

Congress of the United States
Washington, DC 20515

September 19, 2019

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20350

Dear Attorney General Barr,

On June 17, 2019, the New York State Legislature passed the Driver's License Access and Privacy Act, otherwise known as the Green Light Law. The Green Light Law would require the New York Department of Motor Vehicles (DMV) to issue driver's licenses to people unlawfully in the United States and withhold information from federal law enforcement on applicant records. We write to request the Department of Justice review the constitutionality of this newly enacted law in accordance with federal immigration law and, as you determine on the merits, support litigation in federal court to stop the implementation of this statute.

The Green Light Law will make approximately 265,000 unlawful residents of New York eligible for driver's licenses without proper verification of Social Security Numbers (SSN).¹ Any individual without a SSN can submit a signed affidavit for a driver's license. A previous decision rendered in *Cubas v. Martinez* determined the state requirement of an SSN is a reasonable fraud prevention measure to draw distinct lines between applicants not authorized to work in the United States.² Additionally, this bill deliberately withholds all records and information from agencies "that primarily enforce immigration law," therefore intentionally targeting efforts by Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS) to enforce federal immigration law.³

Since this was signed into law, several counties in New York State have rejected implementation of the Green Light Law for fear of violating federal immigration laws. Erie County and Rensselaer County have each filed lawsuits against the bill in federal court, while Niagara County has filed a suit specifically against New York State citing the potential for rampant voter fraud. There are merits to the concerns raised by New York State county clerks regarding the potentially disastrous consequences of the Green Light Law.

I. Failure to Disclose Applicant Records to Federal Immigration Authorities Violates 8 U.S.C. § 1324 and 18 U.S.C. § 1071

¹ *Driving Together: Benefits of Allowing All New Yorkers to Apply for Licenses*. Fiscal Policy Institute, February 15, 2019. <http://fiscalpolicy.org/wp-content/uploads/2019/02/NYS-Drivers-Licenses-2019.pdf>

² *Cubas v. Martinez*, 8 N.Y.3d 611 (2007)

³ Bill Nos. A3675-B, S1747-B

Subsection 1324(a)(1)(A)(iii) makes it a felony for any person who knowingly or recklessly disregards that “an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.” The Green Light Law restricts the DMV from providing records or information to federal immigration authorities. These individuals are subject to removal from the United States under federal immigration law, and the Green Light Law interferes with federal immigration authorities’ ability to carry out their responsibilities under federal law. Additionally, any commissioner who carries out this law may be violating 18 U.S.C. § 1071 because the law would require an individual be notified when their information is requested by an agency as well as identify the identity of the agency making the request for information. If an unlawful resident gets a notification that ICE requested their information, the commissioner would have provided “notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person” by revealing that information was requested by an agency responsible for removal operations. This provision purposefully obstructs the ability of ICE to enforce federal immigration laws, creating a “sanctuary” for individuals who are not in the United States legally.

II. “Visually Identical” Designs of Driver Licenses Conflict with Federal Requirements of the REAL ID Act

The REAL ID Act was signed into law in order to set minimum standards to strengthen identification-document security and make more stringent requirements for alien admissibility and continuing presence within the United States.⁴ The 9/11 hijackers had dozens of state licenses before entering New York State from other parts of the country, which is why the 9/11 Commission report identified that securing state-issued identification documents was a common-sense national security and law enforcement imperative, which also helps to combat identity fraud and illegal immigration.⁵ According to the REAL ID Act, states must issue distinctive alternative licenses to people illegally in the United States. However, the Green Light Law demands that licenses be “visually identical” to those that meet federal standards. This law will make New York State driver’s licenses incompatible with federal standards without requiring notice that the license is not for federal purposes.

III. New York State Voter Registration Laws Permit Voter Fraud for Driver’s License Applicants

New York’s “Motor Voter” law requires that the DMV provide voter registration forms upon application for a driver's license. The Green Light Law does not provide the authority for commissioners to promulgate rules that verify eligibility of applicants who check the box for voter registration. Under the current system, any driver’s license applicant can go to a DMV and check the box to register to vote. There has already been

⁴ P.L. 109-13, Division B

⁵ Department of Homeland Security. *Implementing 9/11 Commission Recommendations, Progress Report 2011*. Pg. 55.

evidence of illegal immigrants voting in elections across New York State, and, by implementing this law, New York could potentially register thousands of unauthorized aliens to vote through the DMV.

More than 60% of New York State county clerks who administrate DMV offices are concerned about the consequences of implementing the Green Light Law and many are refusing to comply altogether. The implementation of this new law will also create increased strain on local counties with already limited resources. The supporters of this new law say it is important for public safety concerns that all drivers have a license. However, withholding information from federal law enforcement poses a greater security risk for information sharing efforts that could identify and remove criminal aliens.

Governor Cuomo has admitted this is a “difficult legal question” that requires a legal resolution. While there is no precedent for individuals with enough standing to challenge other states that provide similar privileges for individuals who are not in the country legally, New York State county clerks are in a unique position. In New York, the duties of the DMV are primarily administered by county clerks who are elected, and under the New York State Constitution, can be removed by the Governor.⁶ Therefore, it is critical the legal concerns regarding the Green Light Law are resolved before the law takes full effect. That is why we seek support from the Department of Justice in litigation against the Green Light Law to ensure the full enforcement of federal immigration laws and protection against voter fraud in New York State.

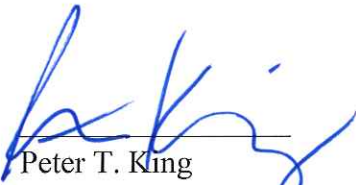
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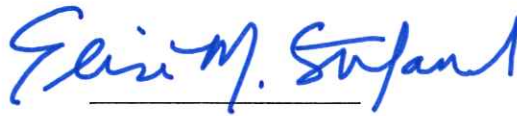
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⁶NY. Const. Art. XIII, § 13