

Denial of Driver's Licenses to Undocumented Immigrants as a Barrier to Human Rights in the United States

I. Reporting Organization(s)¹

- Media Mobilizing Project, Fight for Driver's License Campaign (PA)
- Advocates for Human Rights (MN)
- Border Network for Human Rights (NM, TX)
- Breakthrough (NY)
- Center for Constitutional Rights (NY)
- Junta for Progressive Action (CT)
- Migrant Justice (VT)
- Southern Poverty Law Center's Immigrant Justice Project, Dan Werner, Deputy Legal Director (AL, AR, GA, KY, LA, MS, NC, SC, TN)

II. Issue Summary

Denial of Driver's Licenses: A New Tool for Policing Immigrant Communities

Across the United States, laws denying undocumented persons access to driver's licenses are a new tool to police immigrant communities. The federal REAL ID Act of 2005 requires Federal agencies to only accept state driver's licenses or ID cards issued upon proof of documentation of legal status and Social Security number.² State laws around the country impose similar requirements to obtain state driver's licenses.³ These laws violate freedom of movement (article 12(1)), endanger people's lives (article 6(1)) and facilitate violations of the right to privacy (article 17(1)) and the right to family unity (article 23(1)). State and Federal laws and practices denying driver's licenses to the more than 11 million⁴ undocumented people in the United States do not exist in isolation; instead, they are enacted and implemented in context of the broader national attack on immigrant communities fueled by racial discrimination, xenophobia and economic protectionism (article 2).⁵

U.S. Federal and State Laws Restricting Access to Driver's Licenses for Undocumented People are on the Rise

In addition to the REAL ID Act of 2005, which was promulgated by Congress at the federal level, several U.S. states have added laws or changed policies in recent years to deny access to driver's licenses to persons without legal status. In 2009, the **Pennsylvania** Department of Transportation retroactively canceled thousands of immigrants' driver's licenses issued under an old policy.⁶ It implemented a new practice that requires a Social Security number or proof of lawful immigration status to acquire a license. In **Oregon**, a November 2007 gubernatorial executive order⁷ revoked access to driver's licenses for undocumented immigrants, and this executive mandate was codified in 2008 in a law requiring driver's license applicants to prove U.S. citizenship or legal residence. In **North Carolina**, a 2006 law rendered previously eligible undocumented immigrants ineligible for driver's licenses by requiring a Social Security number on the application.⁸ In **Arizona**, Governor Jan Brewer's Executive Order 2012-06 denies driver's licenses to young undocumented immigrants granted work authorization under President Obama's Deferred Action for Childhood Arrivals (DACA) program. In **New Mexico**, Governor Susana Martinez has pushed aggressively, although unsuccessfully, for three consecutive legislative sessions to repeal access to licenses.⁹ In 2010, **Utah** attempted to comply with the REAL ID Act while still protecting its workers and passed a law replacing access to driver's licenses for undocumented immigrants with a "Driving Privilege Card."¹⁰ Even this attempt at compromise is problematic: the new card immediately signals that the possessor is without legal status, which has serious discriminatory consequences.

The Human Rights Consequences of Laws Denying Driver's Licenses

State and federal laws denying driver's licenses to individuals without legal status are in direct conflict with the international human rights of undocumented people and their mixed-status families and communities. This type of law puts members of these communities in an impossible bind: they must either sacrifice freedom of movement or else drive without licenses in violation of domestic law.¹¹ Either course of action results in violations of fundamental civil rights protected by the ICCPR, and the negative impacts of these violations affect entire communities and touch all aspects of people's lives.

Government restrictions on driver's licenses interfere with undocumented people and their families' access to essential resources and services with potentially fatal consequences.¹² These risks affect undocumented parents and children and extend to mixed-status families, where an undocumented parent may be unable to secure essential services for U.S. citizen children. For example, undocumented parents may be unable to quickly and safely reach a hospital, interfering with an entire family's ability to access health care services—especially in areas where public transportation is not easily available. Such situations can lead to devastating health outcomes, and even death.

Moreover, laws that deny driver's licenses to undocumented people increase encounters between law enforcement and immigrant communities by providing yet another excuse to racially profile and police communities of color in the course of daily living. Contact between mixed-status communities heightens the risk of devastating immigration consequences, including detention and deportation. The risk of immigration consequences extending from an otherwise routine encounter due to true traffic violations or racial profiling¹³ is heightened for people who do not have driver's licenses. Inability to produce a driver's license may prompt further questions that threaten the privacy of the interrogated person, forcing them to reveal their immigration status against their will.¹⁴ Discovery of lack of legal status by law enforcement during a traffic stop or incident often results in detention and deportation, which threatens the unity of undocumented and mixed-status families.¹⁵ These risks are heightened by racial profiling (article 26)¹⁶ and the increased collaboration between local law enforcement and the Department of Homeland Security under programs such as Secure Communities.¹⁷

III. U.S. Government Report

The U.S. Government report does not address rights violations that stem from *de facto* discrimination or the discriminatory impact of laws, including those denying driver's licenses to undocumented people.

Equality and *de facto* discrimination under U.S. laws

- The U.S. Government report notes that as a matter of U.S. law, noncitizens and non-nationals of the United States within U.S. territory, “regardless of their immigration status,” enjoy “robust” protections under the U.S. Constitution and other domestic laws (Paragraph 101). In support, the government cites U.S. Supreme Court jurisprudence extending equal protection and due process under the Fourteenth Amendment to all people within the territorial jurisdiction of the United States (Paragraph 101). However, the report fails to acknowledge rampant *de facto* discrimination faced by undocumented people in the United States.
- The U.S. report also mentions “many federal statutes” that protect the rights of noncitizens against discrimination, but fails to provide specific examples (Paragraph 102). As a result, it is impossible to verify the accuracy of the government's assertion.

Legal challenges to state immigration laws by the U.S. Department of Justice

- The U.S. report details various legal challenges the Department of Justice (DOJ) has joined against state efforts to enforce immigration laws against undocumented individuals in paragraphs 636-40 (Arizona, Alabama, South Carolina, and Utah). These DOJ cases address state laws that interfere with the federal government's ability to set and enforce immigration policies (preemption), but do not categorically reject the discriminatory features of the state laws.
- Moreover, many of the discriminatory impacts of the state laws challenged by the DOJ are also present in federal laws. For instance, the U.S. report explains the DOJ opposition to Alabama's immigration law in the following terms: "More expansive than the Arizona law, Alabama's law is designed to affect virtually every aspect of an unauthorized immigrant's daily life, from employment to housing to transportation to entering and enforcing contracts." (Paragraph 637) However, the federal REAL ID Act of 2005 states that Federal agencies may only accept state driver's licenses or ID cards issued upon proof of documentation of legal status and Social Security number.¹⁸ This provision of the Act therefore impacts all aspects of an unauthorized immigrant's daily life in a way that is very similar to the Alabama law.

IV. U.S. Federal and State Denial of Driver's Licenses to Undocumented Immigrants Violates Rights Recognized by this Committee

General Comment No. 15 applies ICCPR rights to "all individuals" within a State's territory and subject to its jurisdiction. This means ICCPR rights apply to all immigrants, regardless of legal status.

- "Reports from States parties have often failed to take into account that each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness."¹⁹

General Comment No. 6 requires the State to adopt positive measures to secure the right to life. This includes taking all possible steps to increase life expectancy. In this context, relevant action by the U.S. Government would include ensuring that all people within the United States can obtain necessary medication and access hospitals safely and quickly. The U.S. Government could also avoid undue transportation risks by certifying and insuring all individuals on the road.

- Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics."²⁰

General Comment No. 19 calls upon the State to adopt measures to ensure the unity of families as part of the protection of the family. Instead, the United States has adopted laws that increase racial profiling and discriminatory policing of immigrant communities – practices which often lead to the detention and/or deportation of individuals who attract attention from law enforcement simply for "driving while brown."²¹ This can result in prolonged or permanent separation of families.

- "... Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons."²²

V. Relevant UPR Recommendations

During the United States' Universal Periodic Review in 2011, several recommendations were made and accepted, in whole or in part, related to the rights of immigrant communities. The U.S. Government has failed to act upon general recommendations to protect the human rights of migrants or to end discrimination against migrants.

- A/HRC/16/11 (UPR 2011), Recommendation A - 92.210 from Ecuador: Protect the human rights of migrants, regardless of their migratory status. *Accepted by the United States.*
- A/HRC/16/11 (UPR 2011), Recommendation A - 92.207 from Cuba: End violence and discrimination against migrants. *Accepted in part by the United States.*
- A/HRC/16/11 (UPR 2011), Recommendation A - 92.99 from Bangladesh: Eliminate discrimination against migrants and religious and ethnic minorities and ensure equal opportunity for enjoyment of their economic, social and cultural rights. *Accepted in part by the United States.*

There were also more specific recommendations, including the one below from Uruguay to increase efforts to ensure access of all immigrants, including those without legal status, to basic services. An essential part of access is physical access, yet the U.S. Government – which accepted this recommendation – continues to deny undocumented immigrants driver's licenses that would allow individuals to reach medical or other life-saving services in emergency situations.

- A/HRC/16/11 (UPR 2011), Recommendation A - 92.214 from Uruguay: Make greater efforts to guarantee the access of migrants to basic services, regardless of their migratory status. *Accepted by the United States.*

The U.S. Government was also advised to restrain states' attempts to repress immigrant communities, but the proliferation of laws that restrict access to driver's licenses, increase racial profiling and violate the human rights of undocumented immigrants and their family members is clear evidence that such efforts have not been made.

- A/HRC/16/11 (UPR 2011), Recommendation A - 92.79 from Guatemala: Attempt to restrain any state initiative which approaches immigration issues in a repressive way towards the migrant community and that violates its rights by applying racial profiling, criminalizing undocumented immigration and violating the human and civil rights of persons. *Accepted in part by the United States.*

VI. Recommended Questions

- What steps is the U.S. Government taking to ensure that laws denying driver's licenses are not being used in a manner that discriminates against immigrant communities?
- What steps is the U.S. Government taking to ensure protection of the right to privacy when members of immigrant communities encounter law enforcement officers during traffic stops?
- What steps is the U.S. Government taking to protect family unity and the right to family life—including, but not limited to parental participation in education, extracurricular activities, securing medical care, and religious life—in its implementation of immigration policies and practices?
- What positive measures is the U.S. Government taking to secure the right to life for all people within U.S. territories in context of the barriers to accessing necessary medical care created by laws denying driver's licenses?

VII. Suggested Recommendations

- Take affirmative measures to ensure the human rights of undocumented immigrants and their families are protected.
- Identify and implement measures to ensure protection of the right to privacy during encounters between law enforcement officials and immigrants, in particular with regard to questions about immigration status.
- Consider repealing Section 202 of the REAL ID Act of 2005 and related state laws that deny driver's licenses on the basis of lawful immigration status.

¹ See Appendix A for mission statements of reporting organizations.

² REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, § 202(c) (2005).

³ See *infra*. Social Security numbers are only assigned to U.S. citizens and noncitizens with “work-authorized immigration status” from the Department of Homeland Security. See *International Students and Social Security Numbers*, SSA Pub. No. 05-10181 (Sept. 2011), <http://www.socialsecurity.gov/pubs/10181.html>. Requiring a Social Security number is therefore an effective coding tool for denying driver's licenses to undocumented immigrants.

⁴ Emily Deruy, *Illegal Immigration to the United States is Down*, ABC NEWS, Dec. 6, 2012, http://abcnews.go.com/ABC_Univision/Politics/illegal-immigration-united-states/story?id=17894215 (“Jeffrey Passel, a senior demographer with the Pew Research Center and a former Census Bureau official . . . came up with the estimates for undocumented immigrants by subtracting the estimated legal immigrant population from the total foreign-born population, reports the AP, since the Census Bureau does not ask people about their immigration status.”).

⁵ International Covenant on Civil and Political Rights, art. 2(1)-(2), *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); HUMAN RIGHTS FIRST, COMBATING XENOPHOBIC VIOLENCE: A FRAMEWORK FOR ACTION 4 (2011) (“In the United States, xenophobic attacks targeting people of Hispanic origin rose nearly 40 percent between 2003 and 2007. They declined in 2008 and 2009, before rising 10 percent in 2010. Refugees have also been the victims of hate crimes motivated by racism and religious intolerance.”); Edward D. Murphy, *Anti-immigrant bias assessed in new study*, PORTLAND PRESS HERALD, June 20, 2011., http://www.pressherald.com/news/anti-immigrant-bias-assessed-in-new-study_2011-06-20.html; *Hateful Graffiti Found on Refugees' homes in Concord*, CONCORD MONITOR, Sept. 19, 2011, <http://www1.whdh.com/news/articles/local/north/12005416551442/hateful-graffiti-found-on-refugees-homes-in-concord/>.

⁶ Gustavo Martinez, *Immigrants v. PennDOT: The Right to Drive*, PHILADELPHIA WEEKLY, Apr. 20, 2010, <http://www.philadelphiaweekly.com/news-and-opinion/Immigrants-v-PennDOT-The-Right-to-Drive.html>.

⁷ Oregon Exec. Order No. 07-22, Nov. 16, 2007, *available at* <http://www.oregon.gov/gov/pdf/eo0722.pdf>.

⁸ N.C. GEN. STAT. § 20-7(b1) (2012).

⁹ Dan Frosch, *A New Fight on Licenses for Illegal Immigrants*, N.Y. TIMES, Jan. 18, 2012,

<http://www.nytimes.com/2012/01/19/us/in-new-mexico-a-fight-anew-over-drivers-licenses-for-illegal-immigrants.html>.

¹⁰ D. Lance Davenport, Utah Driver License Division, http://publicsafety.utah.gov/dld/documents/Brochure_apply-renew8-11.pdf.

¹¹ ICCPR, art. 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”). The reporting organization considers that the text of Article 12 wrongly distinguishes between those lawfully and unlawfully present; however, the reporting organization is also cognizant that the jurisprudence surrounding generally restricts the application of article 12(1) to people who are “lawfully within the territory of a state” under domestic laws. Accordingly, while the denial of driver's licenses to undocumented people who are not lawfully within the U.S. may not directly violate article 12(1), restricting movement for undocumented people also impacts the freedom of movement of citizens and lawfully present immigrants who depend upon undocumented people for transportation. This violation of freedom of movement for citizens and lawfully present immigrants is frequent due to the high prevalence of mixed-status families. In 2009, the Pew Hispanic Center estimated that there were 8.8 million people living in mixed-status families in the United States. Jeffrey Passel & D’Vera Cohn, PEW HISPANIC CENTER, A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES 8 (2009), *available at* <http://pewhispanic.org/files/reports/107.pdf>.

¹² ICCPR, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

¹³ American Civil Liberties Union, *Racial Profiling: Definition*, <http://www.aclu.org/racial-justice/racial-profiling-definition> (“Suits have also been filed in Arkansas, California, Louisiana, and Ohio claiming racial profiling by the INS. A federal court in Ohio found violations of the rights of Latinos by that states highway patrol's practice of stopping Latino drivers to question them about their immigration status, including officers even confiscated the green cards of legal migrant workers claiming they were counterfeit. In California, federal courts have found Fourth Amendment violations of Latinos in the stopping of Latinos on the basis of appearance and foreign sounding names. The Supreme Court has held that INS agents working near the Mexican border may use Spanish ethnicity as a basis for detaining a person, but that it may not be the only basis.”); Southern Poverty Law Center, *Racial Profiling by Law Enforcement is Constant Threat*, <http://www.splcenter.org/publications/under-siege-life-low->

income-latinos-south/2-racial-profiling (“Just the simple acts of driving to work or taking a child to a soccer match can result in intimidation or abuse — regardless of a Latino’s immigration status.”); Russell L. Jones, *A More Perfect Nation: Ending Racial Profiling*, 41 VAL. U. L. REV. 621, 621-22 (2007), available at

<http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1172&context=vulr> (“A recent Texas study indicates that in certain areas in the United States, blacks and Latinos are searched at higher rates than Anglos following a traffic stop. The traffic stop, the basis for most investigations resulting in racial profiling, although legal, is usually a pretext used by police officers to search for drugs in situations where there is no other legitimate basis to conduct the search. Additionally, cases indicate that border patrol officers stop people of Mexican descent more often than other ethnic groups. In fact a “Mexican appearance” is the most salient factor considered when deciding who to stop to investigate illegal border crossings.”).

¹⁴ ICCPR, art. 17(1) (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”).

¹⁵ ICCPR, art. 23(1) (“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”).

¹⁶ ICCPR, art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

¹⁷ See, e.g., Aarti Kohli et al., THE CHIEF JUSTICE EARL WARREN INSTITUTE ON LAW AND SOCIAL POLICY, *SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS* (2011), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf (discussing the level of data sharing between law enforcement agents and the Immigration and Customs Enforcement and finding that U.S. citizens are severely impacted by Secure Communities).

¹⁸ REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, § 202(c) (2005).

¹⁹ Human Rights Comm., General Comment No. 15: The position of aliens under the Covenant, para 1 (1986), <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

²⁰ Human Rights Comm., General Comment No. 6: The right to life, para 5 (1982), <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

²¹ Stephen G Rodriguez & Partners, *Legal Dictionary: Driving While Brown (DWB)*, <http://www.lacriminaldefenseattorney.com/Legal-Dictionary/D/DIS-DZ/Driving-While-Brown-DWB-.aspx> (“Recently, driving while Mexican has also come to describe the practice of police or immigration officers who illegally pull over individuals who “look Mexican” in order to determine if they are legally in the United States.”); Ralph E. Stone, *Walking or Driving While Brown – Arizona’s New Immigration Law*, BERKELEY DAILY PLANET, Apr. 30, 2010, <http://www.berkeleydailyplanet.com/issue/2010-04-30/article/35189?headline=NEWS-ANALYSIS-Walking-or-Driving-While-Brown---Arizona-s-New-Immigration-Law--by-Ralph-E.-Stone>.

²² Human Rights Comm., General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses, para 5 (1990), <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

Appendix A: Reporting Organizations

- **Media Mobilizing Project, Fight for Driver's License Campaign (PA)**

Building a statewide media, education and organizing infrastructure to reclaim the dignity of thousands of individuals without Social Security numbers who have lost the right to drive in the state of Pennsylvania.

- **Advocates for Human Rights (MN)**

Helping individuals fully realize their human rights in the United States and around the world by strengthening accountability mechanisms, raising awareness, fostering tolerance and adapting traditional human rights methodologies to conduct cutting-edge research. The Advocates' innovative programming has touched the lives of refugees and immigrants, women, ethnic and religious minorities, children, and other marginalized communities whose rights are at risk, producing 75 reports documenting human rights practices in 25 countries.

- **Border Network for Human Rights (NM, TX)**

Organizing border communities through human rights education and mobilizing our members to ignite change in policy and practice. The BNHR has three ongoing campaigns-- Comprehensive immigration reform; Accountable and responsible border policy; and Protection and Promotion of civil and human rights--and a membership of more than 700 families, or close to 4,000 individuals, in West Texas and Southern New Mexico.

- **Breakthrough (NY)**

Working to make women's human rights real and relevant to everyone, by creating innovative, relevant multimedia and pop culture that bring human rights issues and values into the mainstream and inspire people to take bold action for social change.

- **Center for Constitutional Rights (NY)**

Dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

- **Junta for Progressive Action (CT)**

A community-based, non-profit organization dedicated to improving economic, social and political conditions for the Latino and immigrant community of Connecticut, while building bridges with other communities. Our issue focus is based on a vision of a successful and thriving community, free from discrimination, injustice, and fear, working together with mutual respect to achieve full human rights and dignity for all people. We work specifically

on issues that address racial and economic disparities within Latino and immigrants in Connecticut.

- **Migrant Justice (VT)**

Building the voice, capacity and power of the migrant farmworker community and engaging community partners to organize for social and economic justice and human rights.

- **Southern Poverty Law Center's Immigrant Justice Project, Dan Werner, Deputy Legal Director (AL, AR, GA, KY, LA, MS, NC, SC, TN)**

The Southern Poverty Law Center, known for its innovative civil suits against hate groups, launched the Immigrant Justice Project (IJP) in 2004 to protect the rights and dignity of the powerless and exploited in America.

Immigrants are routinely cheated out of their pay and denied basic health and safety protections in the workplace. They are subjected to racial profiling and harassment by law enforcement. They are frequently forced to prove themselves innocent of immigration violations, regardless of their legal status. And they are, increasingly, targeted for violent hate crimes. This discrimination against immigrants constitutes a civil rights crisis. The SPL has reunited families, authored influential reports, set legal precedents, testified before Congress, and has helped build the capacity of other immigrant rights groups.