



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

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AGENCY: Ohio Department of Public Safety,
Bureau of Motor Vehicles

BASIS FOR INVESTIGATION: Inspector General Initiative

ALLEGATION: Failure to Comply With State Law and/or
Regulations

DATE INITIATED: September 3, 2009

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Executive Summary

File ID Number 2009304

On August 24, 2009, in response to a change in the law two years earlier, the Ohio Bureau of Motor Vehicles (“BMV”) enacted new policies and procedures for people who rely on a third party to register their vehicles and obtain their license plates. Traditionally, people who are homebound, out of state attending college or serving in the military, or otherwise are unable to register their own vehicles could designate another to do it for them using a BMV Power of Attorney (“POA”) form. Car dealers also would use the form to register vehicles for customers as a convenience.

The BMV, a division of the Ohio Department of Public Safety (“DPS”), revised the POA form and procedures to conform to a new law, which changed the identification requirements for registering a vehicle. The revision process involved months of unsuccessful attempts and mounting tensions between the BMV and DPS, which in part led to the resignation of Registrar Michael Rankin, the top official at the BMV.

On September 3, 2009, pursuant to section 121.42 of the Ohio Revised Code, this office initiated an investigation. We found that former DPS Director Henry Guzman unnecessarily delayed implementation of new POA procedures. This was in spite of repeated warnings from the Registrar, BMV investigators and law-enforcement officials about how the delays were undermining the integrity of vehicle registrations, facilitating illegal activity and raising identity theft and homeland security concerns.

During the prolonged delay, thousands of people lacking proper identification used the POA form to register vehicles. A cottage industry of “runners” flourished, charging undocumented immigrants hundreds of dollars each to register their vehicles. The registrations often contained inaccurate and fraudulent information, impeding police investigations of everything from routine traffic crashes to felony crimes. In one case, a runner was regularly mailing packages of Ohio license plates to a suspected drug dealer in another state. Guzman failed to act despite repeated warnings about these problems.

The two years of delays were ostensibly to rewrite the two-page POA form and procedures. This became a dubious pretext as weeks stretched into months and then two years. Along the way, Guzman hosted meetings for businessmen allegedly profiting from the delays, without providing any such forums for frustrated law enforcement officials. Moreover, Guzman's impartiality was compromised when the delays continued, without explanation, at the same time an attorney who advocated against the new procedures represented Guzman's son in an unrelated lawsuit.

To this day, Guzman is at a loss to explain why he halted implementation of new POA procedures. If he ever shared his reasoning with anyone, we were unable to find it among the thousands of pages of e-mails and memos we reviewed. Nor could Guzman's advisors, when interviewed, recall him explaining his rationale. Yet everyone recognized that Guzman was sensitive about the POA issue, and he made clear that reforms were not to move forward without his approval. Guzman's adamant involvement in the process, without providing meaningful guidance or direction, left everyone scrambling blindly.

In stark contrast to DPS's defensive posturing when the procedures were implemented, Guzman said in an interview with this office that he accepted responsibility for the delays and regretted them. Guzman stressed that the delays had nothing to do with personal motives or conflicted loyalties. Rather, Guzman said legitimate questions raised complicated issues, which he felt his administration failed to resolve in a timely manner while also wrestling with a difficult budget and numerous other challenges.

After Guzman resigned in September 2009, new DPS Director Cathy Collins-Taylor immediately began proactive measures to identify and verify registrations lacking a proper identification number, at considerable effort and expense to the agency. DPS mailed notices in October 2009 to the owners of more than 47,000 vehicles, giving them 60 days to verify their identity or face cancellation of their license plates. Less than 6 percent of those who received the BMV mailing came forward with proper identification as of December 1, 2009.

For far too long Guzman had given the complaints of businessmen with financial motives more credibility than those of BMV investigators and law enforcement officers. This was out of all

proportion to the information available at the time, and to the detriment of public safety. Accordingly, we found reasonable cause to believe wrongful acts or omissions occurred. We also found an appearance of impropriety regarding Guzman's son being represented by an attorney who also was intimately involved in the POA debate.

Meanwhile, the Ohio State Highway Patrol and BMV investigators have launched a related criminal probe. This office will assist law enforcement in its ongoing efforts to identify potential criminal behavior, past and present, related to vehicle registrations and POAs.

Copies of this report have been forwarded to the Franklin County Prosecutor's Office and the Disciplinary Counsel of the Ohio Supreme Court for their review.

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I. BASIS FOR INVESTIGATION

On August 24, 2009, in response to a change in the law two years earlier, the Ohio Bureau of Motor Vehicles (“BMV”) enacted new policies and procedures for people who rely on a third party to register their vehicles and obtain their license plates. Traditionally, the BMV, a division of the Ohio Department of Public Safety (“DPS”), has accommodated Ohio residents who are homebound, out of state attending college or serving in the military, or otherwise are unable to register their own vehicles. With the BMV’s Power of Attorney (“POA”) form, vehicle owners can appoint another person to register a vehicle on their behalf. The BMV introduced a new POA form and procedures in August 2009, after months of aborted attempts and mounting tensions between the BMV and DPS administration, culminating in the resignation of the top official at the BMV. Meanwhile, the Registrar, BMV investigators and law enforcement officials complained that the delays had undermined the integrity of vehicle registrations, facilitated illegal activity and raised identity theft and homeland security concerns. On September 3, 2009, pursuant to section 121.42 of the Ohio Revised Code, this office initiated an investigation.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We requested from DPS all records related to POA-registered vehicles, which included thousands of pages of memos and correspondence. We also interviewed former DPS Director Henry Guzman, former BMV Registrar Michael Rankin and others, and examined their computers and archived e-mails.

To determine the scope and nature of POA abuses, we analyzed a database of more than 44,000 vehicles registered to people without a Social Security number in either the BMV’s registration or licensing systems. This analysis was made possible by the cooperation and assistance of the DPS Office of Information Technology. We verified and supplemented the computer data by examining the actual paperwork for a random sample of these registrations.

III. DISCUSSION

In March 2007, the Ohio General Assembly approved House Bill 67 (“HB 67”). Included in the wide-ranging, 54-page transportation bill were two sentences that changed the identification requirements for persons registering a motor vehicle in Ohio (Exhibit 1).

Effective September 1, 2007, people registering vehicles were required to prove identity and demonstrate Ohio residency by presenting a state driver’s license, state identification or Social Security number. For business vehicles, a business Tax Identification Number would suffice. Previously, the BMV accepted only a Social Security number, if one had been assigned; if the person lacked a Social Security number, the box typically was left blank.

Expanding the list of acceptable identifications (“ID”) was done in cooperation with DPS and was intended to minimize the inconveniences of BMV customers. The changes also endeavored to protect the privacy of vehicle owners by removing their Social Security numbers from vehicle registrations.

HB 67 also closed – on paper at least – a controversial loophole that had bedeviled the BMV and law enforcement officials. Under the old law, many people without a Social Security number, particularly undocumented immigrants, had been paying “runners” to register vehicles for them. A cottage industry of runners charged as much as \$300 each to process registrations, using the BMV’s POA form. While not sworn or notarized, and therefore not a power of attorney in the traditional sense, the POA form allowed a person with valid ID to register a vehicle on behalf of another.

Law enforcement officials in Ohio and elsewhere complained that they were noticing an increase in the number of vehicle registrations with shadowy or fraudulent ownership information. They said these registrations were undermining police investigations of everything from routine traffic crashes to criminal activity.

The POA form, created more than 25 years ago, has traditionally been used to accommodate military personnel, seasonal residents, college students away at school, and other Ohio residents who were out of state or otherwise unable to personally register a vehicle. Car dealerships also routinely used the form to register newly purchased vehicles for customers as a matter of convenience. However, several years ago, runners increasingly began submitting POA forms without a Social Security number for the vehicle owners they represented. Indeed, R.C. 4503.10 provided the legal exception, requiring a Social Security number for vehicle registrations only “if assigned.” HB 67 deleted the language “if assigned” from the statute. As revised, the law expanded the list of acceptable IDs beyond a Social Security number. But deleting “if assigned” eliminated the legal basis for accommodating BMV customers without proper ID.

Nonetheless, for registrations involving POA forms, the BMV continued operating under the old law and procedures for two years after HB 67 took effect. During that time, top DPS and BMV officials debated whether and how to change the procedures. BMV Registrar Michael Rankin resigned in July 2009, citing his frustrations over this and other issues. DPS Director Henry Guzman resigned in September 2009, shortly after new POA procedures were implemented.

Allegation: Former DPS Director Henry Guzman unnecessarily delayed implementation of a state law requiring people to provide an acceptable identification number to register a vehicle.

The BMV promptly enforced the new ID requirements by the September 1, 2007 effective date of HB 67 for all customers except those registering vehicles via the POA form. On August 27, 2007, a BMV directive announced the new ID requirements for vehicle registrations but specifically exempted POA registrations (Exhibit 2). Nobody interviewed during this investigation, including the author of the directive, could recall how POAs came to be singled out.

Interviews and documents collected during this investigation indicate that internal discussions about changing the POA policies, procedures and forms in response to HB 67 apparently did not begin in earnest until December 2007, several months after the law took effect. At that time, the two DPS attorneys assigned to BMV matters, John R. Guldin and Melissa Mayhan, concluded that Rankin, as the top BMV official, was within his legal authority to impose new POA

standards (Exhibit 3). They added that while revising the POA form, the BMV could continue using the old form and mark the appropriate ID number, per the new law, in the spot once reserved solely for a Social Security number. Rankin favored tightening the process, citing law enforcement concerns about POAs facilitating fraudulent registrations. But Rankin noted that any changes should “entail some detailed discussions before moving forward” to ensure success (Exhibit 4).

A fatal car crash January 1, 2008 in Columbus added a sense of urgency to the discussion. Paula Martinez Gomez and her unborn child were killed in the wreck. Gomez was an undocumented immigrant, and the runner who registered her car had allegedly signed Gomez’s name on the POA form. The runner later confessed to signing Gomez’s name and was convicted in February 2008 of a misdemeanor count of falsification (Exhibit 5).

DPS and BMV officials quickly proposed new policies and procedures for POA registrations. By mid-January 2008, DPS Chief Legal Counsel Joshua Engel circulated the suggested changes, including instructions and flowcharts for implementation. The changes would have required an ID number from vehicle owners for POA registrations, per the new state law and consistent with what for several months had already been required of people registering their own vehicles. But after a January 29, 2008 meeting to discuss a “final draft” of the new procedures, Director Guzman sent an e-mail that read in part: “Before we go too far down the road with this issue, I want a briefing on the changes made to the form and an implementation schedule” (Exhibit 6).

A February 2008 launch date was postponed, in the first of at least a dozen unsuccessful attempts to roll out new POA procedures during the next 18 months. In hindsight, there are conflicting explanations for the delays, but on one point DPS and BMV officials now seem to agree: implementing new POA procedures took much longer than it should have, and the delay was a detriment to public safety.

The record also is clear that Guzman personally prevented the BMV from enacting new POA procedures in a timelier fashion, despite Rankin and others repeatedly demonstrating the importance of prompt action. The cause and validity of those delays are a matter of some

disagreement, and indeed evolved over time, but by Guzman's own admission he insisted from the beginning on approving changes to POA procedures, and he failed to do so until summer 2009.

More than two years earlier, HB 67 had clearly spelled out the list of acceptable IDs for vehicle registrations. But the law did not indicate whether the state would or should attempt to verify an ID number before issuing a registration. Demands for supporting documentation, for instance, could pose logistical challenges since the vehicle owner is not present during a POA registration. The POA form itself needed to be rewritten, as well.

More broadly, there also was debate internally among DPS and BMV officials about how aggressive the BMV should be on this matter, given that by all accounts the primary goal of HB 67 was to provide BMV customers with more ID options when registering vehicles, not to crack down on POA registrations. There is no indication that lawmakers were specifically targeting or even considering POA registrations (Exhibit 7). In any case, in tightening the POA registration requirements in response to HB 67, officials wanted to avoid causing unintended problems for car dealers and others who routinely used the POA form as intended.

Yet people were increasingly registering vehicles without providing any ID number when using the POA form. In assessing and attacking the misuse of POA forms, the BMV did not have the capability to distinguish POA registrations from others in its computer systems. BMV officials knew that most of the registrations lacking an acceptable ID number – estimated by the BMV to be perhaps as many as 64,000 in January 2008 – were processed via POA forms (Exhibit 8). They also knew that the rise in POA registrations lacking an ID number was largely attributed to undocumented immigrants, particularly the fast growing Latino population, further complicating the debate. DPS and BMV officials did not want to be perceived as targeting specific ethnic groups (Exhibit 9).

Nonetheless, by summer 2008, officials at DPS and the BMV had finally agreed on how to enforce identification requirements for POA registrations. The policies, procedures and POA form had been revised numerous times. Guzman and Rankin both signed off on the revised

form, although the July 1, 2008 implementation date was pushed back again to August 1 for reasons that are not clear (Exhibit 10). The news media publicized the upcoming changes.

After the public announcements, Director Guzman received at least a dozen complaint letters from local businessmen who detailed the negative impact the new POA requirements would have on them and their customers. In response, Guzman arranged a July 31, 2008 meeting with the businessmen in his conference room (Exhibit 11). Top DPS and BMV officials, including Guzman and Rankin, attended this meeting. Those interviewed by this office said they were taken aback by the turnout. There were at least 46 outside attendees, among them car dealers, insurance and finance company representatives, and advocates for the Latino community (Exhibit 12). Many had not been invited by DPS but heard about the meeting and showed up. Several people asked questions and protested the proposed changes, concerned about their impact on undocumented immigrants. Guzman ended the meeting by announcing that the new POA procedures, which were to take effect the next day, would be postponed for two weeks.

In an interview with this office, Guzman said he declared the “moratorium” because he was angered by what he perceived as DPS and BMV officials being unprepared and unable to provide satisfactory answers to questions posed at the meeting. Immediately after the meeting, Guzman conveyed his anger directly to the DPS and BMV employees who had attended. Guzman ordered his legal staff to follow up with Columbus attorney Joseph L. Mas, a prominent figure in the Latino community who attended the meeting.

Engel, Rankin and others said they were baffled by Guzman’s blowup after the meeting. They said they never were clear on precisely what he was angry about; indeed, more than a year later, in an interview with this office, Guzman remained unable to articulate his concerns and expectations in declaring the moratorium.

Following the meeting, the director’s subordinates tried to assuage his unspecified concerns. Further confusing matters, apparently nobody kept minutes during the meeting, and during interviews with this office no one was able to recall even taking notes. Nonetheless, on August 4, 2008, Engel e-mailed Guzman answers to questions raised during the meeting (Exhibit 13).

Engel and Anne Vitale, DPS associate legal counsel, also met August 21, 2008 for about 50 minutes in Guzman's conference room with Mas and car dealers who catered to a Latino clientele (Exhibit 14). Engel and Vitale said they also kept no notes from this follow-up meeting, and they did not document events of the meeting in a memo or e-mail. But both said Mas appeared satisfied and that Guzman was updated. Pressed by Rankin for a status update after the meeting, Engel replied: "The meetings did go well. We will advise of implementation date as soon as we receive guidance" (Exhibit 15). On August 29, 2008, Vitale spent time in the field with BMV investigators who were attempting to verify suspicious POA registrations. Afterward, she reported to Guzman instances of fraudulent addresses and vehicle registrations that had been issued to people without proper ID, via the POA form (Exhibit 16).

By then, the moratorium on enforcement had extended well beyond the stated two weeks. Rankin and others were again adamant about the need to implement the proposed POA procedures, urging Guzman to lift the moratorium (Exhibit 17). But another year would pass before the procedures were approved and implemented.

To this day, Guzman offers little explanation for not lifting the moratorium sooner. In an interview with this office, Guzman said he was awaiting a revised POA form, although he could not give any specific examples of what was wrong with the form. It had already been revised numerous times and would have been rolled out August 1, 2008, if not for his moratorium.

Guzman noted his own insistence that the BMV not merely collect ID numbers, but also verify them. This ensured that the new procedures would not only be more rigorous, but also more difficult to develop. However, verification procedures had been developed by the time of the moratorium. For non-POA registrations, the BMV had been verifying newly required ID numbers for a year at that point.

In addition, Guzman said he did not want to cause problems for people who used the POA form legitimately. This, too, was an unconvincing pretext for further delay for at least two reasons. First, Guzman acknowledged that Mas, the attorney who spoke on behalf of the concerned businessmen, was apparently appeased during his August 21, 2008 meeting with Engel and

Vitale. Second, while Guzman characterized the POA changes as potentially impacting businesses in general, the complaints from the July 31, 2008 meeting were in fact narrow and specific. Dealers in general, as represented by the Ohio Automobile Dealers Association and the Ohio Independent Auto Dealers Association, had already expressed support for new procedures after some revisions (Exhibit 18). The only remaining outside resistance was coming from a handful of businessmen concerned specifically about losing customers who were undocumented immigrants and who were unable to obtain a valid Ohio driver's license or ID, or Social Security number.

Notwithstanding political debates about whether it is in the public interest to deny undocumented immigrants the ability to register vehicles and obtain a driver's license, Guzman had an obligation to uphold Ohio laws that were unambiguous on this issue. For too long Guzman shirked his obligation and impeded enforcement at the urging of businessmen who were suggesting, in effect, that the BMV permit people without legally required ID to use the POA form to register vehicles they may not have been licensed to drive.

Worse, Guzman persisted with delays or inaction even as serious problems associated with dubious POA registrations became more apparent. BMV investigators and law enforcement officials in Ohio and elsewhere reported more and more instances of unreliable vehicle registrations impeding investigations of everything from routine traffic crashes to felony crimes (Exhibit 19).

Guzman's credibility on the POA issue also was seriously damaged when his adult son was sued in September 2008, in an unrelated dispute, and retained Mas as his attorney. Director Guzman created at least the appearance of impropriety when he inexplicably prolonged the moratorium while Mas, a long-time friend who was a leading critic of POA reforms, helped Guzman's son negotiate a settlement in the lawsuit. Guzman said he gave Mas a personal check to cover the settlement amount and his son reimbursed him in cash. As for whether or how much his son paid Mas to represent him, Guzman said he did not know. Engel, who also served as the chief ethics officer for DPS, said he would have preferred knowing about this arrangement as he oversaw efforts to rewrite new POA procedures. Guzman might have mitigated the potential for

conflict by disclosing the relationship, or by clearly articulating his reasons for postponing new POA procedures a year longer than expected. Guzman did neither.

Engel told our office that he advised Guzman, in no uncertain terms beginning in January 2008 and again in August 2008, that the law required an acceptable ID number for all vehicle registrations, including POA registrations. For his part, Guzman claims he received conflicting interpretations from the DPS legal staff.

In fact, most of the delays in implementing the new requirements were conveyed to BMV not directly by Guzman, but by Engel and his legal staff, typically for unspecified reasons. This at times gave the appearance that Engel shared Guzman's unwillingness to confront POA abuses, or was at least wavering. For example, Guldin, who reported to Engel, in December 2007 wrote unequivocally that the BMV had authority to tighten POA requirements; then he appeared to be backtracking in February 2009, emphasizing that a POA crackdown was not the intent of the law (Exhibit 7). Even at the end of the process in May 2009, Engel seemed uneasy about signing off on the new procedures, with comments such as "suggested substantial revision" and "neither approve or disapprove" scrawled next to his signature (Exhibit 20). Engel and Guldin deny having any misgivings about tightening POA procedures. Engel said Guzman simply did not heed his legal advice on the matter, leaving Engel and others searching for an elusive middle ground that satisfied both the law and Guzman.

Yet Engel was clearly concerned about being blamed for the delays. During our investigation, Engel e-mailed Rankin and asked him to stress to OIG investigators that the fault for the delays "does not lie with me or my staff" (Exhibit 21). Engel also discussed it with Rankin by phone, and even suggested that Rankin should consider returning as Registrar. Engel, in his interview with this office, acknowledged the October 30, 2009 conversation, but insisted he reached out to Rankin in good faith and to help this office arrive at the truth. Rankin said Engel's e-mail misrepresented his opinion about Engel's role in the delays. Whatever the case, and whatever Engel's motives, his phone call and e-mail to Rankin in an effort to steer his testimony appeared highly inappropriate.

There is no dispute that it was Guzman who insisted on final approval of the new POA procedures. DPS and BMV officials clearly shared the blame for not being prepared with new POA procedures when the new identification requirements took effect in September 2007. Likewise, DPS and BMV shared responsibility in the ensuing months, as officials belatedly grappled with the law's implications for POA registrations – although it was Guzman himself who intervened and halted implementation in January 2008.

By imposing the moratorium on July 31, 2008, Guzman assumed responsibility for the next year of delays. This responsibility falls on him not just by virtue of his position as director, but because he personally halted implementation, despite the law and public safety concerns. If Guzman ever detailed his concerns or reasons for prolonging the moratorium for a year, those explanations are conspicuously absent from the thousands of pages of memos and e-mails reviewed by this office. To this day, Guzman fails to articulate his reasons with any specificity. Guzman's adamant involvement in the process, without providing meaningful guidance or direction, left everyone scrambling blindly.

Pressure to implement new procedures was growing inside and outside DPS. On July 16, 2009, Rankin resigned as a result of his disagreements with Guzman on POA and numerous other issues. On August 20, 2009, a reporter for *The Columbus Dispatch* requested records from DPS regarding POA procedures. The next day, the BMV sent a notice to all BMV and deputy registrar locations announcing that the new ID rules would take effect August 24, 2009.

The BMV and deputy registrars were instructed to use old POA forms while waiting for the new forms to be delivered (Exhibit 22). Clerks were told to mark the driver's license or state ID number in the spot once reserved solely for a Social Security number. This sensible approach suggests the new law could have been enforced in this manner from day one, while officials updated and improved upon the form and procedures as necessary.

Accordingly, we find reasonable cause to believe wrongful acts, omissions and an appearance of impropriety occurred in this instance.

IV. CONSEQUENCES OF THE DELAYS

Thousands of vehicles were registered improperly

Delays in enforcing the new ID requirements not only left open a loophole for improper vehicle registrations, the delays fueled a surge of them. Our investigation found that what had been a troubling, if relatively infrequent, occurrence of people registering vehicles without proper ID became a phenomenon (Exhibit 23). The day Director Guzman announced a two-week moratorium on enforcement – on July 31, 2008 – the BMV received more registrations lacking an acceptable ID number than on any other day before or since.

By the time the BMV implemented the new POA procedures in August 2009, there were more than 44,000 vehicles in Ohio registered to people without an acceptable ID number in either the BMV's registration database or in its driver's license database. In other words, the names and addresses on these vehicle registrations were unverified and unverifiable. Of the 44,000 unverified registrations, more than 30,000 had been issued during the period when the law was effective but not enforced for POA registrations.

We found that a sizable number of these suspect registrations – more than 13,000 – were submitted to the BMV in batches of four or more at a time. In fact, nearly 200 transactions involved a runner submitting anywhere from 10 to 30 registration applications without proper identification.

The pace picked up in the final months leading up to enforcement, and was highly localized. Franklin County accounted for more than 21,500, or 56 percent, of the registrations lacking an acceptable ID number. Hamilton County was a distant second with more than 4,700, or 13 percent.

DPS and BMV officials were well aware of what was happening. Yet Guzman could not be persuaded to lift the moratorium. The ongoing resistance from DPS left BMV employees feeling powerless, even in confronting blatant POA abuses. On the first day of the moratorium, Jamie

Bryan, the BMV's administrator for support services, e-mailed DPS legal counsel with concerns about POA runners changing dates of birth on registrations to extend the expiration date (Exhibit 24). Bryan, who oversaw the vehicle registration section, argued in her e-mail that the BMV had authority to ask for documentation before changing birth dates, but sought assurances. Five days later, Engel responded in an e-mail that "I agree in principal" but that since this was a POA issue "we should involve the Director and he should make the call." What Bryan described was not only a POA issue, it was a potential crime. And confronted with evidence of a crime, Engel and the Director not only failed to follow up with Bryan, they also failed to notify the Ohio State Highway Patrol for investigation.

Also, in the wake of Guzman's moratorium, BMV investigators examined 180 registrations obtained via POA forms by 10 different runners over a two-week period in Franklin County. Many of the registrations were blatantly fraudulent, and none could be verified. In a two-page, follow-up memo to Guzman dated January 27, 2009, Rankin and BMV investigators stressed that the new POA procedures would "not have any negative impacts on lawful residents of Ohio" (Exhibit 25). Then in February 2009, investigators complained about packages of Ohio license plates being delivered twice a week to a house in another state that was under surveillance for suspected criminal activity (Exhibit 26).

Yet the Guzman administration failed throughout the process to acknowledge and respond appropriately to POA abuses, in spite of overwhelming evidence. Even after the new procedures were enacted, in September 2009, the Guzman administration suggested that critics were overstating the seriousness of POA abuses. A three-page memo on DPS letterhead, titled "Myths vs. Facts: Vehicle Registration Power of Attorney Policy," was widely distributed but was unsigned and undated (Exhibit 27). The memo responds to criticisms in a September 13, 2009 newspaper article and attempts to minimize the POA problem. The memo also tries to shift blame for the delays from Guzman to the BMV. Both Guzman and Engel tried to downplay their contributions to the memo during an interview with this office, but an e-mail from DPS communications at the time noted that the memo was "developed by DPS Legal and BMV, per HG's request" (Exhibit 28). Guzman also was quoted by *The (Youngstown) Vindicator*, stressing that the POA problem preceded his tenure as director (Exhibit 29). However, the law

authorizing the reforms was not adopted until he was director – after which Guzman presided over two years of delays in implementing them.

A flood of registrations were processed without proper identification required by HB 67. Not surprisingly, those registrations often contained fraudulent or inaccurate information, including phony addresses. This office examined the paperwork for a random sample of registrations lacking an acceptable ID number and found that 86 percent were processed via POA. Based on the sample size, this result is accurate within plus or minus 5 percent, meaning POAs accounted for anywhere from 81 percent to 91 percent of the faulty registrations. All but a handful involved vehicle owners with Latino surnames.

After Guzman resigned in September 2009, new DPS Director Cathy Collins-Taylor immediately took steps to correct the problem. DPS mailed notices to the owners of about 47,000 vehicles registered without proper identification. The owners were given 60 days to verify their identity or face cancellation of their license plates (Exhibit 30). This strategy had been suggested 18 months earlier but never was approved (Exhibit 31). The results were insightful. Thousands of notices were returned as undeliverable; dozens of vehicle owners listed the same apartment as their address. Of the more than 47,000 targeted registrations, less than 6 percent were verified by owners who came forward with proper identification by December 1, 2009 (Exhibit 32).

Unscrupulous middlemen exploited immigrants

In the hours immediately before and after Director Guzman declared a moratorium on vehicle registration reforms, two Latino advocates separately sent Guzman a warning. They pointed out that the fight against POA reforms – seemingly a well-intentioned crusade to help undocumented immigrants keep valid license plates – might be a campaign led by self-interested businessmen who were taking advantage of immigrants (Exhibit 33).

These e-mails highlighted a forgotten victim of DPS's failures: the vulnerable immigrants who purportedly benefitted from the POA loopholes. In fact, undocumented immigrants became easy

prey for unscrupulous profiteers who were allowed by DPS to continue manipulating the vehicle registration process.

An unseemly cottage industry flourished and advertised widely in Spanish-language publications. Immigrants paid “runners” a fee many times over the actual cost of the registration. The runners worked with small car dealerships that catered to Latinos; indeed, the dealers themselves and their family members sometimes worked as runners. Together, the runners and car dealers helped immigrants finance, purchase and register vehicles they may not have had the licenses to legally drive – thus making the immigrants vulnerable to criminal charges and possible deportation. In short, no one stood to benefit from a lax registration system that was rife with unreliable information, except profiteers and criminals.

On the surface, the POA debate was framed as a struggle between law enforcement officials who wanted to strictly enforce the law, and human rights activists who wanted to protect vulnerable immigrants. But this was an overly simplistic analysis. Even among Latino advocates, there was concern that runners and car dealers who were supposedly helping immigrants were in fact exploiting them.

One advocate warned Guzman shortly before the July 31, 2008 meeting that “some of the folks you are meeting they are not always very candid and some are very self serving...charging over \$100 to get plates for folks...some as high as 200 at one point.” Another advocate e-mailed Guzman the day after the meeting: “Unfortunately there have been many reports about people who are in a position to purchase plates etc. taking advantage of those who could not obtain the necessary items to drive legally. In other words if tags cost \$40.00 they were being charged \$300.00 by some of the dealers” (Exhibit 33).

BMV investigators identified more than 600 vehicle registrations processed by 47 runners in Franklin County during the first two weeks of the moratorium. Investigators attempted to validate 180 of these, but none could be authenticated. The investigators personally and immediately alerted Guzman that the opponents of POA reforms who attended his July 31, 2008 meeting included some of the busiest runners. Guzman, in an interview with this office,

acknowledged receiving the warnings. But Guzman never confronted the car dealers or contemplated cutting off discussions with them, despite their alleged profiteering through use of the POA forms. Guzman said opponents were raising legitimate questions.

Asked about the follow-up meeting August 21, 2008 requested by Guzman, neither Engel nor Vitale could recall who else besides Mas attended, even after being given the opportunity to consult their files and notes. The DPS visitor log shows Mas signed in that day and signed out 50 minutes later with three people, including car dealers Enrique Robledo and German Cabrera, both of whom also attended the July 31, 2008 meeting hosted by Guzman. Robledo's family members were among the runners identified by BMV investigators, and Robledo's daughter, Sol Lopez, was a BMV clerk (Exhibit 34). Asked about Robledo, Guzman was initially less than forthcoming: "I think his daughter works – if it's the same guy – I think his daughter works down at the Bureau," he said in an interview with this office. Pressed further, Guzman acknowledged that he was friendly with Lopez and had traveled with her on at least one occasion to meet with a Cincinnati-area Latino community group. In any case, Guzman said the interconnections were irrelevant to his decision to declare and keep extending the moratorium.

Five months into the moratorium, BMV investigators reminded Guzman that postponing POA reforms was allowing runners to charge immigrants usurious rates for vehicle registrations. In a January 27, 2009 memo to Guzman, they noted that "one of the 'business community representatives' who had visited your office had grossed an estimated \$16,000.00 in fees" processing registrations during the first two weeks of the moratorium (Exhibit 25).

Guzman and top DPS lawyers, by their own admission, never questioned the businessmen they met with about these allegations. Rather, Guzman took the complaints of these businessmen at face value, and postponed new POA procedures for more than a year. Guzman in effect gave the complaints of the businessmen more credibility than those of BMV investigators and law enforcement officers, out of all proportion to the information available at the time.

DPS exposed to litigation

Guzman's failure to implement the new POA procedures in a timely manner burdened his successor with the task of identifying and cancelling thousands of invalid registrations, and exposed DPS to a lawsuit. On October 8, 2009, DPS began mailing notices to the owners of 47,000 vehicles registered without an acceptable ID number (Exhibit 30). The vehicle owners were given 60 days to provide a proper identification number and pay a \$3.50 fee. Otherwise, their registrations would be cancelled.

The initiative was an effort by DPS Director Cathy Collins-Taylor to verify the identities of the vehicle owners and belatedly comply with the law, following Guzman's resignation. The mailings cost \$34,604 in postage alone. On November 24, 2009, the League of United Latin American Citizens ("LULAC") sued and sought an injunction to halt this initiative. The Latino advocacy group argued, in part, that the "assertion that the Social Security number is required by law ignores previous BMV practice that regularly approved motor vehicle registration applications that did not contain Social Security numbers" (Exhibit 35). In other words, DPS had followed its own procedures in issuing these registrations.

By the time Guzman finally authorized changing the procedures, the law that had prompted the new procedures was nearly two years old. The prolonged delays gave a misimpression that the new ID provisions were not clear-cut and legally required, but were somehow subjective and open to interpretation. DPS had seemed to be suddenly imposing the new requirements of its own accord and discretion. As a result, DPS under Guzman's directorship sent mixed signals to the opponents of the legally required reforms, exposing DPS to legal challenges.

In September 2009, after imposing the new procedures, DPS further clouded the issue with the "Myths vs. Facts" memo it circulated. The memo stresses that the new ID requirements are the result of BMV policy changes, not a legal mandate. "*These changes were not then, nor are they now, legislatively mandated,*" according to the memo (emphasis theirs). But this assertion amounts to a rhetorical sleight of hand. While the BMV was implementing procedural changes, those changes were devised specifically to comply with a new law that was straightforward and

explicit: Registering a vehicle requires a state driver's license or ID, or a Social Security number, or a business Tax Identification Number.

When LULAC sued, its arguments sounded remarkably like DPS's rhetoric up until that point. And DPS, with Guzman gone, suddenly appeared to be doing an about-face, arguing that the registration changes were required by law. "If LULAC's members do not want to provide the required identifiers, or cannot provide them because they are not residents or temporary residents of Ohio, their grievance is not with the BMV, but rather with the legislature," DPS argued in its response to the lawsuit (Exhibit 36). DPS, after publicly arguing in September 2009 that the changes were not legislatively mandated, was correctly noting three months later that DPS had no choice but to follow the law.

DPS prevailed in court on LULAC's request for a temporary injunction. On December 7, 2009, a magistrate noted: "The State of Ohio has a compelling interest in verifying that an individual who registers a motor vehicle with the BMV is, in fact, the legal owner of that vehicle" (Exhibit 37). Guzman's failure to recognize this responsibility left his successor the task of cancelling thousands of registrations that had been issued contrary to the law, and exposed DPS to a lawsuit.

V. CONCLUSION

While it was never the intent of HB 67 to specifically target vehicle registrations obtained through the use of a Power of Attorney ("POA"), it was intended to improve the process of registering a vehicle in the state of Ohio. DPS and the BMV should have had new POA policies and procedures in place by the effective date in September 2007. Both DPS and its subordinate agency, the BMV, played an integral part in the development of HB 67 and therefore the new law should have come as no surprise. Both share the responsibility of failing to implement new procedures immediately following the effective date.

However, the burden of that responsibility had shifted solely to former Director Henry Guzman by the time he declared a moratorium on July 31, 2008. His lack of action enabled a criminal element to continue to provide blatantly fraudulent and inaccurate information to register

thousands of vehicles in the state of Ohio. And, his self-imposed moratorium allowed unscrupulous middlemen to continue exploiting undocumented immigrants within Ohio's ever expanding Latino community. Ironically, the most vocal opponents of the new requirements were businessmen who professed to be protecting immigrants. Both Guzman and these businessmen now can share responsibility for the victimization.

Repeatedly, Guzman was warned of POA abuses by the Registrar, BMV investigators and others in the law enforcement community. He was counseled by his own legal staff of the necessity of implementing the new requirements to comply with the law. And, he was sent cautionary e-mails from members of the Latino community again warning him of the ulterior motives of some of those who attended the July 31, 2008 meeting arranged by Guzman. Guzman failed to heed these warnings and in doing so not only imperiled public safety, but also burdened his successor with the task of identifying and cancelling thousands of improper registrations, exposing the agency to civil litigation and considerable expense in the process.

During the two-year impasse, thousands of plates were issued contrary to the law, and exploitation and criminal activities were brought to Guzman's attention to no avail. At some point, somebody within the DPS administration should have consulted with an outside agency to help intercede with the director, and provide an independent review. At the very least, the Ohio State Highway Patrol should have been notified of the suspected criminal activities.

VI. RECOMMENDATIONS

Based on the results of our investigation, we are making the following recommendations and request that DPS respond to this office within sixty days with a plan on how these recommendations will be implemented:

1. The BMV should create a mechanism for identifying and tracking POA registrations. This could involve adding to the BMV computer system a field of information to indicate whether the registration was processed via a POA form, and, if practicable, note the name of the person delivering the registration.

2. We recommend DPS tighten the vehicle registration process further, seeking legislative or rules changes if necessary. In particular, the BMV should devise procedures for corroborating information provided by people who register a vehicle using a Tax Identification Number, with the goal of discouraging manipulations.

3. DPS should develop and implement written policies and procedures that require all allegations of criminal conduct be referred to the criminal investigative branch of Ohio State Highway Patrol or other appropriate authority.

VII. REFERRALS

During the course of our investigation, we found instances of potentially criminal behavior related to vehicle registrations and POA. We forwarded our concerns to the Ohio State Highway Patrol and will continue to assist the Patrol and BMV investigators in their ongoing criminal probe. We also forwarded a copy of this report to the Franklin County Prosecutor's Office and the Disciplinary Counsel of the Ohio Supreme Court for their review.