

**STATE OF
COLORADO
Department of State**

1700 Broadway
Suite 200
Denver, CO 80290



Scott Gessler
Secretary of State

Judd Choate
Director, Elections Division

**COMPARISON OF COLORADO'S VOTER ROLLS WITH
DEPARTMENT OF REVENUE NON-CITIZEN RECORDS
MARCH 8, 2011**

The Department of State recently compared Colorado's voter registration database with driver's license records to determine whether non-citizens are registered to vote in Colorado. Starting in August, 2006, people seeking a Colorado driver's license have been required to show proof of legal presence. Accordingly, in 2006 the Department of Revenue began recording the type of document that established an applicant's legal presence in Colorado. The Department of State requested these records from the Department of Revenue this January and compared them to the voter rolls.

The comparison identified 11,805 individuals who (1) were non-citizens at the time they obtained a driver's license, and (2) are registered to vote. As discussed below, the Department of State is nearly certain that 106 individuals are improperly registered to vote. And potentially many of the remaining 11,805 individuals are also improperly registered to vote. It is impossible to provide a precise number, however, because voter registration data are inconclusive.

A. The Department of Revenue driver's license database collects and maintains information regarding citizenship status.

Since 2006, Colorado has required an individual to show documentation proving lawful presence when obtaining a driver's license or state identification card. *See §§ 42-2-107 and 42-2-302, C.R.S. and 1 CCR 204-13.* When this policy became law, the Department of Revenue began recording the type of document that established legal residence. For U.S. citizens seeking a Colorado driver's license, required documentation includes a passport, birth certificate, social security card, driver's license from Colorado, or driver's license from another U.S. state or territory that requires legal presence. For non-U.S. citizens, proof of legal residence means a valid immigration document. The following three documents serve as proof of lawful presence for a non-citizen seeking a driver's license in the state of Colorado:

Employment Authorization Document (EAD Form I-766) - Commonly called a work permit, this document authorizes an alien to work legally in the U.S. for a specific period of time, normally ranging from a few months to a few years.

United States Permanent Resident Card (USCIS Form I-551) - Commonly called a green card, this document reflects permanent resident status for non-citizens. Lawful permanent residents may apply for naturalization after five years of residency. This period is shortened to

three years if the non-citizen is married to a U.S. citizen, or four years if permanent residency was received through asylum.

INS Arrival/Departure Record (USCIC Form I-94) - Used by Customs and Border Patrol, this document must be completed at the time of entry to the U.S. by foreign citizens who are not permanent residents and who are being admitted into the U.S. for 90 days or less.

B. The Department of State compared the Department of Revenue's non-citizen records with the voter rolls.

The Department of Revenue driver's license and identification card database contains over 3.7 million active driver's license records and 660,000 identification card records. These numbers include both current and past Colorado residents who have obtained a driver's license or state identification card.

The Department of Revenue provided the Department of State all records indicating the document that a non-citizen presented to prove lawful presence. From August 2006 until mid-February 2011, 245,878 non-citizen documents were used to obtain a driver's license or identification card. But this number contains duplicate records, because some individuals who obtained or updated a license provided more than one type of immigration document. When the Department of State culled the data to remove duplicate records, it determined that the 245,878 records were associated with 211,200 unique driver's licenses.

The 211,200 non-citizens represent only a fraction of all driver's licenses, because the number (1) only includes new or updated licenses or identification cards after August of 2006, and (2) does not include applicants who provided another state driver's license.

The Department of State compared the 245,878 records against the statewide voter registration database and initially matched 16,297 records. But again, this number included duplicates, and the initial analysis produced a separate list of license numbers for each document type. For example, a non-citizen appeared twice if he or she initially provided a work visa and then later showed a green card.

After removing all duplicates, the 16,297 records produced 11,805 unique registrants currently on the voter registration rolls. This represents 5.6% of the 211,200 non-citizens in the Department of Revenue database. As discussed below, the data are incomplete and this number does not prove that all 11,805 non-citizens were registered improperly.

The following is a breakdown by document type of the 11,805 identified records.

Employment Authorization Document - The Department of Revenue provided 33,561 records where the applicant provided an Employment Authorization Document as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 1,338 of the individuals are registered to vote.

United States Permanent Resident Card - The Department of Revenue provided 139,379 records where the applicant provided a Permanent Resident Card as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 10,048 individuals are registered to vote.

INS Arrival/Departure Record - The Department of Revenue provided 69,023 records where the applicant provided an INS Arrival/Departure Record as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 419 individuals are registered to vote.

The above information is summarized in the table below:

**Non-citizen applicants for driver's license (or identification card)
who are also registered to vote**

	Type of Document Provided by Non-Citizens Seeking a Driver's License			
	Employment Authorization Document	INS Arrival / Departure Record	US Permanent Resident Card	Totals
Individuals who presented non-citizen credential*	33,561	69,023	139,379	211,200
Individuals listed on the voter rolls	1,338	419	10,048	11,805
Individuals who voted in 2010 General	603	130	4,214	4,947

*The sum of this row is greater than the reported total because some people provided more than one type of non-citizen document and appear in the data more than once. There are 211,200 unique individuals who used a non-citizen credential to obtain or update a driver's license or voter identification card.

C. Some of the 11,805 individuals almost certainly were not citizens at the time they registered to vote.

When reviewing the 11,805 individuals who (1) were non-citizens at the time they obtained driver's licenses and (2) are registered to vote, the Department of State noted the voter registration date and drew certain inferences by comparing the date a person registered to vote with the date the person applied for or updated a driver's license.

First, 106 individuals presented the Department of Revenue with a non-citizen document after the date they registered to vote. It is nearly certain that these 106 non-citizens are improperly registered to vote, because they were registered on or before the day they applied for a license using a non-citizenship document.

Second, 11,699 individuals provided the Department of Revenue with a non-citizen document and later registered to vote. In each case, the voter registration date took place after the

license application date. The Department of State does not currently have the data to determine with certainty the person’s citizenship status at the time of registration. That said, two explanations likely cover the vast majority of cases: either (1) the person provided a non-citizen document to apply for a license but later became a citizen and legally registered to vote or (2) the person remained a non-citizen and registered to vote, perhaps through a state agency or voter registration drive. Because the Department of State does not have access to a database that contains the date that non-citizens become naturalized citizens, it cannot determine the exact number of improper registrants.

The Department of State must nonetheless conclude that some of the 11,699 were registered to vote prior to obtaining U.S. citizenship, for three reasons. First, most green card holders must wait three to five years before they may apply for citizenship, and the Department of Revenue data only date back to 2006. Based on this time range, it seems unlikely that all 10,048 green card holders have become citizens since the time they registered.

Second, the other two types of non-citizen residents – the 1,338 holding an employment authorization document and the 419 holding an INS arrival/departure record – were not eligible to become citizens until they first converted to green card status. In short, the individuals who presented an Employment Authorization Document or an INS Arrival/Departure Record still had a long road to citizenship, including at least three years as a green card holder. By contrast, green card holders were much more likely to have become citizens since 2006.

Third, the Department of State’s own database shows that over the last two years 154 people initially registered to vote as non-citizens but then voluntarily withdrew their registrations. These instances of self-reporting likely provide a glimpse at a larger problem where non-citizens accidentally become registered through a mistake made by themselves or by someone else.

D. Some of the 4,947 individuals almost certainly were not citizens at the time they voted.

Of the 11,805 people who showed a non-citizen credential when they received their driver’s licenses, 4,947 – or 41.9% -- voted in the 2010 general election. By comparison, 55.5% of all registered voters turned out to vote in the 2010 election, as noted in the table below:

2010 turnout of all registered voters compared to voters who showed non-citizen documents to obtain a driver’s license

	Registered to Vote	Voted in 2010 General Election	Percentage of Registered
All registered voters	3,293,942	1,828,323	55.5%
Registered voters who presented non-citizen credentials to obtain driver’s license	11,805	4,947	41.9%

As noted earlier, The Department of State does not know if a person became a citizen after obtaining a driver's license or identification card. Similarly, a non-citizen may have been improperly registered to vote, but may have later become a citizen and legally voted. For the reasons discussed above, however, it is likely that many of the 4,947 voters were not citizens when they cast their vote in 2010.

E. Additional data will enable the Department of State to better determine the scope of non-citizen voter registrations.

The above analysis draws tentative conclusions based on a small fraction of driver's license records that contain information about a person's citizenship status. There exist, however, other state and federal databases that contain relevant information related to citizenship status. The following databases may provide additional, valuable tools to better understand the citizenship status of persons listed in the voter registration database:

The Department of Homeland Security - The Department of Homeland Security hosts the Systemic Alien Verification for Entitlements (SAVE) program. The Department of State currently uses this tool to research residence and citizenship information provided for notary applications. The Department of State is in the process of determining whether the SAVE program tool may be used for the purposes of verifying citizenship as it relates to the voter rolls.

State and Federal Courts - The state and federal court systems create jury pools using the voter rolls and Department of Revenue records. When a non-citizen receives a juror summons he or she can respond by returning the summons with a statement indicating that he or she is not a citizen. This information is tracked in the court jury database. A comparison of the juror recusal information and the voter rolls would aid with identifying non-citizens on the voter rolls.

Out-of-State Driver's License Records - The Department of Revenue accepts out-of-state driver's licenses as proof of lawful presence if the issuing state also requires lawful presence. Forty-three states, including Colorado and the District of Columbia, currently require proof of lawful presence before issuing a driver's license. Currently the Department of Revenue does not record the type of document provided to obtain a license in another state. If this information were shared between states it could increase the Department of State's ability to maintain accurate voter rolls. For example, the number of non-citizens identified in this analysis may have been greater had information from all 43 lawful presence states been available.

F. Absent the ability to administratively resolve citizenship disputes, the Department of State may be required to refer these questions to law enforcement authorities.

The Department of State is responsible for maintaining the statewide voter registration database. To fulfill this responsibility it periodically requests information from other governmental agencies. For example, it obtains information from the Department of Corrections and Department of Public Health in order to cancel or archive felons and deceased electors.

Currently, when the Department of State finds evidence of potential registration or vote fraud during the normal course of business it refers those cases to local district attorneys or to the

Attorney General's office for investigation and possible prosecution. The analysis here has identified 11,805 individuals who may be improperly registered to vote.

Criminal enforcement is not the best way to resolve citizenship issues. First, the large number of potential non-citizens may make investigation and possible prosecution both inefficient and prohibitively expensive. Thus, an administrative remedy will be more efficient and conserve law enforcement resources.

Second, criminal prosecution requires the intent to violate the law, but no intentional violation may exist in many cases. Indeed, non-citizens may appear on the voter rolls for many reasons, which can be grouped into three categories: (1) intentional violation of the law by the registrant; (2) mistake by the registrant; and (3) mistake by a governmental officer or voter registration drive.

A non-citizen might, of course, register to vote knowing that he or she is legally prohibited from doing so. In contrast, a non-citizen may unintentionally and mistakenly register to vote. For example, a green card holder may register to vote after receiving incorrect information that he or she may vote. Although some non-citizens may have intentionally violated the law, the Department of State currently lacks the ability to determine intent or willfulness.

Finally, clerical error, confusion, or some other administrative failure may cause an improper registration. For example, the Department of Revenue may incorrectly identify a citizen as a non-citizen. Or a county official may improperly input a registration form when the non-citizen correctly indicated that he or she was not a citizen. Indeed, the Department of State is aware of one such instance that resulted in deportation proceedings.

In these instances criminal prosecution is not appropriate. More authority to collect and analyze data and to administratively request verification would allow the Department of State to avoid criminal referrals in many -- perhaps most -- instances.

G. Summary

The Department of Revenue shows 211,200 people who used a non-citizen credential to obtain a driver's license or identification card. Comparing these names to the statewide voter database shows that 11,805 are currently registered to vote in Colorado. Of the 11,805 registrants, 4,214 voted in the 2010 election.

The Department of State is virtually certain that 106 of these non-citizens are improperly registered to vote and believes that many of the remaining 11,699 are improperly registered to vote. But it cannot accurately determine the number of non-citizens improperly registered to vote, nor can it determine the reasons for any improper registrations. In light of these uncertainties, additional data and the authority to administratively resolve citizenship questions will avoid expensive and perhaps ill-suited criminal investigations.