



AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
MICHIGAN CHAPTER

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Honorable Michael Cox  
Michigan Attorney General  
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**RE: Michigan Driver's Licenses for Foreign Nationals**

Dear Attorney General Cox:

This letter is written in response to your recent Attorney General Opinion No. 7210, and your decision to change the requirements for a Michigan driver's license and require that all applicants be permanent residents of the United States. I am writing this letter as the current Michigan Chapter Chair of the American Immigration Lawyers Association ([www.aila.org](http://www.aila.org)). The American Immigration Lawyers Association (AILA) is the national association of over 10,000 attorneys and law professors who practice and teach immigration law. AILA Member attorneys represent tens of thousands of US families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States. AILA Members also represent thousands of US businesses and industries who sponsor highly skilled foreign workers seeking to enter the United States in a temporary or --having proven the unavailability of US workers -- permanent basis. AILA Members also represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. Founded in 1946, AILA is a nonpartisan, not-for-profit organization that provides its Members with continuing legal education, information, professional services, and expertise through its 36 chapters and over 50 national committees. AILA is an Affiliated Organization of the American Bar Association and is represented in the ABA House of Delegates. The Michigan Chapter has over 250 members throughout our state.

While we support your interests to ensure security for the residents of State of Michigan, and ensure that foreign nationals who are not entitled to work in the US do not take jobs away from qualified residents, especially during our current difficult economic climate, we believe your opinion is misplaced and will actually run counter to the goals you have set out. While you have correctly explained in your opinion that a driver's license can be used for more than just authority to drive, it is important to remember that regulating drivers is still the intended purpose of a driver's license.

You have titled your opinion “Permanent Residency Requirement for Driver’s Licenses”. The term lawful permanent resident has a very specific meaning in US immigration law. A “lawful permanent resident,” more commonly referred to as a green card holder or permanent resident, is subject to very strict eligibility requirements and numerical limitations for approval of that status. It can take years for lawfully present noncitizens to complete the green card process when they play by the rules and follow the law. There are millions of lawfully present nonresident aliens in the US. Upon initial review of your opinion, you appear to have precluded these lawfully present noncitizens from receiving a Michigan driver’s license. Our comments below address issues that can arise from your decision, both for the lawfully present noncitizens, as well as unlawfully present noncitizens.

### **Burden on the Secretary of State**

The complexity of US immigration law will make it difficult for the Secretary of State to implement clear training rules and guidelines for their offices around the US. US immigration law allows for temporarily admitted noncitizens, referred to as “nonimmigrant aliens”, to work or be present in the US under a wide range of categories, including A, B, E, F, G, H, J, K, L, M, O, P, Q, R, S, T, and U status, just to name some of the more common categories. Several of these classifications can be valid, and extended, for many years. Many noncitizens will hold this status until a green card can be approved. According to the Department of Homeland Security, over 33 million new nonimmigrant aliens were admitted to the US in 2006. Michigan alone received over 373,000 of these new noncitizens. These noncitizens are lawfully present in the US and provide a significant benefit to Michigan’s economy while they are here. For example, many of the automotive executives, managers, and key engineering talent come to Michigan for short term work assignments. The complexity of these immigration rules, delays in processing of extensions or changes of status by federal immigration agencies, as well as issues for spouses and dependents of these noncitizens, will put significant strains on the Secretary of State’s resources. We hope care will be taken by the Secretary of State to ensure that, at the very least, lawfully present noncitizens are not inadvertently swept up in the response to your opinion.

### **Highway Safety**

Michigan road safety will suffer from your opinion. Unlicensed lawfully and unlawfully present foreign nationals will continue to drive to work and around our state, and anyone driving on Michigan roads. Without the proper screening and testing they will endanger our residents. They may also be more likely to flee accident scenes. Moreover, without proof of a license, these foreign nationals will probably not be able to secure automobile insurance which could have devastating consequences to citizens and noncitizens alike.

### **Impeding Law Enforcement**

A recent Government Accountability Office (GAO) report confirmed that the agencies of the Department of Homeland Security (DHS) routinely use driver’s license databases to find persons who are unlawfully in the US. The licensing of noncitizens enriches our domestic intelligence and ensures law enforcement agencies can verify and obtain the identities of millions of foreign nationals. We are also concerned that we will see a proliferation of fraudulent documents if unlawfully present noncitizens cannot secure a valid Michigan driver’s license.

### **Work Authorization**

It is worth noting that a driver's license is never the only evidence that a prospective employee can present to prove work authorization. The I-9 Employment Eligibility Verification form requires that an employer see, if a driver's license is presented to prove work authorization, an additional form of valid identification to work in the US in addition to the driver's license (like a social security number). Federal law requires that an I-9 form be completed for every newly hired employee in the US. Making noncitizens ineligible for a driver's license, unfortunately, does nothing to address unlawfully present foreign nationals working for Michigan employers. The I-9 form, and list of acceptable documents, can be found at [www.uscis.gov](http://www.uscis.gov). You have mentioned in your opinion that the Social Security Administration (SSA) has taken significant steps to limit fraud in their application and social security issuance process. By preventing noncitizens who lack lawful status or valid work authorization from securing a social security number, SSA has taken the critical step in ensuring only authorized noncitizens can work in the US. Precluding lawfully and unlawfully present foreign nationals from a Michigan driver's license will not change work eligibility requirements. Moreover, we strongly assert that any weaknesses in the US employment verification process should be dealt with on a federal level, and not through piecemeal changes at the state or local levels.

### **We Are a Resource**

US immigration issues that touch upon Michigan concerns will continue to come up during your tenure as Attorney General. We ask that you consider working with us on future issues so we may provide a balanced and thoughtful response to the problems your office faces. We share the State of Michigan's frustration that the US Congress has not been able to pass a comprehensive reform law for immigration. However, we also believe it is important for the state officials to maintain their focus on state issues and work with their national representatives and senators to ensure reform is passed. We believe those efforts are the most productive and beneficial to the residents of our great state.

Thank you for your kind attention to this matter.

Very truly yours,

Michigan Chapter Chair  
American Immigration Lawyers Association



Michael P. Nowlan

CC: Terri Lynn Land, Michigan Secretary of State  
Representative Tobocman  
Senator Carl Levin  
Senator Gilda Jacobs

## Immigrants' Access to Driver's Licenses: A Matter of Safety and Security

**The Issue:** The question of whether to tie immigration status to driver's licenses has been debated often in recent years, and the issue reemerged during Congress's consideration of legislation to implement the recommendations of the 9-11 Commission. The Commission recommended setting standards for the issuance of birth certificates and driver's licenses. The House and Senate adopted very different approaches to this recommendation in their respective intelligence reform bills. The Senate provision more closely mirrored the 9-11 Commission recommendations by setting minimum standards targeted at securing the integrity of identification documents. The House measure, by contrast, pushed well beyond the parameters of the Commission's recommendation by explicitly tying immigration status to driver's license eligibility. The House measure sought to bar federal agencies from accepting for any official purpose a state-issued driver's license, or other comparable identification document, unless the state required noncitizens to prove their immigration status. The Senate approach carried the day, however, and was included in the measure that became law, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).

At the beginning of the 109th Congress, Representative F. James Sensenbrenner (R-WI) reintroduced the House driver's license provision as part of the REAL ID Act (H.R. 418). Without any hearings or debate, Congress passed the REAL ID Act as part of the Emergency Supplemental Military Appropriations bill (P.L. 109-13). The new law, signed by the President on May 11, 2005, repealed the driver's license provisions contained in the intelligence reform legislation, included immigration status eligibility requirements, and created the architecture of a de facto national ID card.

Supporters of the REAL ID Act argue that denying driver's licenses to undocumented immigrants is critical to combat terrorism. To support this dubious claim, they point out that driver's licenses obtained by the 9-11 terrorists facilitated their activities. This argument misses the mark; none of the 9-11 terrorists would have been prevented from obtaining driver's licenses under REAL ID's provisions since all of them had lawful status when they applied for their licenses. Moreover, they did not even need driver's licenses to board planes on that fateful day because they had foreign passports that would have authorized them to board.

REAL ID proponents' national security claims notwithstanding, linking license eligibility to immigration status will not make us safer, but will instead interfere with effective law enforcement. The 9-11 Commission recommendations focused on secure identity documentation and enhanced intelligence: "The federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. . . . Sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists." By conditioning license issuance on immigration status, REAL ID will *limit* the identity data available to the government on persons present in the United States. And by alienating the very immigrant communities that we need to enlist in the war on terror, we further undercut the national security goal of enhancing our intelligence sources.

**AILA's Position:** AILA opposes tying immigration status to driver's license eligibility because:

**Restrictive Licensing Will Impede Law Enforcement and National Security.** Many local law enforcement officials oppose restrictive licensing proposals because driver's license databases play a critical role in enforcement. In fact, a recent GAO report noted that agents of ICE find public source databases, such as the DMV database, to be more current and reliable than the DHS database. Licensing noncitizens enriches our domestic intelligence by allowing law enforcement authorities to verify and obtain the identities, residences, and addresses of millions of foreign nationals. Restrictive licensing will deprive authorities of this information. Moreover, the proliferation of fraudulent documents that will result from restrictive licensing will contaminate intelligence regarding who is present in the United States.

**State Driver's License Agencies Have Neither the Authorization nor Knowledge to Interpret Immigration Laws and Documents.** Restrictive licensing will require state motor vehicle administrators to become immigration law and document experts in order to evaluate properly an applicant's immigration status and determine when such status expires. Our immigration laws recognize approximately 60 ever-changing nonimmigrant visa categories in addition to myriad classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, as well as applicants for extension, change, or adjustment of status, to name a few. The array of documents issued by U.S. Citizenship and Immigration Services (USCIS), the State Department, and other agencies as evidence of these classifications is even more perplexing and includes visa stamps, laminated cards, unlaminated handwritten cards, forms, letters, and many other documents or combinations of documents, which, even to the trained eye, often do not clearly show an applicant's status or duration of lawful admission. Additionally, due to extensive USCIS delays in application processing, many immigrants and lawful nonimmigrants will be unable to present documentation of their status. It is highly unlikely that motor vehicle administrators will be able to determine correctly whether a particular document or combination of documents establishes lawful status. This task requires the interpretation and application of a complex body of law. Requiring DMV personnel to understand and enforce immigration laws will most likely result in legal U.S. residents facing wrongful license denials and revocations for reasons that are wholly unrelated to driver competence.

**Restrictive Licensing Will Severely Jeopardize Highway Safety.** Proposals to restrict immigrants' access to driver's licenses will result in more unlicensed drivers operating vehicles on U.S. roads. Whether licensed or not, many individuals will have no choice but to drive—to work, to school, to doctors, and to many other destinations—to meet basic everyday needs. Thus, restrictive licensing has the potential to reduce the safety of Americans and all drivers on our roads because it will:

- Remove an entire segment of the driving population from the reach of administrators charged with testing and certifying driver competence, which will contribute to the national highway mortality rate;
- Deprive motor vehicle administrators of the driving records of millions of drivers;
- Discourage or prevent millions of drivers from registering their vehicles;
- Eliminate incentives for foreign nationals to attend driver education schools;
- Increase the rate of minor traffic violations for unlicensed driving, which will divert law enforcement and judicial resources from truly serious offenses; and
- Create incentives for unlicensed drivers to flee accident scenes.

**Current Legislation:** There is no significant pending federal legislation that would address immigrants' access to driver's licenses. Various states, however, are presently considering how and whether to comply with the REAL ID mandates.