



February 23, 2019

VIA EMAIL

Office of the Attorney General
Hon. Xavier Becerra, Attorney General of California
Department of Justice
Sacramento, CA

cc: Hon. Ricardo Lara
Insurance Commissioner, State of California
300 Capitol Mall, Suite 1700
Sacramento, CA 95814

cc: Hon. Lorena Gonzalez-Fletcher
California State Assembly
P.O. Box 942849
Sacramento, CA 94249-0080

cc: Hon. Toni Atkins
President Pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

cc: Maya Krishnan
Voice of San Diego
110 Plaza, 110 W A St #650
San Diego, CA 92101

Re: Implementation of Senate Bill 244 (2018) – Privacy/Personal Information

I am writing to you to inquire about the State of California's 2019 implementation of Senate Bill 244, a piece of 2018 legislation authored by then state senator Ricardo Lara and signed into law by former governor Jerry Brown, and which took effect on the first day of January 2019.

Maya Krishnan, an investigative reporter with the *Voice of San Diego*, recently published an [article](#) regarding data sharing between law enforcement agencies of documents submitted to the Department of Motor Vehicles (DMV) for the purposes of acquiring drivers licenses and state identification cards, and later found to be in the possession of Immigration and Customs Enforcement.¹ The story was later [amplified](#) by NBC's news department.²

As you know, in 2013 the State of California passed legislation known as Assembly Bill 60, which encouraged state residents with uncertain documentation to apply for and receive state drivers licenses and state identification cards.

1 <https://www.voiceofsandiego.org/topics/news/how-california-laws-meant-to-integrate-immigrants-can-open-a-backdoor-for-ice/>

2 <https://www.nbcsandiego.com/news/local/DMV-Confirms-ICE-Has-Limited-Access-to-AB-60-License-Information-506071521.html>

Senate Bill 244 prohibits the release of documents submitted by any California resident for the purpose of securing a CA drivers license or ID to be disclosed except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need, as specified.

The legislation goes on to specify in Section 12800.7(b):

Notwithstanding any other law, any document provided by the applicant to the department for purposes of proving the applicant's identity, true, full name, California residency, or that the applicant's presence in the United States is authorized under federal law, is not a public record and may not be disclosed by the department except in response to a subpoena for individual records in a criminal proceeding or a court order, or in response to a law enforcement request to address an urgent health or safety need if the law enforcement agency certifies in writing the specific circumstances that do not permit authorities time to obtain a court order.

Ms. Skrishnan's investigation cited three examples of individuals with undocumented status whose DMV photos or license copies were in the hands of Immigrations and Customs Enforcement-ERO personnel who detained them for immigration related matters and for possible deportation: Joel Hernandez Centeno, Missael Estevez and Miguel Soto. None of the three had criminal records that were not immigration-related. The three incidents occurred prior to the January 1, 2019 effective date for Senate Bill 244.

Ms. Skrishnan communicated with DMV officials regarding the incidents and was told that ICE can access the Cal-Photos and Department of Motor Vehicles database via the California Law Enforcement Telecommunications System (CLETS). DMV officials reported that both Immigrations and Customs Enforcement and Customs and Border Patrol had been granted access to CLETS and the DMV and Cal Photo databases after certifying that their purpose for access is criminal investigations, which was presented as an urgent health or safety need.

However, once granted access, neither agency (nor any other law enforcement agency) is being required to explain the basis for each individual inquiry that is made absent a subpoena or a court order. Ms. Skrishnan supplemented in a later tweet that a DMV spokesperson had clarified that there was no "mechanism" for providing such information for each specific incident of database use by either of the two agencies (nor any other law enforcement agency).

We believe that this blanket access grant to CLETS and via CLETS to the DMV database and the Cal Photos database does not meet the plain language provided in Senate Bill 244, which states that absent a court order or subpoena **a certification must be made in writing of the specific circumstances that do not permit authorities time to obtain a court order.**

It is necessary for the State of California to establish mechanisms that implement the laws of the State of California. A broad certification that all inquiries from an agency by definition present an urgent health and safety need, are connected to a criminal investigation by default, and all contain specific circumstances that do not permit authorities time to obtain a court order, does not meet the standards laid out in Senate Bill 244. They do not provide meaningful oversight of access via CLETS to DMV data that we know contains the PII of undocumented California residents subject to deportation. They make a mockery of the law's attempt to restrict third party disclosure to subpoena's, court orders and specific individualized circumstances of urgent documented emergencies.

In combination with the earlier passage of AB 60, the seeming failure of the Department of Motor Vehicles and the California Department of Justice to establish the necessary mechanisms to enforce Senate Bill 244, creates a genuinely perilous situation for undocumented Californians who trusted the State to make sure that the action of securing a drivers license or a state identification card would not lead to their deportation.

As supporters of Senate Bill 244, due to its attempt to close a loophole that exposed large numbers of long-time undocumented and otherwise law-abiding California residents to being targeted by an abusive federal immigration regime, we are distressed to read in the media that the newly passed law, as we interpret its provisions, is not currently being implemented with regard to the disclosure of DMV-related documents via CLETS to ICE-ERO and CBP. Today is the 59th day after SB 244 became state law and several months after Governor Brown enacted the legislation.

It is urgent that the Department of Motor Vehicles and the Department of Justice issue a moratorium on access via CLETS to the DMV and Cal-Photos databases for law enforcement agencies (specifically Immigrations and Customs Enforcement - Removal Operations (ICE-ERO) and Customs and Border Patrol (CBP) absent a judicially-derived subpoena or court order and institute as soon as possible a mechanism for receiving and accessing individualized requests for emergency access that describe the specific circumstances accompanying each request for access that detail why a court order was not acquired and the individualized urgent nature of the request.

Thank you in advance for your attention to this matter.

Respectfully,

Tracy Rosenberg

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