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## Si Se Puede: An Overview of State Initiatives Addressing the Urgent Need for Driver Licenses for Undocumented Immigrants and Why the Time for Change in Texas Is Now.

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## ARTICLES

### **¡SI SE PUEDE! AN OVERVIEW OF STATE INITIATIVES ADDRESSING THE URGENT NEED FOR DRIVER LICENSES FOR UNDOCUMENTED IMMIGRANTS AND WHY THE TIME FOR CHANGE IN TEXAS IS NOW**

**MARÍA D. CASTILLO\***

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\* J.D. St. Mary's University, 2015; B.A. Colgate University. As a first generation immigrant, I have always been passionate about the challenges faced by immigrants and giving them a voice in society. This article is the culmination of many months spent researching and discussing the repercussions of extending additional benefits to immigrants. I would like to thank my family for their support and encouragement along the way, and in particular I would like to thank my partner for the many insightful conversations on this topic.

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## I. INTRODUCTION

Every year thousands of teenagers nervously take driving tests all around the United States in what is considered an American rite of passage.<sup>1</sup> Receiving your first driver's license is symbolic of impending adulthood and the freedom and responsibilities that come with it. Driving has become an integral part of society; it is the preferred method of everyday transportation for most of us.<sup>2</sup> We drive to work, school, clinics, and everywhere in between. Naturally, most people residing in the United States, including undocumented immigrants, want to participate in this basic part of society, despite the cost and responsibility of operating a motor vehicle.<sup>3</sup>

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1. See U.S. DEP'T TRANSP. FED. HIGHWAY ADMIN., OUR NATION'S HIGHWAYS 25 (2011), available at <https://www.fhwa.dot.gov/policyinformation/pubs/hf/pl11028/onh2011.pdf> (reporting "in 2009, 87% of the driving-age population (age 16 and over) have a license [and there was] 685 drivers for every 1,000 residents").

2. See generally Sarah E. Hendricks, *Living in Car Culture Without a License*, NAT'L IMMIGR. LAW CTR. (Apr. 24, 2014), <http://www.immigrationpolicy.org/perspectives/living-car-culture-without-license> (discussing the importance of both drivers licenses and access to transportation as critical needs for being an affective member of the workforce, especially for immigrants).

3. See Gregory A. Odegaard, *A Yes or No Answer: A Plea to End the Oversimplification of the Debate on Licensing Aliens*, 24 J.L. & POL. 435, 448 (2008) (discussing the importance of driving as part of societal participation because in many parts of the United States it is almost impossible to function without a vehicle).

Every year hundreds of thousands of immigrants make the long and dangerous trek into the United States in search of the American dream, hoping for a better life with more freedom and opportunity.<sup>4</sup> Like residents of the United States, immigrants are anxious to reach the same milestones and make the best of their new life in this country. Despite the benefits of having licensed drivers on the road, millions of undocumented immigrants are excluded from applying for driver's licenses each year.<sup>5</sup> Even though the U.S. is a country of immigrants, today's undocumented immigrants are denied access to driver's licenses in all but ten states and the District of Columbia.<sup>6</sup>

In recent years several states have pushed to change this disparity, but opposition remains strong.<sup>7</sup> Often the opposition to granting driver's licenses to undocumented immigrants hinges on misplaced concerns over national security.<sup>8</sup> Texas remains a state unwilling to grant driver's licenses to undocumented immigrants,<sup>9</sup> while other states have slowly, but steadily, adopted more open policies.<sup>10</sup> This article argues that, as a bor-

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4. See generally Ray Walser et al., *The Human Tragedy of Illegal Immigration: Greater Efforts Needed to Combat Smuggling and Violence*, THE HERITAGE FOUND. (June 22, 2011), <http://www.heritage.org/research/reports/2011/06/the-human-tragedy-of-illegal-immigration-greater-efforts-needed-to-combat-smuggling-and-violence> (reporting on vast numbers of immigrants entering the country every year and the dangerous conditions they endure to cross the border).

5. See Miriam Jordon, *Illegal Immigrants Rush to Get Driver's Licenses in California*, WALL ST. J. (Jan. 7, 2015, 8:33 PM), <http://www.wsj.com/articles/illegal-immigrants-rush-to-get-drivers-licenses-in-california-1420663013> (discussing millions of undocumented immigrants that lack drivers licenses and those who expect to obtain them as laws in their states evolve).

6. See *Driver's Licenses Map: State Laws & Policies on Driver's Licenses for Immigrants*, NAT'L IMMIGR. LAW CTR., <http://www.nilc.org/driverlicenseemap.html> (last visited Feb. 10, 2015) (displaying states in which individuals can receive a license regardless of immigration status, along with states where illegal immigrants cannot receive a driver's license).

7. Paul L. Frantz, *Undocumented Workers: State Issuance of Driver Licenses Would Create a Constitutional Conundrum*, 18 GEO. IMMIGR. L.J. 505, 508 (2004) (asserting that "any state, California or elsewhere, granting driver licenses to illegal immigrants is an unconstitutional attempt by a state to regulate and control immigration").

8. See generally Alexander L. Mounts, *A Safer Nation?: How Driver's License Restrictions Hurt Immigrants and Noncitizens, Not Terrorists*, 37 IND. L. REV. 247, 247 (2003) (unpacking some of the reasoning behind limiting access to drivers licenses and how it relates to national security).

9. See Julian Aguilar, *Driver's Permit Proposals for Undocumented Immigrants Stalls*, TEX. TRIBUNE (May 17, 2013), <http://www.texastribune.org/2013/05/17/drivers-permits-undocumented-immigrants-derailed> (explaining how a proposed bill intending to address the issue of undocumented immigrants driving without licenses got "derailed" in the Texas senate).

10. See Scott Martelle, *Driver's licenses for immigrants here illegally clear key federal hurdle*, L.A. TIMES (Sept. 22, 2014, 10:31 AM), <http://www.latimes.com/opinion/opinion-la/>

der state and a state with one of the largest immigrant populations, it is a matter of practicality for Texas to grant driver's licenses to undocumented immigrants.

## II. HISTORY AND BACKGROUND OF IMMIGRATION TO THE UNITED STATES

### A. *The Beginning of Driver Licenses*

The issuance of driver's licenses to undocumented immigrants was not always so hotly contested.<sup>11</sup> Prior to the terror attacks against the United States on September 11, 2001, it was commonplace for undocumented immigrants to obtain a driver's license in most states.<sup>12</sup> In the years following, major changes have taken place concerning the way the United States approaches matters involving noncitizens.<sup>13</sup> However, even with the federal government becoming more involved in state matters, the issuance of driver's licenses has always been left to individual states.<sup>14</sup> Authority over driver licenses is derived from the Tenth Amendment of the U.S. Constitution, which grants states the powers not delegated to the federal government by the Constitution.<sup>15</sup>

Each state retains the power to create its own requirements for granting driver licenses. Prior to 1908, there were no driver license laws,<sup>16</sup> but

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la-ol-immigrants-drivers-licenses-20140922-story.html (discussing the approval of drivers licenses for illegal immigrants in the state of California); *see also* Odegaard, *supra* note 3, at 436–41 (comparing steps taken by the State of New York to approve licenses for undocumented immigrants and similar state driver's license initiatives in California).

11. *See* Odegaard, *supra* note 3, at 436–37 (noting that until 1995, New York's Department of Motor Vehicles did not require Social Security Numbers to receive a driver's license—and, after September 11th—an additional requirement was instituted compelling aliens to present documentation from the Department of Homeland Security proving lawful presence in the U.S.).

12. *See* Maria Pabon Lopez, *More Than a License to Drive: State Restrictions on the Use of Driver's Licenses by Noncitizens*, 29 S. ILL. U. L.J. 91, 91, 95, 96 (2004) (pointing out that prior to the disaster on September 11th, a number of states were moving in the opposite direction—looking to lift restrictions on the requirements to obtain a driver's license).

13. *See id.* at 91 (discussing how many states increased restrictions on obtaining a state driver's license once it was discovered that the 9/11 hijackers illegally obtained licenses of their own).

14. Mounts, *supra* note 8, at 249.

15. *See* U.S. CONST. amend. X (providing “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”).

16. *See* Albert Harberson, *Licensed by the states: Keeping driver's licenses in the hands of the states*, COUNCIL OF STATE GOVERNMENTS: STATE GOVERNMENT NEWS, Aug. 2002, at 20, 21, available at <http://www.csg.org/knowledgecenter/docs/infra/sgn0208LicensedByTheStates.pdf> (noting the historical fact that Rhode Island was the first state to set requirements for drivers, in 1908).

by 1954 every state had passed statutory provisions and regulations governing driving and the issuance of driver's licenses.<sup>17</sup> Although these regulations vary by state, they generally include a set of minimum requirements.<sup>18</sup> In Texas, the requirements are similar to most states, which includes a knowledge and driving test, proof of insurance, and, more notably, a Social Security Number or proof of lawful presence in the United States.<sup>19</sup>

Although outside the scope of this article, it is worth noting that defining "lawful presence" presents a real problem for DACA grantees.<sup>20</sup> Deferred Action for Childhood Arrivals, commonly referred to as "DACA," is a program promulgated by executive order on June 15, 2012.<sup>21</sup> Although DACA has a lot of benefits, it also created a category of people who are in the country lawfully, but have no immigration status.<sup>22</sup> Currently, most states, including Texas, recognize DACA grantees as meeting the requirements for "lawful presence,"<sup>23</sup> but some states have pushed back.<sup>24</sup>

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17. Mounts, *supra* note 8, at 249.

18. *See id.* at 250 (outlining minimal requirements often needed to acquire a driver's license—a minimum age, a physical ability requirement, practical driving competency, and knowledge of traffic laws).

19. *See Apply for a Texas Driver's License*, TEX. DEP'T PUB. SAFETY, <http://www.txdps.state.tx.us/driverlicense/applyforlicense.htm> (last visited Feb. 10, 2015) (informing citizens of the driver's license requirements in Texas, including documents that verify identity, Social Security Number, U.S. citizenship or lawful presence status, and Texas residency).

20. *See generally* Tung Sing Wong, *Branded to Drive: Obstacle Preemption of North Carolina Driver's Licenses for DACA Grantees*, 37 *HAMLIN L. REV.* 81 (2014) (examining the creation of the DACA program and its impact on obtaining a driver's license in North Carolina while incorporating analysis of federal statutes relating to driver's licenses).

21. *Id.* at 82.

22. *See id.* at 82–89 (comparing benefits of those approved for DACA—such as the ability to lawfully remain in the U.S., and a path obtaining work permits—to a major downside: DACA grantees remain in a state of legal limbo regarding immigration status).

23. *Access to Driver's Licenses for Immigrant Youth Granted DACA*, NAT'L IMMIGR. LAW CTR. (2014), available at <http://www.nilc.org/dacadriverslicenses2.html> (last updated Jan. 22, 2015); NAT'L IMMIGR. LAW CTR., *supra* note 6.

24. *See Are Individuals Granted Deferred Action for Childhood Arrivals (DACA) Policy Eligible for State Driver's Licenses?*, NAT'L IMMIGR. LAW CTR. 2–3 (2013), available at <http://www.nilc.org/dacadriverslicenses.html> (last updated Jun. 19, 2013) (stating Arizona and Nebraska will not issue driver's licenses to DACA recipients, and that North Carolina's governor stopped issuing driver's licenses to DACA grantees, for a short time, while waiting to see where the state attorney general stood on the issue); *see also* Dulce Matuz, *Arizona Dream Act Coalition, et al. v. Brewer*, ACLU (Jan. 22, 2015), <https://www.aclu.org/immigrants-rights/arizona-dream-act-coalition-et-al-v-brewer> (discussing a federal lawsuit filed in Arizona pertaining to the State's refusal to issue driver's licenses to DACA recipients).

### B. *The Immigrants*

Today when we hear the term “illegal immigrant” or “undocumented immigrant” we tend to think of immigrants stemming mostly from Mexico. While this was not always the case, as of 2012, Mexican immigrants account for 52% of the undocumented immigrant population in the United States.<sup>25</sup> However, to presume the “immigration” problem is recent or exclusive to Mexican immigrants would be a mistake. Immigration has always been an integral part of the United States, and as a result waves of immigrants have experienced their own challenges.

Prior to the early 19th century, the United States had a relatively open immigration policy.<sup>26</sup> The history of immigration is generally categorized into four waves.<sup>27</sup> The first wave lasted from 1607–1820, and saw the arrival of English, German, and Irish settlers.<sup>28</sup> The first wave reached a peak just before the Revolutionary War broke out in 1775.<sup>29</sup> The second major wave of immigrants started in the 1820s and lasted until a depression in the early 1870s.<sup>30</sup> The greatest inpouring of people took place from the 1880s to the early 1920s.<sup>31</sup> This third wave also initiated the creation of some of the first anti-immigrant laws in the United States.<sup>32</sup> The fourth, and current, wave began in 1965 in response to changes in U.S. Immigration laws.<sup>33</sup>

The current wave is what most people refer to when discussing immigration issues in the United States, mostly because it also coincided with the surge of Latin American immigrants. Unlike prior waves, post-1965 immigration laws were meant to be more inclusive as they eliminated the national origins quotas intended to limit the entrance of Southern and

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25. See Jeffrey Passel et al., *Unauthorized Immigrant Totals Rise in 7 States, Fall in 2014: Decline in Those From Mexico Fuels Most State Decreases*, PEW RESEARCH CTR. 9 (Nov. 18, 2014) available at [http://www.pewhispanic.org/files/2014/11/2014-11-18\\_unauthorized-immigration.pdf](http://www.pewhispanic.org/files/2014/11/2014-11-18_unauthorized-immigration.pdf) (noting Mexican nationals account for 5.9 million or about half of all unauthorized immigrants in the U.S. though their numbers have been declining).

26. U.S. CITIZENSHIP AND IMMIGR. SERV., OVERVIEW OF INS HISTORY 3 (2012), available at <http://www.uscis.gov/history-and-genealogy/our-history/agency-history/early-american-immigration-policies> (noting that Americans implemented few restrictions on immigration in the past, encouraging immigration in the 18th and 19th centuries).

27. See Andrew Soergel, *A History of Immigration Reform*, U.S. NEWS (Nov. 20, 2014, 5:51 PM), <http://www.usnews.com/news/articles/2014/11/20/a-history-of-immigration-reform> (designating four primary waves of immigration to the United States).

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See *id.* (providing a timeline the various anti-immigration laws that came into effect post 1880).

33. *Id.*

Eastern Europeans.<sup>34</sup> Instead of adhering to strict quotas, the post-1965 immigration laws focused on family reunification and labor force needs.<sup>35</sup> Although presumably well-meaning, the new immigration laws have become increasingly complex and have brought on many more challenges of their own.

#### i. Not All the Same: Immigrant Categories

When discussing immigration, misconception arises as to who qualifies as “legal.” This may stem from our impulse to simplify things and not recognize that there are several categories of immigrants that exist in the United States.<sup>36</sup> There are four main categories of citizenship and immigration status: U.S. citizens, aliens<sup>37</sup> or immigrants,<sup>38</sup> nonimmigrants,<sup>39</sup> and undocumented aliens.<sup>40</sup> There are two types of U.S. citizens—those who are citizens by birth, and those who become citizens through naturalization.<sup>41</sup> U.S. citizens, whether by birth or naturalization, are afforded *almost* equal rights.<sup>42</sup> Both have access to driver licenses in every state as long as they meet the requirements of the issuing state.

Immigrants are those who are lawful permanent residents, commonly referred to as Legal Permanent Residents or LPR’s.<sup>43</sup> LPR’s enjoy many

34. See Carl Krueger, *Congress Controls the Melting Pot*, 46 R.I. B.J. 9, 9 (1997) (addressing the removal of the national origins quota system, in favor of the Immigration Act of 1965, which established a “preference system”).

35. *Id.*

36. See Dean W. Davis, Comment, *The Best of Both Worlds: Finding Middle Ground in the Heated Debate Concerning Issuing Driver’s Licenses to Undocumented Immigrants in Illinois*, 38 S. ILL. U. L.J. 93, 96–98 (2013) (describing the categorical approach to immigrants under federal law by outlining the immigration and citizenship hierarchy, then discussing driver’s license laws pertaining and how they relate to undocumented immigrants in Illinois).

37. Immigration and Nationality Act (INA) 8 U.S.C. § 1101 (a)(3) (2012) (“The term ‘alien’ means any person not a citizen or national of the United States.”).

38. *Id.* § 1101 (a)(15) (“The term ‘immigrant’ means every alien except an alien who is within . . . a class of nonimmigrant aliens.”).

39. *Id.* § 1101 (a)(15)(A)(i)–(G)(V) (listing classes of “nonimmigrant” aliens).

40. *Id.* § 1101 (a)(13)(A) (“The term ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”)

41. *Id.* § 1401 (a); *U.S. Citizenship*, U.S. CITIZENSHIP AND IMMIGR. SERV., <http://www.uscis.gov/us-citizenship> (last visited Feb. 10, 2015) (detailing the specific requirements to qualify as a U.S. citizen in 2015).

42. See e.g. U.S. CONST. art. II, § 1, cl. 5 (barring all citizens who are not “natural born citizens” from running for the office of President of the United States).

43. See Immigration and Nationality Act (INA) 8 U.S.C. § 1101 (a)(20)(2012) (explaining “[t]he term ‘lawfully admitted for permanent residence’ means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed”).



of the same benefits as U.S. citizens but are not entitled to certain rights reserved for U.S. citizens, such as voting.<sup>44</sup> Nonimmigrants are those who are present in the United States lawfully, but who do not intend to stay permanently.<sup>45</sup> This category includes temporary visitors such as tourists and international students.<sup>46</sup>

Finally, there are undocumented aliens, interchangeably referred to as undocumented immigrants and illegal aliens. Undocumented immigrants are a group of people who reside in the United States without the government's approval.<sup>47</sup> Some undocumented immigrants start off as nonimmigrants that enter the country on a tourist visa and are subsequently considered illegal once their visa expires.<sup>48</sup> Others enter the United States without inspection, either by swimming across a river, jumping a fence, or paying someone to get them across the border. It is this last group, consisting of over eleven million people,<sup>49</sup> at the heart of the driver's license debate.

### III. THE JUXTAPOSITION BETWEEN FEDERAL AND STATE LAW

#### A. *The Constitution*

In order to understand why the issuance of driver's license to undocumented immigrants has created a tug of war between federal and state government, it is important to understand how immigration is governed in the United States. Interestingly, the Constitution does not specifically address the regulation of immigration, and in fact, in the first few decades

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44. See *U.S. Citizenship*, U.S. CITIZENSHIP AND IMMIGR. SERV., <http://www.uscis.gov/us-citizenship> (last visited Feb. 10, 2015) (advising that “[i]f you decide to apply to become a U.S. citizen, you will be showing your commitment to the United States and your loyalty to its Constitution”). “In return, you are rewarded with all the rights and privileges that are part of U.S. citizenship.” *Id.*

45. See Davis, *supra* note 36, at 97 (citing foreign exchange students as an example of nonimmigrants).

46. *Id.* at 93, 97.

47. *Id.* at 93, 97–98. See also Immigration and Nationality Act, 8 U.S.C. § 1101 (a)(13)(A) (2012) (stating that an alien entering the country without proper “admission” makes him or her an undocumented alien).

48. See Dan Well, *Forty Percent of Illegal Immigrants Here on Expired Visas*, NEWSMAX (Feb. 19, 2013, 12:01 PM), <http://www.newsmax.com/Newsfront/immigration-reform-visas-congress/2013/02/19/id/490962/> (pointing out that despite common misconceptions, many “illegal” aliens actually entered the country legally).

49. Jens Manuel Krogstad & Jeffrey S. Passel, *5 Facts about illegal immigration in the U.S.*, PEW RESEARCH CTR. (Nov. 18, 2014), <http://www.pewresearch.org/fact-tank/2014/11/18/5-facts-about-illegal-immigration-in-the-u-s>.

of the birth of the country, there were no specific regulations.<sup>50</sup> However, despite the initial lack of immigration enforcement, the United States found plenary power over immigration by pointing out that the Constitution gave Congress power to “regulate Commerce with foreign Nations, and among the several States<sup>51</sup> . . . [and] to establish an uniform Rule of Naturalization.”<sup>52</sup>

In creating what came to be known as the Plenary Power Doctrine, the United States reasoned that as a sovereign state, it should have the power to control immigration as it saw fit.<sup>53</sup> However, the creation alone of plenary power over immigration is not what is most troubling. Congress has plenary power over other areas, but it is still subject to normal constitutional limitations. In immigration law, on the other hand, courts have usually ruled in favor of granting the federal government nearly unlimited power.<sup>54</sup>

After decades of having an essentially open border, the United States became more concerned with regulating immigration in the mid 1800’s.<sup>55</sup> It is no coincidence that this coincided with high Chinese immigration. As concern rose over the large number of Chinese immigrants settling throughout the country, specifically in California, states began enacting laws to exclude them.<sup>56</sup> This forced the issue of immigration into the Supreme Court, which has since consistently held power over immigration matters lies with the federal government, not the states.<sup>57</sup> It is not difficult to see the implications of permitting states to determine their own immigration regulations. This inevitably results in a confusing piecemeal approach to immigration that raises additional questions as immigrants attempt to arrive at favorable states or even cross state lines.

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50. See Frantz, *supra* note 7, at 511, 514–15 (explaining that the United States started enacting immigration laws to limit widespread immigration in order to set a threshold for nations who were already well represented in the United States).

51. U.S. CONST. amend. X, art. 1, § 8, cl. 3.

52. *Id.* § 8, cl. 4.

53. See Fong Yue Ting v. U.S., 149 U.S. 698, 711 (1893) (stating that the power to deport is “an inherent and inalienable right of every sovereign and independent nation, essential to its safety, its independence and its welfare”).

54. Brian G. Slocum, *Canons, The Plenary Power Doctrine, and Immigration Law*, 34 FLA. ST. U. L. REV. 363, 365 (2007).

55. Frantz, *supra* note 7, at 512.

56. See Chinese Exclusion Act, 1858 Cal. Stat. 295 (providing “any person, or persons, of the Chinese or Mongolian races, shall not be permitted to enter this state, or land therein, at any port or part thereof”).

57. See *generally* Smith v. Turner, 48 U.S. 283 (1849) (arguing that the basis for congressional power is found in the Commerce Clause of the U.S. Constitution, and as such, states cannot establish their own immigration rules—if states were permitted to do so, it would be the equivalent of individual states setting foreign policy, not exercising a legitimate police power).

## B. Major Changes

### i. The REAL ID Act

This piecemeal approach to immigration as a whole is reflected in the country's experience with the issuance of driver licenses. In recent years new laws have been enacted,<sup>58</sup> and as a result many states found their laws and regulations in conflict with federal law.<sup>59</sup> The most significant change in federal law affecting the issuance of identification is the REAL ID ACT, which was signed into law in 2005.<sup>60</sup> In addition to changes to immigration law, the Act has also affected driver's licenses significantly as licenses are now seen as "*de facto* national identification cards."<sup>61</sup> The REAL ID Act has been controversial since its inception because it goes against the federalist principles of the United States.<sup>62</sup> Some of the criticism is that—at its core—the REAL ID Act seeks to interfere with well-established state regulations by forcing states to enact expensive changes to driver licenses.<sup>63</sup> Its impact on immigration has been unprecedented.<sup>64</sup> As a result of the REAL ID Act, states that previously lacked the requirement of lawful presence for obtaining a driver's license have been forced to alter their requirements in order to comply with federal policy.<sup>65</sup> Although states choosing not to comply with the new requirements

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58. *E.g.* Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 311-16 (2005) (codified in scattered sections of 8 and 49 U.S.C. (2006)) (modifying U.S. federal law pertaining to security, authentication, and issuance procedures standards for the state driver's licenses and identification (ID) cards, as well as various immigration issues pertaining to terrorism).

59. *See* Shirley Lin, Comment, *States of Resistance: The Real ID Act and Constitutional Limits Upon Federal Deputization of State Agencies in the Regulation of Non-Citizens*, 12 N.Y. CITY L. REV. 329, 329 (2009) (noting that "all fifty states have taken up a war of attrition over whether the federal government can require them to enact sweeping and prohibitively expensive changes to their driver's license practices through state departments of motor vehicles").

60. Odegaard, *supra* note 3, at 469.

61. *See* Pabon Lopez, *supra* note 12, at 99-100 (arguing the rationale behind requiring proof of lawful presence in the United States is to exclude undocumented immigrants from participating in society, and not to safeguard the integrity of the Department of Public Safety).

62. *See* Lin, *supra* note 59, at 329 (asserting "[s]tate's fierce opposition to the [REAL ID Act]—developed within and juxtaposed against the wholly federalist framework of U.S. immigration law—may offer a legal foothold in the debate over the proper role, if any, of states in immigration enforcement").

63. *Id.*

64. *See id.* (explaining one of the main consequences of the REAL ID Act is that the federal government sought to deputize states for immigration enforcement purposes).

65. *See id.* (discussing the new requirement of a distinct design for driver licenses issued to non-citizens and the goal of creating a streamlined motorist database for all fifty states).

are not officially penalized, their state licenses are rendered invalid as identification for official purposes.<sup>66</sup>

The REAL ID Act is only one part of the sweeping reforms meant to create a safer country after the terrorist attacks of September 11, 2001. It seems peculiar, then, that the REAL ID Act has had such a disproportionate impact on undocumented immigrants, most of who are from Latin American countries and do not present a serious national security threat.<sup>67</sup> This legislation came about because several of the terrorists involved in the September 11 attacks had been issued driver's licenses, which they used to board the airplanes.<sup>68</sup> However, it is important to keep in mind that all of the hijackers had valid passports that served as identification at the airport, so they would have boarded the planes even without these licenses.<sup>69</sup> Regardless, national security is often cited as a justification for restricting access to driver licenses; other justifications include identity theft,<sup>70</sup> public safety, and participation in society.<sup>71</sup>

#### IV. ARE CONCERNS OVER IDENTITY THEFT AND NATIONAL SECURITY JUSTIFIED?

##### A. *Identity Theft and Fraud*

One of the most widely cited arguments against policies allowing undocumented immigrants to obtain driver's licenses is fraud; specifically identify fraud and the use of fraudulent documents to obtain a license.<sup>72</sup> However, there are two points of contention here. First, most of the incidents of fraud often cited are related to the use of fraudulent documents to establish residency in the state in order to qualify for a driver's li-

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66. NAT'L IMMIGR. LAW CTR., THE REAL ID ACT: QUESTIONS AND ANSWERS 6 (2015), available at <http://www.nilc.org/DLaccess toolkit3b.html> (last updated Feb. 2015).

67. See *Unauthorized Immigrants: Who they Are and What the Public Thinks*, PEW RESEARCH CTR. (Jan. 15, 2015), <http://www.pewresearch.org/key-data-points/immigration> (totaling the number of undocumented immigrants by region, with Latin America contributing 78.8% of the total of undocumented immigrants in the United States).

68. Mounts, *supra* note 8, at 247.

69. *Id.*

70. See *id.* at 247–48 (asserting that many states mistakenly believe that requiring more forms will prevent identify theft, when instead the focus should be on better verification of documents).

71. Odegaard, *supra* note 3, at 436.

72. See Davis, *supra* note 36, at 93–96 (arguing that “adding mandatory restrictions to Illinois’s new [driver’s license] law will help prevent fraud while benefitting the undocumented immigrant population it truly intends to support: the hardworking, law-abiding, productive contributors to society”).

cense.<sup>73</sup> This is done because most other states do not offer such licenses.<sup>74</sup> Second, identity theft in relation to voter registration is largely exaggerated.<sup>75</sup> Still, as part of developing special driver's licenses for undocumented immigrants, policymakers have specifically focused on ways to prevent fraud.<sup>76</sup> So far many of the proposals to grant driver's licenses to undocumented immigrants include mandatory fingerprinting, facial recognition technology and stringent verification of state residency.<sup>77</sup> Thus, even though the justification for restricting access to driver's licenses is that state law enforcement officials should have the ability to verify the authenticity of the license and driving history of the license holder, the invasive means of doing so do not justify the end.<sup>78</sup>

The Federal Trade Commission provides a breakdown of the compiled nationwide statistics which indicate in 2012 only 3% of the identify theft victims revealed that his or her information had been acquired from a government document, not including tax or wage related fraud.<sup>79</sup> Of the 3%, only .6% indicated fake driver's licenses as the cause of the identify theft.<sup>80</sup> These statistics are not meant to undermine the importance of identity theft, but merely reflect on real statistics as opposed to the exaggerated claims spouted on a daily basis by unreliable sources.

Activist groups have also been quick to point out one of the reasons why these statistics are so low is because up until recently the government, specifically those agencies regulating state transport, did not have

73. Regina Garcia Cano, *Fraud concerns linger over new Ill. license law*, USA TODAY (Jan. 27, 2014, 11:49 PM), <http://www.usatoday.com/story/news/nation/2013/01/27/concern-ill-license-law/1868091>.

74. *Id.*

75. See Justin Levitt, *A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents out of One Billion Ballots Cast*, WASH. POST (Aug. 6, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast> (concluding that enhanced voter ID laws have not had the desired effect because instances of voter ID fraud are quite rare).

76. See Davis, *supra* note 36, at 96 (arguing that Illinois laws are primarily focused on preventing fraud).

77. *Id.* at 107.

78. See generally *id.* (discussing the information currently being obtained about illegal immigrants and whether the federal government should have access to state information databases).

79. FED. TRADE COMM'N, CONSUMER SENTINEL NETWORK DATA BOOK FOR JANUARY–DECEMBER 2012, at 12 (Feb. 2013), available at <http://www.ftc.gov/sites/default/files/documents/reports/consumer-sentinel-network-data-book-january/sentinel-cy2012.pdf>.

80. *Id.*

such information on file.<sup>81</sup> Dr. Richard Varn, Chief Information Officer for the State of Iowa, noted this point in his testimony for the Senate Subcommittee on Oversight of Government Management.<sup>82</sup> Dr. Varn maintained that while identity security is an integral part of programs issuing driver's licenses, the system is likely to enable identity theft and fraud rather than prevent it.<sup>83</sup> This is because it would place sensitive information, like Social Security Numbers, birth certificates, and mother's maiden names in a system to which many people have access.<sup>84</sup>

### B. National Security

National security has become an increasingly important issue and is often cited as an argument against granting access to driver's licenses to undocumented immigrants.<sup>85</sup> The fear is that issuing driver's licenses to those who are in the country illegally would make federal buildings and commercial flights vulnerable by giving access to unauthorized people, specifically terrorists.<sup>86</sup> The argument is it would eventually lead terrorists to embed themselves in society until they are called upon to complete their mission. This is an understandable point of view, but the evidence suggests that this argument is lacking and at times is purposely disingenuous.<sup>87</sup> Much of the debate over the relation between driver licenses and national security has been led by misinformation. For starters, the suggestion that the 9/11 terrorists only boarded the plane because they had driver's licenses is incorrect.<sup>88</sup> They had valid passports that would also have been acceptable forms identification for boarding purposes.<sup>89</sup> This is something that can still be done today, so the issuing of driver's licenses in such cases does not make much of a difference.<sup>90</sup>

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81. See Mounts, *supra* note 8, at 258 (stating that a small percentage of fraud stemming from driver licenses has activist groups questioning the basis of requiring more documentation).

82. *Id.*

83. *Id.* at 259.

84. *Id.*

85. *Id.* at 247.

86. *Id.*

87. See, e.g., *id.* (revealing that the terrorists responsible for the attack on the World Trade Center could have done the job without driver's license).

88. See *id.* (pointing out "what officials failed to mention [about the attack on September 11] was that none of the hijackers needed driver's licenses to accomplish their goal; all of the hijackers had foreign passports that served as valid identification at airports").

89. AM. IMMIGR. LAWYERS ASS'N ET AL., IMMIGRANT ACCESS TO STATE DRIVER'S LICENSES: A TOOL KIT FOR ADVOCATES 5 (2004), available at [http://www.nclr.org/images/uploads/publications/1073\\_file\\_ImmigToolKit\\_FNL.pdf](http://www.nclr.org/images/uploads/publications/1073_file_ImmigToolKit_FNL.pdf).

90. *Id.*

Practically, on the other hand, issuing driver licenses to noncitizens may actually be better for national security. Granting access to noncitizens would mean having them in a database, which would be a great way of keeping track of them. With the list of requirements for acquiring a license, this would also provide fingerprints, pictures, addresses, and even a background check.

When it comes to national security in connection to licensing noncitizens, the main hurdle to overcome is public opinion. This is perhaps because it makes for a popular view among politicians, where in reality even the Department of Homeland Security does not readily make the connection.<sup>91</sup> In fact, the general consensus amongst experts is that the main issue with regard to identification is not the issuing of driver's licenses, but preventing the use of fraudulent identity documents to obtain them.<sup>92</sup>

### C. *Participation in Society*

The theory behind the societal participation argument is that restricting access to driver's licenses would eventually prevent immigrants from participating in everyday life since they would not have the ability to drive to work, school, etc.<sup>93</sup> This argument lacks substance because despite the many restrictions on access to driver's licenses, undocumented immigrants are still driving or finding alternate ways of participating in society.<sup>94</sup> This argument also ignores the fact that most immigrants come here with the purpose of working, not to seek out an opportunity for driving.<sup>95</sup> Driving is simply the means to facilitate their transportation to and from their job. Thus, rather than having any significant impact on decreasing the number of undocumented immigrants, restricted access to driver licenses simply makes them more vulnerable and less productive members of society.<sup>96</sup>

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91. See Odegaard, *supra* note 3, at 455 (discussing a roughly 1500 page report on homeland security and clarifying that there is no mention of licensing undocumented aliens anywhere in the report).

92. *Id.*

93. *Id.* at 448.

94. See *id.* at 448–50 (describing the difficulties that immigrants are overcoming in order to participate in society).

95. See *id.* at 449 (citing President Obama, who contends “[u]ndocumented workers don’t come here to drive . . . . They’re here to work.”).

96. See *id.* at 449–50 (arguing that without access to driver licenses immigrants are prevented from living a normal life and are often the victims of theft and employer abuse).

## V. LEADING THE WAY, ONE STATE AT A TIME

A. *State Initiatives*

Despite strong feelings on both sides, several states have begun initiatives to grant driver's licenses to undocumented immigrants.<sup>97</sup> These attempts have had varying degrees of success, but still serve the purpose of jumpstarting the debate over driver's licenses.<sup>98</sup> Prior to September 11, 2001, at least fifteen states attempted to lift the restrictions preventing undocumented immigrants from obtaining driver's licenses.<sup>99</sup> Efforts to remove the Social Security Number requirement<sup>100</sup> and broaden the types of identification documents that could be used to apply for a driver's license were quietly underway.<sup>101</sup>

## i. New York

One of the first states to jump into the driver's license debate was New York.<sup>102</sup> Prior to 1995 the Department of Motor Vehicles (DMV) accepted foreign passport and birth certificates as supporting documents when applying for a driver's license.<sup>103</sup> However, in 1995 the requirement for a SSN, or a letter from the Social Security Administration (SSA) stating ineligibility for an SSN, was added.<sup>104</sup> This system seemed to work and provided undocumented immigrants a way of obtaining a driver's license. However, following the September 11 attacks, Governor

97. *See id.* at 436 (discussing state driver's license initiatives in New York, California, Utah, and New Mexico, and others).

98. *See id.* at 437 (describing law suits against the New York Department of Motor Vehicles regarding new provisions for obtaining a driver's license).

99. Pabon Lopez, *supra* note 12, at 95.

100. *See id.* (explaining that the requirement that the SSN be displayed on the driver's license comes from the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996).

101. *See* Odegaard, *supra* note 3, at 441 (remarking that "five states accepted an [Individual Taxpayer Identification Number] in lieu of a [Social Security Number], and seven states accepted the Mexican matricula consular or other foreign identification cards as an acceptable form of identification"); *see also* Pabon Lopez, *supra* note 12, at 95–96 (explaining that the matricula consular is an identification card issued by a foreign government to its citizens).

102. Odegaard, *supra* note 3, at 436–37.

103. *Id.*

104. *See id.* at 437 (stating "[i]n 1995, however, as part of Governor Pataki's wide-ranging initiative to crack down on delinquent child support payments, § 502 was amended to require applicants to provide a social security number (SSN) as well. A special provision was made for foreign applicants, who could substitute a letter from the Social Security Administration (SSA) saying that they were ineligible for an SSN.").



Pataki added a “lawful presence” requirement by executive order in 2002.<sup>105</sup>

As a result of the new requirements, nine plaintiffs brought an action against the Commissioner of the New York DMV in 2005.<sup>106</sup> Although they were initially successful in obtaining a preliminary injunction, in 2006 the Appellate Division reversed and dismissed the case.<sup>107</sup> Even with what seemed like a definitive decision on the matter, during his campaign for Governor, Eliot Spitzer pledged to repeal Governor Pataki’s 2002 executive order.<sup>108</sup> In September 2007, Spitzer announced that driver’s licenses would again be issued to undocumented immigrants.<sup>109</sup> However, after the lost appeal, public opposition to granting driver’s licenses to undocumented immigrants had grown and Spitzer’s efforts were not productive.<sup>110</sup> Despite an agreement with DHS to make the licenses distinguishable,<sup>111</sup> the New York Senate ultimately blocked Spitzer’s plan.<sup>112</sup>

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105. *Id.* (“Governor Pataki issued an executive order requiring that, in addition to a letter of ineligibility from the SSA, aliens would need to present documentation from the Department of Homeland Security (DHS) proving their lawful presence in the United States.”).

106. *Id.* (“In 2005, three named and six John Doe plaintiffs brought an action against the then Commissioner of the New York DMV, Raymond Martinez, seeking declaratory and injunctive relief from the new Guidelines.”).

107. *Cubas v. Martinez*, 33 A.D.3d 96, 114–15 (2006); *see also* Odegaard, *supra* note 3, at 437 (noting the language in the holding that the rules “serve a vital government purpose in preventing the abuse of identification to commit acts of fraud or, as tragically illustrated by the events of September 11, 2001, act of terrorism”).

108. Odegaard, *supra* note 3, at 437; *see also* Nina Bernstein, *A Promise on Immigration Now a Quandary for Spitzer*, N.Y. TIMES (Jan. 24, 2007), <http://query.nytimes.com/gst/fullpage.html?res=9504E7DD163FF937A15752C0A9619C8B63> (highlighting Spitzer’s comments in support of identification for undocumented immigrants, yet pointing out that he was slow to take action).

109. Press Release, Governor Eliot Spitzer, DMV Changes License Policy to Include More New Yorkers and Implements New Regime of Anti-Fraud Measures to Strengthen the Security of the System (Sept. 21, 2007), *available at* <http://www.governor.ny.gov/archive/spitzer/press/0921071.html>.

110. Odegaard, *supra* note 3, at 437 (“This turned out to be merely the opening salvo of an extended legislative battle, which saw the proposal amended, voted down and resubmitted.”).

111. *See* Danny Hakim, *Spitzer Tries New Tack on Immigrant Licenses*, N.Y. TIMES (Oct. 28, 2007), <http://www.nytimes.com/2007/10/28/nyregion/28spitzer.html> (illustrating the efforts made between New York and the Dept. of Homeland Security to promulgate a program that meets federal licensing guidelines and extends driving rights to illegal immigrants).

112. Nicholas Confessore, *Senate Votes to Stop Spitzer Plan to Give Illegal Immigrants Driver’s Licenses*, N.Y. TIMES (Oct. 23, 2007) [http://www.nytimes.com/2007/10/23/nyregion/23legislature.html?fta=y&\\_r=0](http://www.nytimes.com/2007/10/23/nyregion/23legislature.html?fta=y&_r=0) (claiming New York Republicans maneuvered to keep the identification plan from being successful).

This very public debate in New York would prove telling of what was to come in the debate surrounding driver's licenses. While New York was very open in its approach, other states quietly held back from making the changes mandated by the REAL ID Act. Even as late as 2008, six states did not have a legal presence requirement, five states accepted an Individual Taxpayer Identification Number (ITIN), and seven states accepted the Mexican matricula or other forms of identification cards.<sup>113</sup> Utah and New Mexico accepted all three.<sup>114</sup> While Tennessee and Utah attempted a tiered approach to issuing driver's licenses, California rejoined the debate.<sup>115</sup>

## ii. Tennessee—A Tiered Approach

Prior to 2004, Tennessee did not have a legal presence requirement in order to obtain a driver's license.<sup>116</sup> That same year, a bill was passed that changed the requirements, but contained a provision for undocumented applicants who were ineligible to receive a regular state-issued driver's license.<sup>117</sup> The bill allowed undocumented immigrants to apply for a Certificate for Driving (CFD), which was meant for driving purposes only and was not valid for identification.<sup>118</sup> In order to differentiate the CFD from a state-issued driver's license, the words "For Driving Purposes Only-Not Valid for Identification" were to be written across the top of the cards.<sup>119</sup> Although the additional words on the cards were meant to assuage some of the controversy behind granting driving privileges to undocumented immigrants, they created controversy on both sides.<sup>120</sup> Almost immediately, immigrant rights organizations criticized the CFDs, arguing that it created an inferior subclass of license holders.<sup>121</sup> Opponents of CFDs argued they granted their holders "an undeserved legitimacy."<sup>122</sup>

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113. Odegaard, *supra* note 3, at 441.

114. *Id.*

115. *See id.* at 445 (outlining four primary policy goals expressed by supporters of California State Bill 60—in favor licensing of undocumented aliens).

116. Davis, *supra* note 36, at 102.

117. *Id.*

118. Odegaard, *supra* note 3, at 442.

119. *Id.* at 443.

120. *See Davis, supra* note 36, at 103 (noting that immigrant rights group criticized the new program as creating an inferior class of drivers while opponents argued the wording gave undocumented immigrants too much privilege).

121. *See Odegaard, supra* note 3, at 443 (highlighting that soon after the plan came into effect, the League of United Latin American Citizens (LULAC) brought an equal protection suit against the state).

122. *Id.*

Criticism on both sides, however, is not what ultimately led to the CFD program's failure.<sup>123</sup> By July 2005, there were rampant reports of brokers helping out-of-state Hispanics, primarily from New York and New Jersey, obtain a CFD.<sup>124</sup> Reports claimed that applicants were using fraudulent documents or even bribing Department of Safety officials for the purpose of securing CFDs.<sup>125</sup> By October 2007, political pressure became too much and the CFD program was officially cancelled.

### iii. Utah

Another, more successful, attempt at a tiered program is Utah's driving certificate program.<sup>126</sup> In March of 2005, Utah passed a law granting a "Driving Privilege Card" (DPC) to applicants who cannot prove legal residency in the United States.<sup>127</sup> Just like Tennessee's CFD, these cards are marked for driving purposes only and cannot be used for identification.<sup>128</sup> Under the DPC program, drivers fall into two categories.<sup>129</sup> The first category is for undocumented individuals who do not qualify for a Social Security Number (SSN), but can show proof of legal presence in the United States.<sup>130</sup> The second category is for undocumented immigrants who do not qualify for an SSN.<sup>131</sup> For immigrants in the first category, the DPC expires five years from the date of issuance or on the expiration date of their legal presence document, whichever is sooner.<sup>132</sup> Those in the second category must obtain an ITIN from the IRS and their DPC expires one year from the date the card is issued.<sup>133</sup>

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123. *See id.* at 443–44 (bringing light to political pressures that led to the failure of CFDs).

124. *Id.*

125. Duncan Mansfield, *Immigrants Flock to Tennessee for Driver Certificates*, Hous. CHRON. (Jan. 30, 2006), <http://www.chron.com/news/nation-world/article/Immigrants-flock-to-Tennessee-for-driver-1480236.php>.

126. *See* Davis, *supra* note 36, at 105 (asserting that Utah's driving certificate program has been the most successful law related to undocumented alien driving privileges).

127. Odegaard, *supra* note 3, at 444.

128. Lisa Riley Roche & Deborah Bulkeley, *Senators Target License Abusers: Utah Leaders Seeking a New Type of Driving Privileges for Illegal Aliens*, DESERET NEWS (Feb. 10, 2005, 9:04 AM), <http://www.deseretnews.com/article/600111070/Senators-target-license-abuses.html?pg=all>.

129. Davis, *supra* note 36, at 105.

130. *Important Changes to the Utah License or Identification Card That Will Affect You!*, UTAH DEP'T OF PUB. SAFETY, [http://publicsafety.utah.gov/dld/documents/DL335\\_Brochure9-13\\_000.pdf](http://publicsafety.utah.gov/dld/documents/DL335_Brochure9-13_000.pdf) (last visited Feb. 10, 2015).

131. *Id.*

132. *Id.*

133. *Id.*

Part of the reason for the Utah program's success is that it is more lenient than the Tennessee program.<sup>134</sup> However, as of 2011, the Utah Legislature has implemented a stricter system that now requires a fingerprint check.<sup>135</sup> If the fingerprint check shows any felony, the state is required to notify Immigration and Customs Enforcement.<sup>136</sup> If the check shows an outstanding misdemeanor warrant, the state must also notify the proper agency.<sup>137</sup>

## VI. MAKING WAVES IN CALIFORNIA

California is the latest state to join the small, but growing, number of states to grant undocumented immigrants some form of driver's license.<sup>138</sup> However, the road to this somewhat limited victory has been a long one. In 1993, the California Legislature enacted a new law making only citizens and lawful immigrants eligible for driver's licenses.<sup>139</sup> Though there was no evidence of widespread fraud or identity theft resulting from issuing driver's licenses to undocumented immigrants, this policy change came at the height of the nativist and anti-immigrant movement of the 1990s.<sup>140</sup> Over the next twenty years, there were several failed attempts to return to the pre-1993 policy.<sup>141</sup> Even with widespread support for providing driver's licenses, lawmakers struggled to agree on a proper method to issue the driver's licenses, yet finally reached a compromise in 2013.<sup>142</sup>

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134. See Davis, *supra* note 36, at 103 (describing how the Tennessee Certificate for Driving program was cancelled and, in its place, is a Temporary Driver's License requiring the driver be a legal immigrant).

135. Garcia Cano, *supra* note 73.

136. See *id.* (adding that, unlike Utah, Illinois will not include a fingerprint check requirement for fear that it will discourage applicants).

137. *Id.*

138. See Martelle, *supra* note 10 (discussing the federal government's approval of California's Department of Motor Vehicles' design for driver's licenses for illegal residents).

139. Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 219 (2004).

140. See *id.* (discussing whether issuing driver's licenses is a civil rights issue and remarking on California's hotly contested debate of the early 1990s).

141. See Shelby Grad, *Immigrants can soon get driver's licenses, but it's been a long road*, L.A. TIMES (Dec. 28, 2014, 4:15 PM), <http://www.latimes.com/local/politics/la-me-drivers-license-explainer-20141229-story.html> (summarizing California's decades-long debate over driver's licenses for illegal immigrants).

142. See *id.* (reporting that as soon as January 2014, illegal immigrants would be able to obtain driver's license in California, and pointing to the support of law enforcement as a possible "turning point" in the debate).

A. *The Struggle to Restore Access to Driver Licenses to Undocumented Immigrants*

Starting in 2001, Assemblyman Gil Cedillo began introducing yearly bills to restore access to driver's licenses.<sup>143</sup> However, attempts to change the law were either stalled or vetoed year after year.<sup>144</sup> After his eighth attempt at introducing this bill, Cedillo was termed out.<sup>145</sup> Nonetheless, the effort to restore access to driver's licenses for undocumented immigrants did not end with his term. In 2013 California Assemblyman Luis A. Alejo picked up where Cedillo left off and along with a Republican assemblyman, introduced Assembly Bill 60 to members of the Transportation Committee.<sup>146</sup> In his proposal, Assemblyman Luis A. Alejo focused on the benefits of the bill rather than arguing over particulars.<sup>147</sup> He also stressed that for the first time in over a decade this bill had bipartisan support and had the backing of the Police Chief's Association.<sup>148</sup>

B. *Public Support: The Tides Are Changing*

One of the turning points in the debate over driver's licenses in California was that over the past decade, public opinion had shifted and public opinion polls showed that the majority of California residents now supported some kind of bill offering undocumented immigrants access to driver's licenses.<sup>149</sup> The people of California may have finally understood that the benefits outweighed the detriment of issuing driver's licenses to undocumented immigrants. A more likely possibility though is—as the years went by—more and more organizations supported this type of bill

143. Timm Herdt, *Prospects lifted for bill to offer driver's license to those in U.S. illegally*, VENTURA COUNTY STAR (Apr. 22, 2013, 6:57 PM), <http://www.vcstar.com/news/bill-drivers-licenses-to-those-in-us-illegally#ixzz2RMHLH3k1>.

144. *Assemblyman Makes 8th Push to License Undocumented Drivers*, CBS L.A. (Aug. 16, 2012, 10:00 PM), <http://losangeles.cbslocal.com/2012/08/16/assemblyman-makes-8th-push-to-license-undocumented-drivers>.

145. *Id.*

146. Jorge Rivas, *Calif. Bill That Allows Driver's Licenses for Undocumented Moves Forward*, COLORLINES NEWS FOR ACTION (Apr. 24, 2013, 1:13 PM), [http://colorlines.com/archives/2013/04/calif\\_bill\\_that\\_allows\\_drivers\\_licenses\\_for\\_undocumented\\_moves\\_forward.html](http://colorlines.com/archives/2013/04/calif_bill_that_allows_drivers_licenses_for_undocumented_moves_forward.html).

147. *Id.*

148. Herdt, *supra* note 143.

149. See Jim Sanders, *California voters want driver's licenses, other privileges for illegal immigrants*, SACRAMENTO BEE (Apr. 3, 2013, 12:30 PM), <http://www.sacbee.com/news/politics-government/article2576697.html> (reporting on “record numbers [of Californians who] want to grant driver's licenses to undocumented immigrants” and “[a]ttitudes are changing fast”).

and many of the issues with the previous bills were addressed.<sup>150</sup> Specifically, one of the major drawbacks of issuing driver's licenses to undocumented immigrants was issuing a form of valid identification that would not be distinguishable between those who are here legally and those who are not.<sup>151</sup> This issue became particularly important after the terrorist attacks of September 11.<sup>152</sup>

### C. *The Rise of AB 60*

Over the years, legislators and public interest groups debated over whether adding a distinguishing mark to driver's licenses issued to undocumented immigrants would lead to discrimination.<sup>153</sup> After years of debate with no real solutions, both sides finally decided to come to a compromise.<sup>154</sup> This is not to say that AB 60 passed without controversy. Many of its critics argued that providing driver's licenses to people who are in the United States illegally rewards them for breaking the law.<sup>155</sup> Although this has been one of the strongest criticisms, Assemblyman Alejo and other supporters of the bill have countered by stating that this is not a political issue, but one of public safety.<sup>156</sup> Moreover, even Los Angeles Police Chief, Charlie Beck, argued AB 60 does not condone illegal immigration but, rather, it recognized that everyone is safer if those immigrants who are currently driving without a license are taught to operate a car safely and are tested to ensure they meet the same standards as all other drivers in the state.<sup>157</sup>

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150. See Rivas, *supra* note 146 (documenting the “promising outlook” for California’s AB 60—making some undocumented immigrants eligible for driver’s licenses).

151. See Ian Lovett, *Federal Officials Reject Design of California Driver’s Licenses for Illegal Immigrants*, N.Y. TIMES (May 6, 2014) [http://www.nytimes.com/2014/05/07/us/federal-officials-reject-design-of-california-drivers-licenses-for-illegal-immigrants.html?\\_r=0](http://www.nytimes.com/2014/05/07/us/federal-officials-reject-design-of-california-drivers-licenses-for-illegal-immigrants.html?_r=0) (reporting on the federal government’s rejection of California’s proposed driver’s license design because “[t]he proposed design makes the special licenses for immigrants look too much like regular driver’s licenses”).

152. See *id.* (underlining the fact that “[f]ederal law passed after Sept. 11, 2001, requires any state licenses issued to unlawful residents to be easily distinguished from all forms of identification that could be used to board commercial airplanes”).

153. See *id.* (highlighting that “[s]tate officials had hoped to quell such fears by making the distinction on the front of the license subtle, with a federal disclaimer on the back of the card,” and pointing out that immigration reform activists are worried that the law may open immigrants up to further discrimination).

154. See Martelle, *supra* note 10 (remarking that the approved license is a “reasonable compromise”).

155. Martelle, *supra* note 10.

156. See Grad, *supra* note 141 (pointing to public safety concerns of law enforcement, such as reduced hit-and-run accidents, as a critical turning point in the debate over driver’s licenses for illegal immigrants).

157. Martelle, *supra* note 10.

After much debate, committee hearings, and changes to the bill, AB 60 was finally passed in September of 2013.<sup>158</sup> Many saw the approval of this bill as a huge success because California is the highest populated state in the country and is also home to about 2.4 million undocumented immigrants.<sup>159</sup> An estimated 1.4 million are expected to apply for the new driver's license.<sup>160</sup> Immigration advocates saw this shift in policy by the most populated states as a step in the right direction and helped fuel the hope that other similarly populated states would follow suit.<sup>161</sup> Given the intense debate behind AB 60, the approval of the bill on the final day of the legislative year, came as a surprise to everyone.<sup>162</sup> Even Assemblyman Alejo was prepared to put it on hold until the next legislative year due to strong opposition from immigration advocates who opposed the special wording on the driver's licenses.<sup>163</sup> However, in an exciting turn of events, the state Assembly, only hours after the state Senate passed it, approved AB 60 on a fifty-five to nineteen vote.<sup>164</sup> All this good news culminated with California Governor Jerry Brown issuing a statement not only indicating he would sign this bill into law, but also sending a message to the federal government urging immigration reform.<sup>165</sup>

Much of the immigration advocates' opposition to the bill concerned AB 60's specific requirement that the driver's licenses to be distinguishable from regular state-issued driver's licenses.<sup>166</sup> This meant the card had to include a notification or mark that specified the driver's license as only

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158. See generally Jonathan Lloyd, *Calif. Legislature Oks Driver's Licenses for Undocumented Immigrants*, NBC SOUTHERN CALIFORNIA (Sept. 13, 2013, 1:01 PM), <http://www.nbclosangeles.com/news/local/Illegal-Immigration-Undocumented-Immigrants-Driver's-Licenses-California-223578301.html> (discussing the passage of California's Assembly Bill 60, making some illegal immigrants eligible for driver's licenses).

159. See Mark Berman, *California Begins Issuing Driver's Licenses Regardless of Immigration Status*, WASH. POST (Jan. 2, 2015), <http://www.washingtonpost.com/news/post-nation/wp/2015/01/02/california-begins-issuing-drivers-licenses-regardless-of-immigration-status> (stating that California is now issuing licenses to all residents—including its 2.4 million undocumented immigrants—and that it should make roads safer).

160. *Id.*

161. See Martelle, *supra* note 10 (stating that California's legislators hope for the United States Congress to follow their lead).

162. Lloyd, *supra* note 158.

163. *Id.*

164. *Id.*

165. *Id.*

166. See Richard Winton et al., *California's immigrant driver's license bill is driving debate*, L.A. TIMES (Sept. 13, 2013, 6:23 PM), <http://www.latimes.com/local/la-me-immigrant-drivers-license-20130914-story.html#page=1> (detailing the opinion of the Mexican American Legal Education and Defense Fund (MALDEF) and pointing out that they do not like immigrants getting a license that looks different than other licenses).

for driving purposes and not for federal identification purpose.<sup>167</sup> The cards could also not establish employment eligibility, voting rights, or access to public benefits.<sup>168</sup> Essentially, immigrant advocates argued such distinguishing mark or language “put a big flag on the card” indicating the person carrying it was not in the country legally.<sup>169</sup> In the final hours, however, lawmakers pushed the bill through, arguing that licensing people to drive was more important than the specifics of what licenses would look like.<sup>170</sup> Though the bill was passed and signed by the governor of California, the debate over the design of the card was just beginning.

The main hurdle that California and every other state has when dealing with issuing driver’s licenses to undocumented immigrants is compliance with the REAL ID Act. The REAL ID Act, approved by Congress in 2005, has strict restrictions on the issuance of cards for the purpose of federal identification.<sup>171</sup> It specifically requires markings that would allow Federal officials to quickly determine whether a license or identification card is acceptable for official purposes, including accessing Federal facilities and boarding federally regulated commercial flights.<sup>172</sup> As a result, any card issued to undocumented immigrants or anyone without immigration status, has to be sufficiently distinguishable from a standard-issued driver’s license.<sup>173</sup> In order to be in compliance, driver’s licenses issued to undocumented immigrants must make it clear that the card is not acceptable for official federal purposes and must have a design or color that easily differentiates it from other driver’s licenses.<sup>174</sup> The Department of Homeland Security (DHS) rejected California’s first attempt at such markings for not being sufficiently distinguishable.<sup>175</sup> The design was virtually indistinguishable except for a subtle mark on the front of

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167. See Martelle, *supra* note 10 (reporting that the cards will not be acceptable for official federal purposes).

168. *Id.*

169. Lloyd, *supra* note 158.

170. *Id.*

171. See generally NAT’L IMMIGR. LAW CTR., THE REAL ID ACT: QUESTIONS AND ANSWERS (2015), available at <http://www.nilc.org/DLaccess toolkit3b.html> (outlining requirements for individuals to have licenses compliant with the REAL ID Act so that they can use those licenses for certain official federal purposes).

172. Patrick McGreevy, *California Design of Driver’s License for Immigrants Rejected*, L.A. TIMES (May 6, 2014, 8:00 PM), <http://www.latimes.com/local/la-me-immigrants-licenses-20140507-story.html>.

173. See *id.* (stating California’s proposed license design was rejected by the federal government because it was not distinguishable enough).

174. McGreevy, *supra* note 172.

175. *Id.*



the card and a disclaimer on the back in small print with the words: “This card is not acceptable for official federal purposes.”<sup>176</sup>

After the initial rejection, immigrant advocate groups raised concern over the possibility that making driver’s licenses look significantly different could lead to mistreatment.<sup>177</sup> Assemblyman Luis Alejo, who introduced the bill, even made a direct appeal to Jeh Johnson, Homeland Security Secretary, asking him to consider allowing the California design.<sup>178</sup> Members of the Latino Legislative Caucus, including Assemblyman Alejo, publicly argued that the design submitted satisfied the intent of the law by including a mark on the front of the card and the required language on the surface of the card.<sup>179</sup> They called the decision by Homeland Security to reject the design as “troubling,” mostly because further and more obvious changes to the card would risk creating a type of scarlet letter to those carrying it.<sup>180</sup> In his letter, Alejo argued immigrants are already statistically more likely to be victims of crime and are often times targets of scams and discrimination.<sup>181</sup> He argued the California design was meant to provide adequate protection from such incidents.<sup>182</sup> Further, Alejo argued, the design was meant to assuage some of the fear that DHS would use the issuance of driver’s licenses for immigration enforcement purposes.<sup>183</sup>

Despite the public pleas, DHS did not accept California’s initial design and the Department of Motor Vehicles (DMV) went back to the drawing board.<sup>184</sup> Fortunately for California, just months after the discouraging first attempt, DHS approved their revised design.<sup>185</sup> The approval of the new design was a huge step forward in avoiding further delays in implementing the new law.<sup>186</sup> The approved wording reads, “federal limits apply” on the front of the card, which is meant to clearly indicate that the

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176. See Chris Megerian, *New Wording Approved on Driver’s Licenses for those in U.S. Illegally*, L.A. TIMES (Sept. 19, 2014, 5:53 PM), <http://www.latimes.com/local/political/la-me-pc-california-driver-licenses-immigrants-20140918-story.html> (discussing the earlier California license design proposal).

177. McGreevy, *supra* note 172.

178. *Id.*

179. *Id.*

180. See Megerian, *supra* note 176 (addressing the concerns of immigrant advocates, that such an identifiable marking would likely prompt discrimination).

181. McGreevy, *supra* note 172.

182. See *id.* (identifying the vulnerable state of the undocumented community).

183. *Id.*

184. See *id.* (referencing in the rejection letter the Real ID Act, which requires particularized markings on identification cards or licenses).

185. Megerian, *supra* note 176.

186. See *id.* (highlighting that California Governor, Jerry Brown, had signed the legislation into law a year prior).

driver's license is not meant for federally regulated purposes.<sup>187</sup> Though immigrant advocates fought to minimize design differences,<sup>188</sup> the new design is seen as a compromise between DHS and California leaving most advocates glad to see the state taking a step in the right direction.<sup>189</sup>

#### D. *Restoring Hope with New Beginnings*

After years of debate and failed attempts at restoring undocumented immigrant's access to driver's licenses, the law took effect on January 1, 2015.<sup>190</sup> Lines outside several California DMVs started forming as early as twelve hours before the offices opened on January 2, 2015.<sup>191</sup> By late afternoon on the first day applications were made available, more than 11,000 people applied for the restricted licenses.<sup>192</sup> Despite the intense debate over the passing of this law, the process for obtaining one of the special licenses is still quite restrictive.<sup>193</sup> In response to those who suggested the possibility that out-of-state undocumented immigrants would try to obtain a California driver's license, California has incorporated several requirements to ensure only California residents are able to acquire such licenses.<sup>194</sup> Applicants for the special driver's licenses must provide documents to verify their identity and prove they reside in California.<sup>195</sup> Though for most, proof of identity and residency is usually not a problem, undocumented immigrants have limited options for providing such proof.<sup>196</sup> This is another point of contention among immigrant advocates who argue that the requirements for obtaining these special driver's licenses pose an undue burden on immigrants because many times they are

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187. *Id.*

188. See McGreevy, *supra* note 172 (highlighting a vow made by local officials to fight proposals advancing a significantly different looking design).

189. See Megerian, *supra* note 176 (quoting Sen. Kevin de Leon, who applauded the decision as a "common sense agreement between Homeland Security and California").

190. See Brittny Mejia & Cindy Carcamo, *Historic Day as Immigrants in the U.S. Illegally Begin Getting Driver's Licenses*, L.A. TIMES (Jan. 2, 2015, 5:18 PM), <http://www.latimes.com/local/lanow/la-me-ln-dmv-drivers-license-applications-20150102-story.html#page=1> (reporting that Friday, January 2, was the first day licenses were made available to undocumented immigrants in California).

191. See *id.* (singling out Pedro Soriano and his wife, who are among thousands expected to take advantage of the California law).

192. *Id.*

193. See *id.* (listing criteria needed to obtain a special license, including: submission of a thumbprint, passage of a vision exam, written exam, and a behind-the-wheel driving exam).

194. *Id.*

195. *Id.*

196. See Pabon Lopez, *supra* note 12, at 105 (discussing the unequal treatment that state licensing laws have toward immigrants, making it more burdensome for immigrants to acquire licenses).

not allowed to sign a lease, so providing proof of residence can be a challenge.<sup>197</sup> Additionally, applicants will have to submit a thumbprint, pass vision and written exams and schedule a driving test.<sup>198</sup> To prevent any additional confusion, the special licenses will also include language explaining the cards are not to be used for official federal purposes.<sup>199</sup>

California has taken extensive measures in preparation of starting to process the special driver's licenses, but it is not clear yet exactly how many people will continue applying for the licenses.<sup>200</sup> Much of the preparations were made as a response to the delays caused by overwhelmed systems in other states approving driver's licenses for undocumented immigrants.<sup>201</sup> In Colorado, for example, the DMV's scheduling website was so overwhelmed that it shut down several times.<sup>202</sup> In Illinois, which began issuing driver's licenses in December of 2013, there is a three-month wait for an appointment with the Driver Services Department.<sup>203</sup> Such delays make sense in states like Illinois, considering that prior to California approving driver's licenses for undocumented immigrants, Illinois had the highest population of undocumented immigrants to issue special driver's licenses.<sup>204</sup> Moreover, California has tried to avoid some of the complaints arising out of states like Colorado, which only take applications by appointment and only in five of the thirty-seven motor vehicle division offices.<sup>205</sup>

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197. See *id.* at 99–106 (discussing in great detail the licensing schemes that states impose to create hurdles intended to prohibit immigrants from obtaining licenses); see also Henry Goldman, *New York to Issue ID Cards for Undocumented Immigrants*, BLOOMBERG (June 26, 2014, 3:00 PM), <http://www.bloomberg.com/news/articles/2014-06-26/new-york-to-issue-id-cards-for-undocumented-immigrants> (reporting on New York City's decision to issue ID cards to immigrants enabling them to send their children to school and lease apartments).

198. Mejia & Carcamo, *supra* note 190.

199. *Id.*

200. See Berman, *supra* note 159 (highlighting California's efforts to ensure that there are no lengthy delays, as seen in Colorado's underestimation of the demand for such special licenses, which led to problems across the state).

201. See Dan Frosch, *States Hit Snags Issuing Driver's Licenses to Undocumented Immigrants*, WALL ST. J. (July 30, 2014, 8:38 PM) <http://www.wsj.com/articles/states-hit-snags-issuing-licenses-to-undocumented-immigrants-1406749906> (highlighting complications that various states have suffered due to high demands).

202. *Id.*

203. *Id.*

204. See generally Michael Hoefler et al., *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, DEP'T OF HOMELAND SEC. 4 (2012), [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2011.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf) (designating Illinois as the state with the fifth largest immigrant population).

205. Frosch, *supra* note 201.

Though immigrant advocates in Colorado have praised the new law, they have also raised concerns that many of those living in rural areas would not have easy access to one of those five offices.<sup>206</sup> To ease some of those concerns, California held several public hearings in early mid-2014 in an attempt to come up with a better solution.<sup>207</sup> As a result, California is now operating one of the more successful programs offering special driver's licenses. So far signs are optimistic that the program is running smoothly, and it appears that the extensive preparations made by the state are finally paying off.<sup>208</sup> With an estimated total of 1.4 million applicants,<sup>209</sup> the system is still being tested. Still, as of now, California has one of the best-organized programs offering driver's licenses to undocumented immigrants; with some small changes, it should serve as a model for other states.

## VII. TEXAS—A NEED FOR CHANGE

The history of Texas and Mexico will always be intertwined, not only because Texas was once part of Mexico, but also because Texas borders Mexico. Texas remains home to the second highest population of undocumented immigrants in the country, and despite the relatively recent anti-immigration rhetoric in Texas, this is likely to remain unchanged.<sup>210</sup> It seems only logical that given the high number of undocumented immigrants, Texans would demand change in immigration policies. However, and perhaps surprisingly given the close ties between Mexican and Texan cultures, much of the demand for change comes from those who are anti-immigration. That is not to say that immigration activists are quiet in Texas, but because immigration issues are now largely politically aligned and Texas is largely Republican, their voices are often drowned by the politically stronger right-wing.

### A. Texas Department of Public Safety

Currently, Texas has very specific requirements for obtaining a driver's license.<sup>211</sup> Though the requirements were already restrictive, the Department of Public Safety (DPS) introduced additional measures in 2008

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206. *Id.*

207. *Id.*

208. *See generally id.* (discussing some of the ways that California has addressed the flaws coming from other state license issuing programs).

209. Berman, *supra* note 159.

210. *Id.*

211. *See Verifying Lawful Presence*, TEX. DEP'T. OF PUB. TRANSP., <http://www.dps.texas.gov/DriverLicense/documents/verifyingLawfulPresence.pdf> (last visited Feb. 10, 2015) (illustrating the acceptable documents that must be shown in order to obtain a driver's license in Texas).

aimed specifically at excluding undocumented immigrants.<sup>212</sup> Prior to 2008 Texas did not have a specific requirement for proof of citizenship for obtaining a driver's license.<sup>213</sup> However, once DPS added the proof of citizenship requirement, obtaining a driver's license became more problematic and added more difficulty for people in the United States legally.<sup>214</sup> Understandably, immigration advocates immediately protested the new policy.<sup>215</sup> The Mexican American Legal Defense and Educational Fund (MALDEF) led the protest, arguing that the new policy would have the effect of denying legal residents access to driver's licenses.<sup>216</sup> Furthermore, the new policy, MALDEF sought, allowed DPS clerks to act as de facto immigration agents, giving them the right to determine who was and was not eligible for the new driver's licenses.<sup>217</sup> The debate culminated in 2009 when MALDEF sued the Department of Public Safety, arguing DPS had abused its authority by implementing the policy even though the Texas Legislature rejected similar legislation in the 2007 session.<sup>218</sup> In essence, DPS was administratively implanting policies, which had been rejected by Texas lawmakers.

#### B. *Turning Bad Policy into Law*

Despite outrage by immigration advocates over this policy, it became evident that some Texas lawmakers supported this measure.<sup>219</sup> In June of 2011, as the Texas House of Representatives debated an important finance bill, Appropriations Chairman Jim Pitts, decided to take matters into his own hands.<sup>220</sup> Pitts took language, which requires applicants for driver's licenses and ID cards to prove their legal residency, from Senate Bill 9, an omnibus homeland security bill filed by state Senator Tommy

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212. Jason Buch, *Rule Requiring Texas Drivers to Prove Citizenship is Now Law*, HOUS. CHRON. (July 3, 2014), <http://www.chron.com/news/houston-texas/article/Rule-requiring-Texas-drivers-to-prove-citizenship-2078990.php>.

213. Julian Aguilar, *Proof of Legal Status Now Required for State IDs*, TEX. TRIBUNE (July 7, 2011), <http://www.texastribune.org/2011/07/07/lege-requires-proof-of-legal-status-for-state-ids>.

214. *See id.* (alleging the policy change "could have the effect of denying legal residents access" to a driver's license).

215. *Id.*

216. *Id.*

217. *Id.*

218. *See generally* Tex. Dep't of Pub. Safety v. Salazar, 304 S.W.3d 896, 909 (Tex. App.—Austin 2009) (appealing the decision by the trial court to grant injunctive relief from enforcing DPS's policy).

219. *See generally* Buch, *supra* note 212 (illustrating two Texas lawmakers that supported a bill addressing the problem).

220. *Id.*

Williams, and added it as an amendment to Senate Bill 1.<sup>221</sup> The added amendment also allows the DPS to determine expiration dates for IDs based on when an immigration document was issued.<sup>222</sup> In relation to a non-citizen or non-permanent legal resident, the amendment goes as far as to allow DPS to issue a document that expires on the earlier of a date specified by DPS or the expiration date of the applicant's authorized stay in the United States.<sup>223</sup> If the immigration document does not have an expiration date, DPS can issue an ID or license that expires every year.<sup>224</sup> In summary, the amendment brought a challenged policy into law and gave clerks at the DPS the ability to keep tabs on immigrants at their discretion.

In response to criticism, Senator Williams defended the amendment to the bill by pointing out Texas was one of the few states that did not already have a policy regarding legal status for ID applicants.<sup>225</sup> He added that this type of policy was necessary to ensure that foreign criminals were not receiving IDs.<sup>226</sup> Although Senator Williams' argument appears persuasive, he omitted the fact that Texas was one of only three states lacking a policy addressing applicant status; several other states had already implanted a policy granting such applicants driver's licenses or permits.<sup>227</sup>

In response to criticism over giving DPS clerks too much discretion, Williams noted that as part of an appropriation of \$64 million over the next biennium for temporary visitors stations, DPS clerks were to be trained to identify and approve the many immigration documents currently being used to apply for driver's licenses and IDs.<sup>228</sup> However, this is not a solution, it merely adds to the problems with the bill. DPS clerks are already kept busy processing everyday requests; they do not have the time or authority to determine legal status.<sup>229</sup> This policy also lends itself to further complications if the clerk denies an application that should have been approved.<sup>230</sup> Immigrants often times do not have the means, time, or knowledge for obtaining recourse for such denials. This policy essentially makes them more vulnerable to abuse and discrimination.

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221. *Id.*

222. Aguilar, *supra* note 213.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *See id.*

228. *Id.*

229. *See* Buch, *supra* note 212 (illustrating the extra steps required in order to qualify DPS clerks as authority to conduct legal status checks).

230. *E.g., id.* (showing an example of "hundreds of complaints of people getting the wrong licenses").

### C. *An Attempt to Restore Hope in Texas*

The good news is, despite extensive efforts to restrict driver's license access from undocumented immigrants, the debate is not over.<sup>231</sup> Recent efforts by Texas legislators are slowly gaining momentum.<sup>232</sup> Like Assemblyman Cedillo in California, Texas Representative Roberto Alonzo of Dallas has been introducing similar proposals since 2003 and came close to passing one in 2013.<sup>233</sup> In 2013 he introduced House Bill 3206, a bill that would allow applicants who pass a driving test to receive a document that would allow holders to legally register their vehicles and obtain auto insurance.<sup>234</sup> This attempt was notable because the bill had the support of republican state Representative Byron Cook, chairman of the State Affairs Committee, one of the most influential committees.<sup>235</sup> Cook acknowledged Rep. Alonzo's flexibility and willingness to amend the bill in order to make it more appealing for lawmakers.<sup>236</sup> This bill also proposed allowing undocumented immigrants to obtain driver's permits after submitting to a background check, fingerprinting, proving state residency and paying additional fees.<sup>237</sup>

#### i. HB 3206 Gaining Support

Immigrant advocates, lawmakers, and business leaders recognized the bill as a step in the right direction for Texas. Also encouraging is that more and more figures of authority are slowly stepping up and publicly supporting the urgent need for a system that allows undocumented immigrants to drive legally. Much of the success of California's bill is owed to a change in public opinion fueled by legislators and other community leaders. Hence, it is of particular importance that Austin Police Chief, Art Acevedo, testified in favor of the bill; he pointed out that from a public safety and economic standpoint, the bill made sense.<sup>238</sup> Chief Acevedo's testimony also touched on one of the most important argu-

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231. David Saleh Rauf & Susan Carroll, *Texas House Could Take Up Bill to Allow Driver Permits for Immigrants*, HOUS. CHRON. (Apr. 30, 2014) <http://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-House-could-take-up-bill-to-allow-driver-4477639.php>.

232. *See id.* (portraying that several Texas businesses are also behind the bill).

233. Enrique Rangel, *Texas Lawmaker Proposes Driving Permits for Illegal Immigrants*, AMARILLO GLOBE NEWS (Jan. 2, 2015, 8:43 PM), <http://amarillo.com/news/local-news/2015-01-02/lawmaker-proposes-permits-immigrants>.

234. Julian Aguilar, *Bill Would Allow Driver Permits for Undocumented*, TEX. TRIBUNE (Apr. 17, 2013), <http://www.texastribune.org/2013/04/17/bill-would-allow-undocumented-drivers-permit>.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

ments for providing driver's licenses to undocumented immigrants, being able to provide identification and insurance when an auto accident occurs.<sup>239</sup> By providing identification, access to auto insurance, and fingerprints, traffic investigation would be greatly facilitated.<sup>240</sup>

One of the key differences between Texas' HB 3206 and California's AB60 is that HB 3206 would grant driving permits, not driver's licenses. Though immigrant advocates oppose such a stark difference between regular driver's licenses and special permits for undocumented immigrants,<sup>241</sup> the special designation is a way to compromise so the bill does not appear to be rewarding undocumented immigrants. It may also have contributed to gaining the support of powerful business organizations like the Texas Association of Business and the Greater Houston Partnership, as well as other influential Republican groups.<sup>242</sup>

Other business leaders have also come out in support of HB 3206, including Houston insurance broker, Norman Adams who is a self-described "hard right-wing Republican."<sup>243</sup> Adams also heads a group called Texans for Sensible Immigration Policy, and his support for this type of bills is based on the fact it is not an immigration bill, but rather "it's law enforcement, a security, a common sense bill."<sup>244</sup> Adams notes there are more than 1.5 million immigrants in Texas and many are already driving, so providing them with driving permits would actually make Texas roads safer and would allow the state to be able to keep track of who is on the road.<sup>245</sup>

After extensive testimony and well-rounded support, HB 3206 made it through the House State Affairs Committee, but the proposal ultimately failed to make the deadline for placement on the House calendar for consideration by the full chamber.<sup>246</sup> Although many Republicans supported

239. *See id.* (commenting on the ability to exchange information when an individual gets hit).

240. *See id.* (highlighting state agencies opinions on the increased efficiency of providing licenses to undocumented drivers).

241. *See* Saleh Rauf & Carroll, *supra* note 231 (discussing the difference between the proposed permit and a traditional driver's license).

242. *See id.* (reporting on how the compromising approach garnished support of influential Texas Republican organizations).

243. Enrique Rangel, *Bill Would Allow Undocumented Immigrants Driving Permits*, LUBBOCK AVALANCHE-JOURNAL (Apr. 26, 2013, 11:21 PM), <http://lubbockonline.com/editorial-columnists/2013-04-27/rangel-bill-would-allow-undocumented-immigrants-driving-permits#.VLvf6yvF91Y>.

244. *Id.*

245. *Id.*

246. Julian Aguilar, *Bills Addressing Undocumented Immigrants in Limbo*, TEX. TRIBUNE (May 9, 2013), <http://www.texastribune.org/2013/05/09/bills-addressing-undocumented-immigrants-limbo>.



the bill, many of them did not want to have to vote on such a measure out of concern their constituents would disagree.<sup>247</sup> While legislators recognized the merit in such a bill, they worried that others may perceive this bill as pro-illegal immigration, rather than pro-public safety.<sup>248</sup> Even after not making it to the House calendar, Rep. Alonzo still had hope, noting that opposition to such a bill was not as strong or organized as it was just a few years back.<sup>249</sup>

## ii. A Fighting Chance?

On the heels of California's own bill granting undocumented immigrants access to driver's licenses and encouraged by the support for HB 3206, Rep. Alonzo filed a similar bill in anticipation of the 84th Texas Legislature for 2015.<sup>250</sup> The new bill, House Bill 68 (HB68), is very similar to his previous attempts and relates to the creation of a Texas resident driver's permit.<sup>251</sup> However, despite Alonzo's perseverance, the new legislature is even more Republican than the previous one, so the bill is likely to face even more opposition than before. One of the major obstacles to HB 68, if it even makes it past the committee, will be passing it through Lt. Gov. Dan Patrick who will be presiding over the Texas Senate and whose political campaign was devoted to anti-immigration rhetoric.<sup>252</sup> Additionally, even if the bill were to make it through the legislature, new Governor Greg Abbott would likely veto it since he has already stated his opposition to creating differentiated driver's licenses citing concerns over complying with the federal law.<sup>253</sup> Already the new effort to pass such a bill is being characterized as an uphill battle because of the many obstacles it faces. Perhaps 2013 was politically a better year for introducing such a bill, but it is a promising sign that despite year after year of unsuccessful attempts, Rep. Alonzo has not wavered in his commitment. Instead he has continued to garner support for this bill and

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247. *Id.*

248. *See id.* (discussing the hurdles lawmakers face in passing the bill).

249. *Id.*

250. *See* Rangel, *supra* note 233 (highlighting legislative hurdles driving permits faced in Texas).

251. *See generally* Tex. H.B. 68, 84th Leg. R.S. (2015) (framing the Act and the requirements for providing a permit).

252. *See generally* Betsey Blaney, *Greg Abbott Touts Tea Party Star Dan Patrick's Toned-Down Immigration Rhetoric*, THE DALLAS MORNING NEWS (Oct. 28, 2014), <http://www.dallasnews.com/news/politics/state-politics/20141028-greg-abbott-touts-tea-party-star-dan-patrick-s-toned-down-immigration-rhetoric.ece> (reporting on Patrick's anti-immigration stance).

253. *See* Rangel, *supra* note 233 (quoting Greg Abbot during a September 2014 debate with Wendy Davis regarding his opposition to issuing driver's licenses to undocumented immigrants).

continues to tout the benefits, gaining Republican supporters along the way.<sup>254</sup>

#### D. *Recommendations*

Even if HB 68 never makes it past the Committee, the debate over granting access to driver licenses is far from over. The current trend shows signs more states will implement their own version of driver's licenses for undocumented immigrants, and even if Texas is slow to pass a bill, the state will eventually have to specifically address this issue. When the time comes, the bill should be designed to achieve goals tailored to the state. Specifically, any future proposal should aim to enhance public safety by adequately training and testing drivers. This goal not only makes sense, but also makes it more appealing to critics. Second, this type of bill should emphasize as its purpose the protection of all motorists by ensuring all drivers are given access to liability insurance. Further, these proposals should include adequate methods of verifying identity and state residency in order to prevent fraud and address much of the criticism regarding driver licenses and permits for undocumented immigrants. Lastly, an integral part of any proposal should be to create a program that complies with the requirements of the REAL ID Act but does not make applicants more vulnerable to mistreatment and discrimination. This last point will likely raise concerns from both sides of the debate, but especially in Texas, it is important to keep this type of proposal well balanced to increase its chance for success.

### VIII. CONCLUSION

Given the current political landscape in Texas, any measure seeking to expand immigrant rights is unlikely to make it through the legislature. However, the success of California's program will be critical, not just for Texas, but for all other states where similar initiatives are underway. If California's program succeeds at regulating driver's licenses while still complying with the federal law, it may mean more political support even in Texas. One of the most important reasons why California ought to serve as a model for Texas is because of the similarities in the states' composition. Additionally, problems that arise with California's program can likely be adjusted in new proposals in Texas until eventually a bill is introduced that will garner enough support to be a law. Though in Texas

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254. Editorial Board, *Lawmakers need to revisit driving permits proposals for immigrants*, AUSTIN AMERICAN-STATESMAN (Sept. 8, 2014, 3:24 PM) <http://www.mystatesman.com/news/news/opinion/lawmakers-need-to-revisit-driving-permits-proposal/nhJFG>.

this measure may be years away, there is hope that eventually the benefits to public safety and common sense of such a policy will restore access to one of the most basic privileges for undocumented immigrants.