

DHS Considered How To Punish States That Deny Access To Driver Records, A Memo Says

A memo obtained by BuzzFeed News outlines options to put leverage on states that, like New York, deny federal immigration officials access to state driver records.

By **Hamed Aleaziz**

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People wait to be served in a Department of Motor Vehicles office in New York.

Mark Lennihan / AP

The Trump administration drafted a slew of plans to consider not only circumventing state laws limiting the Department of Homeland Security's access to driver records, but to retaliate against states that

are refusing to provide the information they seek, according to government documents obtained by BuzzFeed News.

According to a DHS memo, the administration considered using “friendly” states to discreetly collect information for federal immigration authorities that would otherwise be inaccessible by law. The plans also include retaliation measures against states that limit access to records, such as closing down DHS offices there, refusing to accept their state identification, cutting TSA PreCheck services, and potentially subpoenaing for drivers’ licenses provided to undocumented immigrants.

The signed memo — written by James McCament, an influential agency figure and acting head of the DHS policy office, on Jan. 27 to acting DHS secretary Chad Wolf — offers a view into the agency’s secretive considerations to obtain the information it wants and, in particular, to punish New York for recently cutting off DHS access to driver records. New York also granted the ability for those without lawful immigration status to obtain a drivers license.

It’s unclear if some of the options have been implemented without being publicly announced or if all are still under consideration. The memo repeatedly references “uncooperative states” — an indication that DHS has considered taking action against other jurisdictions as well.

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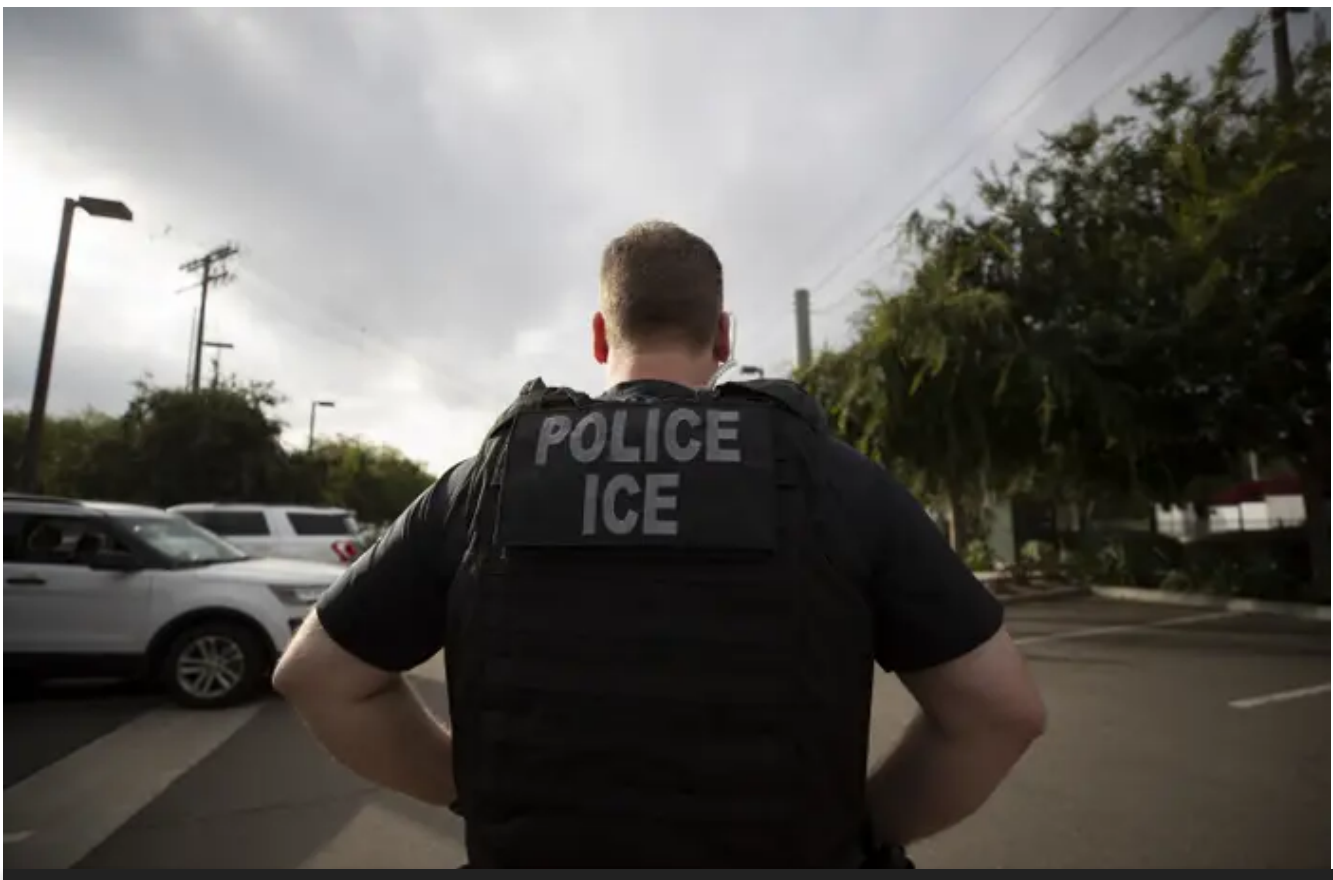
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Swift said in a statement. "The Acting Secretary did not consider the draft recommendations in his decision making. Instead, the Acting Secretary took targeted and limited action to address the security vulnerability New York’s law created."

In recent weeks, administration officials have slammed New York for passing the [Green Light Law](#), which in addition to licensing

undocumented drivers has barred state officials from providing driver information without a warrant to agencies that conduct immigration enforcement, including Immigration and Customs Enforcement and Customs and Border Protection. The law went into effect in December, and though other states have similar laws, DHS has called New York's the most expansive.

The battle between the Trump administration and New York is the latest in an escalating fight over so-called "sanctuary" policies that limit local cooperation with immigration enforcement.



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The memo was drafted more than a week before Wolf, the acting DHS secretary, wrote to New York State Department of Motor Vehicles officials, informing them that tens of thousands of New York residents would no longer have access to "trusted traveler" programs such as Global Entry because of the law, which he has described as misguided and dangerous. ICE officials rely on state DMV databases to locate targets, identify them, and get their vehicle information.

“Although DHS would prefer to continue our long-standing cooperative relationship with New York on a variety of these critical homeland security initiatives, this Act and the corresponding lack of security cooperation from the New York DMV requires DHS to take immediate action to ensure DHS’s efforts to protect the Homeland are not compromised,” Wolf wrote in his letter on Feb. 5.

New York officials, along with civil liberties organizations, have said they will sue over the move.

Cutting the trusted traveler programs was listed in the DHS memo as the fifth option among eight — ranked in order of potential for states to be forced to reverse course — intended to address laws that restrict access to state DMV information. McCament provided the options for Wolf to “consider in response to the impact of the NY Green Light Law and other laws restricting access to state DMV information.”

DHS policy officials led with one option that “it believes is the best option for DHS to explore to achieve the goal of acquiring DMV information that it needs to prevent the hindrance of critical Departmental operations.”

“This option, as outlined below, is to seek access to the DMV information of uncooperative states by using the database of a REAL ID compliant state,” he wrote.

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REAL ID Act compliant.

“Through this information sharing provision, DHS could seek access to DMV information for an uncooperative state by soliciting the assistance of a ‘friendly’ state, who pursuant to REAL ID Act requirements, should have access to other DMV databases.” McCament

wrote they were unaware of this option being used but it “appears to be a worthwhile option” to obtain the information.

For each option listed, McCament provided a “pro” and a “con” description. If DHS were to obtain the information it sought through other states, “not only would this provide a path for DHS to obtain the information that uncooperative states refuse to provide, but it would also be able to be achieved with a level of discretion that may not be possible with other potential options.”

The negatives to such an approach, he explained, would be that it would send the “message” that states could “refuse to provide critical information with the Department without a consequence.” DHS would also be unable to get the information quickly, the “uncooperative” states could already be limiting information given to other states, and it’s unclear if “friendly” states would be willing to expend resources to help DHS, he wrote.

“Perhaps the most problematic part of this is that it shows the primary or at least an important rationale was to punish an ‘uncooperative state,’ even if that meant doing away with programs designed to keep people safe. Many of the programs the administration has cut or has contemplated cutting were developed to keep the U.S. public safer in the aftermath of 9/11,” said Sarah Pierce, an analyst at Migration Policy Institute.

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uncooperative states.” If this option was utilized, DHS would cease “PreCheck functions in states that refuse to share DMV information,” and the option could be “tailored to impact airports on a rolling basis.” McCament said such an option would send a clear message to states that it cannot “impede” DHS and expect the agency to prioritize services, but the “cons” could mean it potentially impacts “lawful travel, inciting pushback from the public and travel industry.”

DHS could also close down its offices, such as USCIS field offices or CBP offices providing GlobalEntry enrollment services, but that could lead to delays or backlogs for those in other states, McCament wrote.

The fourth option provided by McCament would potentially cause outrage among immigrant advocates: “Encourage Department of Justice to defend ICE filing a subpoena for all greenlight licenses,” an apparent reference to the New York law, which allows those who are undocumented to obtain a driver’s license.

“The fact that DHS considered pushing for a blanket subpoena for all licenses of unauthorized immigrants debunks the administration's explanations that this feud has to do with vetting trusting travelers or investigating crimes. It is about immigration enforcement. And encouraging a 'bait and switch' program of issuing driver's licenses for unauthorized residents and then handing that data over for immigration enforcement is short-sighted and reckless policymaking,” Pierce said, noting how DHS officials repeatedly said their issue with the law was not about the issuance of licenses to undocumented immigrants.

McCament also said that DHS could “no longer accept driver’s licenses from uncooperative states as a valid form of identification at DHS locations.” If DHS were to go with this policy, it would mean the agency components, which include CBP, “refusing to accept New York driver’s licenses as a valid form of ID for DHS business purposes.”

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to McCament.

The last two options provided by McCament would see DHS no longer accepting certain states’ IDs for border crossings along the US–Canada border and deprioritizing exports of “uncooperative state-titled vehicles.” The latter option was used by Wolf in his letter to New York,

though McCament wrote that it seemed “low impact/unlikely to effectuate change.”

TOPICS IN THIS ARTICLE

Immigration



Hamed Aleaziz is a reporter for BuzzFeed News and is based in San Francisco.

Contact [Hamed Aleaziz](mailto:hamed.aleaziz@buzzfeed.com) at hamed.aleaziz@buzzfeed.com.

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