



C. Ray Drew, Executive Director • Mark Silverstein, Legal Director

April 5, 2010

Roxy Huber, Executive Director
Colorado Department of Revenue
1375 Sherman Street
Denver, CO 80261
Sent by email: edo@spike.dor.state.co.us

Dear Director Huber:

We would like to again extend our appreciation to you and your staff for considering the ACLU's concerns regarding DMV policies that deny all U.S. citizen children with undocumented parents "front desk access"¹ to driver's licenses and identification cards. Fortunately, there are easy fixes that the DMV can make which will end discrimination against this class of U.S. citizens, while still satisfying the DMV's legal obligations. In addition, such fixes will ease the administrative burden on DMV by allowing exceptions process investigators to focus their time and resources on the truly "exceptional" cases where there is an actual need for an individualized analysis of an applicants' documents. We continue to believe that requiring all of these applicants to go through the exceptions process is an inadequate response to a problem that adversely impacts a class of thousands of Colorado's young adults.² We urge the DMV to consider implementing one or more of the solutions described below.

1. Allow any person who has known the applicant for two or more years to attest to the applicant's identity

There is no Colorado or federal law that states only a parent or guardian may sign an affidavit to establish an applicant's identity. The U.S. State Department, for example, permits a passport applicant to establish his or her identity through any witness who has known the applicant for two or more years. As stated on the State Department's website and reflected in Form DS-71 (attached):

IF YOU CANNOT PROVIDE DOCUMENTARY EVIDENCE OF IDENTITY as stated above, you must appear with an IDENTIFYING WITNESS who is a U.S. citizen, non-citizen U.S. national, or permanent resident alien

¹ As discussed during our March 16, 2010 meeting, the phrase "front desk access" is used to describe the ability of an applicant to receive a driver's license or identification card through the normal procedures at a DMV office, without having to go through exceptions processing.

² The source of statistical information that we discussed during our March 16, 2010, meeting is the Urban Institute's "Children of Immigrants Data Tool" (accessible at <http://datatool.urban.org/charts/datatool/pages.cfm>).

who has known you for at least 2 years. Your witness must prove his or her identity and complete and sign an Affidavit of Identifying Witness (Form DS-71) before the acceptance agent.³

The DMV should follow the practice of the U.S. State Department and allow an applicant under age 21 to establish his or her “identity” through any witness who 1) is a U.S. citizen or legal permanent resident, and 2) has known the applicant two or more years. This solution would permit applicants under age 21 to rely on a witness other than their parents in order to prove their identity. A draft of such an affidavit is attached.

2. Allow licensed high school counselors to complete an affidavit to prove an applicant’s identity

In addition or in the alternative, the DMV should allow Colorado high school counselors to complete an affidavit attesting to the identity of an applicant under age 21. Under Colorado law, all high school counselors must be licensed by the Colorado Department of Education. See C.R.S. § 22-60.5-101 *et. seq.* The specific and rigorous licensing requirements for a high school counselor are detailed fully in 1 CCR 301-37 Section 11.09. Before receiving a license from the Department of Education, each applicant for a counselor license must go through a thorough background check, which includes fingerprinting by the Colorado Bureau of Investigation. See 1 CCR 301-37 Section 2.04(5). Furthermore, whether a not a high school counselor has a current and valid license can be immediately and easily verified online, if necessary.⁴

The DMV could implement this change easily by amending Form DR 2300 to reflect that a “Parent/Guardian/High School Counselor affidavit if under 21” can be used to prove an applicant’s “identity.” A draft of such an affidavit is attached.

3. The DMV should takes steps to ensure that identification requirements for affiants are clearly communicated to the public

As you know, DMV’s current procedures require that the witness signing the affidavit also produce identification. As stated on Form DR 2300, “Identification Requirements,” at Footnote 8:

A parent/guardian providing an affidavit for a minor under 21 must also present identification and proof that they are the parent or legal guardian of the minor.

The DMV’s instructions give absolutely no indication to the applicant or to the parent that there is any restriction on the type of identification the DMV will

³ Accessible at: <http://www.state.gov/documents/organization/79955.pdf>; see also http://travel.state.gov/passport/get/Secondary%20Evidence/Secondary%20Evidence_4314.html.

⁴ See “Search Active Educator Licenses, at: <https://forms.cde.state.co.us/pes/FirstLastSearch.jsp>.

accept from a person signing the affidavit. Consequently, many parents who go to the DMV with their children have no advance notice that DMV will only accept certain forms of identification.

A separate regulation requires that “the affiant must provide identification consistent with these rules...” See 1 CCR 204-13 Sec. 2.3.2.7. It is our understanding that DMV interprets the phrase “consistent with these rules” to require that the affiant to produce a Colorado driver’s license or identification card, or other “stand alone document,” before the affidavit will be accepted. Neither this regulation nor the DMV’s interpretation of the regulation is referenced or quoted in Form DR 2300, which I suspect is the only form the DMV commonly makes available to the public.

Whether the DMV amends its policy to accept affidavits from any witness who has known the applicant more than two years, and/or to accept affidavits from high school counselors, we strongly urge DMV to amend Footnote 8 on Form DR 2300 to make clear that DMV will only accept certain forms of identification from an affiant. DMV should make clear to potential applicants and affiants, in advance, what forms of identification that DMV will accept. In its current form, Footnote 8 does not make clear to the applicant, the affiant, or even to lawyers at the ACLU, that DMV employees will refuse to accept certain forms of identification, like a *Matricula Consular*, from an affiant.

4. Education of front desk employees is an inadequate response.

Even if it were possible to educate all front desk employees regarding DMV’s requirement that all U.S. citizens under age 18 with undocumented parents must go through the exceptions process, that would not be an effective or complete solution to a problem that systematically denies front desk access to an entire class of otherwise deserving applicants. Moreover, even when applicants are told about exceptions processing by front desk employees,⁵ the process can be daunting, confusing, and adversarial—especially for an unaccompanied 17-year old.

In investigating this issue, we heard consistent stories from attorneys and advocates regarding exceptions process investigators treating these applicants as though they were criminal suspects who were trying to fraudulently obtain identification, instead of recognizing that DMV procedures *require*--as a matter of official DMV policy--that each and every one of these children must go through the exceptions process. Even the ACLU’s two clients, whose difficulties with obtaining identification were known to the DMV in advance, experienced

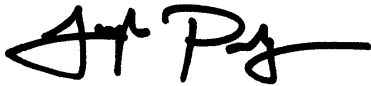
⁵ The failure of front desk employees to tell applicants in this position about the exceptions process may not be just a matter of educating DMV employees about the availability of that option for applicants. Some applicants, including one of the ACLU’s clients, described that front desk employees exhibited hostility toward the applicant and his or her parent after discovering that the parent could not provide the type of identification that DMV requires for affiants.

significant frustrations in setting up an initial appointment. The DMV employee setting up the appointment asked about the status of the applicant's parents, which might deter an applicant from proceeding further if he or she mistakenly concluded that the DMV had some interest in his or her parents' immigration status.

Conclusion

We believe that the solutions described above can be implemented by the DMV in compliance with the legal requirements contained in C.R.S. §§ 24-72.1-202 and 42-2-302(5). If the DMV believes there are legal or other impediments to implementing these solutions, we would appreciate an explanation of the DMV's concerns, and the opportunity to discuss those issues and/or suggest other alternative solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Pendergrass", with a stylized flourish at the end.

Taylor Pendergrass
Staff Attorney

Enc. U.S. State Department Form DS-71

Draft Form DR 2304-B: Affidavit of Identity for Minor Under 21 Years of Age by Identifying Witness

Draft Form DR 2304-C: Affidavit of Identity for Minor Under 21 Years of Age by High School Counselor