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## Filling the Gap: The Case for Driver's Licenses as a Lifeline to Opportunity for Undocumented Immigrants Where the Federal Government Fails to Act on Comprehensive Immigration Reform

David Peraza  
davidperaza98@gmail.com

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# FILLING THE GAP: THE CASE FOR DRIVER’S LICENSES AS A LIFELINE TO OPPORTUNITY FOR UNDOCUMENTED IMMIGRANTS WHERE THE FEDERAL GOVERNMENT FAILS TO ACT ON COMPREHENSIVE IMMIGRATION REFORM

*David Peraza\**

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“We shouldn’t allow them to come into the country to begin with, but once they’re here, what do you do? Do you basically say that they’re lepers to society? That they don’t exist? A policy that ignores them is a policy of denial.”<sup>1</sup> –Jeb Bush.

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\* Bachelor of Science, University of Central Florida (2020), Juris Doctor Candidate, 2024, Florida International University College of Law. First-generation law student. Special thanks to Professor Ediberto Roman for his guidance and thoughtful critique throughout the writing process.

<sup>1</sup> Steve Bousquet, *Let Undocumented Immigrants Drive Legally, and Stop Pretending They Don’t Exist*, S. FLA. SUN SENTINEL (Sept. 23, 2019, 10:00 PM), <https://www.sun-sentinel.com/2019/09/23/let-undocumented-immigrants-drive-legally-and-stop-pretending-they-dont-exist-buzz/>. Former governor Jeb Bush voiced his support for issuing driver’s licenses to undocumented immigrants in 2004. See BRYAN BAKER, DEP’T OF HOMELAND SEC. OFF. OF IMMIGR. STATS., POPULATION ESTIMATES: ILLEGAL ALIEN

## I. BACKGROUND

Under the leadership of both Democratic and Republican administrations, the federal government has repeatedly failed at passing immigration reform. The most recent comprehensive immigration reform (CIR) enacted in the United States was the Immigration Reform and Control Act of 1986, which legalized 3.2 million undocumented immigrants, about seventy-five percent of the undocumented population at the time.<sup>2</sup> Each of the more recent proposals for comprehensive immigration reform have since failed, and even these attempts were unlikely to resolve pressing immigration problems in regulating the largely unrestricted flow of workers to meet the nation's economic needs or securing U.S. borders without shutting the nation off from the benefits of globalization.<sup>3</sup>

In the face of the federal government's inaction, various states have made attempts to provide undocumented immigrants with some limited benefits, particularly in the areas where states possess the sole legal authority to grant such benefits. Chief among these benefits, and the focus of this work, are driver's licenses. Driver's licenses provide access to many important, basic necessities and are often a lifeline to opportunity for many undocumented immigrants that would otherwise be barred from such benefits. As such, this work is centered around an analysis of the benefits and drawbacks to an inclusive licensing policy. Further, this work ultimately posits that holdout states should enact policies—and stand to benefit from—providing driver's licenses to undocumented populations in the face of the federal government's inaction on comprehensive immigration reform.

### A. *Drivers Licenses are a Lifeline to Opportunity*

Procuring a driver's license in the modern day has become less about the qualifications to drive and more about access to basic opportunities for many undocumented populations. To this end, driver's licenses have become one of the primary forms of identification in the United States, given that the country has not adopted a national form of identification.<sup>4</sup> Driver's licenses

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POPULATION RESIDING IN THE UNITED STATES: JANUARY 2015, at 4 (2018). According to the Department of Homeland Security (DHS), Florida—the state where the author of this work is writing from, and the state Bush previously led—is home to about 810,000 undocumented immigrants alone. Bush's words in 2004 still ring true in the present-day, where the policy of the U.S. government has been one of denial, largely ignoring the undocumented immigrants that reside in our community.

<sup>2</sup> NEERAJ KAUSHAL, *BLAMING IMMIGRANTS: NATIONALISM AND THE ECONOMICS OF GLOBAL MOVEMENT* 79 (2019).

<sup>3</sup> *Id.* at 78.

<sup>4</sup> Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 221 (2004).

are typically required as the only form of identification by employers, banks, insurance companies, landlords, and other economic institutions.<sup>5</sup> Additionally, driving without a driver's license is also a crime in many states, significantly limiting mobility among undocumented communities.<sup>6</sup>

Mobility for many undocumented immigrants is particularly limited due, in large part, to a lack of reliable public transit in much of the United States and a heavy reliance on cars to get around.<sup>7</sup> Although public transit experienced a major disruption and decline in demand due to the COVID-19 pandemic, the demand for public transit had already been substantially declining many years before the pandemic.<sup>8</sup> For example, one study demonstrates that ridership by buses in the United States dropped by 16.8% from 2008 to 2017 in eighty-five urban areas surveyed.<sup>9</sup> Further, the same study indicates that ridership by rail fell by 5.28% from 2014 to 2017 in nineteen urban areas surveyed.<sup>10</sup> In response to the decline in demand, transit providers have cut basic local services in many communities as a cost saving measure, and as a result, many bus or train routes have been cut to the point of no longer serving as a viable option for commuters.<sup>11</sup>

Further, many cities in the United States have become less walkable and more reliant on highway systems.<sup>12</sup> As a result, private automobile transportation is the predominant form of commuting to work for most Americans.<sup>13</sup> For example, in 2013 alone, about eighty-six percent of all workers commuted to work in a private vehicle as opposed to public transit, either driving alone or by carpooling.<sup>14</sup> These realities demonstrate that for undocumented immigrants, living without a driver's license means living without access to many basic needs, such as the ability to drive a car to work, and other economic opportunities that U.S. citizens and their documented

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<sup>5</sup> *Id.*

<sup>6</sup> See FLA. STAT. § 322.03(1) (2018).

<sup>7</sup> See Jonathan English, *Why Did America Give Up on Mass Transit? (Don't Blame Cars.)*, BLOOMBERG (Aug. 31, 2018, 11:38 AM), <https://www.bloomberg.com/news/features/2018-08-31/why-is-american-mass-transit-so-bad-it-s-a-long-story>.

<sup>8</sup> Yongsung Lee & Bumsoo Lee, *What's Eating Public Transit in the United States? Reasons for Declining Transit Ridership in the 2010s*, 157 TRANSP. RSCH. PART A 126, 126 (2022); see Yuxin Zhang & Dafeng Xu, *The Bus is Arriving: Population Growth and Public Transportation Ridership in Rural America*, 95 J. RURAL STUD. 467, 467 (2022). Despite nationwide investments in public transport across the United States, public transit remains a less common mode of transportation in rural areas of the United States than in urban areas, reinforcing the notion that the United States is largely a car-dependent country.

<sup>9</sup> Lee & Lee, *supra* note 8, at 126.

<sup>10</sup> *Id.*

<sup>11</sup> See English, *supra* note 7.

<sup>12</sup> See *id.*

<sup>13</sup> BRIAN MCKENZIE, U.S. CENSUS BUREAU, WHO DRIVES TO WORK? COMMUTING BY AUTOMOBILE IN THE UNITED STATES: 2013, at 1 (2015).

<sup>14</sup> *Id.*

counterparts may take for granted.<sup>15</sup> As such, driver's licenses represent a much needed lifeline to opportunity for many undocumented immigrants.

*B. Legal Status Leads to Driver's Licenses: The Interplay  
Between the Federal Government and State's Powers*

It is widely accepted that immigration policy in the United States is entirely a function of the federal government. Although the Constitution does not mention immigration, the Supreme Court has relied on various provisions such as the Naturalization Clause in Article I, Section 8, which grants Congress's power to "establish a uniform Rule of Naturalization," the Foreign Commerce Clause, and the Executive's implied Article II foreign affairs power as the sources of the federal government's power over immigration.<sup>16</sup> To this end, the Supreme Court in *Fong Yue Ting v. United States* held that "[t]he power to exclude or expel aliens, being a power affecting international relations, is vested in the political departments of the government, and is to be regulated by treaty or by act of congress, and to be executed by the executive . . . ."<sup>17</sup> The Court has also repeatedly recognized Congress's plenary power to regulate immigration and "make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden."<sup>18</sup>

In its exercise of its power over immigration, Congress enacted the Immigration and Nationality Act (INA) in 1952, which has been amended and reorganized over the years, and continues to serve as the primordial law regulating immigration.<sup>19</sup> The INA governs the issuance of immigration benefits—such as the issuance of visas,<sup>20</sup> adjustment of status,<sup>21</sup>

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<sup>15</sup> See *id.* at 15. Generally, foreign-born workers demonstrate lower rates of driving to work alone than native-born workers.

<sup>16</sup> See U.S. CONST. art. I, § 8, cl. 3, 4; see also U.S. *ex rel.* Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950) (noting that the foreign affairs power is a source of the executive's power to exclude aliens).

<sup>17</sup> *Fong Yue Ting v. United States*, 149 U.S. 698, 713 (1893).

<sup>18</sup> *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. Immig. & Naturalization Serv.*, 387 U.S. 118, 123 (1967)); see also *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 343 (1909) (recognizing the "plenary power of Congress as to the admission of aliens" and "the complete and absolute power of Congress over the subject" of immigration); *Galvan v. Press*, 347 U.S. 522, 531 (1954) ("Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government . . . . But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.").

<sup>19</sup> See HOLLY STRAUT-EPPSTEINER, CONG. RSCH. SERV., R45020, PRIMER ON U.S. IMMIGRATION POLICY 1 (2021).

<sup>20</sup> See 8 U.S.C. § 1153 (INA § 203).

<sup>21</sup> *Id.* § 1255 (INA § 245(a)).

naturalization<sup>22</sup>—and the imposition of penalties—such as provisions outlining the classes of aliens eligible for removal,<sup>23</sup> and the grounds of inadmissibility.<sup>24</sup>

Notwithstanding the powers of the federal government in regulating immigration, the power to issue driver's licenses is an authority left to the states. The states' power to require the issuance of driver's licenses is derived from the Tenth Amendment, which grants the powers not delegated to the federal government to the states.<sup>25</sup> To this end, the Supreme Court has long held that the states may require individuals to procure a driver's license to operate a motor vehicle as a constitutional exercise of the State's police power.<sup>26</sup> With the emergence of automobiles in modern society, state legislatures imposed licensing laws as a public safety measure, ensuring that individuals operating automobiles know the basic traffic and safety rules.<sup>27</sup> Further, most states, in their exercise of the police power, require liability insurance at a minimum to register a motor vehicle, which can only be purchased with a driver's license.<sup>28</sup>

Although the power to issue driver's licenses is reserved to the states, the federal government's primary mechanism to allow undocumented immigrants to obtain driver's licenses is by granting them legal status, which has been a feature of almost all the failed efforts at comprehensive immigration reform. All states, including the holdout states that have not enacted an inclusive licensing policy, allow for noncitizens to apply for a driver's license with federally-issued documents, such as a valid employment authorization card and a Social Security card.<sup>29</sup> As such, the federal government granting undocumented immigrants legal status would make

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<sup>22</sup> *Id.* § 1427 (INA § 316).

<sup>23</sup> *Id.* § 1227 (INA § 237).

<sup>24</sup> *Id.* § 1182 (INA § 212).

<sup>25</sup> U.S. CONST. amend. X.

<sup>26</sup> *See Hendrick v. Maryland*, 235 U.S. 610, 622 (1915).

<sup>27</sup> Johnson, *supra* note 4, at 220.

<sup>28</sup> *Id.*

<sup>29</sup> *See, e.g., What to Bring: Non-Immigrant*, FLA. HIGHWAY SAFETY & MOTOR VEHICLES, <https://www.flhsmv.gov/driver-licenses-id-cards/what-to-bring/non-immigrant> (last visited Jan. 22, 2024). Florida allows for non-immigrants to present various federally-issued documents as the form of primary identification when applying for a driver's license. *Id.* These documents include a valid employment authorized card issued by DHS, non-expired proof of non-immigrant classification provided by DHS form I-94 with required supporting documents, I-571 travel document/refugee travel permit, I-512 parole letter accepted, or an immigration judge's order granting asylum or cancellation of removal. *Id.* Further, applicants must also provide proof of social security, with a Social Security card, a W-2 form, or various other valid documents. *Id.* Texas similarly requires non-citizen applicants to present federally-issued documents to prove lawful status. *Verifying Lawful Presence*, TEX. DEP'T PUB. SAFETY, at 2–3, <https://www.dps.texas.gov/sites/default/files/documents/driverlicense/documents/verifyinglawfulpresence.pdf> (last visited Jan. 21, 2024).

available to them the various federally-issued documents that states require as proof of lawful status in the United States. With legal status and the documents to prove it, once-undocumented immigrants would be eligible for driver's licenses in all fifty states. Put simply, legal status leads to driver's licenses.

*C. The Federal Government's Failed Attempts to Enact  
Comprehensive Immigration Reform*

The states filling the gap in providing driver's licenses to undocumented immigrants is only necessary because, as a brief historical analysis of its inaction demonstrates, the federal government has repeatedly failed at providing legal status to the undocumented population in the United States. Since the last major comprehensive immigration reform in 1986,<sup>30</sup> numerous bills have been introduced in both chambers of Congress that have been given the title of "comprehensive immigration reform." Broadly speaking, these bills or proposals set forth by legislators included a program that would legalize the immigration status of large portions of the undocumented population living in the United States.<sup>31</sup> For example, Senators Ted Kennedy and John McCain introduced the Secure America and Orderly Immigration Act in 2005 that would have provided legal status to many undocumented immigrants who agreed to pay back taxes, pay fines, maintain employment, and meet English-language requirements.<sup>32</sup> The bill never got a vote in the Senate.<sup>33</sup>

The following year, the Senate passed the Comprehensive Immigration Reform Act of 2006, which would have similarly allowed large portions of the undocumented population in the country to obtain legal status after paying fines and taxes.<sup>34</sup> The year prior, the House passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, which only included draconian enforcement measures and penalties and no pathway to citizenship for undocumented immigrants living in the country.<sup>35</sup>

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<sup>30</sup> KAUSHAL, *supra* note 2, at 79.

<sup>31</sup> Muzaffar Chishti, *The Fading Prospects for Comprehensive Immigration Reform*, 1 ST. JOHN'S J. INT'L & COMPAR. L. 9, 10 (2010).

<sup>32</sup> See Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005).

<sup>33</sup> Suzanne Gamboa, *Congress Has Failed for More Than Two Decades to Reform Immigration—Here's a Timeline*, NBC NEWS (May 9, 2023, 7:31 AM), <https://www.nbcnews.com/news/latino/immigration-reform-failure-congress-timeline-rcna64467>.

<sup>34</sup> See Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. (2006).

<sup>35</sup> See Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005).

Both chambers were unable to reconcile the bills and each proposal ultimately died at the end of the 109th Congress in 2006.<sup>36</sup>

In the next Congress, Senate Majority Leader Harry Reid introduced the Comprehensive Immigration Reform Act of 2007, which would have similarly provided legal status and a pathway to citizenship for the undocumented population in the United States.<sup>37</sup> Although the bill had bipartisan support and backing from the Bush administration, it ultimately failed to survive to cloture and never got a final vote in the Senate.<sup>38</sup>

Hopes for reform were renewed in 2013 when a bipartisan group of senators, nicknamed the “Gang of Eight,” introduced the Border Security, Economic Opportunity, and Immigration Modernization Act that would have provided legal status and eventual citizenship to undocumented immigrants, in addition to increased border security.<sup>39</sup> The bill passed the Senate, but ultimately failed when the Republican-controlled House refused to take up the bill.<sup>40</sup>

More targeted efforts toward reform similarly failed, including the DREAM Act of 2010, which would have provided legal status to undocumented immigrants brought to the United States before the age of sixteen.<sup>41</sup> In the face of this inaction, the Obama administration took executive action, including the Deferred Action for Childhood Arrivals (DACA) program and the never-implemented Deferred Action for Parents of Americans (DAPA).<sup>42</sup> The DACA program continues to provide limited relief to eligible applicants and DACA beneficiaries remain eligible to apply for a driver’s license in all fifty states.<sup>43</sup> Unlike DACA, the DAPA program, which would have provided legal status to undocumented parents of children who are either U.S. citizens or lawful permanent residents, was ultimately

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<sup>36</sup> Gamboa, *supra* note 33.

<sup>37</sup> See Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (2007).

<sup>38</sup> Gamboa, *supra* note 33.

<sup>39</sup> *Id.*; see Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013).

<sup>40</sup> Gamboa, *supra* note 33.

<sup>41</sup> See DREAM Act of 2010, S. 3827, 111th Cong. (2010).

<sup>42</sup> See Kristina M. Campbell, *Dreamers Deferred: The Broken Promise of Immigration Reform in the Obama Years*, 25 TEX. HISP. J.L. & POL’Y 1, 8–10 (2018).

<sup>43</sup> *Access to Driver’s Licenses for Immigrant Youth Granted DACA*, NAT’L IMMIGR. L. CTR., <https://www.nilc.org/issues/drivers-licenses/daca-and-drivers-licenses/> (July 22, 2020); see *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1067 (9th Cir. 2014). In the early years of the DACA program, various states took steps to deny driver’s licenses to DACA beneficiaries. In *Brewer*, the Ninth Circuit held that the Arizona Department of Transportation’s (DOT) denial of driver’s licenses to DACA recipients could not survive rational basis review when Plaintiffs challenged the DOT’s policy as a violation of the Fourteenth Amendment’s Equal Protection clause. *Id.* *Brewer* serves as an example of failure among the states that initially gave pushback to DACA recipients attempting to obtain driver’s licenses. *Id.*



blocked by the federal judiciary, culminating in the Supreme Court's *United States v. Texas* ruling that upheld the lower court's injunction on the program's implementation.<sup>44</sup>

Legislators at the state level have, on numerous occasions, cited the failure of the federal government at passing comprehensive immigration reform as the primary reason to enact laws to issue driver's licenses to undocumented immigrants. For example, Massachusetts state representative Tricia Farley-Bouvier introduced a bill to allow undocumented immigrants to acquire driver's licenses in 2019 and stated, "Our federal immigration system is very, very broken. We . . . have to do everything necessary to keep Massachusetts safe and to keep it fair while Washington gets their act together."<sup>45</sup> In California, Democratic Assemblyman Luis Alejo stated, "When Congress fails to act, it forces states like California, with [the] largest immigrant population in [the] country, to enact laws to improve the lives of immigrants."<sup>46</sup> In Idaho, while sponsoring a bill that would provide undocumented immigrants with a driver's license, state Senator Jim Guthrie stated: "The feds have failed in this regard and have failed miserably."<sup>47</sup> In New York, state Senator Gustavo Rivera introduced a similar bill in 2014 and posed the following rhetorical question in asserting that the state legislature should step in when Congress is at an impasse: "If there is failure at the national level, what should states do?"<sup>48</sup>

Activists similarly cite the federal government's inaction as grounds for the pivot towards advocacy in the state legislatures. Rebecca Shi, the executive director of the American Business Immigration Coalition, stated "[t]here has to be a solution, and if we can act on the local level, we will do that."<sup>49</sup> Additionally, Juan Manuel Guzman, state advocacy director at immigrant advocacy group United We Dream, stated that "[t]he next battle

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<sup>44</sup> See *United States v. Texas*, 579 U.S. 547, 548 (2016); *Texas v. United States*, 809 F.3d 134, 188 (5th Cir. 2015).

<sup>45</sup> Chris Lisinski, *Lawmakers Push Bill Making Undocumented Immigrants Eligible for Driver's Licenses*, WBUR (Jan. 23, 2019), <https://www.wbur.org/news/2019/01/23/undocumented-immigrants-drivers-licenses-bill>.

<sup>46</sup> Sharon Bernstein, *Illegal Immigrants to Get Driver's Licenses Under New California Law*, YAHOO NEWS (Oct. 3, 2013, 2:19 PM), <https://www.reuters.com/article/idUSBRE9920TW/>.

<sup>47</sup> Steve Kirch, *Restricted Driver's License Bill Passes to Senate, 'Without Recommendation'*, KMYT (Mar. 1, 2023, 12:59 AM), <https://www.kmyt.com/2023/03/01/restricted-drivers-license-bill-passes-senate-without-recommendation/>.

<sup>48</sup> Amanda Sakuma, *States Pick up Pieces of Congress' Immigration Reform Fail*, MSNBC (June 25, 2014, 12:09 PM), <https://www.msnbc.com/msnbc/states-pick-pieces-congress-immigration-reform-fail-msna356336>.

<sup>49</sup> Suzanne Monyak, *With Congress Stuck, Some Immigrant Advocates Go Local*, ROLL CALL (Mar. 23, 2023, 9:50 AM), <https://rollcall.com/2023/03/23/with-congress-stuck-some-immigrant-advocates-go-local/>.

is the states.”<sup>50</sup> Tanya Broder, a senior staff attorney at National Immigration Law Center, highlighted the progress made in the states that have enacted an inclusive licensing policy and stated:

[t]o the extent that states have the power, or localities have the power, to improve the daily lives of their residents and to make sure that they feel comfortable engaging with government agencies and receiving what they need, then yes, we’ve seen marked progress at the state and local level.<sup>51</sup>

As its history suggests and both state legislators and activists have concluded, the federal government is unlikely to act on comprehensive immigration reform in the near future. The status quo surrounding current immigration policy is likely to remain, leaving large portions of the undocumented population in the United States without a pathway to legal status, and thus without access to a driver’s license. As such, state and local governments should act within the status quo in providing undocumented immigrants access to driver’s licenses.

This work focuses on the benefits and drawbacks of an inclusive licensing policy. Section II will address the benefits of such a policy, which includes driving down the costs of insurance, increasing public safety in communities, increasing tax revenues for state and local governments, and providing for economic mobility among undocumented immigrants that obtain driver’s licenses. Section III will address four drawbacks to the policy. Two drawbacks in this analysis have merit: the issue of ICE accessing undocumented immigrant’s data through DMVs and third-party data brokers, and the issue of federal limitations on driver’s licenses issued to undocumented immigrants imposed that are largely a product of the REAL ID Act. Two additional issues raised in this section have been characterized as drawbacks by opponents of an inclusive licensing policy, including the myth of increased voter fraud and the overstated dangers of fraudulent documentation and activity among undocumented populations. However, further analysis will demonstrate that these so-called “drawbacks” ultimately lack merit and should not be given serious consideration by policymakers in holdout states that may seek to enact inclusive licensing policies in the future. Finally, Section IV sets forth policy recommendations to effectively maximize the benefits and to mitigate potential drawbacks in implementing an inclusive licensing policy, drawing from the lessons learned in the nineteen states that have already implemented such a policy.<sup>52</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See *States Offering Driver’s Licenses to Immigrants*, NCSL, <https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants> (Mar. 13, 2023).

## II. BENEFITS

As data from the states that have implemented an inclusive licensing policy will demonstrate, providing undocumented immigrants with driver's licenses is not merely an act of charity or selfless generosity by the states. States—and all Americans—stand to benefit from implementing an inclusive licensing policy because it increases the number of insured drivers in a community, ultimately driving down insurance costs; increases public safety; increases tax revenues for state and local governments; and encourages economic mobility.

### A. *Driving Down the Cost of Insurance*

Proponents of an inclusive licensing policy correctly assert that when undocumented immigrants' access to driver's license is restricted, these drivers are barred from obtaining insurance.<sup>53</sup> Given that empirical data suggests that undocumented immigrants will drive uninsured when they are unable to obtain legal driving status,<sup>54</sup> proponents contend that excluding undocumented immigrants increases the number of uninsured motorists, driving the cost of insurance up.

While the scholarship on the interplay between the issuance of driver's licenses to undocumented immigrants and insurance premiums is limited, the literature on insurance policies among the general population continues to inform the discussion surrounding the policy towards undocumented immigrants. In theory, when assessing the state of auto insurance, "risk-based rates should depend on expected claims costs, insurer administrative costs, and an insurance company's cost of holding capital sufficient to pay claims."<sup>55</sup> However, in practice, empirical evidence suggests that other factors affect premium rates, including age (younger or older drivers are considered to be a greater risk), gender (women seem to pay more in insurance premiums), marital status, credit characteristics, type of vehicle, vehicle use, miles driven, geographic location, and driving history.<sup>56</sup> Other factors that may affect insurance costs include "[t]he rate of regulation[,] . . . the accident rate, the size of the residual market, and overall costs for insurers."<sup>57</sup>

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<sup>53</sup> See Mauricio Cáceres & Kenneth P. Jameson, *The Effects on Insurance Costs of Restricting Undocumented Immigrants' Access to Driver Licenses*, 81 S. ECON. J. 907, 911 (2015).

<sup>54</sup> *Id.* at 913.

<sup>55</sup> Lisa A. Gardner & David C. Marlett, *The State of Personal Auto Insurance Rate Regulation*, 26 J. INS. REGUL. 39, 46 (2007).

<sup>56</sup> *Id.*

<sup>57</sup> Cáceres & Jameson, *supra* note 53, at 914.

Researchers have used the aforementioned factors to determine the effect of allowing undocumented immigrants to drive legally on insurance expenditures.<sup>58</sup> The scholarship on point indicates that accidents caused by uninsured drivers, undocumented or not, cost more than \$4.1 billion in insurance losses each year.<sup>59</sup> Insured drivers are then left paying higher premiums and injuries caused by uninsured drivers.<sup>60</sup> In light of these realities, proponents of inclusive driver's license policies argue that insurance becoming available to a segment of the population that did not previously have access to driver's licenses (a requirement to be insured) will, in theory, cause the population of uninsured motorists to decrease and drive down the cost of insurance.<sup>61</sup>

Research suggests that this proposition is largely true. The results of a 2015 study found that "the net result of a state's imposing restrictions on undocumented drivers [i.e. refusing to issue driver's licenses] is estimated to raise the real average insurance costs by \$17.22."<sup>62</sup> Accordingly, empirical evidence supports the notion that the way to drive down the cost of insurance is to ease restrictions on undocumented drivers. Lower insurance costs benefit all drivers, undocumented or not, in communities that would welcome newly licensed drivers.

One way to explain the cost of auto insurance going down is the positive impact that issuing driver's licenses to undocumented immigrants has on auto insurance sales. The premise is simple: in most states, owners of a vehicle are required to have a driver's license to purchase auto insurance, and therefore, giving more individuals driver's licenses will provide opportunity for more individuals to purchase auto insurance.<sup>63</sup>

Empirical evidence suggests that this premise is largely true. One study found that inclusive licensing policies led to an increase in the number of licensed drivers in the state, leading to an increase in auto insurance coverage.<sup>64</sup> As such, researchers concluded undocumented immigrants respond to being given a driver's license with purchasing auto insurance.<sup>65</sup>

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<sup>58</sup> See *id.* at 910.

<sup>59</sup> Kari E. D'Ottavio, Comment, *Deferred Action for Childhood Arrivals: Why Granting Driver's Licenses to DACA Beneficiaries Makes Constitutional and Political Sense*, 72 MD. L. REV. 931, 962 (2013).

<sup>60</sup> *Id.* at 962–63.

<sup>61</sup> See Cáceres & Jameson, *supra* note 53, at 911.

<sup>62</sup> *Id.* at 920.

<sup>63</sup> See DEBORAH GONZALEZ ET AL., ROGER WILLIAMS UNIV. SCH. L. & LATINO POL'Y INST., A LEGAL AND POLICY ANALYSIS OF DRIVER LICENSE'S FOR UNDOCUMENTED RHODE ISLANDERS 16 (2016).

<sup>64</sup> See Brandyn F. Churchill et al., *Driver's Licenses for Unauthorized Immigrants and Auto Insurance* 13 (Utah State Univ. Ctr. for Growth & Opportunity, Working Paper No. 2020.009, 2020).

<sup>65</sup> *Id.*

Data from individual states also support the proposition that undocumented immigrants purchase auto insurance when issued a license. Since implementing legislation to issue licenses to the undocumented population in 2003, the rate of uninsured drivers in New Mexico decreased almost twenty-four percentage points in the span of nine years, from 33% in 2002 to 9.1 % in 2011.<sup>66</sup> A similar trend occurred in Utah after the state began issuing Driving Privilege Cards (a second-tier driver's license that does not conform with the REAL ID Act) in 2005, where the rate of uninsured motorists dropped from 28% to 8%.<sup>67</sup> Researchers argue that these drops in the rate of uninsured motorists are due, at least in part, to state policies issuing driver's licenses to undocumented populations.<sup>68</sup>

### *B. Increasing Public Safety*

Aside from its identification function, public safety has long been the primordial justification for the issuance and regulation of driver's licenses, serving the "important public interest in safety on the roads and highways, and . . . the prompt removal of a safety hazard."<sup>69</sup> Opponents to inclusive driver's license policies argue that such a policy would decrease public safety on the grounds of the stereotypes that undocumented immigrants work low-wage jobs and therefore have difficulty affording insurance, own cars that are frequently older and more accident prone, and are not able to read road alerts in English.<sup>70</sup>

However, the scholarship surrounding the public safety issue suggests the opposite; there is no empirical support for the notion that undocumented immigrants are more prone to accidents.<sup>71</sup> One study on the effects of California's legislative effort to provide licenses to undocumented immigrants with driver's license, Assembly Bill 60 (AB60),<sup>72</sup> presented

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<sup>66</sup> Thamanna Vasan, *The Impact of Allowing All Immigrants Access to Driver's Licenses*, COLO. FISCAL INST. (Mar. 2015), <https://www.coloradofiscal.org/wp-content/uploads/2015/06/drivers-license-for-undocument-immigrants-cfi.pdf>.

<sup>67</sup> *Id.*

<sup>68</sup> *See id.*

<sup>69</sup> *Dixon v. Love*, 431 U.S. 105, 114 (1977).

<sup>70</sup> *Real ID*, FED'N FOR AM. IMMIGR. REFORM (Apr. 1, 2009), <https://www.fairus.org/issue/national-security/real-id>.

<sup>71</sup> Hans Lueders et al., *Providing Driver's Licenses to Unauthorized Immigrants in California Improves Traffic Safety*, 114 PNAS 4111, 4114 (2017).

<sup>72</sup> *Id.*; Assemb. 60, 2013 Leg., Reg. Sess. (Cal. 2013). Enacted by the state legislature in 2013, the California law includes undocumented immigrants in the issuance of driver's licenses by allowing other "identifier[s] determined to be appropriate by the [DMV]" in lieu of a social security number, once the applicant can prove that he or she has never been issued a social security account number and is not presently eligible for a social security account number.

findings suggesting that the policy led to improved traffic safety.<sup>73</sup> The same study indicated that AB60's opponents' concerns about a potential increase in hit and run accidents were unsubstantiated, finding instead that providing undocumented immigrants access to driver's licenses reduced their incentives to flee the scene of an accident.<sup>74</sup>

Evidence also suggests that undocumented drivers had already been driving registered vehicles before the implementation of AB60 as driving is often a necessity in California to go to work, school, and other routine destinations.<sup>75</sup> Finally, researchers found that the majority of new license holders on the other side of AB60 had sufficient driving experience and procuring a driver's license did not change their routine driving behavior.<sup>76</sup>

Another study presented evidence demonstrating that, when comparing traffic fatalities in all states, with and without restrictions for driver's license applicants, larger percentages of undocumented immigrants were associated with lower numbers of traffic fatalities.<sup>77</sup> Additionally, states that have implemented inclusive licensing policies have on average less traffic fatalities than states requiring applicants to produce documented legal status or a valid Social Security Number (SSN).<sup>78</sup>

### C. Increasing Tax Revenues

Providing driver's licenses to undocumented immigrants also presents an opportunity for increased tax revenues for state and local governments. In one study, researchers found that implementing an inclusive licensing policy in Florida—a holdout state that currently provides driver's licenses to only applicants that can prove lawful status—and including the 685,000 undocumented immigrants of driving age living in the state, would generate around \$68.6 million in new state revenue within the first three years of the policy's implementation.<sup>79</sup>

Researchers in that same study found that an analysis of the take-up rates of driver's licenses in other states that implement inclusive licensing policies suggests that an estimated half of the 685,000 driving age undocumented immigrants in Florida would apply for a driver's license.<sup>80</sup> Given that the

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<sup>73</sup> Lueders et al., *supra* note 71, at 4114.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 4114–15.

<sup>76</sup> *Id.* at 4115.

<sup>77</sup> GONZALEZ ET AL., *supra* note 63, at 21.

<sup>78</sup> *Id.*

<sup>79</sup> ALEXIS DAVIS, FLA. POL'Y INST., SAFEGUARDING THE ROADS: GRANTING DRIVER'S LICENSE ACCESS TO ALL FLORIDIANS 1 (2019).

<sup>80</sup> *Id.* at 2.

state's driver's license fee for non-commercial driver's was \$48 in 2019, researchers estimated that issuing driver's licenses to undocumented immigrants would result in \$16.4 million in driver's licenses fees over a three-year period.<sup>81</sup> Researchers also found that other new sources of revenue for the state included initial vehicle registration fees at an estimated \$19,265,625; initial vehicle title fees at an estimated \$5,993,750; and sales and use tax on vehicles at an estimated \$26,936,489.<sup>82</sup>

Additionally, in the fiscal note on Nevada's legislation that allowed undocumented immigrants to obtain licenses, SB 303, the state's DMV estimated that the state would see \$1.4 million in first-year revenues. These revenues would be offset by first-year costs of \$713,000—which included a one-time charge of \$75,000.<sup>83</sup>

The benefit of increased tax revenues extends beyond the hypothetical and has played out in the states that have already implemented an inclusive licensing policy. For example, in California, an estimated 443,000 undocumented immigrants applied for driver's licenses in the first 6 months after AB60 was enacted.<sup>84</sup> Activists estimate the state of California generated more than \$1.3 million in application fees alone on the other side of AB60's enactment.<sup>85</sup>

In response to the debate surrounding repealing legislation to issue driver's licenses to undocumented immigrants, one New Mexico representative calculated that the 2003 law brought about \$500 million in new revenue to New Mexico in 2003.<sup>86</sup> The additional revenue in New Mexico has come in the form of new car sales from new licensed undocumented immigrants, insurance premiums and policies sold to undocumented immigrants, and license fees.<sup>87</sup>

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 1.

<sup>83</sup> NEV. DEP'T MOTOR VEHICLES, S.B. 303, EXEC. AGENCY FISCAL NOTE (2013).

<sup>84</sup> Jennifer Medina, *California Effort to Issue Driver's Licenses to Immigrants Receives Surge of Applicants*, N.Y. TIMES (Aug. 8, 2015), <https://www.nytimes.com/2015/08/09/us/california-effort-to-issue-drivers-licenses-to-immigrants-receives-surge-of-applicants.html>.

<sup>85</sup> Eric Gible, *States Continue to Expand Access to Driver's Licenses for Undocumented Residents*, AM. IMMIGR. COUNCIL (Aug. 19, 2015), <https://immigrationimpact.com/2015/08/19/states-continue-to-expand-access-to-drivers-licenses-for-undocumented-residents/>.

<sup>86</sup> Kate Nash, *Expect Debate on Repeal of Immigrant Licenses in Legislative Session*, SANTA FE NEW MEXICAN (Jan. 16, 2011), [https://www.santafenewmexican.com/news/local\\_news/expect-debate-on-repeal-of-immigrant-licenses-in-legislative-session/article\\_959d3935-1fb3-5a05-b503-6684377eabdc.html](https://www.santafenewmexican.com/news/local_news/expect-debate-on-repeal-of-immigrant-licenses-in-legislative-session/article_959d3935-1fb3-5a05-b503-6684377eabdc.html).

<sup>87</sup> *Id.*

*D. Encouraging Economic Mobility*

In addition to increased tax revenues for state and local governments, evidence suggests that adopting an inclusive licensing policy would generate additional economic benefits. One study found that access to driver's licenses for undocumented immigrants raised their weekly hours of work by roughly 1.6%.<sup>88</sup> Although a modest increase, the same study found that such a policy would increase male work hours by 2,932,800 hours/week, and at an average wage of \$14/hour, the policy would boost GDP by \$41,059,200/week.<sup>89</sup>

Research also suggests that car ownership and usage increases access to jobs and other essential services, even in urban areas where public transit is available.<sup>90</sup> Undocumented immigrants often find themselves at a disadvantage, often limited by a regime that denies them driver's licenses, limiting car usage and ownership. Accordingly, undocumented immigrants are more likely to find mobility through alternative means of transportation than their documented and native-born counterparts, which may include public transit, carpooling, traveling by bicycle, or traveling by foot.<sup>91</sup> Even so, a lack of driver's licenses still limits the practice of carpooling. One study found that a lack of a driver's licenses—coupled with lack of insurance and maintenance issues—made members of undocumented communities less likely to give others rides.<sup>92</sup>

However, evidence suggests inclusive licensing policies increase car use among undocumented populations, particularly in the form of carpooling.<sup>93</sup> The same study indicated that about one in six carpool trips were made with additional household members, suggesting the benefits of increased mobility will trickle down to those not directly affected by permissive licensing laws.<sup>94</sup> Thus, laws allowing for undocumented immigrants to obtain driver's licenses improves access to economic opportunities, including access to jobs and other essential services.<sup>95</sup>

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<sup>88</sup> Catalina Amuedo-Dorantes et al., *Labor Market Impacts of States Issuing Driver's Licenses to Undocumented Immigrants*, 63 LAB. ECON. 101805, 2020, at 1, 2.

<sup>89</sup> *Id.*

<sup>90</sup> See Joe Grengs, *Job Accessibility and the Model Mismatch in Detroit*, 18 J. TRANSP. GEOGRAPHY 42, 52 (2010).

<sup>91</sup> Evelyn Blumenburg, *Moving in and Moving Around: Immigrants, Travel Behavior, and Implications for Transport Policy*, 1 INT'L J. TRANSP. RSCH. 169, 170 (2009).

<sup>92</sup> Kristin Lovejoy & Susan Handy, *Social Networks as a Source of Private-Vehicle Transportation: The Practice of Getting Rides and Borrowing Vehicles Among Mexican Immigrants in California*, 45 TRANSP. RSCH. PART A 248, 253 (2011).

<sup>93</sup> Jesus M. Barajas, *The Effects of Driver Licensing Laws on Immigrant Travel*, 105 TRANSP. POL'Y 22, 31 (2021).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*



### III. DRAWBACKS AND REBUTTALS

The following section address four drawbacks to the policy of issuing driver's licenses to undocumented immigrants. This analysis will demonstrate that while two drawbacks do have merit—the issue of Immigration and Customs Enforcement (ICE) accessing undocumented immigrant's data through DMVs and third parties, and the federal limitations imposed by the REAL ID Act—some so-called “drawbacks,” such as the voter fraud issue and the overstated dangers of fraudulent activity, lack merit and should not be given serious consideration in the policy debate surrounding the issuance of driver's licenses. Even so, the drawbacks considered in this analysis with merit may be addressed with proper public policy measures. As such, legislatures and other state actors should not consider such drawbacks an insurmountable roadblock to the implementation of an inclusive licensing policy.

#### A. ICE Concerns

In the states that have passed measures to issue driver's licenses to the undocumented population, ICE has taken on the practice of mining state DMV databases to target undocumented immigrants.<sup>96</sup> According to one analysis by the Georgetown Law Center on Privacy and Technology, ICE uses at least three different methods to access DMV data.<sup>97</sup> First, ICE may make direct requests to DMVs by asking DMV employees for records and permission to conduct face recognition searches. This typically occurs through close working relationships and active collaboration between ICE investigators and DMV employees.<sup>98</sup> Second, ICE may access records via government databases, which are typically electronic and include information on registered drivers. Third, ICE may access records through data brokers, that is, private companies that purchase records from the government and resell them to ICE.

ICE's practice of accessing information through data brokers is particularly alarming. State DMVs will often sell their data to private data brokers, typically generating millions of dollars of revenue.<sup>99</sup> LexisNexis, the well-known legal research service, and its subsidiary, LexisNexis Risk

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<sup>96</sup> Catie Edmonson, *ICE Used Facial Recognition to Mine State Driver's License Databases*, N.Y. TIMES (July 7, 2019), <https://www.nytimes.com/2019/07/07/us/politics/ice-drivers-licenses-facial-recognition.html>.

<sup>97</sup> NINA WANG ET AL., GEO. L. CTR. ON PRIV. & TECH., AMERICAN DRAGNET: DATA-DRIVEN DEPORTATION IN THE 21ST CENTURY 30 (2022).

<sup>98</sup> *Id.* at 31.

<sup>99</sup> *Id.* at 36.

Solutions, have paid state DMVs millions of dollars to procure driver's license and vehicle data.<sup>100</sup> One report found that the Washington Department of Licensing earned upwards of \$26 million selling driver and vehicle records to private brokers, including LexisNexis.<sup>101</sup> Records show that LexisNexis has purchased driver's license data from DMVs in twelve states, including states that have passed measures to issue driver's licenses to undocumented immigrants, such as California and Nevada.<sup>102</sup> ICE will then pay these private data brokers, often millions of dollars, to access data records in the process of conducting investigations.<sup>103</sup> Since March 2021, ICE has paid LexisNexis Risk Solutions \$3.9 million to access driver's license information.<sup>104</sup> Both LexisNexis and ICE have sought to conceal the terms of their agreement, where the agency claimed that their contract with the private broker in March 2021 was "law enforcement sensitive and not for public release."<sup>105</sup>

So far, state efforts to halt ICE from obtaining driver's license and vehicle records have proven to be largely ineffective, as ICE often evades laws that attempt to offer meaningful protections by finding workarounds to state restrictions.<sup>106</sup> For example, Oregon passed one of the strongest driver privacy laws to protect driver information from ICE access in 2017, specifically prohibiting the dissemination of address information and other data to government agencies for immigration enforcement purposes.<sup>107</sup> In the months following the implementation of the law, Oregon saw a steep decline in direct requests from ICE to state DMVs.<sup>108</sup> After this decline, Oregon passed the Equal Access to Roads Act in 2019, expanding driver's licenses eligibility to the undocumented population in the state.<sup>109</sup> The 2017 protections for driver data ultimately proved to be ineffective because just six months after the passage of the 2019 law, the Oregon DMV signed agreements with LexisNexis Risk Solutions and others to sell driver's license records, allowing them to disseminate it to "government agencies for use in carrying out [their] governmental functions."<sup>110</sup> With these agreements, ICE

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<sup>100</sup> *Id.*

<sup>101</sup> McKenzie Funk, *How ICE Picks Its Targets in the Surveillance Age*, N.Y. TIMES (June 7, 2021), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>.

<sup>102</sup> WANG ET AL., *supra* note 97, at 36.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 37.

<sup>107</sup> H.R. 3464, 2017 Leg., 79th Reg. Sess. (Or. 2017).

<sup>108</sup> WANG ET AL., *supra* note 97, at 37.

<sup>109</sup> H.R. 2015, 2019 Leg., 80th Reg. Sess. (Or. 2019).

<sup>110</sup> WANG ET AL., *supra* note 97, at 37.

found the workaround to the state's strong laws intended to protect driver privacy through private data brokers.

Like Oregon, and in response to pressure and activism from immigrant communities, various states have enacted legislation—at varying degrees of success—to prevent ICE from warrantlessly accessing driver information. In Maryland, for example, the state legislature passed the Maryland Driver Privacy Act in 2021 to limit ICE access to driver information, overriding a veto from the governor, with the law going into effect in 2022.<sup>111</sup> In California, the state legislature passed AB 1747, prohibiting ICE access to state systems with driver's license information for immigration enforcement purposes.<sup>112</sup> Moreover, in Utah, the state legislature passed S.B. 34, prohibiting the use of facial recognition technology to government databases for immigration enforcement purposes.<sup>113</sup>

The aforementioned analysis by the Georgetown Law Center on Privacy and Technology indicates that, of the various jurisdictions that grant driver's licenses to undocumented immigrants, six states have weak restrictions on direct requests for DMV data from ICE agents to DMV employees, while seven states have weak restrictions on ICE access to government databases with driver information.<sup>114</sup> Additionally, six states have weak restrictions on the DMV's ability to sell information to private data brokers.<sup>115</sup> With little to no protection of driver information, undocumented immigrants seeking driver's licenses may be inadvertently availing themselves to warrantless investigations by ICE. Without additional protection, inclusive licensing policies may create more risk for the undocumented than originally thought.

However, providing driver's licenses to undocumented immigrants does not have to create new risks for the undocumented if the correct protections against ICE's warrantless investigations are implemented. One state that has learned this lesson is New York.<sup>116</sup> In 2019, New York passed the Driver's License Access and Privacy Act ("Green Light Law"), which expanded driver's license eligibility to undocumented immigrants and, similar to predecessor states, imposed a categorical restriction on the DMV to disclose driver records or other related information to ICE or other federal immigration enforcement agencies.<sup>117</sup> With the passage of this law, New

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<sup>111</sup> Maryland Driver Privacy Act, S. 0234, Md. Gen. Assemb., 2021 Reg. Sess. (Md. 2020); *see also* WANG ET AL., *supra* note 97, at 38.

<sup>112</sup> Assemb. 1747, 2019-20 Leg., Reg. Sess. (Cal. 2019).

<sup>113</sup> Governmental Use of Facial Recognition Technology, S. 34, 2021 Gen. Sess. (Utah 2021).

<sup>114</sup> WANG ET AL., *supra* note 97, at 39.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 41.

<sup>117</sup> Driver's License Access and Privacy Act ("Green Light Law"), S. S1747B, 2019 Leg. Sess. (N.Y. 2019).

York state police cut off ICE's access to state databases with driver's license information.<sup>118</sup> However, unlike predecessor states, the New York DMV took further protective measures and implemented a restriction on private data brokers seeking to purchase government records from disseminating it to ICE.<sup>119</sup> By implementing strong protections against each of the workarounds that ICE employs to obtain driver information, New York has successfully protected undocumented immigrant's data from falling into the hands of federal immigration enforcement. The New York example demonstrates that holdout states may mitigate dangers of abuse by ICE and other federal agencies by coupling inclusive licensing legislation with the appropriate protections for undocumented applicant's information against abuse by federal agencies and third-party data brokers.

### *B. Federal Limitations and the REAL ID Act*

The REAL ID Act of 2005 imposes limitations on the driver's licenses that states issue to undocumented immigrants. The law admittedly presents a drawback for the issuance of such licenses because the law limits the utility of non-compliant licenses for federal purposes, including accessing federal facilities and boarding federal-regulated commercial flights.<sup>120</sup>

The 2005 REAL ID Act was largely a response to the September 11th terrorist attacks, after a congressional commission's finding that nearly all of the hijackers who boarded commercial planes were carrying state driver's licenses and state-issued IDs, most of which had been obtained fraudulently.<sup>121</sup> As such, the law obliges states to require either evidence of an applicant's lawful status in the United States or identification documents of the applicant that comply with federal standards before issuing a driver's license.<sup>122</sup> Noncitizens are only eligible for REAL-ID compliant licenses and ID cards if they can present evidence that they are lawfully present in the United States, are in temporary protected status (TPS), or have approved deferred action status.<sup>123</sup>

The REAL ID Act's full implementation, originally intended to take effect in 2008, has been delayed for nearly seventeen years, as the

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<sup>118</sup> WANG ET AL., *supra* note 97, at 41.

<sup>119</sup> *Id.*

<sup>120</sup> Magdalena Krajewska, *Implementing the REAL ID Act: Intergovernmental Conflict and Cooperation in Homeland Security Policy*, 50 J. FEDERALISM 398, 398 (2020).

<sup>121</sup> Debra Kamin, *You've Got to Be Kidding! REAL ID Deadline for Domestic Fliers is Extended. Again.*, N.Y. TIMES (Dec. 5, 2022), <https://www.nytimes.com/2022/12/05/travel/real-id-deadline-delay.html>.

<sup>122</sup> See REAL ID Act of 2005, Pub. L. No. 109-13, § 202(c)(2)(B), 119 Stat. 231, 313 (2005).

<sup>123</sup> Krajewska, *supra* note 120, at 402.

Department of Homeland Security most recently announced the delay of the full enforcement date to May 7, 2025.<sup>124</sup> This most recent delay follows a string of many delays, in the face of opposition from state officials from both political parties in the law's early years following its passage.<sup>125</sup> Less than two years after President George W. Bush signed the REAL ID Act into law in 2005, seven states enacted legislation opposing the law.<sup>126</sup> For example, on April 17, 2006, Montana's Democratic Governor, Brian Schweitzer, signed one of the toughest anti-REAL ID state laws, barring state participation in the program and directing the Montana Department of Justice and motor vehicle administration to report to the governor any attempts by DHS to implement the REAL ID Act in the state.<sup>127</sup> Maine similarly enacted anti-REAL ID legislation, specifically preventing the state's participation in a "national identification card" program, with state officials interpreting the statute as preventing compliance with REAL ID.<sup>128</sup>

This widespread state opposition and uncertainty about the effects of noncompliance with federal standards caused DHS to delay the implementation numerous times.<sup>129</sup> Many supporters of the law were uncertain about the Act's ability to survive past its early years of implementation.<sup>130</sup> Further, many opponents of the law—such as the ACLU in 2009—declared the law "essentially dead."<sup>131</sup>

However, states have quietly moved toward making significant progress on implementing federal standards compliant with the REAL ID Act, often reversing course on legislation passed in opposition to REAL ID.<sup>132</sup> For example, Montana passed HB 366 in May 2017, allowing Montanans the option to obtain a REAL ID compliant with federal standards, reversing the 2007 anti-REAL ID law.<sup>133</sup>

The REAL ID Act lives on and DHS is continuing to make progress towards the full implementation of the policy. The earliest phases of the

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<sup>124</sup> *DHS Announces Extension of REAL ID Full Enforcement Deadline*, U.S. DEP'T OF HOMELAND SEC. (Dec. 5, 2022), <https://www.dhs.gov/news/2022/12/05/dhs-announces-extension-real-id-full-enforcement-deadline>.

<sup>125</sup> See Krajewska, *supra* note 120, at 405.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*; see also Priscilla M. Regan & Christopher J. Deering, *State Opposition to REAL ID*, 39 PUBLIUS 476, 481 (2009).

<sup>129</sup> Krajewska, *supra* note 120, at 406.

<sup>130</sup> See *id.*

<sup>131</sup> *Bill Introduced to Repeal Failed Real ID Act*, AM. CIV. LIBERTIES UNION (July 31, 2009, 12:00 AM), <https://www.aclu.org/press-releases/bill-introduced-repeal-failed-real-id-act>.

<sup>132</sup> See Krajewska, *supra* note 120, at 406.

<sup>133</sup> See Sarah N. Keller et al., *Real ID: Privacy Concerns Still a Factor, but Weakly So*, 14 J. TRANSP. SEC. 157, 162 (2021).

policy's implementation by DHS first required visitors to a federal facility who have licenses from a noncompliant state to have an alternative form of government-issued photo ID—such as a passport, passport card, or federal employee, military, or veteran ID card.<sup>134</sup> Upon the full enforcement date, a person boarding a federally regulated commercial flight with a driver's license or ID card from a noncompliant state will only be able to use it in conjunction with a second form of ID.<sup>135</sup> In practice, these policies will effectively bar undocumented immigrants from accessing federal facilities or boarding federally regulated commercial flights because most undocumented immigrants will not have access to another form of identification outside of their licenses or IDs from a noncompliant state.

Importantly, the REAL ID Act does not preclude states from issuing more limited, provisional driver's licenses to applicants who cannot prove legal status.<sup>136</sup> In states that have chosen to implement an inclusive licensing policy, the result has been a tiered system of identification documents and driver's licenses. The first tier consists of driver's license issued to U.S. citizens and other lawful residents, which complies with the REAL ID Act and has no federal limits. States will often refer to these documents as "Enhanced Driver's Licenses" or use some version of that language.<sup>137</sup> The second tier consists of the driver's licenses issued to undocumented immigrants that can only prove identity with documents issued by foreign jurisdictions and are often referred to as "Standard Driver's Licenses."<sup>138</sup> The REAL ID Act requires that noncompliant licenses and IDs clearly state their noncompliance "on the face of the document and use a unique color identifier or design to alert officials not to accept those documents for federal identification or for any official purpose."<sup>139</sup>

States have responded to these federal requirements by including language, such as "Federal limits apply" or similar wording, to denote the imitated nature of the license. For example, in Washington—the first state to enact legislation to issue driver's licenses to undocumented immigrants<sup>140</sup>—the state issues "Enhanced Driver's Licenses" (EDLs) to individuals with

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<sup>134</sup> See Krajewska, *supra* note 120, at 403.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.* at 404.

<sup>137</sup> *Enhanced Drivers Licenses: What Are They?*, U.S. DEP'T HOMELAND SEC., <https://www.dhs.gov/enhanced-drivers-licenses-what-are-they> (Apr. 27, 2023).

<sup>138</sup> *Id.*

<sup>139</sup> Krajewska, *supra* note 120, at 402.

<sup>140</sup> See H.B. 1444, 53d Leg., 1993 Reg. Sess. (Wash. 1993). Washington became the first state to issue driver's licenses to undocumented immigrants in 1993, never explicitly mentioning the inclusion of undocumented immigrants in the language of the bill, but instead amending the state's identification requirements to no longer require applicants to prove lawful status in the United States to acquire a driver's license.

documentation that prove lawful status, such as a Social Security Card,<sup>141</sup> and began marking its standard driver's licenses with the language "Federal limits apply" in July 2018.<sup>142</sup> Similarly, California now requires driver's licenses issued to individuals without a SSN to contain the following notice: "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits."<sup>143</sup>

Recent legislation in Minnesota to issue driver's licenses to undocumented immigrants now takes the REAL ID Act into account and sets up a tiered system from its inception. Minnesota enacted an inclusive licensing policy in March 2023,<sup>144</sup> and the legislation amends the existing Minnesota statute to provide for a new "noncompliant"—that is, noncompliant with the REAL ID Act—driver's license or identification card, stating that an applicant must declare a residential address in Minnesota but is not required to demonstrate U.S. citizenship or lawful presence.<sup>145</sup> The Minnesota example demonstrates that the limited utility of noncompliant or standard driver's licenses need not be a deterrent to holdout states from enacting an inclusive licensing policy. The Minnesota legislation further demonstrates that states can work within the existing framework of the REAL ID Act to provide benefits to their undocumented populations, even if federal limits apply.

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<sup>141</sup> See *Real ID*, WASH. ST. DEP'T LICENSING, <https://dol.wa.gov/id-cards/real-id> (last visited Jan. 25, 2024).

<sup>142</sup> Jim Camden, *Washington Driver's Licenses, ID Cards to Change on July 1*, SPOKESMAN-REV. (June 18, 2018, 10:12 AM), <https://www.spokesman.com/stories/2018/jun/17/washington-drivers-licenses-id-cards-to-change-on/>.

<sup>143</sup> CAL. VEH. CODE § 12801.9(d)(2) (2013); see, e.g., Vallerye Mosquera, *Driving While Undocumented: Chapter 524 Allows Undocumented Immigrants to Apply for Driver's Licenses in California*, 45 MCGEORGE L. REV. 617, 621–22 (2014).

<sup>144</sup> See H.B. 4, 93d Leg., 2023 Reg. Sess. (Minn. 2023) [https://www.revisor.mn.gov/bills/text.php?number=HF0004&version=latest&session=92&session\\_number=0&session\\_year=2023](https://www.revisor.mn.gov/bills/text.php?number=HF0004&version=latest&session=92&session_number=0&session_year=2023); see also Torey Van Oot, *Minnesota to Allow Undocumented Immigrants to Apply for Driver's Licenses*, AXIOS (Mar. 7, 2023), <https://www.axios.com/local/twin-cities/2023/03/07/minnesota-drivers-license-undocumented-immigrants>. Democratic Governor Tim Waltz signed the "Driver's Licenses for All" bill after the legislation passed both the Democrat-controlled House and Senate across strict party lines. The legislation allows an estimated 81,000 undocumented individuals living in the state to apply for a license or state-issued ID card, repealing a 2003 law passed largely in response to the 9/11 terror attacks that required proof of legal status to apply to a driver's license.

<sup>145</sup> H.B. 4, 93d Leg., 2023 Reg. Sess. (Minn. 2023), [https://www.revisor.mn.gov/bills/text.php?number=HF0004&version=latest&session=92&session\\_number=0&session\\_year=2023](https://www.revisor.mn.gov/bills/text.php?number=HF0004&version=latest&session=92&session_number=0&session_year=2023).

*C. The Myth of Voter Fraud*

Policies allowing undocumented immigrants to obtain driver's licenses remain squarely within the modern-day political debate, and opponents of such policies often raise concerns of voter fraud by undocumented immigrants with driver's licenses. Driven in part by such voter fraud concerns, Republican politicians in the state of Massachusetts pushed for a ballot question in the November 2022 elections that would repeal a law passed by the Democrat-controlled Massachusetts House enacting an inclusive licensing policy.<sup>146</sup> Opponents of the law claimed that issuing driver's licenses to undocumented immigrants would result in automatic registration to vote.<sup>147</sup> Opponents pointed to the automatic voter registration law enacted by Massachusetts in 2020, in which every eligible citizen who interacts with state agencies, such as the Massachusetts Registrar of Motor Vehicles (RMV), is automatically registered to vote unless they opt out.<sup>148</sup> To this end, one Facebook post from the Massachusetts Republican Party read, “[g]iving driver’s licenses to illegals gives them the right to vote.”<sup>149</sup>

These concerns of voter fraud, however, are completely unfounded. The 2022 Massachusetts law allowing for undocumented immigrants to obtain licenses specifically mandates that the RMV develop procedures to ensure that ineligible individuals given driver's licenses not be registered to vote.<sup>150</sup> Undocumented immigrants who obtain driver's licenses would be ineligible for automatic voter registration, as the 2020 voter registration law directs the agency to affirm the citizenship status of individuals that would be automatically registered to vote.<sup>151</sup> The law places the burden of reviewing voter eligibility on the RMV, which already excludes other noncitizens eligible for driver's licenses—such as lawful permanent residents (LPRs)—from voter eligibility.<sup>152</sup>

Additionally, no other jurisdictions that have enacted inclusive licensing policies have reported non-citizens illegally attempting, and being permitted, to vote.<sup>153</sup> In light of these unfounded concerns, Massachusetts voters

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<sup>146</sup> See Steve LeBlanc, *Massachusetts Voters Keep New Immigrant Driver's License Law*, GBH (Nov. 9, 2022), <https://www.wgbh.org/news/politics/2022/11/09/massachusetts-voters-keep-new-immigrant-drivers-license-law>.

<sup>147</sup> See Philip Marcelo, *Immigrants Not Auto Enrolled to Vote Under New Driver's License Law*, ASSOCIATED PRESS (Oct. 17, 2022), <https://apnews.com/article/fact-check-elections-voting-immigration-licenses-872467507455>.

<sup>148</sup> See *id.*; see also MASS. GEN. LAWS ch. 51, § 42G1/2 (2020).

<sup>149</sup> Marcelo, *supra* note 147.

<sup>150</sup> H.B. 4805, 2022 Leg., 192d Sess. (Mass. 2022), <https://malegislature.gov/Bills/192/H4805>.

<sup>151</sup> MASS. GEN. LAWS ch. 51, § 42G1/2(a) (2020).

<sup>152</sup> *Id.* § 42G1/2(a), (c).

<sup>153</sup> Marcelo, *supra* note 147.



ultimately voted against repealing the law, allowing undocumented immigrants to obtain driver's licenses as of July 1, 2023.<sup>154</sup> The Massachusetts example demonstrates that any dangers of increased voter fraud flowing from an inclusive licensing policy are squarely a myth. As such, the "drawback" of voter fraud ultimately lacks merit and should not be given any weight by policymakers in holdout states in the implementation of an inclusive licensing policy.

#### *D. Overstated Dangers of Fraudulent Documentation*

Opponents of an inclusive licensing policy often sound the alarm of fraud on the part of undocumented immigrants, particularly the danger of individuals from outside the state flocking to the state to fraudulently obtain a driver's license.<sup>155</sup> This drawback is commonly overstated, as the analysis that follows demonstrates that states that have enacted an inclusive licensing policy have set in place measures to verify an applicant's identity and residence to halt fraudulent activity.

The policy debate and controversy surrounding New Mexico's inclusive licensing policy demonstrates policymakers' overblown response to overstated dangers of fraudulent activity. Opponents of the policy in New Mexico have highlighted several instances of fraudulent activity to add to the controversy and fan the flames of the opposition. For example, in April 2008, the FBI arrested ten undocumented immigrants in connection with an operation charging individuals thousands of dollars to fraudulently obtain New Mexico driver's licenses.<sup>156</sup> Another criminal enterprise was shut down by law enforcement in August 2011 after ringleaders were accused of securing New Mexico driver's licenses for sixty-two undocumented immigrants of Chinese descent, primarily from New York.<sup>157</sup>

In response to these isolated instances of fraudulent activity, and after a failed attempt to overturn its 2003 law providing for the issuance of driver's licenses to undocumented immigrants,<sup>158</sup> New Mexico Governor Susana Martinez initiated a residency verification program in July 2011.<sup>159</sup> The goals of the program were to force applicants for driver's licenses to prove they live in the state and to cancel the driver's licenses of those individuals who

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<sup>154</sup> LeBlanc, *supra* note 146.

<sup>155</sup> See Steven J. Escobar, *Allowing Undocumented Immigrants to Obtain Driver's Licenses in New Mexico: Revising, Not Abandoning, the System*, 43 WASH. U. J.L. & POL'Y 285, 289 (2014).

<sup>156</sup> *Id.* at 289–90.

<sup>157</sup> *Id.* at 290–91.

<sup>158</sup> See H.B. 78, 50th Leg., Reg. Sess. (N.M. 2011).

<sup>159</sup> Escobar, *supra* note 155, at 293.

were not New Mexico residents.<sup>160</sup> However, many immigrant advocacy groups and proponents of the 2003 law saw the verification program as an overzealous and unnecessary response to a largely overstated problem.<sup>161</sup> The verification program began with the New Mexico Motor Vehicle Division (MVD) randomly sending out letters to 10,000 allegedly undocumented immigrants, causing many undocumented immigrants in the community much fear.<sup>162</sup>

Before subsequent litigation by immigrant rights advocacy groups ensued and the program was eventually blocked by a district court order,<sup>163</sup> state officials held meetings with approximately 2,000 undocumented individuals, and about one-half of the individuals were able to prove that they lived in New Mexico.<sup>164</sup> Governor Martinez then voiced her support to repeal the 2003 law allowing for undocumented immigrants to obtain driver's licenses, favoring legislation that would only provide temporary licenses to DACA beneficiaries on the other side of the rescission of the verification program.<sup>165</sup> Even after increased calls by the governor and others to repeal the 2003 law allowing undocumented immigrants to obtain driver's licenses in New Mexico, the law remains in effect in the present-day, as the dangers of fraudulent activity surrounding the policy were largely overstated.

### 1. Current Trends in Proof of Residency Requirements

Under the current regime, New Mexico currently tempers the dangers of fraudulent activity by excluding out-of-state residents from the policy and requiring applicants to prove residency in the state before procuring a license. The state employs a relatively lenient policy for residency requirements, allowing applicants to provide utility bills (excluding cell phone bills), bank or credit card statements, transcripts from an education institution, and other documents to prove residence.<sup>166</sup> This policy is lenient where it allows applicants to pull from a wide variety of options for documents to prove residency that are easily obtainable to the applicant.

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<sup>160</sup> *Id.* (quoting Barry Massey, *New Mexico Judge Blocks State Plan to Verify Immigrant Licenses*, HUFFINGTON POST (Aug. 21, 2011), [http://www.huffingtonpost.com/2011/08/31/new-mexico-immigrant-licenses\\_n\\_944325.html](http://www.huffingtonpost.com/2011/08/31/new-mexico-immigrant-licenses_n_944325.html)).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 294.

<sup>163</sup> *Id.* at 295–96.

<sup>164</sup> *Id.* at 294.

<sup>165</sup> *Id.* at 298.

<sup>166</sup> *NM Real ID: List of Acceptable Documents*, N.M. MOTOR VEHICLE DIV., <https://www.mvd.newmexico.gov/wp-content/uploads/2020/12/REALID-acceptable-docs.pdf> (last visited Jan. 31, 2024).

Other states similarly employ a lenient policy in proving residency. For example, in California, applicants must prove residency and may do so using a rental/lease agreement, deed or title to real property, a home utility bill, and other documents to prove residency.<sup>167</sup> The California DMV will also allow individuals without readily available residency documents to use a birth certificate, marriage license, or domestic partner registration certificate to trace the applicant's relationship with an individual to whom acceptable residency documents are addressed.<sup>168</sup>

New Jersey<sup>169</sup> also employs a lenient policy, requiring one document which may include a utility bill from the last ninety days, a lease or rental agreement, a deed or title to real property, or a bank statement from the last sixty days.<sup>170</sup> These documents may be easily obtainable for many undocumented applicants living in an apartment or paying utility services.<sup>171</sup>

However, several states employ stricter policies in proving residence, requiring applicants to have longer periods of residence in the state or to present specific documents to prove residence. In Connecticut, for example, applicants must show that they have been living at their present address in the state for at least ninety days or, alternatively, they must show that they have been living in the state for the last twelve months.<sup>172</sup> In Maryland, applicants must present a letter from the Maryland comptroller certifying that the applicant has filed taxes in the state for the last two years, in addition to two other proofs of residence, such as a utility bill or rental agreement.<sup>173</sup>

## 2. Current Trends in Identification Requirements

Another way that states temper dangers of frequent activity surrounding an inclusive licensing policy is by imposing identification requirements on applicants. Some states, such as Washington, have lenient identification

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<sup>167</sup> See *AB 60 Driver's Licenses*, CAL. DEP'T OF MOTOR VEHICLES, <https://www.dmv.ca.gov/portal/driver-licenses-identification-cards/assembly-bill-ab-60-driver-licenses/> (last visited Jan. 21, 2024); see also *Residency – Documents List*, CAL. DEP'T OF MOTOR VEHICLES (Nov. 2017), <https://www.dmv.ca.gov/portal/file/residency-documents-list-pdf/>.

<sup>168</sup> See *AB 60 Driver's License*, *supra* note 167.

<sup>169</sup> See Pub. L. ch. 271 A4743, 2019 Leg., Reg. Sess. (N.J. 2019). New Jersey enacted legislation to issue driver's licenses to undocumented immigrants in the state in 2019. Following the example of other states like New Mexico, the law now allows for individuals without a social security number to apply for a driver's license with an ITIN, or by providing an affidavit establishing that the applicant has neither a social security number nor an ITIN.

<sup>170</sup> *New Jersey Standard License & Non-Driver ID Requirements*, N.J. MOTOR VEHICLE COMM'N (June 2022), [https://www.nj.gov/mvc/pdf/license/Standard\\_License\\_Sheet\\_Engl.pdf](https://www.nj.gov/mvc/pdf/license/Standard_License_Sheet_Engl.pdf).

<sup>171</sup> See *id.*

<sup>172</sup> GONZALEZ ET AL., *supra* note 63, at 2, 6.

<sup>173</sup> *Id.* at 7.

requirements, allowing applicants to submit a broad range of documents that are often easily obtainable for many undocumented immigrants. Under this regime, applicants without standalone documents such as USCIS service IDs, U.S. passports, or a valid driver's license from another state may prove identity with a combination of an A-List Document and a B-List Document.<sup>174</sup> The list of A-Documents includes driver's licenses, federal electoral cards, consulate ID cards, and passports from various foreign jurisdictions.<sup>175</sup> The list of B-documents includes U.S. or foreign birth certificates, foreign driver's licenses, foreign passports, marriage licenses issued by a government authority, school transcripts or records, school yearbooks with a recognizable photo, and other documents that show name, date of birth, signature, or photo.<sup>176</sup>

New Mexico also has a relatively lenient policy for identification documents, allowing for applicants to prove identity with easily obtainable documents for many undocumented immigrants.<sup>177</sup> For example, New Mexico allows for applicants without an SSN to prove identity with a "bank statement from a federally insured institution" (the document with the identification number) "and a certified copy of a birth certificate with a translation."<sup>178</sup> Given that several smaller credit unions that are federally insured do not require an SSN to open a bank account, the bank statement is an obtainable document to many applicants.<sup>179</sup> Further, the fact that the state requires only a certified copy and not an original birth certificate makes the document easily obtainable for many immigrant applicants.<sup>180</sup>

Some states, like California, employ stricter identification requirements to temper dangers of fraud. In California, the law directs the DMV to accept various types of documents for the purpose of proving identity when applying for a driver's license, including "a valid, unexpired consular identification document; an original birth certificate, a home utility bill, a marriage license, or foreign driver's license, a Form I-589" (Application for Asylum and for Withholding of Removal), and other documents unavailable to much of the undocumented population in California.<sup>181</sup> This policy is stricter than other states like Washington and New Mexico, as California requires original documents (such as an original birth certificate) to prove identity and not

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<sup>174</sup> *Documents for Proof of Identity*, WASH. ST. DEP'T OF LICENSING, <https://www.dol.wa.gov/driverslicense/idproof.html> (last visited Jan. 25, 2024).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> GONZALEZ ET AL., *supra* note 63, at 5.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Assemb. B. 60, 2013–2014 Leg., Reg. Sess. (Cal. 2013).

certified copies of documents.<sup>182</sup> Given the lack of reliable government services in many regions that undocumented immigrants may be coming to the United States from, such as South and Central America, obtaining original documents may be a nearly insurmountable hurdle for many applicants seeking to obtain a license.<sup>183</sup> The state also requires fingerprints—which inhibits some applicants from applying for a driver’s license for fear of being detected by federal immigration agencies, such as ICE.<sup>184</sup> As earlier analysis in this work demonstrated, these fears from applicants are not completely unfounded.<sup>185</sup>

Similar to California, New Jersey also employs a stricter identification policy for applicants than its counterparts. The state employs a “[six] points of identity” system, which sets forth a tiered system of documents that applicants may present to prove identity.<sup>186</sup> Although some of the documents listed as “primary documents” worth four “points” towards the six point system may be available to undocumented communities, such as a foreign government-issued passport from the applicant’s country of origin, other documents, like an original birth certificate from the applicant’s country of origin, may be less commonly available.<sup>187</sup> Secondary documents worth three points in the system, including a photo driver’s license from any U.S. state or an official school or college photo ID card with transcripts or school records from any country, may also be difficult for many undocumented applicants to obtain.<sup>188</sup>

Going further than states that employ strict identification requirements, some holdout states are seeking to impose even more strict, over-zealous restrictions on licenses issued to undocumented immigrants in response to the overstated dangers of fraudulent activity. For example, the Florida Legislature recently enacted SB 1718, which imposes a number of draconian restrictions on undocumented immigrants living in the state and specifically establishes that Florida will not recognize driver’s licenses issued to undocumented immigrants in other states.<sup>189</sup> These restrictions effectively

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<sup>182</sup> GONZALEZ ET AL., *supra* note 63, at 5.

<sup>183</sup> *Id.* at 4.

<sup>184</sup> *Id.* at 5.

<sup>185</sup> See *supra* Section III.A (discussing fears faced by immigrants that ICE would obtain their personal information).

<sup>186</sup> *New Jersey Standard License & Non-Driver ID Requirements*, N.J. MOTOR VEHICLE COMM’N (June 2022), [https://www.nj.gov/mvc/pdf/license/Standard\\_License\\_Sheet\\_Engl.pdf](https://www.nj.gov/mvc/pdf/license/Standard_License_Sheet_Engl.pdf).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> See S.B. 1718, 2023 Leg., Reg. Sess. (Fla. 2023); see also FLA. STAT. § 322.033 (2023); CBS Miami Team, *Florida Senate Panel Backs Immigration Crackdown Plan*, CBS NEWS (Mar. 17, 2023, 7:12 AM), <https://www.cbsnews.com/miami/news/florida-senate-panel-backs-immigration-crackdown-plan/>.

eliminate any possibility for undocumented immigrants in Florida to drive legally.

The Florida example is one of overcorrection to an overstated problem that many states, as seen in the foregoing analysis, have already taken steps to address. States with an inclusive licensing policy have moved to reduce the dangers of fraudulent activity by requiring undocumented applicants to prove their identity and their residence within the state—eliminating any incentive for out-of-state undocumented immigrants to attempt to fraudulently procure a driver’s license. As such, any potential drawbacks in terms of an increased risk of fraudulent activity for states that may seek to implement an inclusive policy may be mitigated by appropriate identification and residence requirements for undocumented applicants.

#### IV. CONCLUSION AND POLICY RECOMMENDATIONS

Providing driver’s licenses to undocumented immigrants is a sound, desirable policy from both an economic and public-safety perspective and should be adopted among the jurisdictions that have yet to implement the policy. In stark contrast to the pervasive belief that undocumented immigrants are a “drain [to the] economy” and are underserving of social benefits,<sup>190</sup> empirical data demonstrates that providing undocumented immigrants with the social benefit of a driver’s license improves public safety, drives down insurance costs, increases tax revenues for state and local governments, and promotes economic mobility. As it relates to driver’s licenses, a policy of inclusion toward undocumented immigrants is not a drain to communities, but is instead a net positive, including to citizens and other documented individuals living amongst the undocumented population.

To reap the full benefits of the policy, the goal is to get as many drivers as possible to obtain driver’s licenses, and policies that limit the inclusion of large swaths of undocumented populations only limit the practical benefits that states could enjoy. As such, holdout states should follow the model that Washington, New Mexico, and various other states with similar legislation have employed in directing DMVs to accept other documents to prove identity when individuals do not possess an SSN, including a consular identification document, a birth certificate, a home utility bill, a marriage license or foreign driver’s license, immigration forms and receipts from USCIS, and other documents.<sup>191</sup>

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<sup>190</sup> See EDIBERTO ROMÁN, *THOSE DAMNED IMMIGRANTS: AMERICA’S HYSTERIA OVER UNDOCUMENTED IMMIGRATION* 14 (2013).

<sup>191</sup> Assemb. B. 60, 2013 Leg., Reg. Sess. (Cal. 2013).

States should also allow documents that are readily available to undocumented individuals to prove identity and residence in order to reap the full benefits of a policy of inclusion. This means that states should refrain from policies that allow applicants to present only original documents (such as a birth certificate), as is the current policy in California.<sup>192</sup> This policy ignores the reality that many undocumented immigrants seeking the benefit of procuring a driver's license come to the United States from regions that have unreliable government services and often make it impossible to obtain original documents.<sup>193</sup> States should also refrain from allowing applicants to present only an Individual Taxpayer Identification Number (ITIN) in lieu of an SSN without other methods to prove identity and residence in the state, as portions of undocumented populations may not presently file taxes and possess an ITIN.<sup>194</sup>

States should also employ lenient proof of residence requirements, even where the justifications for proof of residence are sound. States may employ proof of residence requirements to deter out-of-state, undocumented immigrants from attempting to procure a driver's license and to prevent fraud, even where the dangers of fraudulent activity are largely overstated by opponents of an inclusive licensing policy.<sup>195</sup> However, a lenient policy—such as the California policy that allows undocumented immigrants without readily accessible proof of residence documents to present a family member's documents to trace their relationship<sup>196</sup>—can effectively curb dangers of fraudulent activity while simultaneously providing benefits to as many eligible applicants as possible.

Where state governments fail to enact legislation to provide driver's licenses to undocumented immigrants, local governments can contribute to the “patchwork” solution by providing provision benefits. Local governments should enact measures to provide identification cards—often called “community IDs”—to their undocumented populations, as limited as they may be.<sup>197</sup>

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<sup>192</sup> GONZALEZ ET AL., *supra* note 63, at 5.

<sup>193</sup> See *supra* Section III.D.2 (discussing California's strict identification requirements).

<sup>194</sup> See *New Jersey Standard License*, *supra* note 170. New Jersey allows for individuals without an SSN to present an ITIN when applying for a driver's license. Individuals without an SSN or an ITIN may submit an affidavit stating that they possess neither an SSN nor ITIN to be eligible for a standard driver's license.

<sup>195</sup> See *supra* Section III.D.1 (discussing current trends in proof of residency requirements).

<sup>196</sup> See *Residency – Documents List*, *supra* note 167.

<sup>197</sup> See Matt Flegenheimer, *New York City to Formally Start Its Municipal ID Card Program*, N.Y. TIMES (Jan. 12, 2015), <https://www.nytimes.com/2015/01/12/nyregion/new-york-city-to-formally-start-its-municipal-id-card-program.html>; see also *A Free City ID Card*, NYC HUM. RES. ADMIN., <https://growingupnyc.cityofnewyork.us/programs/idnyc/#section-eligibility> (last visited Jan. 25, 2024). Well before the state of New York enacted legislation in 2019 to issue driver's licenses to undocumented immigrants, one of the most prominent efforts to issue identification cards at the local level was New York

States should also recognize the dangers that possessing driver data from undocumented immigrants in state DMVs present for their undocumented population and should follow the New York model in preventing ICE and other federal agencies from exploiting data for immigration enforcement purposes.<sup>198</sup> Much like the Green Light Law enacted in 2019, states should be careful to restrict DMV employees from engaging ICE investigators through direct requests, direct DMVs to set restrictions in agreements with data brokers to prohibit the dissemination of information to ICE and other federal agencies, and limit federal agent's access to government databases with driver information.<sup>199</sup>

Asking state and local governments to fill in the gaps begins with the recognition that the current immigration regime at the federal level is deeply flawed and excludes many individuals from receiving basic social benefits. In theory, Congress could pass a law that provides all undocumented immigrants with an SSN or other federal documents proving legal status and make an entire population of individuals eligible for driver's licenses in all fifty states. However, the federal government has not acted on comprehensive

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City in 2015. The cards are known as IDNYC cards and are available to New Yorkers ages 14 and older, regardless of immigration status, who can apply at enrollment centers across the city. *Document Calculator*, IDNYC, <https://www.nyc.gov/site/idnyc/card/documentation.page> (last visited Jan. 25, 2024). The city requires individuals to prove their residence, possess a document with a photo, and possess one document with the individual's date of birth. *Id.* Inclusive of the undocumented population without U.S. documents, the city allows for individuals to prove identity with foreign passports, foreign driver's licenses, and other foreign ID documents. *Id.* In Florida, a state that has yet to adopt an inclusive driver's license policy for undocumented immigrants, various local governments are implementing municipal ID programs. For example, on February 1, 2022, the Board of County Commissioners of Miami-Dade County approved Mayor Daniella Levine Cava's proposal to issue identification cards to undocumented immigrants unable to obtain another form of identification. Natalia Jaramillo, *Miami-Dade County Approves Plan to Launch Community ID Program*, MIAMI-DADE CNTY. NEWS RELEASE (Feb. 1, 2022), <https://www.miamidade.gov/releases/2022-02-01-mayor-community-id.asp>. This community IDs model is run by a nonprofit and enables otherwise undocumented individuals to access COVID-19 vaccines, library resources, storm shelters, local recreation facilities, and the identification necessary to return to their homes after evacuation orders during hurricanes or other disasters. *Miami-Dade County Commissioners Give Green Light for Immigrant IDs*, CBS MIA. (Feb. 2, 2022, 6:17 PM), <https://www.cbsnews.com/miami/news/miami-dade-commissioners-immigrant-ids/>. The community ID program was previously implemented in Broward and Palm Beach counties. See Yvonne H. Valdez, *'Community ID' Card Now an Option for Undocumented Immigrants, Homeless People in Broward*, S. FLA. SUN SENTINEL (Feb. 2, 2022, 8:14 PM), <https://www.sun-sentinel.com/2022/02/02/community-id-card-now-an-option-for-undocumented-immigrants-homeless-people-in-broward/>; Wells Dusenbury, *ID Cards for Undocumented Immigrants and Homeless Gain Favor, Despite Some Opposition*, S. FLA. SUN SENTINEL, (Aug. 21, 2021, 8:00 AM), <https://www.sun-sentinel.com/2021/08/21/id-cards-for-undocumented-immigrants-and-homeless-gain-favor-despite-some-opposition/>. However, in an attempt to curb efforts to provide relief to undocumented communities in Florida, as part of the S.B. 1718 legislation, the Florida legislature banned county and local governments from providing funding to organizations to create identification cards. FLA. STAT. § 125.0156 (2023).

<sup>198</sup> WANG ET AL., *supra* note 97, at 39, 41.

<sup>199</sup> *Id.* at 41.



immigration reform since 1986<sup>200</sup> and, given current trends towards increasing polarization and gridlock in Congress,<sup>201</sup> the federal government is not likely to act on reform soon.

In the face of this inaction, a “patchwork” approach is both a realistic and beneficial solution for states and local governments that are willing to adopt an inclusive policy. Whether through ballot measures or legislation, states can fill in the gaps in providing social benefits for undocumented immigrants where the government fails to act. Where states fail to fill in the gap, local governments can provide lower-tier community IDs to provide limited benefits to undocumented immigrants. Although a federal solution through Congress remains most desirable, state and local governments can still provide benefits to undocumented immigrants and, in turn, reap the benefits of a policy inclusion.

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<sup>200</sup> See KAUSHAL, *supra* note 2, at 79 (on the Immigration Reform and Control Act of 1986).

<sup>201</sup> See, e.g., Cynthia R. Farina, *Congressional Polarization: Terminal Constitutional Dysfunction?*, 115 COLUM. L. REV. 1689, 1689 (2015).