

Coming to a Court Near You: An Unlicensed Immigrant Driver

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There are currently as many as 13 million illegal immigrants in the United States;¹ 5 million are illegal Mexican immigrants, with 46,000 living in my home state of Colorado.² There is a push by the Mexican government at both the state and federal levels to change the legal status of those immigrants. President Vicente Fox of Mexico recently added the issue of permitting undocumented migrants to apply for a driver's license to his agenda for a meeting with governors from the United States.³ On the federal level, President Bush is now weighing plans to grant legal residency to Mexican illegal immigrants in the United States, including a "guest worker" program.⁴

There are an abundant number of violations issued to illegal and legal immigrants for driving without a valid driver's license. At first blush, the problem seems to stem from the fact that Social Security cards are a precursor for a driver's license. Although legal immigrants are eligible for a Social Security card, it typically takes several years to obtain one because of the complex Immigration and Naturalization Service process required to get it.⁵ Moreover, illegal immigrants may not be eligible for one at all. Some states have specifically excluded illegal immigrants from obtaining one.⁶ Although the Social Security card requirement has never been

aimed at preventing illegal or legal immigrants from obtaining a driver's license, it became an end result. The problem began to present itself about six years ago when Congress decided that Social Security numbers should be used to track people whose child support payments were in arrears.⁷ Perhaps the intention was for child support enforcement through the attachment of federal tax refunds.⁸

These types of convictions create extraordinary consequences for immigrants and the judicial system. For example, in order to purchase auto insurance in Colorado, one must supply the insurance company with a valid driver's license; therefore, many times a violation for having no valid license is accompanied with a violation for having no valid auto insurance. This scenario has both an economic impact and an incongruous legal result. For example, if an accident is involved and the immigrant driver is at fault, the victim may be left without insurance reimbursement. Further, within a short period of time, an immigrant may accumulate enough points to have a license suspended for excessive points.⁹ This point accrual may continue until such time that the driving "privilege" is revoked even though there is no license to revoke. Nonetheless, the driving may continue and the immigrant

may pay higher and higher fines, ultimately facing potential incarceration. To ask why immigrants drive without a valid license and, in some cases, continue to drive even after several convictions, is begging the question. The primary reason people immigrate to the United States is to improve their economic condition. The way to accomplish that is through employment, and the automobile is almost a necessity for travel to and from that employment.

The driver's license issue for immigrants is not peculiar to Colorado. Recently, there has been political, social, and legal activity related to it in the states of Arizona, Georgia, Illinois, Minnesota, Tennessee, and Utah, each of which has taken differing positions. Illinois elected to enforce its existing driving laws. The Illinois Secretary of State ordered 80 suspected illegal immigrants to take a new driver's license exam. To do so, they had to show valid Social Security cards or other identification documents. Of the 25 who showed up, 15 people were arrested on document fraud charges. The remaining 55 were suspected of being illegal and the state canceled their licenses.¹⁰ In Tennessee, the legislature passed a bill eliminating the need for a Social Security card as the only means of securing a state driver's license.¹¹ The expanded identifi-

Footnotes

1. "FAIR Calls on Governor Sundquist to Veto Illegal Alien Driver's License Bill," *U.S. Newswire*, April 27, 2001.
2. Bruce Finley, "Mexican President Heads to U.S.," *DENVER POST*, July 11, 2001, at 1A.
3. *Id.*
4. Eric Schmitt, "Residency Sought for Illegals," *DENVER POST*, July 15, 2001. Chances of success for such a proposal are reportedly uncertain: "There is stiff opposition from anti-immigrant groups and influential Republicans in Congress." *Id.*
5. Monica Whitaker, "Driver's License Law Easing for Aliens; Legislators Put Motorists' Safety over Legal Status of Immigrants," *THE TENNESSEAN*, April 24, 2001.
6. See, e.g., Ga. Code Ann. § 40-5-1(15).
7. See Whitaker, *supra* note 5.

8. Child support enforcement is also sought at the state level with the use of Social Security information. In Colorado, for example, if a person is in arrears in child support, their privilege to drive may be revoked under Colo. Rev. Stat. section 42-2-138.
9. In Colorado, for example, three points are assessed for the first offense of driving without a valid license; six points are assessed for a second violation within two years. Colo. Rev. Stat. § 42-2-101. An additional four points are assessed for the no-insurance violation. *Id.* § 42-2-1409. Thus, it is very conceivable that a person convicted of those offenses could easily accumulate 12 points in one year or 18 points in two years, the levels at which licenses in place are suspended and obtaining one becomes impossible. See *id.* § 42-2-127.
10. James R. Edwards, "The Downside of Easy Driver's Licenses," *COMMERCIAL APPEAL* (Memphis, Tenn.), May 18, 2001.
11. 2001 Tenn. Pub. Acts 158, Sen. Bill 1266 (passed May 3, 2001).

cation options in Tennessee now include Immigration and Naturalization Service documents, resident alien cards, and military papers issued by a foreign country.¹² At a recent rally in Minnesota, illegal immigrants argued that the Minnesota Department of Public Safety should make it easier for them to obtain a driver's license.¹³ In response to the rally, the head of the Department of Public Safety said that "state law enforcement agencies cannot institute policies that contradict federal law."¹⁴ In Arizona, there have been two attempts to pass legislation that would eliminate the legal residency requirement for driver's license applicants,¹⁵ while Utah has in fact already adopted this type of law.¹⁶

Some argue that permitting immigrants to obtain a driver's license is prompted by public safety concerns: a valid license would make the immigrants safer drivers; they would become familiar with driving regulations; and they could obtain the proper auto insurance.¹⁷ Additionally it may circumvent the manufacturing of fraudulent documents. For example, the United States Immigration and Naturalization Service broke up a fake ID ring, finding 4,000 blank Social Security cards and other false documents, including green cards.¹⁸ These measures may effect the elimination of false documents, which may in turn reduce the exploitation of immigrants. In contrast, others have argued that there is no correlation between a valid driver's license and safe driving,¹⁹ that relaxed licensing rules would encourage and facilitate illegal immigration; and that it might make it easier to create false identities, thereby making the driver's license an inauthentic form of identification.²⁰

This issue has also crept into case law.

Last year, an illegal immigrant who was charged with driving under the influence argued that the Georgia driving statute defining "resident" excluded illegal immigrants; therefore, he argued, he was not required to seek a valid license and was not subject to the driving laws.²¹ The Georgia Court of Appeals rejected the argument, finding that "the intention of the General Assembly was not to exempt undocumented aliens from the requirement of obtaining a Georgia driver's license but to permit visitors, with no intention of becoming residents, to drive here without obtaining a Georgia license."²² The court went on to say that "[t]o interpret the statutes otherwise would create an absurdity: Citizens and documented aliens would be required to obtain valid Georgia licenses after living in this state for 30 days, while undocumented aliens would be permitted to drive forever without a valid Georgia license."²³ In another case, illegal immigrants sought to have a class action certified against the Georgia State Department of Public Safety and its director, alleging that enforcement of state statutes prohibiting the issuance of driver's licenses to illegal immigrants was unconstitutional, based on equal protection and right-to-travel claims.²⁴ In June 2001, a federal court found that the illegal immigrants were not a suspect class requiring strict scrutiny and dismissed the complaint.²⁵ The court noted *Edwards v. California*,²⁶ the Supreme Court case establishing travel as a fundamental right, but held that, under *Edwards*, "the right to travel is derived from federal citizenship."²⁷ The court also noted that there were legitimate state interests furthered by the statute, including "not allowing its governmental machinery to be a facilitator for the concealment of illegal aliens" and limiting its services to citizens and legal residents.²⁸

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To avoid a continued eruption of the issue, the motor vehicle or public safety departments in each state could adopt a policy similar to Illinois and "crack down" on illegal immigrants who drive without a valid license. But if the federal Immigration and Naturalization Service is not an effective deterrent to illegal immigration, would a state motor vehicle department serve as an effective deterrent to illegal driving?. Attorneys and the judiciary could urge state legislators to enact legislation similar to that recently enacted in Tennessee, expanding identification beyond Social Security cards; however, if the immigrant does not have a complying form of identification, as mandated by the statute, those immigrants remain in the same position. Each state could just let undocumented immigrants apply for driver's licenses, as they do in Utah. Judges could take under consideration the extraordinary circumstances of the immigrant defendant and simply render lenient sentences. There may be other creative state solutions as well.

State solutions, however, would only serve as a band-aid to a much broader underlying cause: the immigration law itself. Although it is somewhat beyond the scope of this essay, a cursory overview of this law seems important. With some exception, there are five requirements for naturalization: the English language requirement, the civics requirement, ideological qualifications, an oath renouncing allegiance to the country of origin, and a residency and good moral character requirement.²⁹ Denials of applications for citizenship began to soar during early 1999,³⁰ and one-third were attributable

12. Whitaker, *supra* note 5.

13. Charlie Weaver, "Why Not Grant Driver's Licenses to Illegal Aliens," STAR TRIBUNE (Minneapolis, Minn.), May 8, 2001.

14. *Id.*

15. Daniel Gonzales, "Change Sought for Arizona Drivers," ARIZ. REPUBLIC, February 11, 2001.

16. Finley, *supra* note 2.

17. See U.S. Newswire, *supra* note 1.

18. Edwards, *supra* note 10.

19. See U.S. Newswire, *supra* note 1.

20. Weaver, *supra* note 13.

21. *Diaz v. State*, 537 S.E.2d 784, 787 (Ga. 2000).

22. *Id.* at 788.

23. *Id.*

24. *John Doe No. 1 v. Georgia Dept. of Public Safety*, 2001 U.S. Dist. LEXIS 7385 (N.D. Ga. June 6, 2001).

25. *Id.* at *6-19.

26. 314 U.S. 160 (1941).

27. 2001 U.S. Dist. LEXIS at *12.

28. *Id.* at *17.

29. See 8 U.S.C. §§ 1423, 1427, 1443, 1445, 1448; see generally Peter J. Spiro, "Questioning Barriers to Naturalization," 13 GEO. IMMIGRATION L.J. 479 (1999).

30. Patrick J. McDonnell, *INS Denial of Citizenship Climbs Sharply*, L.A. TIMES, June 14, 1999, at A1 (reporting a 251% increase in citizenship denials during the first six months of the 1998-99 fiscal year).

to a failure of the English language or civics test.³¹

Many scholarly reviews have been published, both pro and con, questioning the immigration laws.³² Those advocating lowering or eliminating the requirements argue that the “requirements are ineffective and/or unnecessary to maintaining the integrity of the national community and its political foundations” and that “such ineffective or unnecessary barriers cannot be sustained where they compromise the rights of individuals.”³³ It has been said that these requirements are equivalent to being an “American moving to Japan, learning to speak the language as well as read and write kanji script, and reciting facts about the shogunate, the Maiji restoration, and Admiral Togo.”³⁴ Those who seek to reinforce or expand the requirements argue that those requirements prevent the fragmentation of the American polity.³⁵

While it is difficult to speculate as to the number of illegal and legal immigrants who are operating motor vehicles across the country, it is fair to say that, due to their immigration status, many of those immigrants are operating a motor vehicle without a valid driver’s license. This issue presents cascading economic, social, political, and legal effects. Traffic

convictions for these offenses create both an economic impact and an incongruous legal result, at least in Colorado, and at most throughout the country. State public safety departments may enforce their laws on immigrants who drive without a valid license; state courts may continue to address the driver’s license issue in a piecemeal fashion; state legislatures may pass bills expanding identification requirements for a driver’s license; and the judiciary may render lenient sentences. These remedies, however, are only the tip of the iceberg.

As we view the underlying layers, we are left with a reflection of the existing immigration laws and their overarching impact on immigrants as well as the political and judicial system. While state legislators, courts, and agencies are positioned to address the driver’s license issue, they do not have any power with regard to the immigration laws themselves. Other writers have aptly summarized the basic situation: “As with all matters relating to immigration, the courts have exercised almost no oversight of naturalization policies.”³⁶ “Naturalization is a privilege, to be given or withheld on such conditions as Congress sees fit.”³⁷ “So long as federal policy classifies persons as illegal aliens they will be viewed as such by the state.”³⁸

Thus, this seemingly negligible issue is ultimately in the hands of the federal government: hands that change with the tides of politics.



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31. U.S. DEP’T OF JUSTICE, IMMIGRATION & NATURALIZATION SERV. & PRICE WATERHOUSE, LLP, A BLUEPRINT FOR THE NEW NATURALIZATION PROCESS: NATURALIZATION INTERVIEW OUTCOME SURVEY II at 8 (Aug. 21, 1998 draft). In 1997, naturalization applications numbered 1.6 million, a 600% increase over the 1990 level. *Id.* See also CONG. RES. SERV., NATURALIZATION TRENDS, ISSUES, AND LEGISLATION 2 (1998).

32. See Joseph Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POLITICS 251 (1987); JOHN J. MILLER, THE UNMAKING OF AMERICANS: HOW MULTICULTURALISM HAS UNDERMINED THE ASSIMILATION ETHIC 147-73 (1998); ARTHUR M. SCHLESINGER, JR., THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY (rev. ed. 1998).

33. Spiro, *supra* note 29, at 517.

34. Miller, *supra* note 32, at 150.

35. See, e.g., GEORGIE ANNE GEYER, AMERICANS NO MORE 137-89 (1996).

36. Spiro, *supra* note 29, at 481.

37. *Schneiderman v. United States*, 320 U.S. 118, 131 (1941) Cf. *Miller v. Albright*, 523 U.S. 420, 459 (1998)(Ginsburg, J., dissenting) and *id.* at 471 (Breyer, J., dissenting)(three justices in dissent found that equal protection clause would invalidate more restrictive citizenship admission standard for child of U.S. father and alien mother than for child of U.S. mother and alien father).

38. Weaver, *supra* note 13.