



PHILADELPHIA CHAPTER

June 15, 2009

Pennsylvania Department of Transportation
Attn: Janet L. Dolan, Director
Bureau of Driver's Licensing
1101 S. Front Street
Harrisburg, PA 17104

Dear Ms. Dolan:

As representatives of the undersigned groups, we are writing to express concerns about the May 29, 2009, letter sent from your office notifying thousands of individuals that their driver's licenses have been cancelled, subject only to reconsideration if they bring certain specified documents verifying their identity and immigration status to a driver's license center before June 19. Since these letters began to arrive at the beginning of June, we have received countless complaints from members of our respective organizations. We believe the Department's actions raise serious legal, including constitutional, concerns that we hope and request your office will address before any licenses are actually canceled, a process that as of now is scheduled to begin on June 19, 2009. Unless the very serious issues we discuss below are addressed, innocent people will unfairly be punished and many will suffer grievous harm.

The letters sent out by your agency, bearing a May 29, 2009, date, raise many legal issues. The entire scheme, which essentially involves the agency sending out a letter placing the burden on individuals to prove their immigration status to the agency's satisfaction in less than two weeks or face losing their driver's license, fails to provide elemental due process protections.

The importance and centrality of a driver's license in modern society cannot be overemphasized. For the large number of Pennsylvanians who live or work outside a

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major city with a public transportation system, who do not have sufficient resources to hire taxi cabs or chauffeurs, or who have jobs involving operation of a motor vehicle, a driver's license is not a luxury; it is essential to employment and daily living. Both the U.S. Supreme Court and the courts of this Commonwealth have recognized the importance of a driver's license.¹

Under the Fourteenth Amendment to the U.S. Constitution, and under Article I, § 9 of the Pennsylvania Constitution, a driver has a constitutionally protected interest in the continued possession of a motor vehicle operator's license.¹ Consequently, although people may not have a right to obtain a driver's license, once issued "the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment."² "[T]he essential requisites [of due process] are notice and meaningful opportunity to be heard."³

The May 29th letters sent to individuals, which are part of a Bureau scheme reportedly targeting thousands of drivers, fail to give notice in a timely or sufficiently informative fashion, curtail permissible evidence, and do not give aggrieved individuals a meaningful opportunity to contest the Bureau's decision. And, as we expect you recognize, the Social Security database, which your system relies on, contains such a high error rate that Congress has for more than a decade steadfastly refused to allow federal employment verification to be made mandatory. Any verification system relying on the Social Security database will produce errors. Without improved procedural protections, individuals who truly are eligible for licenses will lose them, not because they are out of immigration status or some other issue, but because of flaws in the system. We review briefly some of the more obvious problems with the Bureau's program.

The Commonwealth's list of approved documents is unduly narrow. Many individuals will have difficulty complying with your request because they do not currently possess these specific documents demonstrating their status and thus they will not be able to produce them prior to the June 19, 2009 deadline. For instance, many lawful immigrants, such as refugees or asylees, cannot renew their passports or even secure them in the first place. For other non-citizens it often takes weeks or months to obtain a passport from their home countries, which leaves them at an extreme disadvantage. Another problem, one which likely affects even more people, is the requirement that individuals produce *original* documents. This is unrealistic and often impossible.

The Bureau's evidentiary restriction is also problematic because many people who received your letter provided the Department of Transportation with their individual taxpayer identification number (ITIN) rather than a Social Security Number. At the time

¹ See, e.g., *Bell v. Burson*, 402 U.S. 536, 539 (1971); *Commonwealth, Dept. of Transp. v. McCafferty*, 563 Pa. 146, 163 (2000).

² *Burson*, 402 U.S. at 539.

³ *Com. Dept. of Transp. v. Clayton*, 546 Pa. 342, 351 (1996) (citation omitted).

these numbers were routinely accepted by PennDOT. This new requirement that citizens and non-citizens produce a social security card contradicts the Bureau's own Publication 195. As your own publication acknowledges, many classes of immigrants do not and cannot have a social security card yet are still eligible for a driver's license. And many people simply have not kept their social security card or have lost it.

The problems caused by the unduly restrictive evidentiary requirements are compounded by the unreasonably short time period given to the drivers to produce the documentation. While the letters bear a May 29 date, drivers did not actually begin to receive the notices until the second week in June. Consequently, the Bureau is insisting that people gather their documents and take a day off from work or school to come into a licensing facility in less than two weeks. This will be insufficient time for many people.

Furthermore, the letter was written only in English. For many immigrants, who apparently are the ones being targeted here, English is not their first language. The notice is written in legalistic language and contains complex terms. Consequently, many recipients may not be able to read it at all or may understand it incorrectly. Such notice, which is not reasonably calculated to inform the recipient of his or her obligations and rights, raises questions about whether the Bureau is meeting its obligations under Title VI of the Civil Rights Act or other laws requiring governments to protect the rights of people with limited English proficiency ("LEP").

Finally, the Bureau has failed to provide people with a meaningful opportunity to contest the decision. The process that the Bureau has provided is to require people to bring documents to a licensing center, where they will be reviewed by people who likely have no training in immigration law or on how to read immigration documents. Furthermore, the list of documents for non-citizens identified in the May 29 notice is filled with errors, as will be readily apparent when that list is compared with Publication 195.

Moreover, there is no pre-deprivation hearing or opportunity to present the matter to a neutral arbiter. Indeed, there is no pre-deprivation process at all. A post-deprivation remedy, appealing to a Common Pleas Court, is insufficient. Comparing social security numbers to a notoriously flawed database is unlike situations where your agency cancels licenses because, for instance, the privilege has been suspended in another state or there has been a criminal conviction. In those situations the "fact" on which you rely has been subjected to due process. Common Pleas judges have neither the training nor the authority to adjudicate immigration status, which is a uniquely federal power. By establishing a process whereby licenses are revoked prior to a hearing, without a meaningful opportunity to contest the decision, many Pennsylvanians will be harmed in the form of losing their jobs, not being able to attend school, etc., even if they ultimately win their appeal.

Given the very serious legal questions raised by the program's lack of adequate process, we respectfully ask that you do not begin enforcement on June 19, and that you postpone the program's implementation for sixty days so that we may discuss the

concerns with your office and the Governor's office. On balance, the prospective harm to the drivers of losing their licenses, perhaps wrongfully, far outweighs any harm the Commonwealth may sustain by delaying this program's implementation. Please respond to this letter by no later than the close of business on June 17, 2009. We would appreciate it if you would be in touch with our designated contact Wiltold Wiczak, Legal Director of American Civil Liberties Union of Pennsylvania, at 215-592-1513, or Nicole Simon, Treasurer of the Philadelphia Chapter of the American Immigration Lawyers Association at 215-925-0705 extension 15.

We recognize that this is short notice, but given the irreparable harm likely to flow from enforcement of the program we simply must have sufficient time to respond in the event of your non-cooperation, to take the steps necessary to protect those individuals who will be harmed by this action. Thank you for your prompt attention and consideration of this matter. We look forward to working with you to protect the public, our clients, and our communities.

Sincerely,



Elise Fialkowski
Chair, Philadelphia Chapter of the American Immigration Lawyers Association



Wiltold Wiczak
Legal Director of American Civil Liberties Union of Pennsylvania

cc:

Tom Corbett, Attorney General of Pennsylvania (via facsimile)

Pedro A. Cortes, Secretary of the Commonwealth of Pennsylvania (via facsimile)

Barbara Adams, General Counsel, Governor's Office of Pennsylvania (via facsimile)

Harold H. Cramer, Chief Counsel, Pennsylvania Department of Transportation, Vehicle and Traffic Law Division (via facsimile)

ⁱ See *Bureau of Traffic Safety v. Slater*, where the court wrote:

“No one will deny that we have reached a time in our modern way of life when the motor vehicle has clearly become a necessity to many people. The very

livelihood of many, such as chauffeurs, truckers, traveling salesmen, men who work in skilled or unskilled labor, depends upon the operation of a motor vehicle. Their drivers' licenses are just as valuable as a license to engage in an occupation or profession.”

75 Pa. Cmwlth. 310, 318-19 (1983) (citation omitted).