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Catherine M. Marshall
Salve Regina University

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Driver's Licenses and Illegal Immigration: Issues of Controversy

by

Catherine M. Marshall

Salve Regina University

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Thesis: The issuance of a driver's licenses to illegal aliens is controversial.

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Got ID? Having an official form of identification is imperative in the United States for legal, travel and government purposes. The increases in illegal immigration and security concerns in this country have caused officials to evaluate the role of driver's licenses as forms of identification with legal and illegal immigrants. Traditionally driver's licenses have been granted to legal citizens only; however, several states have adopted systems making it easier for illegal immigrants to qualify for distinct certificates¹ to drive. This has sparked a national debate regarding the proper use of driver's licenses as identification. While some believe that granting driver's licenses to illegal immigrants² will reduce security concerns and keep immigration in check, others argue that granting such certificates will be too costly for the states, are discriminatory in nature and rewards illegal behavior. Therefore, the issuance of driver's licenses to illegal aliens is controversial.

The role of issuing driver's licenses and registering vehicles has been a function of the state,³ rather than the federal government. Each state has laws regulating minimal requirements and eligibility for driver's licenses, which are enforced and maintained by each state's department of motor vehicles ("Department of Motor Vehicles").⁴ Initially, states issued driver's licenses with the sole purpose of giving one the legal authority to operate a motor vehicle⁵ and was not intended to be used as an official identity document. Original driver's licenses had written the driver's name, a driving license number and possibly an address. Only in 1960 did state legislatures start to require that a color photo be placed on the license, which then allowed the license to be used as a form of identification. As of 2005, all states issue digital driver's licenses⁶ which allow for better fraud prevention and a more permanent record of driver information ("Identity Documents in the United States").

Because of the changes made to the licenses themselves, especially the use of photographs, they are now widely used as forms of identification both within the country and internationally. Because the United States has no official form of national ID and because there is a very widespread use of cars, the driver's license has become the non-official national ID card ("Use as Identification").⁷ Driver's licenses are often required for travel, purchasing items such as alcohol or cigarettes or confirming one's identity when using a debit or credit card ("Identity Documents in the United States"). Many states issue state IDs for those with no driver's license to serve the same identification purposes as a driver's license because it is almost impossible to conduct daily business without an ID ("Use as Identification").

The role of the states in issuing driver's licenses was altered on May 11, 2005 when President Bush signed the Real ID Act⁸ into law. This law, in which Congress preempted state law,⁹ was passed in order to improve security within the United States and to establish requirements for a national ID card (Straub). The Real ID Act requires that all state driver's licenses must meet a federal criteria in order to be used as national identification cards. All states will have to require at least four forms of identification¹⁰ in addition to requiring that applicants demonstrate one's citizenship or legal residency status ("Summary of Driver's License Provisions"). The Real ID Act also creates a requirement that states keep all information and documentation on those issued licenses or identification cards in a digital database that can be accessed nationwide. States have until 2008 to change their requirements to meet federal standards. States are not forced to comply with this law, but their state driver's license will not be an acceptable form of identification for official federal purposes,¹¹ including travel ("Questions and Answers"). By passing the Real ID Act, Congress has limited the states' role in deciding how driver's licenses will be issued and has imposed federal standards.

The debate on issuing driver's licenses to illegal immigrants has risen out of a response to the terrorist attacks on September 11, 2001 and a growing problem with illegal immigration. All but one of the nineteen terrorists who hijacked the planes that went into the World Trade Center had either state issued driver's licenses or non-driver's identification cards ("Driver's Licenses for Illegal Aliens").¹² Seven out of the nineteen carried Virginia driver's licenses.¹³ Their driver's licenses did not expire when their visas did.¹⁴ These hijackers were able to open bank accounts, rent housing and board planes because they had proper identification. Rep. James Sensenbrenner (R, WI),¹⁵ sponsor of

the Real ID Act, argues that for terrorists “travel documents are as important as weapons”. The 9/11 attacks sparked a debate about the ease in which illegal immigrants are able to obtain licenses and whether or not issuing them makes our country safer or more dangerous.

Consequently, there are concerns about the rise in illegal immigration and the fact that many of these illegal immigrants work in the United States. Because many of these jobs require that one be able to drive, many illegal immigrants apply for driver’s licenses (Dewan). According to the National Immigration Law Center, there are only 11 states that do not require proof of legal residency to drive, making it easier for illegal immigrants to obtain licenses (“Overview of State License Requirements”).¹⁶ Some argue that issuing these licenses encourages safe and legal driving in addition to keeping some records of these immigrants. Others argue that issuing licenses to illegal immigrants sanctions unlawful practices and makes keeping track of illegal immigrants more difficult.

Those who favor issuing driver’s licenses to illegal immigrants argue that this practice will reduce some of the security concerns that have been raised due to 9/11 and immigration.¹⁷ By requiring that illegal immigrants pass driving tests and be familiar with the rules and regulations of driving, our roads will be safer (Dewan).¹⁸ In addition, proponents believe that if illegal aliens are able to obtain legal driver’s licenses, there will be less incentive to obtain fraudulent ones. States will have access to whatever documentation these immigrants bring in when applying for their license and they will be able to keep this information on file to keep better tabs on illegal immigrants (“Good and Bad Immigration Reform”). If the licenses are issued merely as tools for driving and not

for identification,¹⁹ then this prevents illegal immigrants from boarding planes and will disrupt terror activity (Straub).

Opponents argue that issuing driver's licenses will do just the opposite. Sensenbrenner argues that having identification fuels terrorist efforts and encourage mobility of illegal immigrants. Issuing driver's licenses to illegal immigrants will make it easier for illegal aliens to obtain many other forms of documentation, as the driver's license is often used to allow qualification for other forms of ID. By allowing illegal immigrants to obtain licenses, it encourages an even further surge of illegal immigrants who want to be able to drive in this country (Schlafly).

Some argue that this will not allow government agencies to keep track of illegal immigrants because many immigrants use aliases and false documents when applying for the driver's licenses, for fear that their information will be used against them and lead to their deportation ("Driver's License Security"). Therefore it will make it more difficult to keep track of these undocumented aliens if not all of their information is accurate.

In addition, requiring that these illegal immigrants pass road tests and be familiar with driving laws does not guarantee that the roads will be safer because many illegal immigrants are unable to obtain insurance and are known for fleeing the scene of an accident ("Driver's License Security"). Consequently, many argue that issuing driver's licenses to illegal immigrants increases our risk for terrorist activity.

Sensenbrenner argues that the Real ID Act, in preventing illegal aliens from obtaining driver's licenses, will reduce the threat of terrorism by making it more difficult for terrorists to be allowed to enter and stay in this country. The 9-11 Public Discourse Report recommended that federal standards be implemented for state-issued documents

to prevent people from getting around the system by exploiting provisions from different states, as the 9-11 terrorists did. States need to be able to confirm that the person is who they say they are before they are allowed to use their ID for official purposes (“Fact Sheet”). In doing so, the government can improve security and make travel and daily life safer for its citizens.

Many who favor issuing driver’s licenses to illegal immigrants as a security measure also believe that this practice will help control immigration. In granting driver’s licenses to illegal immigrants, it allows government agencies a chance to keep and store information about illegal immigrants in the form of a nationwide database. It will be easier to keep accurate immigration statistics with this information (“Why the Federal Government...”). It also encourages illegal immigrants to value and follow U.S. laws and work towards attaining legal status in this country (Kimer), which according to some would dramatically decrease the death toll at the border. There are so many who take drastic measures to come into this country in order to escape hardships from their former country. In creating opportunities, such as a driver’s license program, for these immigrants to achieve “legal” status and escape their former life, it will encourage working towards legal behavior (“Immigration Reforms”).²⁰

Opponents of issuing driver’s licenses to illegal immigrants argue that instead of controlling immigration, this practice will instead make it difficult to keep illegal immigration in check. By granting driver’s licenses to illegal aliens, the government would be sanctioning illegal behavior and opens up an opportunity for illegal immigration to continue and even for it to grow, as well as undermining the authority of the INS in pursuing those who break immigration laws (Krikorian). Instead, because the

states issue the licenses, state law enforcement officers and DMV employees will be responsible to act as immigration patrol (Dewan). These individuals might not be familiar with the many different forms of documents that such immigrants might have and may not be trained properly to handle immigration situations they may face. For these reasons, Straub argues that merely keeping track of illegal immigrants is not a real solution to this country's immigration problems.²¹

In addition to concerns raised about illegal immigration, concerns have been raised about how the states are being imposed upon. Many argue that the provisions of the Real ID Act, in denying driver's licenses to illegal immigrants, will impose a costly burden on the states. The Real ID Act requires that state employees verify the validity of every document that people use when applying for licenses; they will have to make multiple phone calls just to confirm addresses and to cross check SSNs (Ramasastry). These employees will have to be compensated for their time, as well as their training in familiarizing themselves with the database technology and all forms of documentation. State DMV's also have to train at least a few employees to speak Spanish, as even many legal immigrants are unable to speak English, which makes driver's license issuance complicated (Dewan). In addition, to prevent these employees from abusing their access to very personal information, the state will have to pay for background checks for their DMV employees ("Honest People Have Real IDs"). The licenses themselves will have to be updated with additional security devices to prevent fraud, and it would be the state's responsibility to boost security in all places where the driver's licenses are being manufactured ("Questions and Answers"). The National Immigration Law Center points

out that the Federal government, in implementing the Real ID Act, has placed the burden of a largely unfunded mandate on the states.²²

Those who oppose issuing driver's licenses to illegal immigrants argue that the issuance of driver's licenses to illegal immigrants will be more costly than denying them. States that have a separate certificate for citizens that are unable to demonstrate their legal presence, which in turn facilitates the ease in which illegal immigrants may obtain driving documents, must pay for two forms of driving licenses, with separate procedures and requirements, in addition to training employees to understand the differences between them (Dewan). Those who oppose issuing driver's licenses to illegal immigrants concur with those who are in favor that the implementation of a national database system will be expensive to implement and maintain. In both situations, DMV employees will still be forced to act as immigration officers and will need to be compensated for that role (Leach). Where those who oppose the issuance to illegal immigrants diverge is that they argue that the addition of having to keep track of illegal immigrants in this database would be even more costly and unfair to impose on the states. Tennessee State Senator Bill Ketron (R) argues that, in addition to denying driver's licenses to illegal immigrants, issuing the driver's license test in English only will reduce the burden of cost on the states (Dewan). The state will have to update the technology on a regular basis as well as constantly updating information on registered illegal immigrants to make sure the information is still current and valuable ("Driver's License a Hassle?"). Sensenbrenner agrees that the provisions of the Real ID Act might be expensive, but will be partially covered by federal grants and that the cost of the Act's provisions are worth it in order to "close a large security loophole".

Proponents of allowing illegal immigrants to obtain driver's licenses argue that such a practice would not be a violation of the rights of legal citizens. In issuing driver's licenses to illegal immigrants with the sole purpose of allowing them to drive, and their licenses would indicate this, they would not be granted the same usages as legal citizens therefore respecting the rights that only legal citizens should enjoy ("Good and Bad Immigration Reform"). Legal citizens would be allowed to use their driver's licenses as forms of national identification and illegal immigrants would only be granted the right to drive. They also argue that the provisions of the Real ID Act might actually make it more difficult for legal citizens to obtain a driver's license if there is any miscommunication or difficulty in confirming the validity of their documents. They could easily be denied a document which they legally qualify for because of human error, which would be a violation of their rights as citizens.

Others, however, believe that issuing driver's licenses to illegal immigrants, or the use of the driver's license as a national ID card in general, is a gross violation of civil rights. The American Civil Liberties Union opposes the idea of a nationwide database with driver's license information because it allows the government to use the information for surveillance purposes and would restrict the freedom of all citizens ("National Identification Cards"). A nationwide database invites identity theft and the sharing of personal information (Ramasastry).²³ It also opens the door for further privacy violations in the future, as the barcode used on licenses can very easily be used for tracking purposes.²⁴

Issuing driver's licenses to illegal immigrants also raises discrimination issues. In states where illegal immigrants are issued separate driving documents, many legal

immigrants are often discriminated against as they are being denied driver's licenses based on national origin, not legal status (Dewan).²⁵ The ACLU contends that using the driver's licenses as a national ID card will foster discrimination against all immigrants by setting them up for background checks regarding their immigration status. Even legal immigrants who fail to carry a national ID will be subject to discrimination and perhaps detainment ("Nation Identification Cards").

Because the driver's license has become the unofficial form of national identification and is used for everyday functions, as well as government purposes, it is important to consider the manner in which the licenses are being distributed and who should be eligible to receive them. In addition, the events of September 11th and the rise in illegal immigration have made it imperative to reevaluate immigration practices and security measures, including driver's license issuance. In considering the use of driver's licenses as national ID or whether issuing driver's licenses to illegal immigrants is a sound practice, there are many arguments to take into account. Those who favor issuing driver's licenses to illegal immigrants argue that this practice will help the government keep tabs on illegal immigration, encourage illegal immigrants to follow US laws and work towards attaining legal status, and relieve the states from acting as immigration police. Those who are against this practice believe that it would weaken national security and increase our risk for another attack like 9/11, that it would encourage illegal behavior and cause illegal immigration to skyrocket, and would violate the rights of legal citizens in this country. The issuance of driver's licenses to illegal aliens is controversial.

Endnotes

¹ These distinct certificates, which are issued by several states as forms separate from driver's licenses, will be discussed further in this paper.

² The phrase "granting driver's licenses to illegal immigrants" does not mean that state officials are knowingly granting driver's licenses to illegal individuals, but instead refers to the fact that many states have fewer requirements or their issuance system contains many loopholes which facilitates the ease in which illegal immigrants are able to obtain licenses. Some officials would regard these loopholes as flaws in the system, while other officials openly acknowledge that such systems encourage illegal aliens to obtain licenses by design.

³ The 10th Amendment gives the power to the states to regulate all that was not already mandated to the federal government in the Constitution, which may include the rules of driver's licenses issuance, content and format as a state function (United States).

⁴ All states regulate the issuance of driver's licenses under the operations of the state government, with the exception of Hawaii which delegates this function to the county governments ("Department of Motor Vehicles"). See Appendix A for Overview of State License Requirements.

⁵ Since 1954, all states have required that drivers must be licensed in order to operate a motor vehicle (United States).

⁶ Digital driver's licenses are licenses that are generated by computer technology. Rather than having a photographic process, pictures for licenses are taken with a digital camera. These images, along with all one's information that is on the license can be stored in a computer. In addition, digital driver's licenses have added security features which reduce the risk of fraud and tampering. Each license has a barcode which can be used for scanning purposes ("Digital Driver's License Information").

⁷ See Appendix B for Dog Driver's License Cartoon.

⁸ The Real ID Act, which was introduced in the House of Representatives on January 26th, 2005, became public law on May 11, 2005. Its official purpose is "To establish and rapidly implement regulations for State driver's licenses and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence" ("Bill Summary and Status"). The bill was attached to an appropriations bill that provided funds for global defense and tsunami relief. See Appendix C for a Summary of the Real ID Act.

⁹ There are three ways in which Congress can preempt state and local laws. The first is when it is impossible for citizens to comply with both the federal and state law dealing with the same issue. In this case, the federal law will supercede the state law. The second instance is when a state law interferes with the achievement of a federal objective. The third instance is when the state law involves an issue that is really a national concern, such as immigration or foreign policy ("Preemption of State and Local Laws").

¹⁰ States will require that those applying for driver's licenses provide a photo ID document, documentation showing one's date of birth, proof of one's Social Security

number or government alternative, and documentation of the person's name and address of principal residence ("Summary of Driver's License Provisions"). Government alternatives to the SSN include the ITIN, which is the Individual Taxpayer Identification Number which is issued to those who are not eligible for a SSN, and are issued regardless of immigration status for those who need to file for tax returns ("Individual Taxpayer Identification Number").

¹¹ Under the Real ID Act, official federal purposes include being able to access federal facilities, boarding commercial aircraft, and entering power plants ("Questions and Answers").

¹² See Appendix D for Picture of Mohammad Atta's Florida Driver's License.

¹³ In 2003, the Virginia General Assembly passed legislation, effective as of January 1st, 2005, that requires that those applying for Virginia driver's license demonstrate that they have legal presence. Before the passage of this law, Virginia was regarded as a state required a minimal amount of documentation in order to obtain a license or ID card, and did not require that one demonstrate that they are a legal citizen. The Virginia state legislators argued that the passage of this law was in response to concerns about the Virginia driver's license as cited by the Department of Homeland Security ("Legal Presence"). See Appendix E for Virginia Driver's License Requirements.

¹⁴ Many of the 9/11 hijackers did possess visas at one time, and therefore were easily able to obtain driver's licenses. The expiration of their licenses, however, did not correspond with the expiration of their visas, and therefore they were able to easily renew their driver's licenses in states that did not require that they demonstrate legal presence

simply by presenting their previously issued authentic driver's license ("Fact Sheet: Driver's Licenses, 9-11, and Intelligence Reform").

¹⁵ See Appendix F for Picture and Biography of Rep. Sensenbrenner.

¹⁶ States that do not include legal residency requirements to drive are: Hawaii, Maine, Maryland, Michigan, New Mexico, North Carolina, Oregon, Tennessee (issue separate certificates for non-U.S. citizens), UT (issue a separate driving privileges card for non U.S. citizens), Washington and Wisconsin ("Overview of State's License Requirements").

¹⁷ Refer to Appendix G for a Poll About Threats to Border Security.

¹⁸ Dewan argues that illegal aliens will drive regardless of whether or not they have actual driver's licenses. Many jobs that they apply for or work in require a driver's license. Because they need to work in order to survive, they will try and fraudulently obtain one or drive without one. In granting them driver's licenses, it encourages safe, legal driving.

¹⁹ There are two states that issue separate certificates for driving purposes only. These two states are Tennessee and Utah. These certificates, or driving privileges cards, are issued to those who are unable to prove that they are legal residents (Dewan). These cards are supposed to be distinguished from official driver's licenses and must be marked that they are not to be accepted as forms of identification ("Utah Creates 'Driving Privilege Card'"). See Appendix H for a sample photograph of a Tennessee Driving Certificate, Appendix I for Tennessee Driver's License Requirements, Appendix J for an example of the Utah Driving card, and Appendix K for Utah Driver's License Requirements.

²⁰ In October of 2005, President Bush announced that he seeks to support legislation to strengthen border security and create an effective guest worker program. His proposed plan would include \$82 million to improve and expand Border Patrol stations, \$70 million to install and improve fencing, lighting, vehicle barriers and roads, and \$3.7 billion for immigration and customs reform. Bush emphasized the need to strengthen border security in conjunction with a temporary guest worker program in order to keep a stable economy but also boost immigration enforcement. Congressmen from both parties differ as to what the best course of action is in regards to these proposals (“Bush Pledges to Deter Illegal Immigrants”).

²¹ According to Straub, issuing driver’s licenses to illegal immigrants does not solve the immigration problem and is merely a “quick fix” attempt by the government. He argues that they should be tightening border security and should improve disincentives for illegal immigration rather than sanctioning it.

²² The National Conference of State Legislatures (NCSL) estimates that the Real ID Act provisions will cost the states at least \$500-750 million over the first five years of implementation, plus an ongoing cost of \$50-75 million per year to operate (“Questions and Answers”).

²³ See Appendix L for Identity Theft Cartoon.

²⁴ Ramasastry argues that as the government places greater value on the use of driver’s licenses as national ID cards, then it would be very plausible for the government to utilize the digital technology of the licenses themselves to track the movements of license holders. In addition, businesses could use the license technology to track the identities and purchases of its customers to generate their own databases.

²⁵ In Tennessee and Utah, many illegal immigrants are being treated unfairly at testing centers, in court and other situations where identification is required, and their certificates do not provide identification privileges. Legal immigrants are often denied driver's licenses because the DMV clerks are unfamiliar with the immigration and visa documents that legal immigrants provide when applying for their license, and therefore the legal immigrants are incorrectly issued driving certificates, not licenses ("The 'Tennessee Driving Certificate'"). In Utah, police officers are forced to arrest drivers for minor traffic violations, rather than issuing citations, because state law requires that a citation can be issued only if the person has a legitimate form of ID ("Utah Creates 'Driving Privilege Card'"). This wastes the time of law enforcement officers and draws resources away from real emergency situations, in addition to causing humiliation to the immigrants being arrested.

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