

Congress of the United States
Washington, DC 20515

March 28, 2011

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Napolitano,

We write regarding the twenty month extension granted by the Department of Homeland Security (DHS) on March 7, 2011 for states to comply with the REAL ID Act regulation and your comments before the Senate Committee on the Judiciary on March 9, 2011. We are concerned that you are using your position as Secretary of Homeland Security to usurp Congress's authority in setting policy. This latest delay raises concerns from an oversight and from a national security perspective.

The goal of the REAL ID Act is to prevent another terrorist attack by disrupting terrorist travel in the United States. As the recent arrest of Khalid Ali-M Aldawsari demonstrates, the lessons of 9/11 remain valid. As the National Commission on Terrorist Attacks Upon the United States noted in its report over six years ago, "Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are, and to check whether they are terrorists." Nearly a decade after the attacks, the loopholes exploited by the 9/11 terrorists still exist.

The REAL ID Act closes this dangerous vulnerability by requiring DHS to set minimum standards for driver's licenses and state issued identification documents that are used for "official" purposes. Once fully implemented, the REAL ID Act would help secure drivers' licenses by requiring states to verify applicant information. The REAL ID Act rule required that states be fully compliant on or before May 11, 2011.

The extension, dated March 7, 2011, states that, "[t]he inability of States to fully comply with the requirements of REAL ID by May 11, 2011 is the result of a number of factors, including diminished State budgets caused by the economic downturn and the uncertainty throughout much of the 111th Congress about Congressional action on the PASS ID Act." It is our concern that the "uncertainty" was created by your own actions and statements.

On April 22, 2009, in a speech before the Anti-Defamation League National Leadership Conference, you stated, "And so we've been, over the last weeks, meeting with governors of both parties to look at a way to repeal REAL ID and substitute something else that pivots off of the driver's license but accomplishes some of the same goals."

On June 15, 2009, the Providing Additional Security in the States or PASS ID Act was introduced and DHS released a statement on the same day quoting you as saying, "I am committed to supporting this important bill and it is my hope that Congress will pass it into law as quickly as possible."

On December 9, 2009, in testimony before the Senate Judiciary Committee, you stated, "[s]hould Congress not act before it adjourns this year, we have planned for contingencies related to REAL ID implementation to minimize the impact to U.S. citizens. Any of these steps, however, would represent a temporary approach that does not advance our collective security interests over the long-term." In the previous deadline extension granted by your department on December 28, 2009, the notice stated that, "Secretary Napolitano has supported the efforts of the Governors and Congress to enact PASS ID."

On March 9, 2011, in a hearing before the Senate Committee on the Judiciary, you encouraged Congress to take a "fresh look" at legislation that would repeal the REAL ID Act.

PASS ID has never passed either house of Congress. It is reasonable to conclude that the statements quoted above created much of the uncertainty in the states. Is it, in fact, your intention to continue to delay implementation of the REAL ID Act rule until repealing legislation is enacted?

Please provide us with the following information:

- the number of states that have certified that they are materially compliant, and which states those are; and
- the number of states that have communicated to DHS that they will not be materially compliant, and which those states are.

States have made significant progress toward compliance. Congress has authorized and appropriated funding for its implementation. Rather than usurping Congress's authority in writing policy, DHS should commit to the law and fully support implementation. A twenty month delay leaves the same loopholes open as the ones exploited by the 9/11 hijackers and continued action other than promoting full implementation, endangers America lives.

Please respond on or before April 8, 2011.



Lamar Smith
Member of Congress

Sincerely,



Charles E. Grassley
United States Senator