide*, September 21, 2018, available at <https://www.oig.dhs.gov/sites/default/files/assets/2018-09/OIG-18-80-Sep18.pdf>.



# **Schwartz\_FAV\_SB649**

Uploaded by: Schwartz, Jonathan

Position: FAV

February 27, 2020

Jonathan Schwartz  
810 Carriage House Ct  
Reisterstown, MD 21136  
jbs4334@gmail.com / (410) 960-0737



THINK JEWISHLY. ACT LOCALLY.

**TESTIMONY IN SUPPORT OF SB649**

**Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Jonathan Schwartz, on behalf of Jews United for Justice

My name is Jonathan Schwartz and I am a resident of District 10 in Baltimore County. I am providing this testimony in support of SB649 on behalf of Jews United for Justice. JUFJ organizes 5,000 people across the state of Maryland to help win social, racial and economic justice campaigns. All people have a right to be safe and to thrive in our state, regardless of immigration status or documentation. All of our families, unless we are Native Americans, trace their origins to another country, and likely another continent.

Maryland granted drivers licenses to undocumented residents with assurances that their information would not be used against them. Yet, the Motor Vehicle Administration's database and records can be searched by all federal law enforcement agencies, including ICE. SB649 would prohibit ICE from accessing MVA records for civil immigration enforcement purposes, thereby maintaining the trust of all people who have obtained Maryland drivers licenses.

I am Jewish. My tradition teaches that it is our responsibility to welcome migrants. Jews have been persecuted for our religious beliefs and had to flee in order to save our lives and the lives of our children many times in our history. We have been seen as foreigners in the places we have called home for centuries. Antisemitism is on the rise today, so I am increasingly aware of how people seek to divide us as Americans and cause people to fear and discriminate against other human beings who simply want to support their family and live peacefully.

Our country was founded as a haven for migrants. Our economic and social fabric have been shaped by the energy and innovation of each generation of new Americans. The most American thing that we can do is welcome migrants. The most noble thing we can do is support our fellow human beings in their time of need, rather than add to their suffering. I am proud to support the efforts of CASA and JUFJ's other coalition partners by supporting this legislation and amplifying the voices of those being forced to live in the shadows.

Thank you to Delegate Stein and Senator Lam for their leadership on this important issue. **I ask all of you to return a favorable report on SB649.**

## **Lam\_FAV\_SB649**

Uploaded by: Senator Lam, Senator Lam

Position: FAV

CLARENCE K. LAM, M.D., M.P.H.  
*Legislative District 12*  
Baltimore and Howard Counties

Education, Health, and Environmental Affairs  
Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

*Chair*

Joint Committee on Fair Practices and  
State Personnel Oversight

*Chair*

Howard County Senate Delegation



THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

Miller Senate Office Building  
11 Bladen Street, Room 420  
Annapolis, Maryland 21401  
410-841-3653 · 301-858-3653  
800-492-7122 Ext. 3653  
Clarence.Lam@senate.state.md.us

### Support: SB 649

Public Information Act – Motor Vehicle Administration –  
Warrant and Subpoena for Personal Information and Reporting

#### Issue:

- Maryland is one of the states with the most unrestricted federal access to Motor Vehicle Administration (MVA) data in the US
- Immigration and Customs Enforcement (ICE) has access to MVA data via DPSCS's Maryland Criminal Justice Dashboard ("Dashboard"), which includes 7 million MD driver's license photos for facial recognition searches
- ICE agents have accessed the Dashboard with generic federal logins and have saved facial recognition searches without a warrant or any oversight by DPSCS
- There is little data on the accuracy of facial recognition technology (FRT), though FRT is known to be less accurate for people of color
- Unrestricted access is a serious threat to privacy of all Marylanders -- *you don't have to be the person of interest to be selected by FRT, you only have to look like that person*
- Additionally, undocumented immigrants are encouraged to get a driver's license, which makes their information available to ICE without any prior notification or state oversight

#### What SB640 does:

- Requires ICE to present a warrant prior to obtaining access to MVA information
- Requires the MVA to report data about federal requests for personal information and facial recognition searches

#### Sponsor amendment:

- Defines protected information in terms of the type of information rather than who controls it, to clarify that warrant requirement applies to both direct (e.g., contacting MVA directly) and indirect (e.g., DPSCS Dashboard) access points to MVA information

**Action taken in other states:**

- *California Values Act (2017)*: requires AG to make recommendations to ensure to the “fullest extent practicable” that law enforcement databases are not used to enforce immigration laws (ICE lost access to CA law enforcement databases in October 2019)
- *New York Green Light Law (2019)*: prohibits DMV disclosure of information to “any agency that primarily enforces immigration law” unless presented with a warrant; requires notification of individuals about whom requests are made
- *New Jersey P.L.2019, c.271 (2019)*: prohibits disclosure of DMV information to any federal, state, or local law enforcement without consent or warrant
- *8 states prohibit FRT*: AK, NH, LA, MO, MT, OK, OR, WA
- *21 additional states do not provide driver’s license photos to federal FRT databases*: CA, CT, FL, GA, HI, KS, MA, ME, MS, MN, NV, NY, OH, RI, SD, VT, WY, NJ, VA, WV, WI



## Department of Public Safety and Correctional Services

### Information Technology & Communications Division

Post Office Box 5743 • Pikesville, Maryland 21282-5743  
(410) 585-3100 • FAX (410) 764-4035 • [www.dpscs.maryland.gov](http://www.dpscs.maryland.gov)

November 21, 2019

STATE OF MARYLAND

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The Honorable Susan C. Lee  
223 James Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

The Honorable Clarence K. Lam  
420 Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

The Honorable Dana Stein  
251 House Office Building  
6 Bladen Street  
Annapolis, MD 21401

The Honorable Joseline Pena-Melnyk  
241 House Office Building  
6 Bladen Street  
Annapolis, MD 21401

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.

The Honorable Susan C. Lee  
The Honorable Clarence K. Lam  
The Honorable Dana Stein  
The Honorable Joseline Pena-Melnyk  
Page Two

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,*

The Honorable Susan C. Lee  
The Honorable Clarence K. Lam  
The Honorable Dana Stein  
The Honorable Joseline Pena-Melnyk  
Page Three

*[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.



The Honorable Susan C. Lee  
The Honorable Clarence K. Lam  
The Honorable Dana Stein  
The Honorable Joseline Pena-Melnyk  
Page Four

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

# **Maryland Catholic Conference\_FAV\_SB649**

Uploaded by: Wallerstedt, Anne

Position: FAV



ARCHDIOCESE OF BALTIMORE † ARCHDIOCESE OF WASHINGTON † DIOCESE OF WILMINGTON

**February 27, 2020**

**SB 649**

**Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting**

**Senate Judicial Proceedings Committee**

**Position: Support**

The Maryland Catholic Conference (“Conference”) represents the public-policy interests of the three Roman Catholic (arch)dioceses serving Maryland: the Archdiocese of Baltimore, the Archdiocese of Washington, and the Diocese of Wilmington.

Senate Bill 649 provides that the Motor Vehicle Administration may not disclose an individual’s personal information to the U.S. Immigration and Customs Enforcement (ICE) without a judicial warrant or subpoena.

The Catholic Church has historically held a strong interest in immigration and how public policy affects immigrants seeking a new life in the United States. The U.S. Conference of Catholic Bishops supports comprehensive immigration reform. However, in the absence of such reform, immigration law enforcement can neither cease completely nor continue unabated in its current status. There has to be greater clarity in the roles of local, state, and federal law enforcement in immigration enforcement and detainment. The Bible guides us in stating that “[y]ou shall treat the alien who resides with you no differently than the natives born among you; have the same love for him as for yourself; for you too were once aliens in the land of Egypt” (Lv 19:33-34).

Without being able to rely on over-reaching and inhumane tactics such as 287(g) programs everywhere in the state, ICE has resorted to attempting to gain information about our undocumented neighbors through agency records. However and fortunately, because the Motor Vehicle Administration is a state agency, Maryland can and should regulate access to the private information it stores. Further, because Maryland allows undocumented individuals to obtain drivers licenses, it has a duty to protect their personal information as well. The U.S. Conference of Catholic Bishops stresses how in situations like this, “[t]he native [should] not have superior rights over the immigrant. Before God all are equal; the earth was given by God to all.”

The Conference appreciates your consideration and, for these reasons, urges a favorable report on Senate Bill 649.

# **Shari\_Rendall\_FAIR\_UNF\_SB649**

Uploaded by: Rendall, Shari

Position: UNF

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\*Board of Directors Emeritus

*FAIR is a nonprofit public interest organization working to end illegal immigration and to set levels of legal immigration that are consistent with the national interest.*



FEDERATION FOR AMERICAN IMMIGRATION REFORM

February 23, 2020

The Honorable William Smith, Jr., Chairman  
Judiciary Committee  
2 East  
Miller Senate Office Building  
Annapolis, MD 21401

Dear Chairman Smith and other distinguished members of the Committee,

My name is Shari Rendall and I am the Director of State and Local Engagement at the Federation for American Immigration Reform (FAIR). FAIR is an non-profit, non-partisan organization of concerned individuals who believe that our immigration law must be reformed to serve our nation’s interests.

FAIR advocates for immigration policies that reduce the harmful impact of illegal immigration on national security, public safety, the economy, jobs, education, healthcare and the environment.

Founded in 1979, FAIR has two million members and supporters nationwide including approximately 12,300 in Maryland. On behalf of our members and supporters, I am writing to express FAIR’s strong opposition to Senate Bills (SB) 649, 901 and 903. FAIR opposes the reckless lawlessness of sanctuary policies like those imposed by these bills.

If enacted, these bills would enact dangerous policies that provide a safe-haven, or “sanctuary,” in which illegal aliens can work and live without fear of apprehension by federal immigration authorities. Such policies undoubtedly encourage illegal immigration.

Most everyone is familiar with Kate Steinle’s story: The young woman was walking with her father on the San Francisco pier and was gunned down by Juan Francisco Sanchez-Lopez, an illegal alien with seven prior criminal convictions and five previous deportations.



Sanchez-Lopez admitted that he chose to live in San Francisco because he knew he would be protected by its sanctuary policy.<sup>1</sup> His belief couldn't have been truer—as law enforcement in San Francisco had him in custody just months before Kate Steinle's death—but refused to turn him over to federal immigration authorities.

Many expect crimes like this to happen in border states like California. However, most would be shocked to find out these incidents are not relegated to those states alone. Many Maryland jurisdictions that enacted sanctuary policies that shelter criminal aliens by impeding the enforcement of federal immigration laws and blocking or barring free communication between state and local officials and federal immigration officials, did so under former President Obama. They have affirmed these policies in defiance of President Trump.

Despite US Immigration and Customs Enforcement (ICE) detainer requests, sanctuary jurisdictions like Montgomery and Prince George's Counties regularly release criminal aliens that pose a clear public safety threat back into the community. In May 2017, Montgomery County released 19 year-old Salvadoran national, Mario Granado-Alvarado, after he posted bail even though ICE requested he be held. Granado-Alvarado was arrested for vehicular theft and for bringing an assault-style rifle onto his high school parking lot. He had been arrested previously also on auto theft charges.

In Prince Georges County, a 14 year-old may have been alive today if law enforcement had honored an ICE detainer. Two suspected murderers and MS-13 gang members, Josue Rafael Fuentes-Ponce and Joel Ernesto Escobar, had been in police custody the year before a 14 year-old girl was killed on another attempted murder charge. They were released because Prince Georges County banned honoring immigration detainees.

These are clear and unambiguous violations of federal law. State and local officials cooperate with the federal law enforcement in every aspect, such as gun control and drug laws, and immigration should not be an exception.

Sanctuary policies rely on the false premise that individuals in the country unlawfully are "law-abiding," but simply lack "papers" or "documentation." However, the average adult illegal alien routinely commits multiple crimes just to conceal their presence in the United States and work without authorization. In 2013, the Social Security Administration's Office of the Chief Actuary estimated that more than 40 percent of all illegal aliens working in the United States were using fake or stolen Social Security Numbers. Elsewhere, the office has put the figure as high as 75 percent.<sup>2</sup> Furthermore,

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<sup>1</sup> Breitbart, "Murderer: I chose SF Because it is a 'Sanctuary City,'" July 6, 2015.

<sup>2</sup> The Washington Times, "When Illegals Use Piflered Social Security Numbers, May 23, 2018; See also, The New York Times, Illegal Alies Are Bolstering Sociall Security with Billions, April 5, 2005

many falsify I-9 forms under penalty of perjury. It is improper for a state legislature to tolerate sanctuary jurisdictions that enable these federal crimes.

Moreover, the assumption that illegal aliens commit crimes at a lower rate than American citizens is simply not true. FAIR's recent study of data from the federal government's State Criminal Alien Assistance Program (SCAAP) found that illegal aliens are more likely to be incarcerated in state prisons and county jails than U.S. citizens and legal immigrants.<sup>3</sup> In fact, this report finds that in the states examined, illegal aliens are incarcerated up to five and a half times as frequently as citizens and legal immigrants.<sup>4</sup> Additionally, the report found that states with the highest incarceration rates are also the states that boast numerous sanctuary jurisdictions.<sup>5</sup>

According to U.S. Sentencing Commission data provided at a recent U.S. House of Representatives hearing on immigration enforcement, over 35 percent of the individuals who are sentenced for federal crimes are illegal aliens.<sup>6</sup> Given that illegal aliens are an estimated 3.5 percent of the population<sup>7</sup> that means that illegal aliens are ten times more likely to be sentenced for a federal crime than legal residents.

Furthermore, shielding criminal aliens needlessly endangers innocent lives. There are roughly 3 million criminal aliens living in the United States, and nearly one million of these aliens have final orders of removal.<sup>8</sup> These criminals should not be able to continue to live in communities and engage in further criminal activity.

Many jurisdictions are bullied into adopting sanctuary policies by open-borders advocates claiming that honoring or complying with immigration detainers would be unconstitutional, primarily as a violation of the Fourth Amendment. Detainers are written requests issued on behalf of the U.S. Department of Homeland Security to another law enforcement agency to hold an individual based on an inquiry into immigration status or an alleged violation of civil immigration law for up to 48 hours. Simply put, detainers constitute a reasonable request for state/local assistance in effectuating a civil arrest based on an administrative warrant, which ICE may issue, pursuant to explicit statutory authority.

Neither the U.S. Supreme Court nor the U.S. Court of Appeals for the 4th Circuit, which governs Maryland, has ever determined that honoring or complying with detainers is unconstitutional. The only federal appellate court that has ever directly ruled on the

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<sup>3</sup> Federation for American Immigration Reform, "SCAAP Data Suggest Illegal Aliens Commit Crime at a Much Higher Rate Than Citizens & Lawful Immigrants," February 3, 2019.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> United States Sentencing Commission Interactive Sourcebook.

<sup>7</sup> Pew Research Center, "5 facts about illegal immigration in the U.S.," Nov. 3, 2016.

<sup>8</sup> The Washington Examiner, "ICE: 950,000 Illegals With 'Removal Orders', Raids Get Just A Sliver," Feb 20, 2017

constitutionality of detainers, the Fifth Circuit in *El Cenizo v. Texas*<sup>9</sup> last year, held not only that detainers are constitutional, but that Texas in its 2017 anti-sanctuary law, SB 4, could constitutionally require its cities and counties to honor them.

It is no secret that Americans face serious threats from terrorist organizations. With the FBI pursuing hundreds of active extremist investigations, federal agents are stretched thin and depend heavily on intelligence provided by state and local law enforcement. By impeding cooperation with federal immigration officials, sanctuary policies create an environment where terrorists and other criminal aliens can go undetected and uninterrupted.

A recent report issued by the Departments of Justice and Homeland Security showed three out of every four individuals convicted of international terrorism-related charges in U.S. federal courts between September 11, 2001 and December 31, 2016 were foreign born.<sup>10</sup>

ICE has just 20,000 employees, only half of whom are dedicated to the apprehension and removal of illegal aliens. The cooperation of state and local law enforcement, which number about 900,000 strong, is vital to ferreting out those among us who wish to cause us harm. At least five of the 9/11 hijackers were illegal aliens, four of whom came into contact with state and local law enforcement several times before the attacks, in some cases just days prior to the attack.<sup>11</sup> If those state and local law enforcement officers had worked with federal immigration officials, the 9/11 terrorist plot might have been thwarted.

While the cost of illegal immigration to public safety is incalculable, the fiscal cost of illegal immigration also bears a heavy price tag. Annually, U.S. taxpayers pay roughly \$116 billion in costs associated with illegal immigration. A significant majority of this price tag, \$88.9 billion, is absorbed by state and local governments.<sup>12</sup>

In Maryland, taxpayers spend an estimated \$2.4 billion each year for illegal aliens and their U.S.-born children.<sup>13</sup> One hundred thirty-seven million of those expenditures are for Criminal Justice alone. These costs come in the form of educational, healthcare, welfare and law enforcement expenditures to illegal aliens and their families.

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<sup>9</sup> No. 17-50762 (5th Cir. May 8, 2018).

<sup>10</sup> Department of Justice Press Release, DOJ/DHS Report: Three Out of Four Individuals Convicted of International Terrorism and Terrorism-Related Offenses Were Foreign Born, January 16, 2018

<sup>11</sup> CNN, "Another Hijacker Was Stopped for Traffic Violation, January 9, 2002

<sup>12</sup> Federation for American Immigration Reform, "The Fiscal Burden of Illegal Immigration," 2017.

<sup>13</sup> *Ibid.*



Sanctuary policies contribute significantly to these costs by telling individuals that despite violating federal laws, law enforcement and other government officials will ignore them. Just because the regulation of immigration is a federal issue, does not mean that state and local law enforcement agencies must overlook immigration violations that harm their communities.

To the contrary, the cost of illegal immigration disproportionately affects state and local governments, giving them even more incentive to cooperate with federal officials. To ensure the safety of our communities, state and local law enforcement and governments should be encouraged—not discouraged—from cooperating with federal immigration authorities. For these reasons, FAIR opposes SB 649, 901 and 903.

I thank you for the opportunity to provide my input. Please do not hesitate to reach out to me, if I may be of assistance. I may be reached by email at [srendall@fairus.org](mailto:srendall@fairus.org) or by phone at 202-328-7004.

Sincerely,

A handwritten signature in black ink that reads "Shari Rendall". The signature is written in a cursive, flowing style.

Shari Rendall

**MDOT\_INFO\_SB649**

Uploaded by: MVA, MDOT

Position: INFO

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February 27, 2020

The Honorable William C. Smith, Jr.  
Chairman, Senate Judicial Proceedings Committee  
2 East Miller Senate Office Building  
Annapolis MD 21401

***Re: Letter of Information – Senate Bill 649 – Public Information Act – Motor Vehicle Administration – Warrant for Personal Information and Reporting***

Dear Chairman Smith and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 649 but offers the following information for the Committee’s consideration.

Senate Bill 649 prohibits a custodian of public records from disclosing personal information to the federal U.S. Immigration and Customs Enforcement (ICE) absent a valid warrant issued by a federal or state court. This provision would apply under the Public Information Act (PIA), which allows disclosure of information “for use by a federal, state, or local government, including a law enforcement agency, or a court in carrying out its functions” (General Provisions Article Section 4-320(f)(1)). The bill further establishes several reporting requirements specific to MDOT Motor Vehicle Administration (MDOT MVA), including reporting the number of requests for personal information received from ICE; the number of those same requests accompanied by a valid warrant; the number and purpose of facial recognition searches completed by ICE based on personal information provided to ICE by the MDOT MVA; and the number of individuals whose personal information was provided to ICE by MDOT MVA.

As a matter of course, law enforcement access to MDOT MVA records occurs via the Department of Public Safety and Correctional Services (DPSCS), through either the Local Law Enforcement Dashboard (Dashboard) or the Maryland Electronic Telecommunications Enforcement Dashboard (METERS). Access to these databases is certified by the Maryland State Police for state and local agencies, and by the Federal Bureau of Investigations for federal agencies. MDOT MVA has no means by which to control or monitor the access of approved end-users in the law enforcement systems.

Though MDOT MVA seldomly provides data directly to law enforcement agencies, on the rare occasion when a law enforcement agency contacts MDOT MVA directly, procedures could be adjusted to accommodate the disclosure and reporting requirements in Senate Bill 649.

Notwithstanding any process-oriented considerations to limiting data exchange between the MDOT MVA and ICE, recent interactions between the U.S. Department of Homeland Security (DHS) and the New York Department of Motor Vehicles (DMV) give the Maryland Department of Transportation reason for concern about potential operational consequences of any actions

The Honorable William Smith, Jr.  
Page Two

which seek to stop or substantially reduce ICE access to law enforcement databases. On February 5, 2020, two months after New York law took effect prohibiting the disclosure of DMV records to federal immigration and customs enforcement agencies except with a court order or warrant, DHS formally halted enrollments in Trusted Traveler programs (Global Entry, NEXUS, SENTRI, and FAST) for New York residents. Trusted Traveler Programs improve safety and enhance the overall security profile of an airport as those that choose to enroll undergo additional pre-screening requirements. DHS also announced that used vehicle exports from New York will be significantly delayed due to substantial difficulty validating vehicle ownership. Subsequently, Acting DHS Secretary Chad Wolf indicated to Washington State, where a similar law is being considered, that they should expect similar sanctions, and had reportedly considered more severe sanctions in both cases. DHS's posture towards states that are implementing laws to limit their access to records is uncertain and this landscape and potential implications should be considered in the deliberation of this legislation.

The Maryland Department of Transportation respectfully requests that the Committee consider this information when deliberating Senate Bill 649.

Respectfully submitted,

Christine E. Nizer  
Administrator  
Maryland Motor Vehicle Administration  
410-787-7830

Jeff Tosi  
Director of Government Affairs  
Maryland Department of Transportation  
410-841-2850