

## Safe Roads, Safe Communities: Immigrants and State Driver's License Requirements

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### INTRODUCTION

Every day millions of people travel on U.S. roads. Whether their destination is school, work, doctor appointments, a vacation spot, or any one of countless other places, individuals venture out feeling assured that state agencies charged with ensuring overall public safety of roads are doing everything in their power to accomplish this goal. One principal element of achieving public safety includes taking

steps for properly credentialing all motorists by testing, licensing, and requiring that they have insurance.

Recently, there has been a plethora of legislation, executive orders, and regulatory changes in the states which impose harsh restrictions specifically on immigrants' access to state-issued driver's licenses (DLs) and identification documents. The impact on the Latino population is potentially enormous. These proposals go well beyond denying

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undocumented immigrants access to DLs and have the potential to exclude legal immigrants and even U.S. citizens from state-issued identification documents. Moreover, they are of great concern because they prohibit drivers from being properly licensed and insured, discriminate against immigrants and other groups, and make entire communities less safe.

The National Council of La Raza (NCLR) believes that a state-issued DL should be reliable proof of an individual's identity and proof of authorization to drive a motor vehicle; it should not be tied to an individual's immigration status. There are legitimate and sound avenues for individuals to prove identity which would allow state Departments of Motor Vehicles to fulfill their mission of ensuring safe roads without creating new licensing requirements that would make the driver's license a *de facto* proof of legal residency in the United States.

In the post-September 11 environment, the debate over driver's licenses has been linked to issues of national security. National security is of the utmost importance and, to that end, NCLR believes that national security and law enforcement interests are best served by allowing, and not restricting, access to DLs to those who can prove their identity and ability to drive. This paper explores current federal and state DL requirements, current restrictive proposals, NCLR's driver's license principles, arguments in favor of increased accessibility, and steps that can be taken to ensure that DLs remain authentic and prevent unauthorized drivers from making our roads less safe.

## OVERVIEW OF FEDERAL AND STATE DRIVER'S LICENSE REQUIREMENTS

State driver's license agencies have a twofold task: licensing qualified motorists and ensuring the validity of driver's licenses. Each individual state licensing agency has distinct policies and procedures to which applicants must adhere before a license will be issued.

Current federal law does not require states to deny DLs to undocumented immigrants, and very few state statutes contain language explicitly denying DLs to undocumented immigrants or requiring lawful presence in the U.S. However, some state DL requirements, such as the requirement to provide Social Security Numbers (SSNs), have resulted in the inability of undocumented immigrants in some states to receive DLs, rendering them unable to participate in proper driver's education courses, to obtain insurance, and to perform daily activities. In some cases, legal immigrants also have been unable to provide the necessary documentation to obtain a DL.

## SOCIAL SECURITY NUMBER REQUIREMENTS

Many states require DL applicants to provide an SSN, and many states believe that they must require SSNs in order to be in full compliance with federal law. However, the federal SSN requirements are frequently misunderstood (see Appendix for a comprehensive explanation of

current federal law as it pertains to SSNs and state-issued DLs). Briefly, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 contained a provision requesting that state DL agencies record the SSN of applicants for driver's licenses for the purpose of child support enforcement. Specifically, Section 466(a)(13)(A) directed that SSNs be recorded on applications for professional licenses, commercial driver's licenses, occupational licenses, and marriage licenses (and was later amended to include all licenses). The Department of Health and Human Services interpreted this provision to mean that states must have procedures to obtain the SSNs of any individuals who have SSNs, but not that an SSN be a requirement for DLs. However, many states' statutes now contain language requiring that DL applicants provide SSNs. Because of the SSN requirements, many immigrants are unable to obtain DLs.

Effective March 1, 2002, the Social Security Administration will no longer assign SSNs when the sole reason for needing an SSN is to obtain a DL. Prior to March 1, the SSA would assign SSNs to lawful residents who did not have work authorization but needed a valid SSN for non-work-related reasons, such as acquiring a DL. This new policy means that people who are lawfully present in the U.S. but are not authorized to work will no longer be able to obtain an SSN and will therefore be unable to obtain a DL in many states.<sup>1</sup>

## **PROOF OF IDENTITY AND RESIDENCY REQUIREMENTS**

Besides providing an SSN, applicants for a state-issued DL must also provide proof of age and identity and, in some instances, proof of state and legal residency. Often, these are intertwined, and many states' proof of identity requirements serve as a *de facto* means of probing into a noncitizen's immigration status by limiting the types of Immigration and Naturalization Service (INS) documents accepted as proof of identity.

### **PROOF OF IDENTITY**

Each state has its own list of acceptable documents for proving one's identity. Unfortunately, in many states, the list of documents accepted to verify identity is unnecessarily narrow and is an obstacle for many noncitizens who are at various stages of the immigration process and who do not have the accepted documentation. As a result, some immigrants remain unable to produce the required documentation to prove their identity and therefore are ineligible to receive a DL.

There are many documents that can be used as proof of identity, including DLs issued by other states or countries, U.S. passports, U.S. original state birth certificates, state ID cards, student ID cards, original Social Security cards, U.S. military photo ID cards, Indian tribal photo ID cards, and some INS documents, such as a Certificate of Naturalization, an Arrival-Departure Record (I-94), an Alien Registration Receipt Card (I-551), a Letter of Authorization

issued by the INS, a visa, or a valid Employment Authorization Card (I-688 A or B). In several states, Canadian DLs, passports, and birth certificates can be presented as proof of identity in the same manner as another U.S. state's or territory's driver's license or birth certificate. A few states accept documents issued by Germany and France. However, these same documents from other countries may or may not be accepted, resulting in an inequity for noncitizens from most every country in the world.

#### **PROOF OF STATE RESIDENCY**

Some states explicitly require proof of residency in the state. These states require documentation to prove that the individual lives in the state, such as a utility bill, a bank statement, a rent receipt, an insurance policy statement, or a tax receipt. However, proving residency can be difficult for many individuals, particularly when more than one person lives in the same house or apartment and utility bills and rent receipts are often under only one occupant's name. Furthermore, many immigrants do not have bank accounts, insurance policies, or access to other acceptable documents. As a result, many immigrants are ineligible for DLs because they cannot prove state residency.

#### **PROOF OF LEGAL IMMIGRATION STATUS**

In addition to state residency, a few states explicitly require proof of legal immigration status or proof of legal residency in the United States. Many more states are currently seeking to require legal immigration status. Currently, California explicitly requires proof of legal presence in the United States. Other states are less explicit. For example, in South Carolina the

statute denies DLs to anyone "who is not a resident of South Carolina, except for persons from other countries who are present in South Carolina on a student visa or on a work visa or the dependents of the student or worker who may be issued a license."<sup>2</sup> Following September 11, the South Carolina Department of Motor Vehicles (DMV) began to interpret this provision more narrowly and no longer grants DLs to immigrants without green cards, valid student visas, or work visas, or to dependents of persons with the proper documentation. Although in most states legal immigration status is not explicitly required, undocumented immigrants are denied access to DLs because they cannot meet the proof of SSN, proof of identity, or proof of state residency requirements.

In summary, because of documentation requirements, undocumented and other immigrants have been unable to obtain DLs in many states. The implications of being denied a DL are wide-ranging, and the impact is felt by individuals and entire communities. As a result of current law, many unlicensed drivers are currently driving on U.S. roads creating unsafe conditions for all Americans. Because the need to travel does not diminish if a DL has been denied, many individuals will continue to drive without DLs and thus without proper driver's education and without insurance.

Furthermore, unlicensed and uninsured drivers are more likely to flee the scene of an accident even if not at fault. And since DL databases are often used to enforce child support payment and criminal warrants, many remain immune from these law enforcement mechanisms. In many states, the driver's license agency issues not only driver's licenses but also official identification. Often, the requirements for a

state ID are similar to those for a driver's license. Therefore, access to a driver's license is commensurate with access to a common proof of identity. Without state-issued identification

documents it may be difficult to accomplish the tasks necessary for everyday life, such as opening a bank account and cashing a check.

## NCLR Principles for Driver's License Debate

Like all Americans, NCLR is concerned about national security and supports measures that increase the safety of the U.S. and protect Americans from future terrorist attacks. However, NCLR firmly believes that, before taking antiterrorist action, it is necessary to reflect on whether the proposed measure is truly an effective means to increase national security, as well as to address unintended negative effects of such proposals.

During these challenging times, many new proposals aimed at enhancing our national security and preventing future terrorist attacks have arisen. However, we must be cautious not to proceed quickly and recklessly. NCLR believes that each new state and federal legislative proposal and executive action must receive thoughtful attention, broad discussion, and be judged by four principles. Specifically,

**1. Driver's license proposals must be effective.** Will the proposal achieve what it intends? Is it an effective means to achieve greater national security and public safety, or does it give us a false sense of security and simply make us feel better? Is the proposal cost-effective, or would we expend a great amount of resources on unproven or ineffective results?

**2. Driver's license proposals must not create negative unintended consequences.** What are the ultimate results of the proposal? Will the proposal deny driver's licenses to eligible individuals?

**3. Driver's license proposals must not single people out for abuse and discrimination.** Will the proposal create opportunities for abuse, or result in discrimination or civil rights violations? Are there ample protections contained in the proposal to protect individuals from abuse?

**4. Driver's license proposals must be based on accurate information.** Will the proposed changes ensure that the information contained on a driver's license or identity document is accurate? If the information is to be verified with databases, is the information contained in the database reliable and accurate? Is the identity document based on information from valid documents?

NCLR believes that these four principles should guide national and state debates on DL proposals and, indeed, any proposals aimed at enhancing safety and security.



## Current Restrictive Proposals in the States

Over the past several years, local police forces, Departments of Transportation, insurance companies, employers, community advocates, and others have launched campaigns to make DLs more accessible to all people and thus improve public safety. Successful campaigns in Utah and Tennessee, and an ongoing campaign in California, have sparked campaigns in other states.

After the tragic events of September 11, 2001 and revelations that several of the terrorists had obtained state-issued DLs, there has been renewed debate over immigrants' access to driver's licenses and state identity documents. The list of states with restrictive proposals grows daily, and the types of immigrant restrictions proposed continue to increase as well. Most alarmingly, these new proposals go well beyond requiring legal immigration status and create situations in which noncitizens are treated distinctly from citizens, resulting in discrimination and civil rights violations. The following outlines the major categories of immigrant restrictions that have been proposed in recent months:

- ▶ **Lawful presence requirements.** Several states have introduced legislation that explicitly requires DL applicants to prove that they are lawfully present in the U.S., thereby excluding undocumented immigrants from receiving DLs. These proposals often contain narrow lists of acceptable documents for proving lawful presence which also exclude many legal immigrants.
- ▶ **Distinct processes for noncitizen applicants.** Several states have proposed that all noncitizens, even long-time legal

permanent residents, be required to go to particular DMV offices in order to apply for a DL or state ID card. These proposals may contain provisions requiring specialized training for DMV staff in the noncitizen facilities.

- ▶ **Strict photograph requirements.** Several states propose to overturn laws allowing individuals to refuse photographs on religious or other grounds.
- ▶ **Document verification requirements.** Several states have introduced proposals requiring the DMV to verify noncitizens' documents with the Social Security Administration database and/or the INS database, neither of which are designed for this purpose and are fraught with inaccuracies that result in denial of eligible applicants.
- ▶ **Reporting requirements.** Several states have new proposals requiring and/or allowing DMVs to share information regarding "suspicious" applicants with the appropriate state and/or federal law enforcement agency.
- ▶ **DL expiration date requirements.** Several states have proposals to require that DLs expire the same day as the individual's visa.
- ▶ **Repeal of expansive legislation.** There have been efforts to repeal laws allowing Individual Taxpayer Identification Numbers (ITINs) to be used as a substitute for SSNs, thereby requiring individuals to have a valid SSN.
- ▶ **Revocation for misrepresentation of immigration status.** Several

states have proposals that would require the DMV to revoke the DLs of individuals who have misrepresented their immigration status.

- ▶ **Biometric data.** Several states have new proposals with provisions requiring biometric data, such as fingerprints, to be collected and used on DLs.
- ▶ **Immigration status listed on DL.** Several states have proposed steps to indicate immigration status on the face of the DL or to create new DLs that differentiate between undocumented immigrants, noncitizens, and citizens.

Additionally, since the terrorist attacks, the debate over immigrant access to DLs now takes place in the context of national discussions regarding immigrant tracking systems, national ID cards, biometric identity cards, and other documentation systems proposed in the name of national security.\* DLs have also come to play a key role in the debate over national ID cards. Because a national ID card received significant opposition from across the political spectrum, state-issued DLs are emerging as a potentially politically feasible compromise. The American Association of Motor Vehicle Administrators (AAMVA) recently announced that it supports uniform standards for DLs across all 50 states\*\* and is now working with computer security experts to create a national system to link all state DL databases to high-tech DL cards with computer chips, bar codes, and biometric identifiers such as thumbprints. If implemented, uniform DLs would result in a *de facto* national ID card.

\* For example, the Enhanced Border Security and Visa Entry Act of 2001 proposes increased tracking of foreign students, the implementation of an exit/entry system, and smart visas. Scholars and policy-makers from across the political spectrum have advocated national ID cards, uniform DLs, and even implanted microchips for foreigners. The Bush Administration has opposed the creation of a national ID card making it more likely that DLs will be the focus of the ID debate.

\*\* AAMVA Executive Committee Resolution establishing the Special Task Force on Identification Security, October 24, 2001, <http://www.aamva.org/Documents/hmExecResolution.pdf> and AAMVA Special Task Force on Identification Security Report to the AAMVA Board, Executive Summary, <http://aamva.org/drivers/drVIDSecurityExecutiveSummary.asp>.

## APPLYING NCLR PRINCIPLES TO CURRENT PROPOSALS

While NCLR is deeply concerned with national security and public safety, it believes that current proposals to restrict state-issued DLs and identification documents are not effective means to combat terrorism. In fact, NCLR's position is that all communities' best interests are served by increased accessibility to identification documents. Furthermore, NCLR believes that DLs should accurately and reliably identify individuals and should indicate an individual's authorization to operate a motor vehicle. However, DLs should not be linked to an individual's immigration status. NCLR's analysis, as outlined below, suggests that current restrictive proposals (such as the those described in the box on page 6), could result in negative consequences and inaccurate information that would do little to enhance national security.

### 1. DL RESTRICTIONS ARE NOT EFFECTIVE.

- ▶ **Restricting DLs is an inefficient and ineffective measure to prevent terrorism.** Sophisticated terrorists with substantial financial resources are likely to have the ability to obtain DLs and other documents when they find them necessary. Furthermore, press accounts since September 11 have called attention to the fact that the hijackers had obtained DLs when, in fact, the terrorists did not need U.S.-issued DLs to board

planes on September 11; they had foreign passports that allowed them to board airplanes. Because of the large number of tourists and other visitors who travel in the U.S., foreign passports are likely to continue to be acceptable forms of identification to board airplanes. Finally, restricting DLs to immigrants does nothing to address the issue of domestic terrorist threats.

The argument that identification cards can prevent terrorism is based on the premise that we can identify terrorists and separate the "good guys" from the "bad guys." However, it is first necessary for various federal agencies to gather intelligence and share information with each other in order to identify potential threats and stop them before they enter the U.S. Federal legislation has been proposed to increase intelligence-gathering and information-sharing at the federal level, and to revamp the visa issuance process. The nation's resources and energies are best spent gathering information and identifying potential terrorists rather than placing unnecessary DL restrictions on millions of American families.

- ▶ **Restricting DLs interferes with other law enforcement mechanisms.** Law enforcement officials point out that the current child support enforcement and criminal warrant tracking functions of DLs are less useful if

large proportions of the population are excluded from the DL databases.

- ▶ **Restricting DLs does not accomplish immigration policy goals such as reducing undocumented employment or improper use of public benefits.**

A driver's license only proves identity and ensures that the license holder has shown a minimal level of competency to drive and understands U.S. traffic laws. Federal law requires all employees to complete an I-9 form, which requires both proof of identity and eligibility to work, so a driver's license alone is not enough.

Furthermore, undocumented immigrants are ineligible for federal public benefits programs, and such programs require additional proof of eligibility, identity, and immigration status.

## **2. NEW DL RESTRICTIONS HAVE NEGATIVE CONSEQUENCES FOR IMMIGRANTS, CITIZENS, AND ENTIRE COMMUNITIES.**

- ▶ **DL restrictions result in the denial of licenses to legal immigrants.** Many of the current proposals would also effectively deny driver's licenses to many people who are authorized to live in the United States but who do not have the required

documentation for a variety of reasons. For example, persons who have been given temporary protected status due to civil conflict or natural disaster in their countries, or abused women who are in the process of petitioning for legal residency under the provisions of the Violence Against Women Act, or individuals whose visas have been approved but not processed would be denied driver's licenses even though they are lawfully present.

Furthermore, refugees, asylees, and others who fled persecution without proper identification documents from their countries of birth would be denied driver's licenses. In some states, new proposals mean that naturalized citizens would be treated differently than native-born citizens and would be subject to onerous requirements, which is unfair and potentially unconstitutional.

- ▶ **Restricting DLs results in unsafe roads, high insurance rates, and overwhelmed court systems.**

Current proposals would result in more unlicensed drivers operating vehicles on U.S. roads. Currently, there are an estimated eight million undocumented immigrants in the United States, many of whom have to drive on U.S. roads in order to work, whether or not they have a DL. As a result of immigrant restrictions these drivers will not take



driver's classes or pass driving tests, will not be able to get insurance, and may be more likely to flee the scene of an accident for fear of immigration consequences unrelated to the accident. Nationally, chances are approximately 14 in 100 that if an insured car occupant is injured in an accident, an uninsured motorist caused the accident.<sup>3</sup> These proposed measures are likely to increase those numbers. In addition, immigrant license restrictions result in numerous arrests for minor traffic violations, clogging the public courts and diverting the time of law enforcement officers which would be better spent protecting public safety.

- ▶ **DL restrictions negatively affect American families.** According to the Urban Institute, one in ten children in the U.S. lives in a "mixed-status family," in which at least one parent is a noncitizen and one child is a citizen. Four out of five children of immigrants were born in the U.S., and two out of three children in families with one or more undocumented parents are citizens.<sup>4</sup> The impact of denying DLs to immigrants reaches far beyond the undocumented community and even the immigrant community. Denying DLs to immigrants negatively affects U.S. citizens and American families.
- ▶ **Restricting DLs erodes community trust.** Rather than

increasing security, DL restrictions result in a situation in which immigrants fear discrimination and being reported to the INS and therefore avoid contact with law enforcement; immigrants are unwilling to report crimes and assist local law enforcement in fighting criminal and terrorist activity. This decreases community trust and infringes upon efforts to fight crime and save lives. In most states, law enforcement officials are opposed to restrictions on DLs, citing public safety, fraud prevention, battling corruption, and crime prevention.

- ▶ **Restricting DLs results in the proliferation of false documents.** The production and sale of falsified documents are likely to increase if large numbers of immigrants are denied DLs. Excluding individuals from legal DLs creates conditions in which false documents and false identities will proliferate, meaning that we will have less accurate information about who is currently in the country.

### **3. DL RESTRICTIONS RESULT IN ABUSE AND DISCRIMINATION.**

- ▶ **DL restrictions result in discrimination and racial profiling.** Increased restrictions on immigrant DLs are likely to result in

racial profiling, vigilantism, and other forms of discrimination. When documents such as DLs are believed to be linked to immigration status, history has shown that Latinos and other ethnic minorities, as well as all people who look or sound “foreign,” are the primary targets of document verification. For example, people believed to be “foreign” or who look like they might be “undocumented” because they fit a certain profile may be stopped solely to provide documents, an enforcement activity that clearly leads to racial profiling. And if new laws require DMVs to report “suspicious” individuals to the INS, the probability of abuse and discrimination will increase dramatically.

- ▶ **DL restrictions result in civil rights violations.** Often, individuals who are asked to show documentation are U.S. citizens, and those suspected of being “undocumented” are legal immigrants, resulting in civil rights violations. Reports of discrimination and racial profiling have already been documented. Puerto Ricans, who are U.S. citizens, have been the targets of such discrimination and have been asked to show proof of citizenship, or even worse, their green cards. Naturalized citizens have also been asked to produce additional documentation. In several cases, the DLs of naturalized citizens, U.S. citizens, refugees, and others have been

confiscated when the individuals failed to present green cards or other proof of legal immigration status.

- ▶ **DL restrictions result in vigilantism.** Another potential effect of the increasing anti-immigrant sentiment in the nation is vigilantism; that is, undue, and often illegal, enforcement of existing laws by ordinary citizens. In the aftermath of the terrorist attacks of September 11, incidents targeting persons perceived to be immigrants have become all too common. Airlines and others have reportedly participated in racial profiling by asking members of particular ethnic and racial groups to provide documentation. If DLs or other documents are linked (or perceived to be linked) to immigration status, it is likely that even more merchants, restaurant owners, and others will request documentation before services will be provided.
- ▶ **Discrimination and racial profiling make the country less safe.** Racial profiling undermines the ability of law enforcement to enforce the law effectively. When an innocent individual’s ethnicity is used to establish a cause for suspicion of a crime, then that individual – along with family members, friends, and neighbors – may lose trust in the integrity of law enforcement. As a result, the public safety may be placed in jeopardy because members of these communities

are likely to fear harassment and abuse by the police and are thus less likely to seek police help when they legitimately need it: to report a crime or suspicious behavior, serve as a witness, or otherwise cooperate with law enforcement. Racial profiling not only violates civil rights, it also diverts essential resources, undermines the ability of law enforcement to enforce the law effectively, and makes everyone less safe.

#### **4. NEW DL PROPOSALS DO NOT GUARANTEE ACCURATE AND RELIABLE INFORMATION.**

- ▶ **Immigrant restrictions to DLs do not address the issue of false breeder documents.** The information on a DL is only as good as the information provided by the applicant. If individuals use false documents to obtain valid state-issued DLs or ID cards, these proposals simply result in a false sense of security without addressing the real issue of identity fraud and theft.
- ▶ **Blanket information-sharing with the INS and SSA does not increase public safety.** Linking DL databases to the INS or the Social Security Administration to verify documents is likely to have harmful consequences. First, the accuracy and reliability of the databases are problematic. INS and SSA databases have been shown to have

error rates approaching 20%.<sup>5</sup> The INS database is not updated quickly enough to contain current immigration status for all persons. For example, according to the INS, no U.S. citizens naturalized prior to 1972 appear in INS databases at all. Such individuals would be routinely denied DLs under these procedures. Finally, innocent mistakes, such as the misspelling of “unusual” names, transposing given names and surnames, and inconsistent entry of multiple surnames, disproportionately occur with ethnic minorities. If verification against INS data is used by DL agencies, it is inevitable that eligible persons will be denied DLs because of inaccuracies in the databases. Sharing information with the INS and SSA does not lead to increased public safety. If immigrants do not apply for DLs because they fear discrimination or that they will be reported to the INS or other law enforcement agencies, this results in greater numbers of unlicensed and uninsured drivers and less contact between the community and the authorities. Consequently, the entire community is less safe.

## **NCLR’s PROPOSED APPROACH**

Certainly, maintaining the authenticity and reliability of DLs is critical, as is ensuring that unauthorized drivers do not endanger public safety. Taking steps to increase national security

is also important. NCLR believes that these goals can be accomplished without denying immigrants access to DLs. The next sections review practical steps that can and should be taken to ensure maximum access to DLs without endangering national security or public safety.

## **ALTERNATIVES TO DOCUMENTATION REQUIREMENTS**

One way to ensure DL accessibility to immigrants is to offer alternatives to documentation requirements. The following sections outline possible alternatives to the SSN, proof of identity, and proof of legal residency requirements.

### **ALTERNATIVES TO THE SSN**

There are ways that states can allow individuals to qualify for DLs without SSNs. Some states have provided alternatives to the SSN requirement, clearly demonstrating that they have chosen public safety as a principal guideline for inclusive DL policies.

Some states allow individuals who do not have SSNs to present a sworn affidavit stating that they do not have an SSN and are not eligible for one. Besides the sworn affidavit, additional options are currently being utilized in various states. For example, Texas currently accepts an L-676 letter in place of an SSN. An L-676 letter can be obtained through the SSA and states that an individual does not qualify for an SSN. Issued by local SSA offices, an L-676 letter can be obtained by persons who can prove their age, identity, and ineligibility to obtain an SSN.<sup>6</sup>

Other states have additional alternatives. In Utah, for example, DL applicants can submit an L-676 letter or an Individual Taxpayer Identification Number (ITIN) issued by the Internal Revenue Service (IRS) for federal tax collection purposes. The ITIN is a tax processing number that became available on July 1, 1996 for certain nonresident and resident aliens, their spouses, and dependents. Like the SSN, it is a nine-digit number, and only individuals who are not eligible for an SSN can obtain an ITIN.<sup>7</sup>

### **ALTERNATIVES TO PROOF OF IDENTITY AND PROOF OF RESIDENCY DOCUMENTS**

As with the SSN, there are ways to increase immigrants' ability to produce necessary documentation. One solution is to broaden the list of acceptable identity documentation to include foreign documents.

As mentioned above, several states accept Canadian DLs, passports, and birth certificates as proof of identity, and a few states accept documents from other countries. However, most often these same documents from other countries are not accepted. All states could accept legitimate foreign government-issued documents, thereby allowing more individuals to access DLs.

In most countries, obtaining a passport or consular documents requires extensive documentation before issuance. For example, a Mexican consular document (*matricula*) requires (1) a certified copy of a Mexican birth certificate and (2) a picture ID. Both a foreign passport and consular document are easily recognizable and verifiable documents issued by an individual's country of origin. They provide

both an identifiable photograph and the date of birth of an individual.

The acknowledged validity of the *matricula* has led some financial institutions and other entities to accept it as an alternative form to prove identity. In Orange County, California, chiefs of police have adopted policies encouraging officers to accept the *matricula* as an alternative ID when stopping individuals for minor offenses. This measure is intended to diminish community reluctance to have contact with police or to report crimes.<sup>8</sup> Similarly, some banks allow customers to use it as one of two proof of identity documents to open bank accounts or effect transactions. Given that immigrants are vulnerable to robberies and predatory schemes because they do not have access to banking facilities, measures to facilitate their access to these services could also serve to reduce crime.

Likewise, original foreign birth certificates are carefully issued to individuals by national governments. Currently, several states accept foreign birth certificates as the only document required for identification purposes. Other acceptable foreign government-issued documents include a national military identification card, a voter registration card, driver's license, school records, or a variety of other documents.

State Departments of Motor Vehicles can work with foreign consulates to receive information and training regarding the documentation issued by any foreign country. Consulates can also provide helpful information regarding identifying false documents.

There are also alternative ways to prove state residency. For example, some community

service organizations are willing to provide affidavits that can be notarized and used for proof of state residency. In addition, residents can request that newsletters or other pieces of mail be sent to them at their address to be used as proof of residency. Individuals and organizations need to check with their local DL agency to determine what types of proof of state residency are acceptable.

NCLR believes that state DL agencies should work to ensure that individuals who are driving on roads are licensed, insured, and knowledgeable of all rules, and should not act as INS agents by verifying immigration status. Given the identity and legal residence requirements, INS documentation and immigration law are extremely complex and subject to frequent changes. State driver's licensing agencies do not have the authority or the expertise to navigate through the variety of immigration documents and understand the nuances among different types of immigration status and stages of the process. These complexities have been brought to bear when agencies or legislators have adopted seemingly straightforward policies to prevent undocumented immigrants' access to DLs, which have instead resulted in denying such documents to certain categories of legal immigrants.

## **INCREASING DL INTEGRITY**

Measures can be taken to create tamper-proof and counterfeit-proof birth certificates, visas, Social Security cards, and other documents that are presented as proof of identity, residency, and immigration status since a DL is only as authentic as the documents upon which it is based.



However, efforts to standardize DLs across all 50 states, resulting in a *de facto* national ID card, should be avoided. National ID cards are ineffective at preventing terrorism and result in the loss of privacy, increased identity theft, and increased discrimination against immigrants and ethnic or racial minorities.<sup>9</sup> In the current law enforcement context, the failure to carry an ID card would likely provide a pretext to search, detain, or arrest African Americans, Arab Americans, Latinos, and Asians disproportionately, and these and other ethnic minorities would be subject to new levels of government discrimination and harassment. In the private sector, minorities would likely be the targets of identity checks by banks, landlords, health care workers, and others.<sup>10</sup>

History has shown that laws requiring individuals to show proof of legal status or citizenship result in increased discrimination based on national origin and/or appearance. For example, in 1986 Congress passed the Immigration Reform and Control Act (IRCA) which implemented a national worker verification system and sanctions for employers who knowingly hired undocumented workers. One result of employer sanctions and worker verification has been increased discrimination against persons who look or sound “foreign” or have a “foreign” surname, regardless of their ability to produce documents. Some employers demand that certain workers show additional or “better” documents, while other employers implement unlawful “citizen only” policies. A Congressionally-mandated GAO report found a “widespread pattern of discrimination” resulting “solely from the implementation of IRCA.” GAO reported that 10% of employers discriminated on the basis of foreign accent or appearance, and 9% discriminated by preferring certain authorized workers over others.<sup>11</sup>

Linking DLs and other identification documents to databases should also be avoided. Biometric technology that accurately and reliably matches an individual to a large database of information is not yet available (a one-to-N match). Accurate databases do not exist, and false positives, discrimination, and racial profiling are likely to result from such systems.<sup>12</sup>

## CONCLUSION

Public safety and national security are of the utmost importance to all people of the United States, and promoting measures to identify potential terrorists and prevent future terrorist attacks is a national priority that NCLR shares. However, NCLR believes that safety and security goals are not mutually exclusive and can be accomplished through initiatives that carefully combine effectiveness, accuracy, explicit civil rights protections, and prevention of discriminatory effects. Steps must be taken to ensure that new policies are effective and truly make the country safer rather than simply make some segments of the population feel better at the expense of others.

The use of the driver’s license – a government-issued document that offers proof of authorization to drive a motor vehicle and also serves as proof of identity – to address national security concerns is unwise. In particular, as this issue brief describes, restricting immigrant access to driver’s licenses is not an effective way to counter potential terrorists and actually makes entire communities less safe. Moreover, blurring the lines regarding which government agencies are responsible for enforcing immigration law is not prudent. Such strategies have the potential to foment discrimination against entire groups without achieving their national security goals. The

Latino population in the U.S. is all too familiar with discrimination, racial profiling, unsafe communities, and other negative effects of such policies.

Instead of advancing restrictive measures, NCLR believes that allowing maximum access to state-issued ID cards and DLs through legitimate means will help to ensure that all drivers are properly trained, licensed, and insured. A less restrictive approach will also facilitate access to proper documentation for all residents of the United States, as well as increase knowledge of who is in the country at any given time. Furthermore, it will prevent large segments of the population from living clandestinely and avoiding contact with law enforcement and other government and private agencies, thereby enhancing safety and security.

With respect to responsibility for enforcing immigration law, State Departments of Motor Vehicles should not be authorized to check the immigration status of DL applicants. The U.S. Constitution gives the federal government the sole authority to create and enforce immigration law; only the INS is responsible for issuing immigration documents and verifying the legal residency of persons residing in the United States. Furthermore, immigration law

and immigration documents are incredibly complex and subject to frequent changes. State driver's licensing agencies do not have the expertise to navigate through the variety of immigration documents and to verify an individual's immigration status. Doing so without expertise typically leads to discrimination against persons who are lawfully present in the U.S. The Department of Motor Vehicles' role should be to ensure that all individuals who drive on U.S. roads are properly licensed and insured, and not to act as INS agents verifying immigration status.

NCLR supports efforts to strengthen national security and prevent future terrorist attacks. It also seeks to ensure that measures that are advanced to address these concerns are effective and do not further exacerbate problems of discrimination and racial profiling, or create a climate of fear and, in turn, less security. Policies that seek to restrict immigrant access to DLs as a way to respond to national security concerns are misguided, since issues regarding identity and immigration were not meant to be addressed by DLs. Instead, ensuring immigrant access to DLs will ensure safer roads and safer communities for everyone.

## APPENDIX

### SOCIAL SECURITY NUMBER REQUIREMENTS

There are a variety of federal policies that have come to include Social Security Number (SSN) requirements. Though the SSN was explicitly intended only for the purpose of administering the Social Security program, the use of the SSN is ubiquitous; the SSN is used by both government and nongovernment entities for numerous purposes. Whether one is applying for a federal public benefit program or a credit card, the request for an SSN is almost certain. However, the original purpose of the SSN was far less expansive. Created under the federal Social Security Act, the SSN was originally designed to keep track of an individual's earnings and eligibility benefits. In 1996, two major pieces of federal legislation addressed the use of the SSN for the purposes of obtaining a state-issued DL: the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 ("Welfare Reform") and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 ("Immigration Reform"). The result of these changes has been that, although not mandated by the federal government, many state DL agencies now require an SSN to apply for a DL, and anyone without an SSN is not able to obtain a DL in those states legally.

Section 656 (b) of IIRIRA mandated that all state driver's licensing agencies must request the SSN of all DL applicants and place the SSN on the DL, resulting in the creation of a *de facto* national ID card. A coalition of various advocacy groups led by the states themselves

vigorously opposed this provision on the grounds that it violated privacy rights, would lead to increased identity theft, and would result in increased discrimination against immigrants and certain ethnic groups. Due to the overwhelming opposition, the Section 656(b) mandate was repealed in October 1999.

However, PRWORA also contained a provision requesting that state DL agencies record the SSN of applicants for certain licenses and also that the SSN be recorded on certain court-issued and medical documents for the purpose of child support enforcement. Specifically, Section 466(a)(13)(A) directed SSNs be recorded on applications for professional licenses, commercial driver's licenses, occupational licenses, and marriage licenses.

Subsequent legislation was enacted eliminating the "commercial driver's license" specification and applying Section 466(a)(13)(A) to the issuance of **all** driver's licenses. State licensing agencies were given until October 1, 2000 to implement policies and procedures for Section 466 (a)(13)(A).

When Departments of Public Safety and Motor Vehicles began the process of implementing Section 466(a)(13)(A) agency staff and advocates requested an interpretation by the proper federal agency (in this case, the U.S. Department of Health and Human Services [DHHS] because the provision dealt with child support enforcement). When asked if Section 466(a)(13)(A) mandated the SSN as a condition

for a driver's license, Commissioner David Gray Ross of the DHHS's Office of Child Support Enforcement offered this interpretation:

We interpret Section 466(a)(13)(A) to require that States have procedures which require an individual to furnish any social security number that he or she may have. [However,] Section 466(a)(13)(A) does not require that an individual have a social security number as a condition of receiving a license.<sup>13</sup>

Additionally, Commissioner Ross recommended that state licensing agencies require those applicants without an SSN to sign a sworn affidavit, under penalty of perjury, stating that they do not have an SSN nor are they eligible for an SSN.

Since the interpretation was issued to child support directors, and not driver's licensing agencies, it is possible that many state DL administrators were not aware of this

interpretation. Whether state driver's licensing agencies were aware of the interpretation or not, Section 466(a)(13)(A) has been misapplied in numerous states. Many state DL administrators now require an SSN as a condition to apply for a driver's license. As a result of the SSN requirements, advocates in some states report that, in addition to undocumented immigrants, many noncitizens who are in the U.S. legally are not able to obtain DLs because they are ineligible for SSNs or have not yet been assigned one. Some noncitizens are in the U.S. legally, but their status does not permit them to work here legally and they do not have SSNs, which prevents them from obtaining a DL. Other immigrants are in the process of adjusting to legal status but have not yet received their SSN – they are also unable to obtain a DL.

## ENDNOTES

1. See "Frequently Asked Questions about SSNs for Driver's Licenses," <http://www.SSA.gov>.
2. South Carolina Code Ann. Section 56-1-40 (7).
3. Insurance Research Council, *Uninsured Motorists 2000 Edition*, Malvern, PA: Insurance Research Council, 2001.
4. Children of Immigrants Fact Sheet, The Urban Institute, December 2001.
5. See *Racing Toward "Big Brother:" Computer Verification, National ID Cards, and Immigration Control*, Washington, DC: National Council of La Raza, 1995.
6. From Texas Register, September 22, 2000. Comments on rule changes to 37 Texas Administrative Code.
7. Understanding your IRS Individual Taxpayer Identification Number, IRS Publication 1915, February 1999. [http://www.irs.gov/ind\\_info/itin.html](http://www.irs.gov/ind_info/itin.html).
8. For example, see *The Orange County Register*, November 8, 2001 and Teresa Puente, "Mexico ID like money in bank. Consul card a key to fiscal freedom," *Chicago Tribune*, March 18, 2002.
9. For arguments against national ID cards see *Racing Toward "Big Brother:" Computer Verification, National ID Cards, and Immigration Control*, *op. cit.*; Miller, John L. and Stephen Moore, A National ID System: Big Brother's Solution to Illegal Immigration, September 7, 1995 <http://www.cato.org/pubs/pas/pa237es.html>; Smith, Robert Ellis, "A National ID Card: A License to Live," *Privacy Journal*, December 2000.
10. For examples of vigilantism following the passage of Proposition 187 in California in 1994 see the National Immigration Forum memorandum "Proposition 187 - Update of Abuses in California, Status of Lawsuits, Developments Around the Country," March 1995.
11. *Racing Toward "Big Brother:" Computer Verification, National ID Cards, and Immigration Control*, *op. cit.*
12. See "Your Papers, Please: From the State Drivers License to a National Identification System," Electronic Privacy Information Center, February 2002, <http://www.epic.org>.
13. PIQ-99-05 July 14, 1999. The memo is available at <http://www.acf.dhhs.gov/programs/cse/pol/piq-9905.html>.

### For more information

<http://www.aamva.org/links.html> (link to each state's version of the Department of Motor Vehicles)  
[http://www.irs.gov/ind\\_info/itin.html](http://www.irs.gov/ind_info/itin.html) (link to IRS information on ITINs)

National Organizations  
NCLR ([www.nclr.org](http://www.nclr.org))

National Immigration Law Center ([www.nilc.org](http://www.nilc.org))  
National Campaign for Jobs and Income Support ([www.nationalcampaign.org](http://www.nationalcampaign.org))



# NCLR ISSUE BRIEFS

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Brings attention to the importance of the EITC to Hispanic and other low-wage workers and outlines several important steps toward improving the credit for families. **ISSUE BRIEF No. 1**

## **FINANCIAL SERVICES AND HISPANIC AMERICANS**

Raises awareness of the financial service needs of the broader Latino community. The brief presents data that show lower participation by Latinos in critical asset-building areas like home-ownership and brokerage services. The brief highlights the barriers to financial services that many Hispanics face, including lower household income and discrimination on the part of the financial services industry. **ISSUE BRIEF No. 2**

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## **THE LATINO VOTE IN THE 90'S.**

Examines Latino voting trends in the 1990's. In 1996, Hispanics were the only group of American voters whose turnout at the polls increased. In 1998, Hispanic voters provided the margin of victory in races across the country, especially in California and New York. With every election, this Hispanic mobilization is likely to increase; in coming years it is expected that the Hispanic vote will have a significant impact at all levels, including the Presidential election. **ISSUE BRIEF No. 4**

## **FINANCIAL INSECURITY AMID GROWING WEALTH: WHY HEALTHIER SAVINGS IS ESSENTIAL TO LATINO PROSPERITY**

Examines the low savings rate of Latinos, what that has meant in terms of their wealth, and how it has negatively affected their overall financial security. The brief also discusses the barriers Hispanics face in saving and lays out promising strategies and recommendations for policy-makers and financial institutions to help increase Latino savings. **ISSUE BRIEF No. 5**

## **INCREASING HISPANIC HOMEOWNERSHIP: STRATEGIES FOR PROGRAMS AND PUBLIC POLICY**

Reviews the most recent data on homeownership and analyzes the factors associated with the low homeownership rate of Latinos. The brief also proposes specific recommendations and lays out a strategy for the private sector, community-based programs, and public policy to increase the number of Hispanic homeowners by two million over the next two decades. **ISSUE BRIEF No. 7**

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