DRIVER'S LICENSES AND UNDOCUMENTED IMMIGRANTS: THE FUTURE OF CIVIL RIGHTS LAW?

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In the United States, efforts to end racial discrimination have generally been viewed as struggles for basic civil rights. The anti-discrimination aim of the civil rights movement of the 1950s and 1960s might be considered the primary civil rights concern. With the help of cases like *Brown v. Board of Education*, officially sanctioned school and housing segregation was dismantled. The triumph of the ban on racial discrimination can be seen in a myriad of laws, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968.

As immigration has dramatically transformed the racial demographics of this nation, the United States today is seeing a new generation of civil rights grievances emerge. This Article analyzes how immigration generates, and will for the foreseeable future continue to generate, new civil rights controversies in the United States. The nation has only begun to appreciate how Mexican migration, combined with that from the rest of the world, has changed the entire country, not just the region known as the American Southwest. Issues associated with immigration and border enforcement, language regulation, cultural difference, and equal citizenship and full membership, are arising with increasing frequency and will likely continue to do so in the future.

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The nexus between immigration and civil rights has tightened as the overlap between immigrant and minority status has grown. From the late 1800s through 1965, the U.S. immigration laws preferred immigrants from northern Europe. In 1965, Congress repealed the discriminatory national origins quota system, which greatly increased migration from the developing world to the United States.\textsuperscript{6}

The globalizing world economy, facilitated by improvements in technology and transportation, has accelerated the demographic changes in the United States. It is much more likely today that labor travels across national borders than a century ago. Many people of color from developing nations migrate to the developed world for jobs. The international labor market has created workers with ties and allegiances to more than one nation. For example, associations of Mexican immigrants from the same town, but living in this country—known as hometown associations, have become politically active in both the United States and Mexico.\textsuperscript{7} Global citizens with transnational identities pose challenges to the nation-state as it previously existed.\textsuperscript{8}

Liberalization of the immigration laws, combined with globalization, has contributed to the fact that the vast majority of immigrants to the United States since 1965 are people of color.\textsuperscript{9} Many major U.S. civil rights laws do not, however, address discrimination based on immigration status. Indeed, discrimination against immigrants often is legally acceptable.\textsuperscript{10} Although the law ordinarily tolerates discrimination against immigrants within limits,\textsuperscript{11} it generally condemns racial discrimination.\textsuperscript{12} For example, although the requirement that


\textsuperscript{8} See generally Anupam Chander, Diaspora Bonds, 76 N.Y.U. L. REV. 1005 (2001) (analyzing how global diasporas of people creating multinational allegiances have undermined the nation-state concept).

\textsuperscript{9} For example, for fiscal years 2000 through 2002, the largest percentages of immigrants to the United States came from Mexico, India, China, the Philippines, and Vietnam. See U.S. DEP’T OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STATISTICS, 2002 YEARBOOK OF IMMIGRATION STATISTICS 8 (Table B), available at http://uscis.gov/graphics/shared/aboutus/statistics/Immigs.htm (last visited Oct. 29, 2004).

\textsuperscript{10} See infra text accompanying note 11 (citing authorities).


a police officer be a U.S. citizen has withstood legal scrutiny, a racial prerequisite would not. Conceptions of civil rights, as well as legal remedies, must adapt to ensure that discrimination on the basis of immigration status does not effectively amount to discrimination on account of race. In other words, the law must police governmental conduct based on immigration status to ensure that it does not serve as a proxy for race and allow for circumvention of the core ban on anti-discrimination.

More generally, this article contends that the United States must reconceptualize "civil rights" to comport with modern realities. As race and races evolve in the national consciousness, the civil rights challenges facing racial minorities will change as well. U.S. society unquestionably is changing dramatically. High levels of immigration of diverse peoples of color have literally transformed the face of this nation. Latina/os have emerged as the largest minority in the United States. Change, as can be expected, has brought tension. Recognition of new civil rights concerns may arise from, as well as be symptomatic of, this tension.

To begin the task of reconsidering the expansion of the civil rights agenda in the United States, this article considers a matter that appears routine to most U.S. citizens, but which amounts to a serious civil rights issue for certain immigrant communities. The ability to obtain a driver's license has civil rights implications for undocumented Mexican immigrants. The denial of licenses to undocumented immigrants generally increases fears of arrest and deportation, limits access to jobs, and increases immigrant vulnerability to exploitation by unscrupulous employers. Without acknowledging the impacts of the state policy at stake, the United States Supreme Court in 2001 rejected a class action challenge brought by a lawful immigrant from Mexico who primarily speaks Spanish, to Alabama's new English language requirement for driver's license tests.

The state laws governing immigrant eligibility for driver's licenses follows a fascinating trajectory. As anti-immigrant sentiment hit a fever pitch in the early 1990s, states began limiting undocumented immigrant eligibility for driver's licenses. Over the last decade, civil rights activists in many states have pressed for undocumented immigrant eligibility for driver's licenses. Opposition to the calls for restoration of driver's license eligibility intensified with

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13 See, e.g., Foley v. Connellie, 435 U.S. 291 (1978) (upholding state law requiring that police officers be citizens); infra text accompanying notes 169-71 (analyzing Supreme Court's refusal to disturb California's citizenship requirement for probation officers).
14 See Johnson, supra note 5, at 1491-1510.
17 See infra text accompanying notes 22-147.
20 See infra text accompanying notes 22-24.
the fears generated by the tragic loss of life on September 11, 2001, which was perpetrated by noncitizens, many of whom had state-issued driver's licenses.  

This article contends that driver's license eligibility constitutes an important civil rights concern for Latina/os. As we will see, the driver's license controversy is part of a larger phenomenon, the proverbial tip of a civil rights iceberg. After analyzing the stakes in the driver's license debate, this article studies the impact of the changing immigrant-driven racial demographics generally on civil rights grievances in a multiracial United States. Although the vast majority of today's immigrants are people of color, the courts, including the Supreme Court, have failed to acknowledge the overlap between immigrant and minority status in the modern United States. Because of this overlap, discrimination based on alienage status may mask unlawful racial discrimination. Alienage status, as well as language, may serve as a proxy for race. Under modern circumstances, a desire to discriminate against noncitizens may be a conscious or unconscious way of engaging in racial discrimination. To this point, however, the courts have failed to carefully consider the immigrant/racial minority overlap in the interpretation and application of the anti-discrimination laws.

As modern sensibilities have evolved, racism has become more sophisticated and covert. Civil rights law has been slow in responding. However, the overlap between immigrant status and race has not been lost on communities of color, policy-makers, and law-makers. The political debates on issues such as immigration, language regulation, bilingual education, and driver's license eligibility often reveal deep racial schisms, with certain minority communities deeply interested in the outcomes.

Although often submerged in political debates, the issue of race and identity politics is of tremendous practical relevance to policymakers, advocates, scholars, and the media. A full understanding of the ongoing controversies is possible only if the depth of Latina/o sentiment about the importance of the policy issue in question is fully appreciated. Part I of the article analyzes the brewing controversy in states across the nation over undocumented immigrants' ability to obtain driver's licenses. Part II considers the more general issue implicated by driver's license eligibility – the expanding frontier of "civil rights" for immigrant communities.

I. DRIVER'S LICENSES AS A CIVIL RIGHTS ISSUE?

In recent years, states across the nation, from Georgia to California and Idaho to Rhode Island, have experienced political controversy over whether undocumented immigrants should be able to obtain driver's licenses.  

21 See infra text accompanying notes 25-32.  

22 See Sylvia R. Lazos Vargas, Missouri, the "War on Terrorism," and Immigrants: Legal Challenges Post 9/11, 67 Mo. L. REV. 775, 800-02 (2002); Ricardo Alonso-Zaldivar, States Take the Lead on Policies for Immigrants, L.A. TIMES, June 9, 2003, at 1 ("In recent months, at least 39 states have considered more than 100 bills that affect immigrants' access to driver's licenses."); see, e.g., Tatiana Pina, Driver's License Bills Draw Capitol Crowd, PROVIDENCE J.-BULL., Mar. 27, 2003, at B4 (Rhode Island); David Cho, Driver's License Legislation Pushes Hispanics into Va. Politics, WASH. POST, Mar. 23, 2003, at C4 (Virginia); Ivan Penn, Effort to Help Illegal Immigrants Get Driver's Licenses Draws Protest,
ifornia, for example, Latina/o legislators pressed aggressively for several years for a law that would permit certain undocumented immigrants to be eligible for a license and, after the law was passed, political controversy continued. States with burgeoning Latina/o populations across the nation have seen similar controversies. About thirty states, including Arizona, Colorado, Florida, Georgia, and Virginia, currently limit driver’s license eligibility to lawful immigrants.

Immediately after September 11, driver’s license eligibility became an important national security issue. In short,

[the question of issuance of driver’s licenses to nonimmigrant aliens has once again arisen in state legislatures and in Congress, as a disparate group of lawmakers, civil liberties advocates, public safety officials, representatives of the insurance industry and immigration advocacy groups attempt to balance national security and immigration enforcement interests with civil liberties concerns and basic issues of mobility and traffic safety.]

National security concerns understandably took on new urgency in the wake of the horrible loss of life that occurred on September 11, 2001. Most of the noncitizen hijackers had obtained state driver’s licenses or identifications; as a consequence, fears of identify fraud came to dominate the debate over driver’s license eligibility. In response, many states tightened the rules.

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23 See infra text accompanying notes 122-47.
26 See, e.g., Rich Stanek, Terrorism: Minnesota Responds to the Clear and Present Danger, 29 WM. MITCHELL L. REV. 739 (2003) (discussing Minnesota’s efforts to limit access to driver’s licenses).
for obtaining driver's licenses.28 Congress held hearings on the issue,29 ultimately introducing a bill that would have required states to issue high tech driver's licenses.30

National identification cards previously had been rejected on civil liberties grounds, with the primary concern being that such identifications would give the government undue power to violate the privacy of individuals.31 In light of the public's apparent willingness to trade off civil liberties for heightened security, national identity card proposals enjoyed a revival after September 11. In a new world preoccupied with security, a national identity card once again surfaced as a serious policy option.32

Driver's license eligibility, however, was an important policy matter long before September 11. A number of states previously barred undocumented immigrants from securing a driver's license.33 The debate over the issue has been heated and racially divisive, which, at first glance, might seem surprising. Licensing schemes would not seem likely to evoke much controversy. Although a public safety regulation enforced in a racially discriminatory manner might be expected to provoke criticism,34 that generally has not been the case with the driver's license eligibility requirements.

Importantly, the controversy over undocumented immigrant access to driver's licenses has not emerged on a clean slate. Nativism and anti-immigrant sentiment historically have influenced federal, state, and local laws.35 Although no widespread problems of identity fraud had resulted from issuing...
licenses to undocumented immigrants, the California Legislature enacted a new law in 1993 making only citizens and lawful immigrants eligible for driver's licenses, thus denying them to undocumented immigrants. This law came shortly before voters overwhelmingly approved the anti-immigrant initiative known as Proposition 187, which was marred by a campaign with distinctly anti-Mexican overtones and came to be seen as the embodiment of the nativist outburst of the early 1990s. The driver's license bill was one of many hotly contested matters such as undocumented immigrant access to public benefits, public education, bilingual education, and language rights during a sustained period in which California's Latina/o community felt under attack.

California was not alone. Even though the federal government has primary authority for regulating immigration, many states passed laws designed to discourage undocumented immigration. Race inevitably influenced the debates, with Latina/os and Anglos often finding themselves taking radically different positions. Limits on eligibility for driver's licenses also came at a time when the federal immigration laws, in no small part due to major reform efforts in 1996, were generally viewed as having negative impacts on immigrants. The 1996 immigration reforms, for example, resulted in record levels of deportations, with the vast majority of those removed from the country coming from Mexico.

Courts historically have been deferential to the federal government's decisions to discriminate against noncitizens. Courts also have given considerable latitude to the states in the treatment of immigrants so long as there is no direct conflict with federal policy and the state law does not purport to regulate immigration. Supreme Court decisions, however, suggest possible grounds for constitutional challenges to the laws barring undocumented immigrants from obtaining a driver's license. To this point, however, no court has actu-

36 See infra text accompanying notes 122-26.
38 See, e.g., Kevin R. Johnson & George A. Martínez, Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education, 33 U.C. DAVIS L. REV. 1227, 1247-68 (2000) (analyzing impacts on Latina/os of voter initiative that eliminated bilingual education in California); Kevin R. Johnson, Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class, 42 UCLA L. REV. 1509, 1541-53 (1995) (analyzing racial impacts of Proposition 187, which would have denied public benefits to undocumented immigrants, including access to public education).
ally invalidated a state law precluding undocumented immigrants from access to driver’s licenses. In fact, one court upheld a state law barring undocumented immigrants from driver’s licenses.\textsuperscript{44}

In the end, driver’s license eligibility is not simply a public safety issue. It is about the status and security of Latina/os, particularly undocumented immigrants, in U.S. society. Unless that fact is acknowledged and addressed by policy-makers, it will remain a heated issue riddled by controversy and racial divisiveness.

A. The Evolution of Driver’s Licenses in Modern U.S. Society: From Ensuring Safety to Providing Identification

On its face, access to a driver’s license would seem to be a mundane issue dealing with public safety, having nothing to do with civil rights, racial discrimination, and immigration. As automobiles emerged as the preferred mode of transportation in the United States in the early years of the twentieth century, state legislatures across the country originally passed driver’s license laws to improve public safety. Testing and licensing were generally believed to be ways of ensuring that drivers on the road knew the basic rules of traffic safety. With a license necessary to drive in most states, driver’s license schemes mandate testing on traffic and safety rules.

The justification for licensing schemes is to ensure that only safe drivers are on the roads.\textsuperscript{45} To this end, insurance companies generally require drivers to be licensed before they will insure them. In most states, liability insurance must be established in order to register a motor vehicle.\textsuperscript{46}

Because of safety concerns, the original idea was to ensure licensing of all drivers.\textsuperscript{47} The reasoning was that, in order to protect the public safety, we should encourage any person – lawful and undocumented immigrant, as well as

\textsuperscript{44} See John Doe No. 1 v. Georgia Dep’t of Public Safety, 147 F. Supp. 2d 1369, 1376 (N.D. Ga. 2001); see also Launderbach v. Zolin, 41 Cal. Rptr. 434, 439 (Cal. Ct. App. 1995) (holding that state could deny driver’s licenses to immigrants without Social Security numbers who were unlawfully in the country but not to immigrants without Social Security numbers who were lawfully in the country).

\textsuperscript{45} See American Association of Motor Vehicle Administrators, Driver License Examinations: A Manual for Driver-Licensing Authorities in the Examining of Applicants for Drivers’ licenses 1 (1959) (“The main purpose of driver examining is to determine whether an applicant for a license has the abilities, knowledge, and skills needed by the driving task for safe operation. A driver examination, successfully passed, means that the driver meets established standards of what he must know and be able to do regarding certain aspects of motor vehicle operation.”); Edward C. Fisher, Vehicle Traffic Law 368-70 (1961) (summarizing safety rationale for driver’s licensing); 7A Am. Jur. 2d, Automobile and Highway Traffic § 105 (1997) (stating that driver’s license laws “are designed to promote safe driving and to protect the traveling public”) (footnote omitted).


\textsuperscript{47} See American Association of Motor Vehicle Administrators, supra note 45, at 1 (“The legal basis for driver licensing is found in the state’s power to legislate for the welfare and safety of its citizens. Such laws may not be discriminatory . . . .”) (emphasis added); see also Alexander L. Mounts, A Safer Nation?: How Driver’s License Restrictions Hurt
citizen — who drives to take the tests necessary to secure a driver’s license. This, in turn, would tend to maximize the number of drivers able to secure liability insurance. Public safety often dominates analysis of any proposed reforms to the driver’s license eligibility requirements. Debates about testing requirements for the elderly and efforts to reduce alcohol-related traffic accidents are two contemporary examples. Although there is no right to drive, it generally has been a privilege extended to persons believed to be safe drivers.

From a law enforcement perspective, licensing of as many drivers on the road as possible makes the most sense. Allowing undocumented immigrants to obtain a driver’s license if they pass a driving test should promote traffic safety. It also might encourage undocumented immigrants to cooperate with police and not to flee when approached by law enforcement because they lack a license. This explains why some local police departments prohibit officers from inquiring about immigration status. Consequently, some law enforcement leaders have endorsed measures that would ensure that undocumented immigrants are eligible to obtain driver’s licenses.

It may seem obvious that the states initially enacted driver’s licensing schemes to promote public safety. However, in modern times, a driver’s license also is the primary form of identification in a country, that for civil liberties reasons, has not adopted a national identification system. Despite their foundation in public safety, driver’s licenses have evolved into much more. Today, an accepted form of identification is necessary for full access to U.S. society, from opening a bank account to renting an apartment, as well as to avoid instant suspicion as a law breaker in interactions with the police and virtually any governmental official.

Indeed, driver’s licenses issued by the states in some ways are de facto national identification cards, the denial of which injures immigrants. Given that the United States lacks a national identification card, a driver’s license and a Social Security card often are the only forms of identification generally accepted by employers, banks, landlords, and other economic actors and institutions. To an undocumented immigrant, a driver’s license means the ability to live in a way that most Americans take for granted. "[T]he denial of drivers’


See supra note 45 (citing authority).


See, e.g., Suzanne Graves, Checkpoints and the Fourth Amendment: Saving Grace or Constitutional Martyr?, 32 CONN. L. REV. 1487 (2000) (analyzing constitutional implications of sobriety checkpoints and other police practices designed to enforce drunk driving laws); Elizabeth F. Rubin, Trying to Be Reasonable About Drunk Driving: Individualized Suspicion and the Fourth Amendment, 62 U. CIN. L. REV. 1105 (1994) (same); see also infra note 73 (citing authority reviewing cases dealing with deportation of immigrants convicted of driving under the influence of alcohol).

See infra text accompanying notes 80-81.

Id.


See supra text accompanying notes 31-32.
licenses to undocumented Mexicans exacerbates immigrant fears of arrest and deportation, limits access to jobs, and generally increases immigrant vulnerability to exploitation in the workplace and elsewhere.55

Employers fearing sanctions under federal law for hiring undocumented workers may request to see driver’s licenses from prospective employees.56 The lack of a license, however, does not mean that an undocumented immigrant will not find a job. Rather, it more likely relegates a person to the secondary labor market, with low wages and poor conditions, reserved primarily for undocumented immigrants.57 This underground market flourishes, even though such employment is unlawful.58 Between five and fifteen million undocumented immigrants live and work in the United States.59 The lack of driver’s licenses thus facilitates the exploitation of undocumented immigrants in the secondary labor market.60

Even under the current workplace enforcement system, legal immigrants of certain national origins suffer discrimination by employers who fear violating the employer sanctions law. Discrimination against lawful immigrants does not violate Title VII of the Civil Rights Act of 1964, the major piece of employment discrimination legislation in the United States.61 Although such discrimination violates the Immigration Reform and Control Act of 1986, the prohibition has proven largely ineffective; evidence shows that employers often discriminate against persons of Latina/o and Asian ancestry because of fears of hiring an undocumented worker and violating the law.62

1. Race, Immigration Status, and Driver’s Licenses

There is a significant overlap, which is more pronounced in some regions of the country, between immigration status, race, and national origin.63 Most lawful immigrants and undocumented immigrants in the United States are peo-

55 Johnson, supra note 5, at 1504 (footnote omitted).
56 See infra text accompanying notes 84-88.
59 See infra note 64 (citing authorities) and text accompanying note 90.
60 See Johnson, supra note 58, at 226-30.
63 See Johnson, supra note 5, at 1505-08.
ple of color. This means that any change to the immigration laws, or in the treatment of immigrants, will disparately impact people of color. This is why, in the modern United States, every immigration issue has racial and civil rights components.

According to the best current estimates, over one-half of the millions of undocumented immigrants living in the United States are from Mexico, making it by far the largest sending country of immigrants to this country. The percentage of undocumented immigrants from Mexico is higher in some states in the border region, such as Texas, Arizona, and California. Consequently, a driver's license law that does not allow undocumented immigrants to obtain a driver's license will have a disparate impact on persons of Mexican ancestry. This helps explain why the issue is of such importance to Latina/os (two-thirds of whom are of Mexican ancestry), and thus to national Latina/o civil rights organizations.

In some ways, the fact that race – and the related volatile issue of immigration control – is at issue in the driver's license controversy may explain the ferocity of the political debate. All states and all drivers presumably would rather have licensed, safety-tested, drivers on the road than unlicensed drivers. State and local governments, concerned with safety and costs of medical care and emergency services for accidents, generally would support expanding eligibility for driver's licenses for public safety reasons. For precisely these types of reasons, the City of San Jose opposed passage of the California law in 1993 that denied licenses to undocumented immigrants:

We believe the safety of the public is not served by denying driver's licenses to an entire segment of the population. It is to California's advantage to ensure that drivers are licensed and have proven their skills and knowledge of the vehicle code. By prohibiting licensing, registration and insuring of some immigrants, the public will be exposed to greater numbers of unsafe drivers. Further, the bill will not result in a curtailment of illegal immigration into California.

64 See U.S. DEP'T OF HOMELAND SEC., supra note 9, at 214 (Table Q) (compiling data estimating that, as of 2000, 7 million undocumented immigrants resided in the United States with over 68 percent from Mexico and other top five undocumented immigrant sending countries being El Salvador, Guatemala, Columbia, Honduras, and China). The Urban Institute estimated that, as of March 2002, 9.3 undocumented immigrants lived in the United States, with 57 percent from Mexico. See JEFFREY S. PASSEL ET AL., UNDOCUMENTED IMMIGRANTS: FACTS AND FIGURES (Jan. 12, 2004).

65 See U.S. DEP'T OF HOMELAND SEC., supra note 9, at 214 (Table Q).


67 See infra text accompanying notes 82-101.

68 Letter from Roxanne L. Miller, Legislative Representative for City of San Jose, to Assembly Member John Vasconcellos, Chair, Assembly Ways and Means Committee (Aug. 23, 1993) (on file with author); see infra text accompanying notes 122-47 (discussing developments in California over undocumented immigrants eligibility for driver's licenses).
Liability insurance companies naturally would favor maximizing the number of holders of driver's licenses, which in turn would improve driver safety and increase the market for insurance.

The denial of driver's licenses to undocumented immigrants does not make sense, even in a post-September 11 world. The United States currently lacks a complete record of the identifications of undocumented immigrants in the country. Given that today's driver's licenses serve more of an identification than a safety function in modern circumstances, allowing undocumented immigrants to secure a license would further national security concerns. If licenses were open to all, driver's license records would create a fuller record of the identity of all U.S. residents. Such records, if accurate, would assist law enforcement authorities in fighting crime and combating terrorism.

2. Criminal Justice Implications

The lack of an identification deeply affects the nature of undocumented immigrants' interactions with law enforcement officers. Lacking a license, an undocumented immigrant may want to avoid any interaction with the police and worry about possible deportation from the country for something as minor as a burned out taillight. Fear of deportation runs especially deep in immigrants with roots in the United States, such as those with U.S. citizen children; if deported, they may face loss of family, friends, and a job.

Driving without a license is a crime in many states and, under certain circumstances, can result in deportation of an immigrant under the immigration laws. The Supreme Court has held that a state law may constitutionally allow for the arrest of a person for a minor traffic violation. Resisting arrest and other crimes resulting in possible deportation are more likely to occur as well if an undocumented immigrant fears arrest and deportation.

In some states, driving without a license may also be grounds for impoundment of the motor vehicle. At the same time, driving is a necessity

69 See supra text accompanying notes 25-32 (discussing increased concerns with driver's licenses after September 11).
70 See, e.g., CAL. VEH CODE § 40302(a) (West 2003).
74 See, e.g., ALA. CODE § 32-5A-203(c)(1); CAL. VEH. CODE § 22651(p) (West 2003); WASH. REV. CODE ANN. § 46.20.435(1).
for many people, including undocumented immigrants, who live and work in the United States. Consequently, we should assume that some undocumented immigrants will drive with or without a driver’s license. It has been estimated that hundreds of thousands of unlicensed (and thus uninsured) drivers regularly drive in the state of California.\textsuperscript{75}

State and local law enforcement have allegedly engaged in racial profiling of Latina/o, African American, and other minority drivers in traffic stops.\textsuperscript{76} If Latina/os are profiled for traffic stops, we can expect that more undocumented immigrants will suffer not just the indignity and embarrassment of a stop and possible arrest, but also criminal sanction – and possible deportation – for not having a driver’s license than their numbers on the road might indicate.

Efforts in recent years to enforce driver’s license laws have adversely affected undocumented Latina/o immigrant workers. For example, in a small Kentucky town that had seen a rapid growth in its Latina/o population, local police, in the name of public safety, set up roadblocks on the road to a poultry processing plant, which employed many undocumented Mexican immigrants, to verify driver’s licenses and motor vehicle registrations; many arrests resulted and the Immigration and Naturalization Service instituted deportation proceedings against some immigrants.\textsuperscript{77}

\textsuperscript{75} See Michael Cabanatuan & Erin McCormick, California’s Hit-and-Run Crisis: More Flee Fatal Accidents Here Than Any Other State, S.F. CHRON., July 27, 2003, at A1 (citing California Department of Motor Vehicles report estimating that California had one million unlicensed drivers on the road, including many undocumented immigrants).

\textsuperscript{76} See, e.g., Chavez v. Ill. State Police, 251 F.3d 612 (7th Cir. 2000); Ill. Migrant Council v. Pilliod, 540 F.2d 1062 (7th Cir. 1976), modified, 548 F.2d 715 (7th Cir. 1977) (en banc); Rodriguez v. Cal. Highway Patrol, 89 F. Supp. 2d 1131 (N.D. Cal. 2000). For example, a class action was brought in 2003 alleging that police in Rogers, Arkansas “operate pursuant to a policy, practice or custom of racial profiling that results in stops, detentions, investigations, searches and seizures of Latinos or Latino-looking individuals” in violation of the U.S. Constitution. See Lopez v. City of Rogers, 2003 U.S. Dist. LEXIS 14570, at 2 (W.D. Ark. Aug. 8, 2003). Racial profiling also has long been a problem in immigration enforcement. See, e.g., United States v. Montero-Camargo, 208 F.3d 1122 (9th Cir. 2000); Hodgers-Durgin v. de la Vina, 199 F.3d 1037 (9th Cir. 1999) (en banc); Nicacio v. INS, 797 F.2d 700 (9th Cir. 1985); Ramirez v. Webb, 787 F.2d 592 (6th Cir. 1986) (per curiam). See generally Kevin R. Johnson, The Case Against Race Profiling in Immigration Enforcement, 78 WASH. U. L. Q. 675 (2000) (analyzing the problems with racial profiling in the enforcement of the immigration laws).

\textsuperscript{77} See Ty Tagami, Roadblock Reveals Problem for Courts, HERALD-LEDGER (Kentucky), Nov. 26, 2000. In Southern California, Latina/os voiced disapproval of police arrests of Mexican immigrants for minor crimes, such as selling goods on the street without necessary licenses, and delivering them to the INS for their removal from the country. See H.G. Reza, Minor Offenders in Orange County Taken to Border Patrol; L.A. TIMES, Feb. 12, 2001, at B1 (reporting that local police agencies were arresting Latina/o immigrants on minor criminal matters and, rather than prosecuting them, transporting them to nearest INS checkpoint to facilitate their deportation); Kimi Yoshino, Soto Urges Anaheim to Restore Trust of The Latino Residents, L.A. TIMES (Orange County ed.), Mar. 21, 2002, at B3 (discussing tensions arising from local police assisting federal immigration officers in removing undocumented immigrants arrested on minor crimes). Anaheim, a city in Orange County, California, has been the site of much anti-immigrant activity, including police conduct of this type, as it experienced the growth of its Latina/o population. See Rick Hampson, ‘New Brooklyns’ Replace White Suburbs, USA TODAY, May 19, 2003, at 1A.
Thus, police practices make driver’s licenses all the more important for Latina/o immigrants. State and local police have been implicated in serious deprivations of civil rights of Mexican immigrants. Local enforcement of the immigration laws has been on the upswing in the aftermath of September 11, a development that increases the likelihood of civil rights abuses. This, in turn, has increased the importance of driver’s licenses to undocumented immigrants who will have even greater reason to fear arrest and deportation if they lack a license and come into contact with police.

To facilitate law enforcement, many state and local police departments have worked for years to gain the trust and respect of the undocumented immigrant community. Effective law enforcement requires a good relationship between police and the immigrant community. To help encourage immigrants to cooperate with police, many departments prohibit its officers from inquiring into the immigration status of any person – victim, witness, or perpetrator - and have resisted any involvement in immigration enforcement. Indeed, after September 11, some local police departments refused to cooperate with the federal government in interviewing Arab and Muslim noncitizens because of local policies precluding the inquiry into the immigration status of any person. In a system in which undocumented immigrants are denied driver’s licenses, arrests for lack of a license will appear to the immigrant community as if the police are enforcing the immigration laws; such perceptions will thwart law enforcement efforts to gain the trust and cooperation of that community.

3. The Immigration Control Arguments Against Driver’s License Eligibility for Undocumented Immigrants

Rather than only protecting public safety, driver’s licenses could also be seen as an immigration control device. Indeed, the most consistently vociferous objections to expanding license eligibility to undocumented immigrants center on the need to help enforce the immigration laws. The truth of the matter, however, is that millions of undocumented immigrants live and work in the United States. This is true even though they are in the country in violation of the law and employers are prohibited from employing them.

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78 See Johnson, supra note 40, at 863-64 (discussing adverse civil rights impacts resulting from increased state and local involvement in immigration enforcement); supra text accompanying notes 70-75.
80 For example, the Los Angeles Police Department has a policy of not inquiring into a person’s immigration status, although the policy is often violated. See Theodore W. Maya, Comment, To Serve and Protect or to Betray and Neglect?: The LAPD and Undocumented Immigrants, 49 UCLA L. Rev. 1611 (2002).
83 See Johnson, supra note 58, at 245-52.
Reforms to the federal immigration laws generally have increased the importance of driver’s licenses to undocumented immigrants. The Immigration Reform and Control Act of 1986,84 which allows employers of undocumented immigrants to be sanctioned, placed greater importance on access to driver’s licenses.85 Employers can accept driver’s licenses as identification in attempting to verify identity and work authorization.86

Without a driver’s license, undocumented immigrants may be unable to secure work from law-abiding employers. However, unscrupulous employers who do not comply with the law may surmise that an employee without a license is undocumented and subject to exploitation.87 The law does little to prevent such exploitation. For example, federal labor law does not provide full relief to an undocumented worker who was unlawfully discharged for engaging in union organizing activities, although it does for citizen and lawful immigrant workers.88

As many studies show, undocumented immigrants come to the United States for jobs and family.89 They have been a normal feature of the U.S. economy for most of the twentieth century. Millions of undocumented immigrants live and work in the United States.90 The critical question is how they will be treated — in a humane way worthy of contributing members of society, or as a caste of disposable labor that is slighted at every turn. In this way, the issue of driver’s licenses is a struggle over inclusion of undocumented immigrants in U.S. society.91

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act required states to include social security numbers on driver’s licenses.92 Although ultimately repealed because of privacy concerns,93 the measure reflects the political pressures for more uniform national identification to assist in immigration enforcement. The 1996 immigration reforms also encouraged

87 See supra text accompanying notes 56-60.
89 See Johnson, supra note 58, at 230-32, 245-52.
90 See supra text accompanying notes 56-60.
states to conduct pilot programs in denying licenses to undocumented immigrants.\textsuperscript{94}

In this way, the United States, in the words of one observer, "is moving toward a system of national identification numbers, databanks, and identity cards . . . ."\textsuperscript{95} States, through the issuance of driver's licenses, help implement a loose system of national identification. The system that has emerged, however, excludes undocumented immigrants.

If immigration control is the primary reason for limiting undocumented immigrant access to driver's licenses, then an issue of federal preemption arises.\textsuperscript{96} The federal government is entrusted with the regulation of immigration.\textsuperscript{97} State laws, such as California's anti-immigrant Proposition 187, have been invalidated for intruding on federal powers.\textsuperscript{98} The problem with this argument is that federal law, at least since 1996, has encouraged the states to limit driver's license eligibility to lawful immigrants.\textsuperscript{99}

Identity fraud as well as immigration enforcement concerns have motivated the calls for national identification systems.\textsuperscript{100} Fraud is a frequently asserted objection to extending driver's license eligibility to undocumented persons.\textsuperscript{101} Any driver's license law obviously must include provisions that minimize the potential for fraud. Acceptance of reliable foreign identification cards would help safeguard against identity fraud.

4. Ready Alternative to Driver's Licenses: The Mexican Identification Card

Recognition of another form of identification available to undocumented Mexican immigrants might cure some of the problems associated with denial of driver's licenses. In recent years, major banks and some state and local government agencies have begun to accept the matricula consular, an identification issued by the Mexican government to its citizens. Among other things, this has allowed undocumented Mexican immigrants to open bank accounts, write


\textsuperscript{96} See Lazos, supra note 22, at 782-90; supra text accompanying notes 41-44.

\textsuperscript{97} See DeCanas v. Bica, 424 U.S. 351, 354 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power.") (citation omitted).


\textsuperscript{99} See supra text accompanying notes 92-94.

\textsuperscript{100} See, e.g., Lynn M. LoPucki, Human Identification Theory and the Identity Theft Problem, 80 TEX. L. REV. 89 (2001).

\textsuperscript{101} See infra text accompanying notes 127-28 (discussing California Governor's objections to driver's license bill that he vetoed in 2002).
checks, use automated teller machines, and bank on the internet. In a few states that allow undocumented immigrants to obtain a driver’s license accept matriculas for driver’s license purposes. In light of the growing acceptance of the Mexican identification in the United States, other Latin American nations are considering issuing similar forms of identification.

Even after the focus on national security and identity fraud after September 11, the federal government has been willing to sanction foreign identifications for certain purposes. Section 326 of the USA PATRIOT Act provides that the Treasury Department will establish regulations governing bank standards for the verification of customer identities, the concern being the secret diversion of funds for terrorist ends. The Department’s regulations, after generating controversy, allow for banks to accept foreign identifications, such as the matricula consular. This agency action confirms that the federal government does not consider identity fraud to be a serious concern with matriculas and that their acceptance for purposes of securing driver’s licenses will not undermine the “war on terror.”

Growing acceptance of the matricula consular has meant a great deal to the undocumented immigrant community. Consider access to banking services. It is well-known that Mexican migrants send billions of dollars annually to friends and family in Mexico. Before being sued in a class action, some wire transfer companies charged exorbitant rates to wire funds to Mexico, exploiting undocumented Mexicans who had no alternative for sending money home. When banks began accepting the matricula consular, undocumented immigrants were able to open checking accounts and directly send checks, or

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103 See, e.g., N.M. STAT. ANN. § 66-5-5 (2002); Kate Nash, Immigration Hot Topic for Gov., ALBUQUERQUE J., June 25, 2003, at A2; see also Carl Ingram, Panel OKs Use of Identity Cards, L.A. TIMES, June 18, 2003, at B6 (reporting that legislative committee had approved bill that would require California state agencies to accept Mexican and other foreign identification cards).


107 See Johnson, supra note 5, at 1503 n.121.

108 See In re Mex. Money Transfer Litig., 267 F.3d 743 (7th Cir. 2001) (approving settlement in class action).
otherwise transfer funds, to family and friends in Mexico and avoid exploitation at the hands of the wire transfer companies. Undocumented immigrants also were not forced to hoard cash in their residences, which subjected them to increased risks of crime.

With the denial of an identification to many immigrants, the document fraud industry has flourished. In addition, unscrupulous *notarios* (notaries) have exploited undocumented immigrants with false promises of offering them legal status. In sum, seeking a degree of security in this country, undocumented immigrants have been defrauded by those falsely promising proper immigration and other legal documentation. Such exploitation may be avoided to a certain extent with the growing acceptance of foreign identifications.

Acceptance of foreign identifications has generated considerable controversy among advocates of stronger immigration controls. Critics claim that recognition of the Mexican identification card, for example, will inappropriately encourage illegal immigration and condone violation of the U.S. immigration laws. Tom Tancredo, a member of Congress who has championed a variety of measures to restrict immigration and bolster enforcement, as well as the deportation of an undocumented high school honors student and his family who were featured in a news story, introduced a bill that would limit acceptance of foreign identifications. The arguments against the acceptance of foreign identifications ranged from the unreliability of the identification to concerns with immigration control and terrorists.

The popularity of the *matricula consular* demonstrates the importance of an accepted identification card to undocumented immigrants who live and work in the United States. Denial of an identification sends a message of exclusion and effectively excludes undocumented immigrants from many amenities available to U.S. citizens. The lack of an identification makes criminal law enforcement, including that in connection with the “war on terror,” more, not less,

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110 See Michelle Mittelstadt & Alfredo Corchado, *Mexican ID Opens Doors for Undocumented Workers in U.S.*, *Dallas Morning News*, Feb. 18, 2003, at 1A; see also supra text accompanying notes 82-101 (outlining immigration control arguments for limiting access to driver’s licenses).


112 See Katie Kerwin McCormon, *Tancredo: Deport Teen; Lawmaker Says Honor Student is in the U.S. Illegally*, *Rocky Mountain News*, Sept. 14, 2002, at 17A (reporting on Tancredo’s efforts to have undocumented immigrant honors student and his family deported).


difficult because millions of undocumented immigrants are unaccounted for in any official governmental record-keeping system.\textsuperscript{115}


To this point, the courts, including the United States Supreme Court, have not been particularly sensitive to the importance of driver’s licenses to the immigrant community. In 1990, Alabama passed a law making English the official state language, which prompted the state to stop driver’s testing in languages other than English.\textsuperscript{116} Previously, Alabama had administered examinations in over a dozen languages without incident for more than twenty years.

In Alexander v. Sandoval,\textsuperscript{117} the Supreme Court failed to consider the racial and national origin impacts of Alabama’s new requirement that driver’s license testing be in English. This is true despite the fact that the new policy “disproportionately impacted minority communities [and] the state refused to make the testing accommodations [for non-English-speakers] that it did for illiterate and disabled English-speakers.”\textsuperscript{118} The Court decided the class action brought by Martha Sandoval, a legal immigrant from Mexico, on procedural grounds— that an implied private right of action did not exist under Title VI of the Civil Rights Act of 1964— and emphasized that it did not decide “whether the courts below were correct to hold that the English-only policy had the effect of discriminating on the basis of national origin.”\textsuperscript{119}

The Alabama testing requirement did not expressly target immigrants or Latina/os. However, one could certainly understand that Alabama’s change in its driver’s license law to bar testing in any language other than English would primarily affect foreigners, including Latina Spanish speakers such as Martha Sandoval. The communities that would be affected reasonably should have been known to the law’s supporters given the close nexus between immigration status, national origin, and English language proficiency in modern U.S. society.\textsuperscript{120} Nor was it a coincidence that the law was enacted at a time of high

\textsuperscript{115} See supra text accompanying notes 56-60.


\textsuperscript{117} 532 U.S. 275 (2001).

\textsuperscript{118} Johnson, supra note 5, at 1504-05 (footnote citing, inter alia, Sandoval v. Hagan, 197 F.3d 484, 489-91 (11th Cir. 1999) and Sandoval v. Hagan, 7 F. Supp. 2d 1234, 1280-91 (M.D. Ala. 1998)).

\textsuperscript{119} Alexander, 532 U.S. at 279. The Court only addressed whether a private right of action could be implied into the statute, not whether the government could take actions to enforce its provisions. See id. at 287-91.

\textsuperscript{120} See Hing, supra note 16, at 874 (“Given the huge numbers of immigrants who enter this country from Asian and Latin American countries whose citizens are not white and who in
Latina/o immigration to the United States when nativist sentiment captured the nation.\textsuperscript{121}

In \textit{Sandoval}, the Supreme Court wrestled with whether private parties could sue to enforce the provisions of a major civil rights law. The serious civil rights issues at stake to Latina/o immigrants were lost in legalisms. It was left for another day to analyze the discriminatory impacts of driver’s license eligibility requirements.

C. A Case Study: California’s Flip/Flop on Driver’s Licenses for Undocumented Immigrants

Before the 1990s, many states permitted undocumented immigrants to obtain a driver’s license, a policy decision consistent with the safety function of the licensing scheme.\textsuperscript{122} In a time of tumult over illegal immigration and the proposal and adoption of many anti-immigrant measures,\textsuperscript{123} the California legislature in 1993 passed a law, which went into effect in 1994, making undocumented immigrants ineligible for a California driver’s license.\textsuperscript{124} Immigration control concerns carried the day, with restrictionist groups such as the Federation for American Immigration Reform backing the law, while the California Department of Motor Vehicles and immigrants’ rights groups registered opposition.\textsuperscript{125}

It is important to keep in mind the circumstances in which California restricted driver’s license eligibility in 1993. The legislature was not faced with widespread safety problems, or claims of identity fraud, associated with undocumented immigrants having access to licenses. Nonetheless, it enacted the law prohibiting undocumented immigrants from obtaining a license in the midst of anti-immigrant ferment and social turmoil, which culminated in the landslide passage of Proposition 187.\textsuperscript{126} The driver’s license law was one of many anti-immigrant measures during this period that the Latina/o community saw as affronts to their dignity.

Over the next few decades, Latina/o politicians in the California legislature pushed for the passage of a bill that would permit undocumented immigrants to obtain a driver’s license. In 2002, the legislature passed such a bill. However, Democratic Governor Gray Davis, who expressed concerns with the potential national security consequences of identity fraud if it became law,

most cases do not speak English, criticism of the inability to speak English coincides neatly with race.

\textsuperscript{121} See supra text accompanying notes 14-16.
\textsuperscript{122} See supra text accompanying notes 45-53.
\textsuperscript{124} See \textit{CAL. VEH. CODE} § 12801.5 (West 2000).
\textsuperscript{125} See supra text accompanying notes 67-68.
\textsuperscript{126} See supra text accompanying notes 35-38.
vetoed the bill. Governor Davis vigorously defended his veto, claiming among other things that "'[t]he bill I got would allow people for whom there was an outstanding warrant . . . for murder, treason or espionage to get a driver's license.'"

Outraged by the veto, the Latina/o Caucus of the California legislature, which had grown dramatically in size since 1990, declined to endorse Governor Davis in his bid for reelection in 2002. This was an extraordinary measure — a group of Democratic Latina/o legislators refused to endorse an incumbent Democratic governor in large part because of his veto of a driver's license bill. Davis won the election, but by a narrower margin than expected before the driver's license controversy and with lukewarm support from Latina/o voters.

A driver's license bill was introduced again in California's 2003-04 legislative session. Facing a recall election and needing Latina/o support, Governor Davis signed the bill into law, even though it was more liberal than the one he previously had vetoed. The Governor's signing of the new law obviously reflected political exigencies.

The controversy was not over, however. Arnold Schwarzenegger campaigned in the recall election with the promise of repealing the driver's license law because, in his view, it posed national security risks. Moreover, opponents of the new law challenged it in court, claiming that it was preempted by federal law. Finally, sponsors of an initiative that would repeal the bill began collecting signatures with the hope of placing the issue on the ballot for voters to decide in 2004. Ultimately, after Governor Schwarzenegger's election, the sponsor of the driver's license bill, Senator Gil Cedillo, successfully

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127 See Margaret Talev & Kevin Yamamura, Davis Defends Decision on Driver's License Bill, SCRIPPS HOWARD NEWS SERV., Oct. 18, 2002.
128 Id. (quoting Davis); see William Booth, A Driver's License Debate in California, WASH. POST, Sept. 10, 2002, at A3.
132 See Peter Nicolas and Jennifer Mena, Bill Allowing Illegal Immigrants to get Driver's Licenses is Signed, L.A. TIMES, Sept. 6, 2003, at B1. The bill that Governor Davis vetoed would have allowed only undocumented immigrants in the process of regularizing their immigration status to obtain a license; the bill signed in the law did not include this restriction. See A.B. 60, 2002 Sess. (Cal. 2002) (passed the Assembly and Senate, Sept. 14, 2002, vetoed by Governor, Sept. 30, 2002).
133 See Margaret Talev, Recall Campaign Affecting Davis' Political Actions, VENTURA COUNTY STAR (California), June 16, 2003, at A1; Aurelio Rojas & Ed Fletcher, Davis Feeling Heat to Sign Immigrant License Bill, SCRIPPS HOWARD NEWS SERV., June 5, 2003.
obtained its repeal because of mounting political opposition, with the hope of passing a compromise bill in the future.137 Latina/os engaged in a statewide boycott in response to the repeal.138 Senator Cedillo later sponsored, and the California legislature passed, a new driver’s license bill, which Governor Schwarzenegger vetoed.139

As the controversy suggests, driver’s licenses are an issue of great concern to the Latina/o community in California. The Latina/o Caucus, which championed the extension of driver’s licenses to undocumented immigrants, mirrored the strong views of the Latina/o community about the legislation. National Latina/o advocacy organizations, such as the National Council for La Raza, pressed the California and other state legislatures on this issue.140 At one point, the Mexican American Legal Defense and Education Fund opposed the California bill proposed in 2002 on the ground that it failed to sufficiently expand the eligibility of undocumented immigrants for driver’s licenses.141 As an article in the Los Angeles Times observed, "[t]he inability of illegal immigrants to get driver’s licenses has become a major issue in California’s Latino community. During the last three years [prior to 2003], demonstrations have been held in support of the bills."142

In a related move, California legislators proposed a bill in 2003 that would require state and local agencies to accept Mexican identification cards as a valid form of identification.143 This suggests that the pressing issue is access to identification, rather than per se access to a driver’s license. Matriculas consulares, for example, might substitute for a driver’s license as a form of identification if accepted by important social and economic institutions.144

In sum, the debate over undocumented immigrant access to a driver’s license in California has been racially-polarized. Latina/o legislators vigorously advocated for the proposals, with strong support from Latina/o activist organizations. California’s experience is not unique. The Midwest and the South have seen considerable Mexican migration in recent years. Mexican migrant communities have arisen in Iowa, Illinois, Missouri, and Nebraska,145 with the meat and poultry processing industry employing many Mexican migrants. Not coincidently, these regions also saw increased demands for immigrant access to driver’s licenses as a form of identification. As one com-

140 See Lazos, supra note 71, at 363.
141 See Hispanic Group Protests Driver License Restriction for Immigrants, EFE NEWS SERVICE, Aug. 29, 2002.
142 Carl Ingram, Driver License Measure Clears First Hurdle, L.A. TIMES, Apr. 2, 2003, at 2; see Driver’s Licenses, CITY NEWS SERV., Aug. 21, 2002.
143 See A.B. 522, 2003-04 Sess. (Cal. 2003); see also supra text accompanying notes 102-115 (discussing increasing acceptance of Mexican identification cards).
144 See supra text accompanying notes 102-115.
145 See Lazos, supra note 71; Laura Rothstein, Introduction to the Symposium Issue on Immigration in the Heartland, 40 BRANDeIS L.J. 849 (2002).
mentator has observed, "access to driver's licenses [was] the most important state civil rights issue for Latinos [in Missouri] in the 2003 legislative session." Specifically, in 2003, Georgia and Virginia, both with quickly growing Latina/o communities, saw controversies similar to California's over driver's licenses. As in California, Missouri saw a racially-polarized debate about driver's license eligibility, even though race was not implicated on the face of the proposal. Ultimately, it is easy to see that the issue is about much more than a license to drive but in fact centers on the place of Latina/os in U.S. society.

II. THE EXPANSION OF CIVIL RIGHTS: IMMIGRATION, ALIENAGE, AND RACE

Immigration has transformed the United States and likely will continue to do so for the foreseeable future. After the elimination of racially discriminatory immigration laws in 1965, the flow of immigrants to the United States has been dominated by people of color from the developing world. In response to labor demand and family, undocumented immigrants have been entering as well, despite the largest border militarization effort in U.S. history that began in the early 1990s. These immigrants share some of the same civil rights concerns as citizens of color in the United States. As the driver's license controversy reveals, however, immigrants have their own specific civil rights concerns as well.

Discrimination has become more sophisticated over time, with the civil rights revolution of the 1960s going far to make the most blatant forms of discrimination both unlawful and condemned socially. However, unconscious racism, stereotypes, and institutional racism still adversely affect the treatment of racial minorities. For immigrants, facially-neutral proxies that substitute for race may assist in facilitating racial discrimination. Discrimination against certain groups of racial minorities, for example, to an extent may be accomplished through reliance on immigration status and language regulation, two forms of discrimination at times permitted by law.

146 Lazos, supra note 22, at 825.
147 See Cho, supra note 22. In 2004, controversy followed Florida Governor Jeb Bush's endorsement of a bill allowing undocumented immigrants to be eligible for a driver's license. See Michael Vasquez & Gary Fineout, Governor Endorses Illegal-Alien Driving Bill, MIAMI HERALD, Apr. 6, 2004, at 1A.
148 See supra text accompanying notes 14-16.
151 See Johnson & Martinez, supra note 38, at 1269-71.
To understand fully the political importance of certain issues to minority communities, lawmakers must recognize that many policy decisions have racial implications and disparately affect discrete communities. Seemingly unimportant issues like driver's license eligibility may be important issues to minority communities that warrant serious attention. Immigrants have begun to view these issues as civil rights matters and are taking political steps to vindicate their rights. In the fall of 2003, for example, the Immigrant Workers Freedom Ride, modeled after the 1960s civil rights freedom rides, criss-crossed the country and tried to raise public awareness by equating immigrants' struggle for civil rights with that of African Americans and other racial minorities in the 1960s. Past immigrant activism has included labor organization and related collective action.

Language, public benefits, immigration, and related issues, are battle grounds between Latina/os and Anglos. This helps explain some of the deep-felt views expressed about the driver's licenses issue and the racially-polarized debate that surrounds the various proposals. Similarly, the quest for full membership in U.S. society helps explain the ferment over whether undocumented immigrants will be allowed to pay resident fees to attend public universities. Although relatively few undocumented immigrants would directly benefit from liberalized fee policies, the political debate generated over them has been heated. Access to higher education means access to the American dream for undocumented immigrants, a dream that brought many of them to the United States in the first place. Somewhat ironically, legislation originally proposed in Congress in 2003, which would allow for undocumented immigrants to pay in-state fees at public colleges and universities and to regul-

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152 See http://www.iwfr.org (offering details about the Immigrant Workers Freedom Ride and seeking to bring the issues of immigrant workers to national attention).


larize their immigration status, is known as the DREAM (Development, Relief, and Education for Alien Minors) Act.157

Debates on issues like driver's license eligibility are not simply differences of opinion on matters of neutral public policy. Rather, the issues amount to a fight for status mobility in the United States. Latina/os, through measures seeking to ensure access to identification documents and to public universities, hope for access to the full amenities of social and economic life in the United States. One can expect these issues to increase with regularity due to a growing Latina/o, and immigrant, population working and living in the United States and seeking full membership.

Driver's licenses are the tip of the proverbial iceberg in terms of civil rights issues for undocumented immigrants in the United States. In the future, new civil rights concerns are likely to arise as well. Regulation of street vendors and day laborers soliciting work in some localities, for example, has racial impacts.158 These are issues of great importance to Latina/o immigrants struggling for work and a livelihood.

Other areas of law have seen increasing awareness of the racial impacts of apparently facially neutral regulation. Exclusionary zoning is one example; zoning decisions can have racial impacts. At times, municipalities have sought to keep racial minorities, the poor, or both, from their communities.159 The environmental justice movement, which addresses the siting of toxic hazards near poor minority communities, considers the racial impacts of public policy.160 Recent years have seen increased scholarly attention paid to the racial impacts of immigration law and its enforcement.161 Language is another area that implicates race and national origin.162 These areas of law, although neutral on their face, have significant impacts on minority communities.

In modern U.S. society, race-based remedies will not be sufficient to prevent discrimination against communities of color. Of course, race-based policies, such as affirmative action, may be appropriate in certain circumstances. However, today's world of discrimination requires increased sophistication to eradicate the racial impacts of facially neutral laws and regulations. This is one lesson of the battles over access to driver's licenses.


158 See Johnson, supra note 5, at 1501-02.


162 See supra text accompanying notes 116-21.
Consider another issue that has increased in prominence since September 11. Besides adversely affecting the civil rights of Arabs and Muslims, heightened immigration enforcement also has injured Latina/o immigrants. In the wake of September 11, Congress passed a law imposing a U.S. citizenship requirement for employment in airport security jobs, which directly affected Latina/o and Asian American immigrants. Citizenship requirements can have devastating impacts on immigrant communities. More than eighty percent of the security screeners at San Francisco International Airport and about forty percent of those at Los Angeles International Airport lost their jobs as a result even though they were lawful immigrants. Immigration checks at airports across the country have resulted in arrests and deportations, primarily of persons of Latin American and Asian ancestry. Efforts to verify social security numbers of employees as part of the heightened security measures have spawned general fear among undocumented immigrants who secured employment through use of fraudulent documents.

In the United States today, discrimination based on citizenship status will disparately impact minority groups with large immigrant populations. In the 1982 case *Cabell v. Chavez-Salido*, for example, the Supreme Court rejected an Equal Protection challenge to a California law interpreted to require that probation officers be citizens. For that reason, Los Angeles County refused to hire Jose Chavez-Salido, a lawful permanent resident for twenty-six years who had been born in Mexico but had received all of his formal education, including a college degree, in the United States. After reviewing the history of the California law, Justice Blackmun dissented: "I can only conclude that California's exclusion of [Chavez-Salido and others like him] from the position of deputy probation officer stems solely from state parochialism and hostility toward foreigners who have come to this country lawfully."


164 See Johnson, supra note 40, at 855-70.


170 *Id.* at 448 n.1 (Blackmun, J., dissenting).

171 *Id.* at 463 (Blackmun, J., dissenting).
immigration demographics of California, it comes as no surprise that many Mexican immigrants stood to be affected by the citizenship requirement.

This history offers lessons for our treatment of immigrants today. The nation must be vigilant and strive to understand the civil rights impacts of governmental policies on immigrant communities. Otherwise, we can expect politically heated debates over public policy and racial divides that go unappreciated and unaddressed.

CONCLUSION

The driver's license issue brewing at the state and national levels is just one of many civil rights grievances that will demand our attention in the future. A seemingly innocuous part of everyday life has, under the circumstances of a high immigration, racially diverse society, become a matter of racially-charged debate. As a nation, we are likely to see similar issues surface in the future. Policymakers and lawmakers must take care to hear the pleas of minority communities about governmental policies and social realities. The traditional civil rights agenda forged to dismantle Jim Crow is no more. Because the modern United States is a more complicated world, care and sensitivity will be necessary to navigate the difficult waters ahead.

The driver's license issue touches something deep for undocumented immigrants who live and work in the United States and seek some recognition of their membership in the national community. The driver's license controversy exemplifies the marginalized status of undocumented immigrants. A new Jim Crow has emerged, with undocumented immigrants filling segregated jobs and living in segregated housing, with the denial of an identification facilitating segregation. Through a variety of legal mechanisms, undocumented immigrants, many of them people of color, are denied full membership in U.S. society. Ensuring full membership for all contributing members of the national community who live and work within its boundaries may well be the pressing social issue of the next millennium.