



Written by [Joe Wolverton, II, J.D.](#) on March 2, 2020

Maryland Bill Would Force Feds to Get Warrant Before Searching State Photo Databases

State legislators in Maryland have discovered evidence that for a couple of years federal immigration agents have accessed the state's driver's license database "dozens of times" prompting lawmakers to propose a bill that would block such unauthorized access.

The measure, if passed, would require officers of the U.S. Immigration and Custom Enforcement (ICE) agency to obtain a warrant before comparing images of suspects to the photographs contained in the Maryland Image Repository System (MIRS). The MIRS database holds millions of photographs from driver's licenses and vehicle registrations. Most relevantly, MIRS is capable of cross-matching any photo to the photos in the database through facial recognition technology.

Beyond mandating that ICE agents get a warrant before searching the MIRS database, the proposed bill would require the state to track all federal queries of the system.

The *Baltimore Sun* reported on the remarkably low hurdle that feds must clear under the current law:

Currently, any credentialed ICE agent can access that system remotely, and without a warrant. Last year, lawmakers obtained information from the state's Department of Public Safety and Correctional Services, which maintains MIRS, that ICE officials had logged into the system 14 times in 2018 and 42 times in 2019. State officials said it was unclear how many searches were conducted after each log-in, or who was the subject of those searches.

Georgetown Law professor Harrison Rudolph recognized the unusually open access given by Maryland to federal immigration authorities.

"Maryland allows any federal law enforcement officer with a particular type of credential to log directly into the facial recognition system," he said. "That's an unprecedented level of access."

For its part, ICE responded the *Sun's* story, saying that it "does not comment on proposed legislation," but "has concerns about any state or local laws that limit the sharing and exchanging of critical information, or that protect criminals at the expense of the safety and security of law-abiding residents."

State Senator Clarence Lam answered ICE's claim that the bill would impede law enforcement, explaining that the proposed process was "intended to put a layer of protection in place to ensure that the database, when accessed by federal agents, is being accessed for appropriate reasons."





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“They just need to show a judge probable cause to be able to seek a warrant,” he added. “If a judge signs off on that warrant, they can access the database.”

That seems like a reasonable requirement. More importantly, it is the constitutional requirement.

Many Americans will likely consider the Maryland state legislature’s proposal an unnecessary impediment in the path of police.

A little history will reveal that that is exactly the role the Founders wanted the states to play in any future effort by the federal government to usurp powers not granted to it within the four corners of the U.S. Constitution.

In 1776, George Mason, the principal author of the Virginia Declaration of Rights — a document of profound influence on the construction of the federal Bill of Rights — upheld the right to be free from such searches, as well: “That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence [sic] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.”

Thus, the Fourth Amendment is in substantial part taken from Mason’s Virginia Declaration of Rights.

The Fourth Amendment guarantees:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The protection afforded these rights by the Fourth Amendment are under nearly constant assault. The papers, effects, and homes of all Americans are now de facto denied the protections our Founders held so dear.

According to the story in the Baltimore Sun, there are many in the state government of Maryland who foresee federal retaliation for the state government’s efforts to shore up the protections of the Fourth Amendment. In fact, “state officials have raised concerns that the U.S. Department of Homeland Security might retaliate against the state if the bill passes, as it did when New York passed legislation limiting ICE access to information in that state,” the *Sun* reported.

The fear of federal backlash is not irrational. The *Sun* recounts such recrimination by ICE in New York:

Earlier this month, DHS temporarily barred New Yorkers from enrolling in Global Entry and other programs aimed at getting travelers through borders and airport lines more quickly, citing a new law in that state that allows unauthorized immigrants to obtain driver’s licenses. The so-called Green Light Law blocks agencies like ICE and Customs and Border Protection from accessing motor vehicle databases without a court order.

While there may be a price to pay for standing up to the federal government, there are a couple of fundamental facts that must be remembered by those faithful to the U.S Constitution and the principles of individual liberty and protection thereof.

First, the Fourth Amendment exists for the very purpose of preventing the federal government from infringing on the rights of privacy that are the patrimony of every person, liberty with which they were “endowed by their Creator.” All men are children of God, therefore, all men are entitled to the rights



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which He has given to his children.

Next, the very structure of the government established by the U.S. Constitution — federalism — recognizes the role of states in keeping the federal beast inside its constitutional cage. In other words, as the creators of the federal government and grantor of all its enumerated powers, the states retain the authority and the obligation to stand as safeguards between the federal government and the people.

In *The Federalist*, No. 46, James Madison listed the appropriate responses by a state government to any “unwarrantable measure” of the federal government:

The means of opposition to it [federal overreach] are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised.

Finally, the cornerstone of the Constitution’s federal structure is the states’ power to nullify — consider as null, void, and of no legal effect — any act of the federal government that exceeds the authority granted to it by the states. In the words of James Madison:

The powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

So, while many might see Maryland’s proposed prevention of the violation by federal immigration agents as a hindrance of law enforcement, the constitutional facts are irrefutable: that is exactly what states ought to do!

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