



Testimony of

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before the

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Subcommittee on Highways & Transit

*Examining the Future of
Transportation Network Companies
Challenges and Opportunities*

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Chair Norton, Ranking Member Davis, and members of the Committee, my name is Paul Miller and I serve as Legislative Counsel to The Transportation Alliance, which represents the interests of members in 250 cities on four continents, including taxicab, limousine, sedan, TNC, shuttle, brokers, paratransit and nonemergency medical fleets. The Transportation Alliance is the largest trade organization in the industry, with members operating over 100,000 vehicles and serving 900 million passengers per year.

Let me begin by saying our President, Terry O'Toole, very much wanted to have the opportunity to present his views in person to the Committee, but our trade association's 101st annual convention starts today. He has asked me to fill in for him, and to pass along his apologies for not being here to testify, and his thanks to you for bringing the concerns I am about to raise into a clarifying light.

Our industry has changed dramatically since the 2010 entrance of Transportation Network Companies (TNCs). The Transportation Alliance has never opposed competition. What we have opposed has been the special treatment afforded to these new companies.

In the early days of TNCs, the debate centered on whether TNCs were taxi companies or technology companies. From the beginning, our industry has had major concerns about the safety of TNC passengers due to a growing number of news reports highlighting assaults against passengers.

Since 2010, The Transportation Alliance has put passenger safety on its priority list due to the growing trend of incidents against passengers by TNC drivers. We started by launching "Who's Driving You?", a public safety campaign. This campaign [tabulated news articles](#) alleging 395 sexual assaults, 102 physical assaults and 22 kidnappings perpetrated by Uber and Lyft drivers from July 2013 to August 2018. Because these incidents were discovered among news stories, rather than by scouring police reports, we firmly believe the actual number of victims to be substantially higher since, as we know, sexual assault cases are always tragically underreported.

There is a growing chorus among lawmakers questioning the safety standards of these companies. Just last week, Sen. Richard Blumenthal held a press conference to call for Uber and Lyft to institute fingerprint-based background checks on their drivers. His call for immediate action came on the heels of sexual assault crimes committed by Uber and Lyft drivers in Connecticut this year. In one case, a convicted felon was allowed to slip through Uber's background check was [charged with sexually assaulting a young woman](#) riding with him. That same month, a former Uber driver, later hired by Lyft, was charged with [sexually assaulting an intoxicated female passenger](#).

As a backdrop to tragic cases such as these, the process of becoming a public company has brought additional light the real problems with Uber and Lyft's background checks, and the inferiority of their background-check process.

In its [form S-1 Registration Statement](#) submitted to the United States Securities and Exchange Commission prior to its May, 2019 initial public offering, Uber acknowledged: "...there have been allegations, including from regulators, legislators, prosecutors, taxicab owners, and consumers, that our background check process is insufficient or inadequate."

Most notably, Uber finally publicly admitted something the corporation had denied for years: "Although we administer certain qualification processes for users of the platform, including background checks on Drivers through third-party service providers, **these qualification processes and background checks may not expose all potentially relevant information and are limited in certain jurisdictions according to national and local laws, and our third-party service providers may fail to conduct such background checks adequately or disclose information that could be relevant to a determination of eligibility.**"

Uber and Lyft use the same background check company.

I applaud this Committee and its leadership for holding this important hearing today. We've all seen the stories in the media about the continued rise in assaults on passengers. These stories are tragic, yet in most cases avoidable.

On behalf of our professional transportation operators around the country, The Transportation Alliance continues to be concerned about the increased number of incidents against TNC passengers.

A few years ago, Uber and Lyft spent more than \$10 million to oppose fingerprint-based background checks in Austin, Texas. As we gather here today, Uber and Lyft are lobbying for less stringent statewide background checks in Oregon, despite the fact that the Eugene, Oregon police department just recently [identified](#) a convicted murderer, and a registered sex offender, driving for the ride-hailing companies. Neither of these people should ever have been able to pick up an unsuspecting passenger.

I'm here today to call on Congress to take immediate action to protect passengers. Every incident against a passenger impacts all of us, even if it's not our own company. When the public feels unsafe, it means they are less likely to use our services and will turn to other modes of transportation. Today, passengers have more transportation services than ever to get around—from the bus to the scooters flooding our streets. In the past, consumers had limited mobility options. Today, if you are unhappy with one mode, you can easily move to another.

Today we are seeing a rise in the number of harmful incidents involving TNC passengers. Part of the problem with this is that these incidents are hard to track. When a taxi driver is involved in a car accident or passenger assault, not only are the local police on-site, the local taxi commission is monitoring passenger safety too.

With TNCs, these same safeguards are not in place. If a TNC incident occurs, the police are likely to be involved, but the incident is not necessarily documented as TNC-related. If it weren't for the press, we might never learn about these tragic stories. The fact is: We are all here today because of *The Washington Post* article documenting the increasing number of incidents of

passengers harmed by TNC drivers, and because of Uber's and Lyft's callous regard for safety. These companies have made a cold, calculated decision that profit and propping up their valuations is more important than irrevocable harm committed against vulnerable passengers.

In short, Uber and Lyft regulate passenger safety themselves, and they do so while prioritizing profit as the recent *The Washington Post* article points out.

I'm here today because we need your help. For the past three years, The Transportation Alliance has been actively working to bring awareness to the issue of passenger safety and the need for action. Our industry wants action, but we want Congress to be deliberate about any actions it takes. Today our industry isn't regulated at the federal level, nor do we want to be. We believe our issues are better resolved at the state and local levels. Issues in the District of Columbia may be different than those in Illinois and we do not want a one-size-fits-all solution that isn't effective.

However, dangerous times call for immediate action. Where we do see Congress having an immediate role is with federal contracts awarded to for-hire transportation companies. The General Services Administration (GSA) is in the process of putting together a Request for Proposal (RFP), which is looking to outsource some of the Federal government's transportation needs to TNCs.

We believe fervently that any company awarded a federal transportation contract must have its drivers undergo a fingerprint-based background checks.

Congress needs to become involved in this immediately. No industry can weed out all bad actors, but Congress can put in place commonsense safeguards that go the extra mile to ensure we are doing everything we can to protect passengers who put their lives in our hands. That includes protecting federal workers, from Senators and Representatives to interns working in their first job in government. If you travel on federal business, someone has to be looking out for you, and making sure that you will arrive safely at your destination.

I know TNCs will argue fingerprint background checks are costly. TNCs will argue fingerprint background checks discriminate against some Americans. These are simply myths to avoid taking steps to ensure passengers are protected.

In most major cities in the United States, taxicab drivers are required to pass fingerprint-based criminal background checks conducted by state or local authorities. When a Live Scan fingerprint check is used, it can cost an applicant between \$60-\$90 dollars. The scan crosschecks the applicant through official Department of Justice and FBI databases.

The real reason TNCs oppose fingerprint background checks is because their business model depends on flooding the streets with as many drivers as possible, so that they can put their competition (taxis and limousines) out of business. This rush to put anyone behind the wheel, regardless of their criminal history, is the reason why we are seeing the increase in incidents against TNC passengers today.

In contrast to traditional for-hire vehicle companies, Uber and Lyft use private company background checks on applicant names and social security numbers. Time and time again, felons have been proven to be behind the wheel of Uber and Lyft vehicles owing to these inferior checks.

How inferior are the background checks performed by Uber and Lyft? A recent peer-reviewed study by a team of law enforcement experts, “One Standard for All,” found that name-based background checks are 43 times more likely to have errors than fingerprint-based checks (executive summary included in footnote below).¹

Conducting thorough criminal background checks on drivers who transport passengers is crucial to keeping passengers safe. Passengers are frequently alone with these drivers in their vehicle, and being exhausted, inebriated or traveling in a strange city renders them even more vulnerable.

Fingerprint-based checks are used to definitively identify applicants are who they claim to be. Instead, Uber’s entire application process, including background checks, is conducted online. Drivers do not appear in person and are not fingerprinted. Intentionally or not, this anonymity positions Uber as attractive to predators.

Even Hirease (now Accurate Background), the company Uber uses to run name-based checks on its drivers, acknowledged fingerprint-based criminal background checks are more secure because “fingerprinting helps uncover criminal history not discovered through traditional methods, offers extra protection to aid in meeting industry guidelines, and helps prevent fraud.”²

This is why The Transportation Alliance supports fingerprint-based criminal background checks conducted on all drivers of for-hire vehicles: taxicabs, limousines, Uber and Lyft.

Nationally, a number of organizations and Members of Congress have called for fingerprint-based criminal background checks. These organizations include the Boston Chapter of the National Organization for Women, the National Coalition Against Domestic Violence, and the National Women’s Coalition Against Violence & Exploitation.

We are not asking Congress to do something that’s unproven or something that will disrupt the industry. We are asking Congress to move judiciously by requiring that any contractor providing for-hire transportation services paid for in full or in part by the Federal government first be required to pass a fingerprint background check. This is a responsible first step toward ensuring all federal government employees are safe on official government business travel. We are confident this requirement will save lives.

What we’re proposing is a small and easily achievable step toward ensuring passengers in the service of the American government can trust that the vehicles they are getting into are safe. This simple step would provide the peace of mind that family members, mothers, fathers, grandparents, siblings, and friends need to believe their loved will arrive home safe every time.

¹ <http://www.utrc2.org/sites/default/files/pubs/Background%20Check%20Report.pdf>

² <http://www.hirease.com/fingerprinting/>

The numbers of TNC victims are astounding. According to a story done by CNN in April of 2018, the news outlet was able to verify that 103 Uber drivers had been accused of assault or abuse. Again, we believe the real numbers are much, much higher. This is an epidemic. Something needs to be done.

As the father of a daughter, these stories make me cringe. Take, for example, the woman in San Diego who was riding home in an Uber because she was intoxicated who woke to encounter her Uber driver assaulting her. When police searched the driver's home, they found videos of him abusing numerous other young teenage women. As a father, I cannot imagine what this young woman and her family went through.

Ask the numerous women in Boston who have been sexually assaulted by drivers, in horrific incidents covered by the Boston Globe. As one survivor said after realizing she had been charged for the Lyft ride given by her violent attacker, "They got paid for me being sexually assaulted. Lyft is profiting from this."

Or, in a tragedy that affected even the halls of this great institution, ask the parents of Samantha Josephson, the young college student from New Jersey, who was out with friends one night and decided to go home early. Samantha got into what she believed was her Uber ride only to realize too late the car she entered was a fake Uber. Unfortunately, this is a common occurrence because there are no significant marking requirements for these vehicles. Samantha got into the wrong vehicle and never made it home. Passengers entering the wrong TNC vehicle is a very real and common occurrence. Just ask some of your colleagues who may themselves (or their children) have had this experience.

Then there is the story of Anthony Horn who was sentenced to 30 years in prison for evading police. Horn was on parole for murder, yet he was allowed to drive for Uber. Or, as mentioned previously, the Oregon drivers for Uber and Lyft—one a convicted murderer and one a convicted sex offender.

The safety issues don't stop here. In 2016, Kyler Schmit, an Uber driver, tweeted: "I can't wait to shoot you in the face one by one." This tweet was sent to your colleague Senator Roy Blunt. What if he, or one of his colleagues, had inadvertently been assigned that driver?

I mention these stories because incidents like this can be avoided. No system is 100 percent foolproof. But ride-hailing companies, specifically Uber and Lyft, are not adhering to the most rigorous—but also most basic—safety standards. This cannot continue.

Thank you for the opportunity to testify before the Committee today and The Transportation Alliance looks forward to working with you on commonsense safety solutions that are good for the industry, our passengers, and your family and friends using our services.



ONE STANDARD FOR ALL

CRIMINAL BACKGROUND CHECKS FOR TAXICAB, FOR- HIRE, AND TRANSPORTATION NETWORK COMPANY (TNC) DRIVERS

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I. EXECUTIVE SUMMARY

“The rule and standard for all law-making is the public good.”

Locke, John. *A Letter about Toleration*. 1689.

In the last year or so, a nationwide discussion has been sparked regarding the accuracy, reliability, and adequacy of the public safety requirements that are imposed on for-hire vehicle (“FHV”) providers. Much of the debate has centered around whether the breadth and scope of driver vetting requirements imposed on drivers providing services through new transportation network companies, or “TNCs,” are comparable to those vetting requirements that have been established for traditional for-hire vehicle providers. This discussion is compounded by the fact that in several jurisdictions TNCs are operating “rogue,” or outside of the regulatory framework, which has many consumer rights advocates and law enforcement officials questioning whether TNCs are doing enough to protect the riding public.

The purpose of this report is to provide the reader with a comprehensive understanding of available background checks, and to then examine the types of checks in use to vet for-hire drivers in a variety of jurisdictions. Since there are differing standards for the types of checks in use by jurisdictions, there are legitimate concerns as to how these varying standards put the riding public at risk. Based on our review of the litigation and legal questions that have been raised concerning current practices for examining the criminal histories of driver-applicants, as well as the potential for disparate reporting of arrests of licensees, we seek to determine the “best practices” for ensuring that those who drive the public meet basic requirements in the local jurisdictions.

This study was prepared by several persons with a wide variety of experience in law enforcement, government, law, and technology. The effort was led by *Professor Pasqualino Russo, Esq.*, of *John Jay College of Criminal Justice, CUNY*, and *Professor Matthew W. Daus, Esq.*, Distinguished Lecturer at the University Transportation Research Center at the City College of New York, CUNY. Special recognition is made to *Frances Zelazny*, a subject matter expert with more than 15 years of experience in the biometrics field.

The study was presented and peer-reviewed by a blue ribbon panel of academics, criminalists, law enforcement officials, and security experts who reviewed the study, provided comments and, ultimately, provided their approval for the conclusions reached from the research. The panel includes: *Hon. Michael A. L. Balboni* (former Deputy Secretary for Public Safety for New York State, former New York State Senator and Chair of the New York State Senate Committee on Veterans, Homeland Security and Military Affairs); *Professor William J. DiVello* (former Executive Director, Office of Integrity and Oversight for the District of Columbia Chief Financial Officer (“CFO”), whose responsibilities included performing background investigations on CFO employees); *Professor Lawrence Kobilinsky* (Professor and Chairperson of the Department of Sciences, John Jay College of Criminal Justice); and *Professor Philip Zisman* (Executive Director, The Association of Inspectors General, former Inspector General for the City of Yonkers). Appendix J to this Report contains the biographies of the authors and the panelists.

The study begins with a primer concerning criminal background checks – describing for the novice what it means to “print” someone to providing details about the mechanism by which biometric “prints” come back to the entity requesting a background check. For the purposes of this discussion, it is important to differentiate between a “background check” and a “criminal background check.” A background check is typically a search of publicly-available records based on a person’s name, a process that may be done when applying for housing, employment, and, historically, for immigration purposes.

Further, this report provides a comparison between the types of checks, and identifies best practices for conducting these checks according to available studies and data, including the limits on legal access to government databases absent legislative changes allowing for an FBI-approved channeling agency.

Following this initial factual discussion, we set out to provide the reader with an overview of the regulatory standards and process for the background checks in a sampling of jurisdictions that: (1) have the same standards for all FHV drivers; (2) have different standards for TNC drivers; or (3) have “no standards” in that the TNCs self-regulate the driver background checks. The discussion herein offers a summary of the regulations involving driver

requirements, including criminal background and driver history checks. To date, TNC-specific regulations have been adopted in approximately twenty jurisdictions. We begin with a summary of the regulations imposed in New York City and Houston, Texas, where no special categories for TNCs exist and traditional FHV and TNCs are subject to the same body of regulations. We then discuss and compare the traditional FHV regulations with the new TNC regulations in California; Chicago, Illinois; Colorado; the District of Columbia; and Seattle, Washington. Finally, we analyze and describe the different standards that are set by the TNCs themselves in jurisdictions like Boston, Massachusetts and Miami-Dade County, Florida, where TNCs are operating entirely outside of the regulatory framework. A comparison is offered of the breadth, speed, and accuracy of the traditional FHV regulations with those incorporated into new TNC regulations, and those standards that are imposed by the TNCs themselves. For the reader's convenience, Appendix A to this report is a reference guide with tables setting forth the background check requirements in these various jurisdictions; Appendix B is a flow chart representing the biometric check process.

In the next section of the report, we explain and examine the controversy that has been ignited by new TNC regulations and the advocacy by TNCs for self-regulation. Also, a discussion is set forth identifying and explaining the legal risks, issues, litigation, and public safety concerns, insofar as TNC background checks may not be as efficient or thorough as the traditional standards imposed by local and state regulators on taxicab and limousine drivers. We examine the recent California lawsuit initiated against TNCs by a group of the state's district attorneys. We then discuss the civil rights lawsuits initiated by TNC drivers in Massachusetts. This discussion is followed with an analysis of the equal protection and public safety concerns that have been raised in a spate of lawsuits that have been brought against TNCs within the past two years.

The last section of the study sets forth the conclusions reached by the select group of panelists who have reviewed the available evidence and determined that the varying standards for background checks required by TNC jurisdictions, as well as the self-regulatory model, fall short of the regulatory requirement to protect the riding public. In sum, the use of biometrics by transportation regulators in the driver vetting process provides efficient, cost-effective, and comprehensive results for those regulators to determine which drivers meet the standards for

licensure. Further, equal standards are required, regardless of the class or type of license being sought by the driver-applicant.

In summary, the recommendations in this report are not intended in any way to discourage the use of private criminal background checks by private companies or employers in general, or as an additional voluntary measure on the part of transportation companies in addition to government administered biometric fingerprinting. Our recommended best practices for conducting criminal background checks and making licensing decisions for all for-hire ground transportation drivers (taxicabs, limousines, liveries, black cars, TNCs, etc.), are as follows:

- (1) **Government must make the licensing decision:** the government transportation regulator responsible for licensing drivers should set driver fitness licensing standards via rulemaking or legislative process, and should make the decisions on who to license or not to license – not private companies self-regulating and exclusively making these decisions without any oversight;
- (2) **Government (directly or through a certified channeling agency) is responsible for fingerprinting:** the government transportation regulator or a sister governmental agency should administer a biometric based fingerprint check. Private sector certified channeling agencies and fingerprint service providers can provide a biometric-based fingerprint
- (3) **Biometric fingerprints preferred:** the government transportation regulator should mandate the use of biometric fingerprints, not name checks that are less accurate;
- (4) **Electronic fingerprinting preferred:** the government transportation regulator (or other government agency or private vendor acting on its behalf) should preferably use electronic digital fingerprint impressions (Live Scan) instead of manual ink-based fingerprinting of applicants;
- (5) **Specific criminal convictions can be a bar to licensure:** legislation and/or rulemaking can identify certain criminal convictions that have a direct nexus to the act of driving for hire such that a conviction can serve as either a lifetime ban on obtaining a license, or for a specific number of years (e.g., driving

while intoxicated, or serious felonies such as homicide, rape and armed robbery);

- (6) **Licensing decisions should be based on specific standards that may apply to any misdemeanor or felony conviction:** legislation and/or regulations, in addition to licensing preclusion for specific crimes, should set forth specific overall fitness standards (such as “good moral character” or “protection of public health and safety”) so that government transportation regulators can possess and exercise their discretion to analyze and bar licensure for drivers convicted of any crime that may bear a nexus to the licensed activity when applying said standard;
- (7) **Compliance with anti-discrimination laws must take place:** those states that have anti-discrimination laws that set forth substantive criteria and procedures to evaluate and consider the nexus between prior convictions and licensed activity, as well as any evidence of rehabilitation, must be complied with, and transportation licensing decisions and processes must be tailored to accommodate such laws where applicable;
- (8) **Drivers should have the opportunity to be heard and present evidence as part of licensing procedures evaluating criminal convictions:** government transportation regulators should put into place a process so that license applicants for driver licenses may offer evidence as to whether they were or were not convicted of certain crimes in all instances, as well as evidence of rehabilitation or a lack of nexus to licensed activity where there is fitness decision discretion and (no licensing preclusion for specific crimes);
- (9) **Rap-back service preferred to monitor licensed driver conduct:** the government transportation regulator should store and maintain, in a highly secure and confidential manner within accepted industry and government protocols, criminal conviction information for license applicants who subsequently become licensed for the duration of such license term, and should be notified of the arrest and conviction of licensed drivers for any crimes committed so that the agency may elect to either suspend or seek revocation of such license following a conviction, fitness hearing or procedure, after an opportunity to be heard is presented;

- (10) **“One standard for all drivers” in conducting and evaluating criminal backgrounds of taxi, limo and TNCs applicants:** all laws and rules that prescribe or detail criminal background checks processes, methods and criteria or licensing standards, should apply equally to all licensed for-hire vehicle drivers (however state or local regulations or laws classify them – limousines, taxicabs, TNCs, liveries, black cars, etc...), to ensure equal protection of the law, and no arbitrary, capricious or conflicting standards without a rational basis.

In the event that state and local legislatures continue to pass legislation creating separate TNC licensing categories, it is recommended that the foregoing best regulatory practices be adhered to and consistent with the crafting of such legislation. Historically, the regulation of for-hire ground transportation has been conducted at the local level and sometimes at the state level. Given the sovereign rights of states (and by delegation, municipal governments) to regulate such services within their borders pursuant to promoting the public health, safety and welfare of its citizens, there will undoubtedly be discretion to develop different licensing standards, procedures, and approaches for drivers, and these recommended best practices preserve the ability for local and state regulators to protect passengers, pedestrians and other drivers in accordance with existing laws, and to provide for their own regulatory flexibility without compromising their regulatory structure.

This report does not seek to preclude or discourage private TNC, taxicab or limousine operators from going above and beyond these best practices to conduct driver name background checks, “in addition” to government fingerprinting, or to otherwise develop further standards for monitoring driver conduct and performance beyond basic safety and conduct regulations, or rap-back services. Extra levels of safety and accountability are beneficial to the public interest and should be encouraged and promoted.

It is our hope that as the controversy surrounding TNCs continues and regulatory issues are being debated, that this report will provide policymakers, the media, the riding and general public with both factual information and expert opinions as to best regulatory practices. This report’s goal is to enlighten the public about existing, new and proposed laws, pending litigation,

the purpose for and systems for regulating, the accuracy measure of various criminal conviction background checks, as well as the considered opinions of experts in the field with extensive experience and understanding of the issues from both a forensic, law enforcement and transportation perspective. It is our hope that there will be *“one better and safer standard for all drivers,”* as a result of our extensive research, work and analysis of this issue.