

Is the latest REAL ID threat for real?

Written by By Joey Peters NM Political Report
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New Mexicans may not be able to use their state-issued driver's licenses to board airplanes by next year, according to a letter from the federal Department of Homeland Security.

The federal agency recently rejected a waiver the state applied for to comply with the federal REAL ID Act. Congress passed the law 10 years ago in an attempt to shore state driver's licenses into a national I.D. program follow the 9/11 terror attacks in 2001.

The Associated Press first reported on the DHS letter, which was addressed to New Mexico Taxation and Revenue Department Secretary Demesia Padilla.

"New Mexico has not provided adequate justification for continued noncompliance with the REAL ID standards that would warrant granting your request for another extension," the letter reads. "As a result, federal agencies may not accept New Mexico's driver's licenses and identification cards for official purposes in accordance with the phased enforcement schedule announced on December 20, 2013."

New Mexico is one of 17 states and U.S. territories that do not currently comply with REAL ID, according to Homeland Security.

But Homeland Security's previous attempts to get states to comply with the law have a poor track record. Jim Harper, a senior fellow with the Cato Institute, a Washington D.C.-based libertarian think tank, said that's because the feds are bluffing.

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“The fundamental issue here is how it would play out if DHS starts refusing people to travel,” Harper said in an interview. “When push comes to shove, it’s [Transportation Security Administration] agents turning away New Mexicans at the airport’s TSA that’s going to get blamed. It’s Congress that’s going to get blamed. It’s Homeland Security that’s going to get blamed. It’s not state government.”

States like New Mexico can defy this like they’ve done many times in the past, he argued.

U.S. Congress passed REAL ID into law in 2005, and all states were supposed to be in compliance with it by 2008. But when that year came around, legislators in states like Montana, South Carolina and New Hampshire told Homeland Security they would never comply.

After that, more states joined in what Harper calls a “REAL ID rebellion” by passing legislation saying they won’t comply. Harper said currently no state actually complies with REAL ID, rather, some meet Homeland Security’s “material compliance checklist” and get waived from full compliance.

Now Homeland Security is “literally backchanneling” REAL ID compliance threats to states like New Mexico and Minnesota to warn about noncompliance, Harper said.

He recommends states continue “denying the federal government what they want.”

Key lawmakers, however, will likely take the threats seriously, especially when Gov. Susana Martinez pushes to end the state’s practice of allowing driver’s licenses to undocumented immigrants for the sixth year in a row, as she’s expected to do during January’s upcoming legislative session.

Martinez spokesman Chris Sanchez did not return a call and email Wednesday afternoon, but in the past Martinez has cited noncompliance with REAL ID as a reason to end driver’s licenses to undocumented immigrants.

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Martinez has drawn a firm line on the issue, saying she would only sign an outright repeal of the law.

That effort failed earlier this year when Senate Minority Leader Stuart Ingle, R-Portales, and Sen. John Arthur Smith, D-Deming, passed a bill to allow a two-tiered license system with about a day left in the legislative session. One tier would allow undocumented immigrants to continue driving legally while another tier would comply with REAL ID guidelines.

The Republican-controlled state House of Representatives, which passed a separate bill barring driver's licenses to immigrants in the country illegally, didn't vote on the Senate bill.

Smith released a statement Wednesday afternoon reiterating that the Senate passed their bill with "a strong bipartisan majority."

"Senator Ingle and I worked collectively because we wanted to put this issue behind us and focus on moving our state forward," Smith said. "We urge the Governor to put this issue on the Call for next session and help pass this bipartisan fix."

House Democrats proposed a similar amendment the House's driver's license legislation, but it failed.

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