
**DRIVING PRIVILEGE CARDS FOR UNDOCUMENTED
MINNESOTANS: ADDRESSING CONSTITUTIONAL
CONCERNS AND PROMOTING PUBLIC SAFETY**

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I. INTRODUCTION

A. *Jovita Francisco and the Impact of Minnesota’s Driver’s Licensure Laws*

Although Jovita Francisco was born in a small indigenous community in Mexico, she states adamantly that she considers Minnesota her home.¹ Nearly two decades ago, at age fifteen, her aunt brought her to live in Minnesota.² Under the state’s current driver’s license rules, Jovita cannot legally drive because she cannot provide proof of lawful admission into the United States.³

Despite her inability to obtain a driver’s license in Minnesota, Jovita has established a life in Minneapolis with her husband and her two young children.⁴ On August 1, 2007, Jovita became fully aware of the impact of her inability to drive. While waiting for her two children to return from a school field trip, she received a call informing her that her children’s school bus had been involved in

1. *Drivers License Application Requirements Modifications: Hearing on S.F. No. 271 Before the S. Comm. on Fin.*, 2013 Leg., 88th Sess., at 1:32:57 (Minn. 2013) [hereinafter *April 22, 2013 Hearing*], available at http://www.leg.state.mn.us/senatemedial/saudio/2013/cmte_fin_042213.MP3 (statement of Jovita Francisco).

2. *Id.* at 1:33:07–17.

3. *See id.*; MINN. R. 7410.0410, subpt. 7 (2012).

4. *See April 22, 2013 Hearing, supra* note 1, at 1:32:50 (statement of Jovita Francisco).

the Interstate 35-W bridge collapse in Minneapolis.⁵ Jovita says she felt frantic and helpless, particularly because she could not drive to see her injured children at the scene of the accident.⁶

After the bridge collapse, Jovita found it more difficult to avoid driving.⁷ Because her husband was the family's primary breadwinner, Jovita was tasked with driving the couple's children to regular physical therapy and clinic appointments in order to help them recover from the injuries they sustained in the bridge collapse.⁸ Because she now regularly drives, Jovita has been cited and jailed many times for driving without a license.⁹ Since such interactions with the criminal justice system could lead to her deportation, Jovita says her children are constantly frightened that their mother will be separated from them.¹⁰

B. The Evolution of Senate File 271

Jovita Francisco testified as one of many voices in support of Senate File 271 (S.F. 271), a bill seeking to allow Minnesota drivers to obtain a driver's license regardless of their immigration status.¹¹ Senator Bobby Champion, the sponsor of the bill, nicknamed the measure "Driver's Licenses for All" and promoted the bill as a public safety measure.¹² In addition, Representative Karen Clark

5. *Id.* at 1:34:15; see Libby Sander & Susan Saulny, *Bridge Failure in Minneapolis Kills 7 People*, N.Y. TIMES, Aug. 2, 2007, at A1, available at 2007 WLNR 14798159 ("Television stations showed a school bus on one section of the collapsed slab . . . Red Cross officials said 60 children were taken off the bus, 10 of whom had injuries that were treated at city hospitals.").

6. See *April 22, 2013 Hearing*, *supra* note 1, at 1:34:10 (statement of Jovita Francisco) ("I felt desperate trying to ask myself how to get there with no license. My husband . . . had to first drive to find them at the bridge.").

7. *Id.* at 1:34:25–45.

8. *Id.* at 1:34:31.

9. *Id.* at 1:35:35–47 ("It has been many times now that my husband and I have been taken to jail for not having a driver's license. My children suffered and asked themselves, what do we do now?").

10. See *id.* at 1:34:55–1:35:22 ("When the friends of my children talk about how their parents have been deported because [they have no valid driver's license], they look at me and give me a big hug, telling me . . . I hope the government does not separate us.").

11. See S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013).

12. *Drivers License Application Requirements Modifications: S. Debate on S.F. No. 271*, 2013 Leg., 88th Sess., at 1:50 (Minn. 2013) [hereinafter *May 18, 2013 Debate*], available at http://www.senate.leg.state.mn.us/media/media_video_popup.php?ls=88&year=2013&flv=sfloor_051813c.flv?usehostname (statement of

sponsored a companion bill with similar terms in the House during the 2013 Minnesota legislative session.¹³

With the introduction of S.F. 271, the national debate over driving privileges for undocumented immigrants manifested itself in Minnesota. The bill has spurred vigorous public debate about the benefits and detriments of licensing drivers who cannot prove legal immigration status.¹⁴ Supporters of the bill cite improved driver safety,¹⁵ higher rates of insured drivers,¹⁶ and better law enforcement–community relations¹⁷ as the foremost reasons to grant driver’s licenses to undocumented Minnesotans. Opponents of the bill, in response, argue that granting driver’s licenses to undocumented immigrants undermines federal immigration laws,¹⁸ increases voter fraud,¹⁹ and compromises national security interests.²⁰

Sen. Bobby Champion).

13. See H.F. 348, 2013 Leg., 88th Sess. (Minn. 2013).

14. Jim Ragsdale, *Hot Dish Politics: Heat Rises on Immigrant Driver’s License Bill*, STAR TRIB. (Minneapolis), May 19, 2013, at 3B, available at LEXIS.

15. See Kyle Potter, *Bill Easing Drivers License Restrictions for Illegal Immigrants Clears Senate Committee*, MINN. PUB. RADIO NEWS (Mar. 19, 2013), available at <http://minnesota.publicradio.org/display/web/2013/03/18/politics/minn-licenses-illegal-immigrants> (citing supporters’ claims that changes would make Minnesota roads safer).

16. *May 18, 2013 Debate*, *supra* note 12, at 2:15 (statement of Sen. Bobby Champion; Ragsdale, *supra* note 14 (noting that bill proponents say it would increase the number of insured drivers)).

17. See *Drivers License Application Requirements Modifications: Hearing on S.F. No. 271 Before the Transp. and Pub. Safety Div. of the S. Comm. on Fin.*, 2013 Leg., 88th Sess., at 38:45 (Minn. 2013) [hereinafter *March 18, 2013 Hearing*], available at http://www.leg.state.mn.us/senatemedial/saudio/2013/cmte_transpub_031813.MP3 (statement of Minneapolis City Councilmember Robert Lilligren) (discussing the underlying sense of fear that permeates interactions between immigrants and law enforcement, and reading a letter from Minneapolis Chief of Police Janeé Harteau with her support for the measure).

18. See Rebecca Rodenborg, *Faribault Weighs in on Issue of Driver’s Licenses for Illegal Immigrants*, FARIBAULT DAILY NEWS, Mar. 29, 2013, available at http://www.southernminn.com/faribault_daily_news/news/article_f18114b5-ddd3-52f1-97cb-6a6ea0ce1f9d.html (describing the argument that those who enter the country illegally should not be entitled to the same rights and privileges as United States citizens).

19. See *March 18, 2013 Hearing*, *supra* note 17, at 1:13:50 (statement of Sen. David Osmek) (expressing concern that undocumented immigrants could use driver’s licenses to vote under Minnesota’s “motor voter” laws).

20. Ragsdale, *supra* note 14.

In response to these concerns, bill sponsors amended the bill to allow undocumented immigrants to obtain only a “driving privilege card” rather than a traditional driver’s license.²¹ Unlike a typical Minnesota driver’s license, the driving privilege card cannot be used for voting, airline travel, or other forms of federal identification.²² Rather, the card could only be used to prove the individual may legally drive.²³ The driving privilege card would be visually distinguishable from traditional Minnesota driver’s licenses and would contain the words, “FOR DRIVING ONLY.”²⁴ Additionally, sponsors amended the bill to provide training for election officials to emphasize that the new driving privilege cards could not be used for voting.²⁵ Supporters of S.F. 271 hoped the amendments would alleviate opponents’ concerns and increase political support for the bill.²⁶

While legislative debate over S.F. 271 progressed, hunger strikers and other activists converged on the Minnesota State Capitol, urging legislators and Governor Mark Dayton to support the measure.²⁷ After heated debates in various committee hearings, S.F. 271 passed the Senate on May 18, 2013.²⁸ The House, however, did not take up the bill by the May 20, 2013 deadline. Consequently, the bill has been shelved until 2014.²⁹

21. *April 22, 2013 Hearing, supra* note 1, at 58:40 (statement of Sen. Bobby Champion) (stating that he hoped this amendment to the bill would help address concerns that had been expressed in previous committee hearings). *Compare* S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013), *with* S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment (Minn. 2013) (as amended).

22. *See April 22, 2013 Hearing, supra* note 1, at 58:40 (statement of Sen. Bobby Champion); *see* S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 1 (Minn. 2013) (as amended).

23. S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 1 (Minn. 2013) (as amended).

24. *Id.* at § 7.

25. *Compare* S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013), *with* S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 8 (“Each county auditor must inform all election officials and election judges hired for an election that a driving privilege license must not be used or accepted for voter registration purposes . . .”).

26. *See April 22, 2013 Hearing, supra* note 1, at 58:40 (statement of Sen. Bobby Champion).

27. Ragsdale, *supra* note 14 (“The issue brought hunger strikers and their supports to the Capitol this week, stationing themselves outside the offices of Gov. Mark Dayton.”).

28. S. JOURNAL, 2013 Leg., 88th Sess. 4827 (2013).

29. Allison Herrera, *Hungering for a Driver’s License: Effort by Undocumented*

C. *The Importance of an Analysis of Senate File 271*

Despite the failure of the bill to become law during the 2013 legislative session, the issue of driving privileges for undocumented Minnesotans is likely to resurface in the 2014 legislative session and beyond.³⁰ Driver's licensure laws have profound effects on immigrant communities and residents in general—insurance rates, law enforcement resources, and public safety are all closely tied to the question of driving privileges. Thus, an analysis of the implications of the bill is both timely and pertinent.

This note examines the policy arguments both for and against S.F. 271. Part II discusses the evolving use of driver's licenses in both the state of Minnesota and the United States at large.³¹ Part III discusses how other states have attempted to address the issue of driving privileges for undocumented immigrants, and how such proposals have come up against fervent political and legislative opposition.³² Part IV evaluates the benefits of granting driving privileges to undocumented Minnesotans. Specifically, Part IV posits that S.F. 271 would likely positively affect the following areas: (1) driver safety, (2) reduction of uninsured motorists, (3) cooperation between immigrant communities and law enforcement, and (4) community integration and human rights.³³ Part V addresses concerns that opponents to the bill have expressed. In particular, this section evaluates concerns regarding: (1) equal protection violations, (2) immigration fraud, (3) national security, and (4) federal preemption.³⁴ After examining the policy concerns on both sides of the proposal, this note concludes in Part VI that S.F. 271 successfully addresses opponents' major concerns while promoting driver safety and successful law enforcement strategies in Minnesota.³⁵ This note argues that S.F. 271 represents

Immigrants Comes Close, but Not This Year, TWIN CITIES DAILY PLANET (May 21, 2013), <http://www.tcdailyplanet.net/news/2013/05/21/hungering-drivers-license-effort-undocumented-immigrants-comes-close-not-year> ("The senate did pass the bill on Saturday, but House agreement was not forthcoming and the law is likely to be shelved until 2014.").

30. *Id.*

31. *See infra* Part II.

32. *See infra* Part III.

33. *See infra* Part IV.

34. *See infra* Part V.

35. *See infra* Part VI.

a sensible, pragmatic compromise between proponents and opponents of expanded driver's licensure laws.³⁶

II. HISTORY OF THE DRIVER'S LICENSE: FROM DRIVER SAFETY MEASURES TO NATIONAL IDENTIFICATION CARDS

A. *The National Context: Early Twentieth Century to September 11, 2001*

During the early twentieth century, in response to the growing use of automobiles, states throughout the country began to implement driver's license laws.³⁷ The original aim of driver's licensure was to license all drivers—regardless of their immigration status.³⁸ The stated goal of policymakers was to have as many drivers as possible pass safety tests and procure auto insurance, in order to make roads safer and insurance premiums lower.³⁹ Rather than serving as a system of government identification, the purpose of these laws was to extend the privilege of driving to qualified persons who could safely share the road.⁴⁰ The prevalence of driver's licensure steadily increased thereafter. By 1954, every state in the country required a license to legally drive.⁴¹

Over time, driver's licenses evolved as a primary form of identification throughout the United States. Although the original purpose of driver's licenses was rooted in public safety, a driver's license has become a kind of “de facto national identity card.”⁴² A driver's license has become necessary to participate in many aspects of U.S. society, from opening a bank account to procuring a library

36. See *infra* Part VI.

37. Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 220 (2004) (discussing the evolution of driver's licenses in modern U.S. society); Maria Pabon Lopez, *More than a License to Drive: State Restrictions on the Use of Driver's Licenses by Noncitizens*, 29 S. ILL. U. L.J. 91, 108 (2004) (explaining that since the State of Rhode Island passed the first driver's license law in 1908, other states have enacted driver's license laws in order to identify individuals who meet the necessary safety standards to drive).

38. Johnson, *supra* note 37, at 220.

39. *Id.* at 221.

40. *Id.*

41. Lopez, *supra* note 37, at 109.

42. Spencer Garlick, Note, *License to Drive: Pioneering a Compromise to Allow Undocumented Immigrants Access to the Roads*, 31 SETON HALL LEGIS. J. 191, 195 (2006); see also STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 1225 (5th ed. 2009).

card, traveling on an airplane, renting an apartment, and interacting with law enforcement.⁴³

The era of easy access to driver's licenses came to a close as the purposes of driver's licenses multiplied. In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act.⁴⁴ The Act required that all states put social security numbers on state-issued driver's licenses.⁴⁵ Although this provision was later repealed due to privacy concerns, the Act represented a move toward a federal attempt to make driver's licenses more uniform and centralized throughout the nation.⁴⁶

After the attacks of September 11, 2001, heightened concerns about national security led to increased legislative efforts to restrict the availability of driver's licenses to immigrants.⁴⁷ The 9/11 Commission Report noted the potential dangers of wrongly issued identification documents and recommended that the United States tighten security procedures around obtaining driver's licenses.⁴⁸ The report described how several 9/11 hijackers had obtained federal identification; some through legal means and others fraudulently.⁴⁹ These documents in turn helped the hijackers rent cars, board flights, and make the other preparations necessary to commit the attacks.⁵⁰

Concerns about security led the American public to support a more uniform, secure national identity card. As Kevin Johnson, Dean of the University of California-Davis School of Law, describes:

National identification cards previously had been rejected on civil liberties grounds, with the primary

43. Johnson, *supra* note 37, at 221.

44. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 656(b), 110 Stat. 3009-546 (codified as amended in scattered sections of 8 U.S.C. and 18 U.S.C.).

45. *Id.* § 656 (“The license or document shall contain a social security account number that can be read visually or by electronic means.”).

46. Johnson, *supra* note 37, at 227–28.

47. *Id.* at 217.

48. NAT'L COMM'N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 390 (2004) (“Secure identification should begin in the United States. The federal government should set standards for the issuance of birth certificates and sources of identification, such as drivers licenses.”).

49. *See id.* at 539 n.85.

50. Garlick, *supra* note 42, at 197; Johnson, *supra* note 37, at 215–16 (“Opposition to the calls for restoration of driver's license eligibility intensified with 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.”).

concern being that such identifications would give the government undue power to violate the privacy of individuals. 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.⁵¹

In this context, U.S. lawmakers began to scrutinize existing state driver's license laws and propose uniform, national solutions.

B. The Enactment of the Real ID Act

One such solution was the Real ID Act of 2005, which directed the states to make certain changes in their provision of driver's licenses.⁵² The House of Representatives attached the Real ID Act to "must-pass appropriations" for military and tsunami relief, so it was passed without committee hearings or debate about the merits of the reform.⁵³ The Real ID Act prohibits any federal agency from accepting, for identification purposes, any driver's license issued by a state that is not in compliance with the Real ID Act as of 2008.⁵⁴ To comply with the Real ID Act, states must obtain valid documentation ensuring that each driver's license applicant has permission to reside in the United States.⁵⁵ The Real ID Act's sponsor, Representative James Sensenbrenner, claimed that the Act would help disrupt terrorist plots and enhance border security.⁵⁶ Representative Candice Miller echoed this sentiment, saying, "[N]o longer will we allow terrorists free access to state-issued identity documents as a way to use the tools of our freedom against us."⁵⁷

C. Resistance to the Real ID Act

Despite the arguments of its supporters, the Real ID Act has been criticized on "privacy, cost-benefit, discrimination, technological, federalism, data security, and data access grounds."⁵⁸

51. Johnson, *supra* note 37, at 218 (footnote omitted).

52. Real ID Act of 2005, Pub. L. No. 109-13, § 202, 119 Stat. 231, 312.

53. LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1226.

54. Real ID Act § 202, 119 Stat. at 312.

55. *Id.*

56. Garlick, *supra* note 42, at 195.

57. *Id.* at 197.

58. *Backgrounder on Drivers' Licenses and the Real ID Act*, 2008 EMERGING

Privacy advocates in several states raised concerns about the implementation of a massive, costly federal database containing extensive personal information about the nation's residents.⁵⁹ Due to this kind of resistance, Minnesota became the fifteenth state in the nation to refuse to comply with the Real ID Act.⁶⁰ Minnesota's effort to resist the Real ID Act was remarkably bipartisan; out of the 201 Minnesotan legislators at the time, 200 voted to prohibit the implementation of the Real ID Act in Minnesota.⁶¹

As of 2013, over thirty states have refused to comply with the Real ID Act.⁶² Although the federal government had previously threatened to withhold funding for Social Security and other federal programs if states refused to comply with the Act, the widespread resistance to Real ID has forced the federal government to delay enforcement of the Act.⁶³

Additionally, in response to the Real ID Act, several states have explored the option of two-tiered licensing systems, in which one form of state identification complies with the strictures of the Real ID Act and one form of state identification does not.⁶⁴ Under such a system, residents who are able to provide the necessary documents could use their state-issued driver's licenses for federal purposes, while those who cannot prove legal immigration status

ISSUES 1288 (2007); *see also* LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1227 ("States have expressed growing opposition to the Act's requirements, mainly out of concerns related to privacy, identity theft, and the fiscal costs of implementation.").

59. Michael J. Allen, Comment, *A Choice That Leaves No Choice: Unconstitutional Coercion Under Real ID*, 32 SEATTLE U. L. REV. 231, 241 (2008) (noting that objections based on privacy concerns were especially common, and over six hundred organizations voiced opposition to the Real ID Act); Steve Inskeep, *The Real ID Act Raises Privacy Concerns*, NAT'L PUB. RADIO (May 6, 2005), <http://www.npr.org/templates/story/story.php?storyId=4632952>.

60. *April 22, 2013 Hearing*, *supra* note 1, at 1:45:40 (statement of Sen. Warren Limmer).

61. *Id.* at 1:46:30.

62. *Id.* at 1:45:40; *see also* Allen, *supra* note 59, at 240 ("State opposition to the licensing provisions of Real ID has burgeoned since the law passed in May 2005. Some [s]tates have passed legislation rejecting the Act outright and refusing its implementation . . .").

63. *April 22, 2013 Hearing*, *supra* note 1 (statement of Sen. Warren Limmer); *see* Allen, *supra* note 59, at 268–69 (characterizing the present situation concerning the implementation of the Real ID Act as "untenable").

64. *April 22, 2013 Hearing*, *supra* note 1, at 1:42:55 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

could have a more limited driving privilege card. According to Pat McCormack, director of Minnesota Driver and Vehicle Services (DVS), as of 2013, seven states were considering such legislation, while six states already had a sort of multitiered driver's licensing system in place.⁶⁵ If the Real ID Act were to be enforced, it appears that states would still be permitted to operate such a two-tiered system.⁶⁶ Real ID Act sponsor James Sensenbrenner explained that the legislation does not set policy for states regarding who can drive; it only determines what kind of driver's license can be used for federal identification purposes.⁶⁷

D. Driver's Licenses and Immigrant Populations in the Minnesota Context

As of 2012, Minnesota's foreign-born population was about 7.2% of the total population.⁶⁸ While just under half of foreign-born Minnesotans are U.S. citizens,⁶⁹ the Pew Center estimates that there are approximately 85,000 undocumented immigrants in Minnesota, comprising about 1.6% of the population⁷⁰ and 2.4% of the state's workforce.⁷¹

Minnesota is home to many "mixed status" families, in which some members of the family have legal immigration status and others do not.⁷² Of children with immigrant parents in Minnesota,

65. *Id.* at 1:44:19.

66. *Id.* at 1:43:44 (explaining that Minnesota's system would be considered acceptable under Real ID, even though the state has prohibited compliance with Real ID).

67. Garlick, *supra* note 42, at 207.

68. *Minnesota: Demographics & Social*, MIGRATION POL'Y INST., <http://www.migrationpolicy.org/data/state-profiles/state/demographics/MN> (last visited Mar. 14, 2014).

69. *Id.*

70. Jeffrey S. Passel & D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, PEW RES. HISP. TRENDS PROJECT (Feb. 1, 2011), <http://www.pewhispanic.org/2011/02/01/appendix-a-additional-figures-and-tables/>.

71. Editorial, *Allow All Immigrants to Drive Legally, Safely*, STAR TRIB. (Minneapolis), Apr. 6, 2013, at 8A, available at 2013 WLNR 33243224.

72. See generally MiaLisa McFarland & Evon M. Spangler, *A Parent's Undocumented Immigration Status Should Not Be Considered Under the Best Interest of the Child Standard*, 35 WM. MITCHELL L. REV. 248, 258-59 (2008) (describing some of the unique challenges faced by mixed-status immigrant families in Minnesota and in the United States in general).

more than 85% are U.S. citizens by birth.⁷³ Driver's licensure restrictions pose particular challenges for these "mixed status" families, as parents without the legal ability to drive often have U.S.-citizen children who depend on them for transportation to school, medical, and religious functions.⁷⁴

Like many other states in the nation, proof of immigration status is a relatively new requirement for driver's licensure in Minnesota. As recently as 1998, DVS required only an original or certified copy of a birth certificate to prove name and identity.⁷⁵ At that time, DVS also accepted an alien ID card or foreign passport if it met the identification requirements.⁷⁶ In 2000, DVS amended the driver's license regulations to exclude the I-94⁷⁷ as an identification document.⁷⁸ In September 2003, Governor Tim Pawlenty made an administrative rule change barring the state from issuing a driver's license to individuals who cannot provide proof of legal immigration status.⁷⁹ Since the administrative rule change, DVS cannot issue a Minnesota driver's license to an undocumented

73. *New Americans in Minnesota: The Political and Economic Power of Immigrants, Latinos, and Asians in the North Star State*, IMMIGR. POL'Y CENTER 2 (May 2013), http://www.immigrationpolicy.org/sites/default/files/docs/new_americans_in_minnesota_2013_1.pdf.

74. See *April 22, 2013 Hearing*, *supra* note 1, at 1:37:07 (statement of Monica Vega) (testifying that her U.S.-citizen children could not participate in afterschool programs when busing services were not provided). See generally McFarland & Spangler, *supra* note 72, at 258–59.

75. *March 18, 2013 Hearing*, *supra* note 17, at 1:27:30 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

76. *Id.* at 1:27:52 (providing historical background about the processes DVS has used to verify the identities of applicants, including immigrant applicants).

77. An I-94 is the Department of Homeland Security's arrival/departure record issued to aliens who are admitted to the United States. Traditionally, a border patrol officer attached a paper I-94 to the visitor's passport upon U.S. entry. The system has since been automated for greater security and oversight. *I-94 Automation Fact Sheet*, U.S. CUSTOMS & BORDER PROTECTION (Mar. 2013), http://www.cbp.gov/sites/default/files/documents/i94_factsheet_2.pdf.

78. *March 18, 2013 Hearing*, *supra* note 17, at 1:28:22 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

79. Sasha Aslanian, *House Committee Approves Bill Allowing Driver's Licenses for Illegal Immigrants*, MINN. PUB. RADIO NEWS (Mar. 13, 2013), <http://minnesota.publicradio.org/display/web/2013/03/13/politics/bill-drivers-licenses-illegal-immigrants> ("An administrative rule change under the Pawlenty administration in 2003 added: 'The department shall not issue a driver's license, permit, or identification card if an individual has no lawful admission to the United States.'").

individual.⁸⁰ Individuals with short-term visas have driver's licenses with a "status check" marker, which limits validity of the license to the length of time the individual has legal permission to remain in the United States.⁸¹

E. The Current Proposal: Senate File 271

S.F. 271 proposes an alternative model, in which the official documents that DVS uses to verify identity may be issued by a foreign country.⁸² The applicant must have a valid, unexpired passport and a birth certificate in order to apply for a driving privilege card.⁸³ Both the passport and the birth certificate must have "security features that make the document as impervious to alteration as is reasonably practicable . . . using materials that are not readily available to the general public."⁸⁴ In addition, "[a]ny document [that is] not in English must be accompanied by a qualified English translation."⁸⁵ The rest of the licensure process would remain intact; drivers would still have to pass a behind-the-wheel test, pass a written test, have proof of insurance, attest to their residence, have their photograph taken, provide personal information, and pay the necessary fees.⁸⁶ In order to verify Minnesota residence, DVS does not issue licenses in person, but rather mails them through the U.S. Postal Service.⁸⁷

80. *March 18, 2013 Hearing, supra* note 17, at 1:29:04 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services); *see* MINN. R. 7410.0410 subpt. 7 (2012).

81. MINN. R. 7410.0410, subpt. 8 (2012); *March 18, 2013 Hearing, supra* note 17, at 1:28:40 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services) (describing the current "status check" system and noting that if S.F. 271 were to be enacted, the current system of having a "status check" for those with short-term visas would be discontinued).

82. *Id.* at 1:29:10.

83. S.F. 271, 2013 Leg., 88th. Sess., 3d Engrossment § 6 (Minn. 2013).

84. *Id.*

85. *Id.*

86. *March 18, 2013 Hearing, supra* note 17, at 1:29:40 (statement of Pat McCormack, Director, Minnesota Driver and Vehicle Services).

87. *Id.* at 1:45:25.

III. COMPARATIVE ANALYSIS: DRIVER'S LICENSES AND UNDOCUMENTED IMMIGRANTS IN OTHER STATES

As Minnesota grapples with the issue of driver's licenses for undocumented immigrants, it is instructive to examine the successes and failures of other states' attempts at reform. This note uses the experiences of several states as illustrative examples—Illinois, New Mexico, Washington, and Utah have all adopted measures to provide driving privileges to undocumented immigrants.⁸⁸ Thus, Minnesota may learn from the experiences of other states. Furthermore, as commentators have contended, looking at other states' experiences is a beneficial analytical tool because it “allows an opportunity to determine whether the positive effects claimed by licensing proponents have empirical support.”⁸⁹

A. *Past Attempts at Driver's License Reform for Undocumented Individuals*

1. *New York*

Historically, the Department of Motor Vehicles (DMV) in New York accepted foreign passports and birth certificates to verify driver's license applicants' identities.⁹⁰ After the terrorist attacks of September 11, 2001, New York instituted a lawful immigration status requirement.⁹¹ In 2005, six John Doe plaintiffs sued the Commissioner of the New York State DMV, seeking relief from these new guidelines.⁹² The plaintiffs won a preliminary injunction against the DMV, but the appellate division reversed and dismissed.⁹³

88. See Greg Botelho, *New Illinois Law Allows Undocumented Immigrants to Get Driver's Licenses*, CNN (Jan. 29, 2013, 05:26 AM), <http://www.cnn.com/2013/01/28/us/illinois-immigrant-licenses/index.html> (noting that Illinois, New Mexico, Washington, and Utah all allow some measure of driving privileges for undocumented individuals).

89. Gregory A. Odegaard, *A Yes or No Answer: A Plea to End the Oversimplification of the Debate on Licensing Aliens*, 24 J.L. & POL. 435, 441–42 (2008).

90. *Id.* at 436.

91. *Id.* at 437.

92. *Cubas v. Martinez*, 870 N.E.2d 133, 135 (N.Y. 2007).

93. *Id.* at 139 (rejecting plaintiffs' challenge to the DMV's requirement that Department of Homeland Security documents be submitted by applicants for driver's licenses who lack social security numbers).

In September 2007, Governor Eliot Spitzer announced that the state would once again be issuing driver's licenses to undocumented individuals, effective December 2007.⁹⁴ Following a meeting with the Department of Homeland Security (DHS) in October 2007, Spitzer announced that the driver's licenses for undocumented people would be visibly distinguishable from traditional licenses.⁹⁵ The New York Senate voted to block the plan.⁹⁶ After this defeat, Spitzer negotiated a new "trifurcated" driver's license plan, which was then approved by the DHS.⁹⁷ Despite the backing of the DHS, Spitzer abandoned the plan, faced with intense political pressure opposing the reform.⁹⁸

2. California

The issue of driver's licenses for undocumented immigrants has been "especially volatile" in California.⁹⁹ A 2003 driver's license reform bill sought to grant the California DMV the power to issue driver's licenses to undocumented immigrants.¹⁰⁰ In September of 2003, Governor Gray Davis signed the bill into law. The plan was short lived; less than a month later, Governor Davis was subject to a recall election,¹⁰¹ and Governor Schwarzenegger helped repeal the bill in December 2003.¹⁰²

94. Odegaard, *supra* note 89, at 438.

95. *Id.*

96. *Id.* at 439 ("The entire Republican bloc, joined by eight Democratic Senators, voted down what some called 'Spitzer's single most unpopular decision since he took office.'").

97. *Id.* Under the trifurcated plan, three driver's license options would be available: (1) a Real ID Act-compliant license for citizens, legal permanent residents, and some visa holders; (2) an "enhanced license" for citizens that would allow travel to certain specified countries; or (3) a license that would be stamped "not valid for federal purposes," and could be issued to aliens who did not meet the Real ID Act requirements. *Id.*

98. *Id.* at 439-40.

99. LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1226.

100. S.B. 60, Chap. 326, 2003-04 Sess. (Cal. 2003); Paul L. Frantz, *Undocumented Workers: State Issuance of Driver Licenses Would Create a Constitutional Conundrum*, 18 GEO. IMMIGR. L.J. 505, 532 (2004).

101. Katharine Q. Seelye, *The California Recall: The Governor; For Gray Davis, Great Fall from the Highest Height*, N.Y. TIMES, Oct. 8, 2003, at A5, available at LEXIS (describing how the dot-com collapse, the electricity crisis, budget problems, and a poor economy contributed to Governor Davis' political unpopularity).

102. Frantz, *supra* note 100, at 533-34.

The issue of driver's licenses for undocumented immigrants did not stay off California's legislative agenda for long. In October 2013, California passed a law allowing undocumented immigrants to receive driver's licenses no later than January 2015.¹⁰³ The cards will have a special marking to show that they are not to be used for federal identification purposes.¹⁰⁴

3. *Tennessee*

In 2004, Tennessee became the first state to attempt a multitiered licensing system. In that year, the state changed its law so undocumented individuals could no longer obtain traditional driver's licenses.¹⁰⁵ However, instead of entirely removing driving privileges for undocumented immigrants, the state "created a middle ground" by issuing "driving certificates."¹⁰⁶ Similar to S.F. 271's proposed framework for Minnesota, in order to obtain a "Certificate for Driving" (CFD), the applicant had to present two forms of government identification, such as a translated foreign passport and a birth certificate.¹⁰⁷ The CFDs were marked with "For Driving Purposes Only—Not Valid for Identification."¹⁰⁸

The plan received vocal opposition from both sides: by certain immigrants' rights advocates and by those who opposed licensure for undocumented immigrants. In 2004, the League of United Latin American Citizens (LULAC) filed suit against Tennessee's governor, alleging that the two-tiered system violated the Equal Protection clause by creating an unconstitutional classification based on alienage or national origin.¹⁰⁹ Plaintiffs in the suits were undocumented immigrants whose driver's licenses would be invalidated under the law and would thereafter only be eligible for a CFD.¹¹⁰ The U.S. district court denied the plaintiffs' request for

103. Jacqueline Hurtado & Catherine E. Shoichet, *New California Law Gives Undocumented Immigrants Driver's Licenses*, CNN (Oct. 3, 2013), <http://www.cnn.com/2013/10/03/us/california-undocumented-immigrant-drivers-licenses/>.

104. Stephen Dinan, *California Grants Driver's Licenses to Illegal Immigrants*, WASH. TIMES (Oct. 3, 2013), <http://www.washingtontimes.com/news/2013/oct/3/calif-grants-drivers-licenses-illegal-immigrants>.

105. Garlick, *supra* note 42, at 205.

106. *Id.*

107. Odegaard, *supra* note 89, at 442–43.

108. *Id.* at 443.

109. League of United Latin Am. Citizens (LULAC) v. Bredesen, No. 3:04-0613, 2004 WL 3048724, at *2 (M.D. Tenn. Sept. 28, 2004).

110. *Id.* at *1.

an injunction, explaining the law drew a distinction not between “citizens” and “aliens,” but rather between those with legal immigration status and those without.¹¹¹ Although the suit was unsuccessful, it helped crystallize opposition among those who believed CFDs unfairly created an “inferior subclass of license holders.”¹¹²

On the other side, opponents of the plan gained traction when scandals emerged that out-of-state brokers were helping immigrants from other states receive CFDs in Tennessee.¹¹³ Eventually, the political pressure on both sides became too intense for the plan to survive. The CFD was canceled on October 1, 2007.¹¹⁴

B. Current States with Driving Privileges for Undocumented Immigrants

As of March 2014, eleven states have made or plan to make driver’s licenses or driving privilege cards available to undocumented people. Twelve other states have pending legislation.¹¹⁵ Of the states with driver’s license privileges, there are a variety of statutory approaches. For example, New Mexico and Washington grant traditional driver’s licenses to undocumented immigrants.¹¹⁶ Utah issues driving privilege cards to undocumented immigrants who live in the state for more than six months.¹¹⁷ Illinois is a recent addition to driver’s licensure reform. In January 2013, Governor Pat Quinn signed a bill into law that would allow the state’s estimated 250,000 undocumented drivers without a license to obtain one.¹¹⁸ Thus, if Minnesota passed S.F. 271 into law in 2014, it would join several other states in moving towards more inclusive driver’s licensure laws.

111. *Id.* at *3.

112. Odegaard, *supra* note 89, at 443.

113. *Id.* at 443–44.

114. *Id.* at 444.

115. *Current & Pending State Laws & Policies on Driver’s Licenses for Immigrants*, NAT’L IMMIGR. L. CENTER (Mar. 24, 2014), <http://www.nilc.org/driverlicenseemap.html>. As of March 2014, eleven states—plus Washington D.C. and Puerto Rico—have enacted legislation to allow undocumented people access to driving privileges. *Id.* Enactment of Oregon’s bill is on hold pending a referendum. *Id.*

116. Botelho, *supra* note 88.

117. *Id.*

118. *Id.*

IV. EVALUATING THE POTENTIAL BENEFITS OF SENATE FILE 271

There are four primary benefits cited by proponents of S.F. 271: (1) driver safety, (2) reduction of uninsured motorists, (3) cooperation between immigrant communities and law enforcement, and (4) community integration and promotion of human rights. This section provides support for each of these claims in both the national and Minnesota contexts.

A. *Driver Safety*

A common justification cited by proponents of S.F. 271 is the bill's potential for ensuring more qualified drivers, thereby making Minnesota's roads safer and reducing traffic accidents. In floor debates, the bill's sponsor, Senator Bobby Champion, repeatedly emphasized that driver's licensure reform is a public safety issue.¹¹⁹ Krystell Escobar,¹²⁰ chairperson for the Minnesota Chicano Latino Affairs Council,¹²¹ urged the Senate Committee on Transportation and Public Safety to view the bill not as immigration reform, but rather as a way to enhance the safety of all drivers.¹²² Minneapolis attorney Bruce Nestor emphasized that allowing all qualified drivers to receive licenses would allow DVS to focus on its public safety function.¹²³ Speaking to the House Transportation Policy Committee in support of S.F. 271's companion bill, he said, "[W]hat we're really asking for in this bill is that the department of motor vehicles perform its core function: . . . identify people . . .

119. See, e.g., *March 18, 2013 Hearing*, *supra* note 17, at 25:18 (statement of Sen. Bobby Champion) (discussing public safety).

120. Krystell Escobar also owns a Farmer's Insurance Agency in the Twin Cities metro area. Her biography is available at *Board of Director's*, CHICANO LATINO AFF. COUNCIL, <http://www.clac.state.mn.us/index.html#!board-of-directors/cxz3> (last visited Mar. 20, 2014). For her comments regarding the effect of S.F. 271 on insurance in Minnesota, see *infra* Part IV.B.

121. For more information on the Chicano Latino Affairs Council, see CHICANO LATINO AFFAIRS COUNCIL, <http://www.clac.state.mn.us> (last visited Mar. 20, 2014).

122. *March 18, 2013 Hearing*, *supra* note 17, at 1:50:32 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).

123. *Driver's License Application Procedures and Requirements Modified: Hearing on H.F. 348 Before the H. Comm. on Transp. Policy*, 2013 Leg., 88th Sess., at 55:57 (Minn. 2013) [hereinafter *February 27, 2013 Hearing*], available at <http://ww2.house.leg.state.mn.us/audio/mp3ls88/tranpol022713.mp3> (statement of Bruce Nestor).

[and] make sure that those people know how to drive . . . , not to try to serve as federal immigration agents.”¹²⁴

According to the American Automobile Association (AAA), unlicensed drivers are more likely than licensed drivers to be involved in fatal traffic accidents.¹²⁵ The AAA Foundation for Traffic Safety reports that “[o]ver 8,000 drivers involved in fatal crashes annually—nearly one of every seven drivers involved in fatal crashes—have an invalid license, no license, or unknown license status.”¹²⁶ The process of receiving a driver’s license itself helps improve driver safety. The licensure process provides access to driver’s education, which informs the driver about the rules of the road and safe driving practices.¹²⁷ In order to receive a driver’s license or driving privilege card, a person must show familiarity with the state’s driving laws.¹²⁸ Due in part to this oversight and education, individuals with a license tend to be better drivers than those without.¹²⁹

Driver’s education has particular importance for immigrant communities. As scholarship indicates, “Given the international variance of rules and signs, and the fact that many undocumented aliens may not have driven in their home country, allowing the state DMV to test them seems like a prudent safety measure.”¹³⁰ In order to meet employment demands, many immigrants settle in rural and suburban areas where public transit options are essentially nonexistent.¹³¹ Only 4.7% of Americans used public transportation to get to work in 2005.¹³² Furthermore, many new immigrants lack the community support structures of long-term residents, so finding private transportation can pose a challenge.¹³³ Given the lack of alternative transit options, it is safe to assume that many undocumented Minnesotans will continue to drive even if

124. *Id.* at 57:15.

125. Peter Kissinger, *Unlicensed Drivers: Everyone Is at Risk*, AAA FOUND. FOR TRAFFIC SAFETY (July 31, 2008, 7:58 AM), <http://aaafoundation.blogspot.com/2008/07/unlicensed-drivers-everyone-is-at-risk.html>.

126. *Id.*

127. *See id.*

128. Odegaard, *supra* note 89, at 446.

129. Garlick, *supra* note 42, at 200.

130. Odegaard, *supra* note 89, at 446.

131. *See Lopez, supra* note 37, at 97.

132. Odegaard, *supra* note 89, at 448.

133. *Id.*

they are prohibited from receiving driver's licenses.¹³⁴ Because of this reality, supporters of S.F. 271 frame the bill as a pragmatic measure to increase driver safety among a sizable population who will likely drive anyway.

B. Effect on Insurance Coverage and Premiums

Another major benefit cited by S.F. 271 proponents is a reduction in the number of uninsured motorists and lower insurance premiums for Minnesota drivers in general. Unlicensed drivers generally cannot obtain auto insurance.¹³⁵ Like other states in the nation, it is illegal to drive in Minnesota without auto insurance.¹³⁶ However, as literature reflects, "When unlicensed drivers cannot obtain insurance . . . many will simply continue to drive."¹³⁷ When uninsured drivers are involved in auto accidents, other drivers must foot the bill by paying for damage and by paying higher insurance premiums. As insurance agency owner and S.F. 271 proponent Krystell Escobar explains, "Insurance for all practical purposes is a tax in the state of Minnesota."¹³⁸ Escobar estimates that there are more than 45,000 drivers on Minnesota roads without insurance.¹³⁹ In hearings regarding S.F. 271, she testified that all admitted insurance providers in Minnesota have increased premiums since 2008, in part because so many drivers feel they cannot afford to participate in the insurance system.¹⁴⁰ The inability to obtain auto insurance, combined with the fear of being cited for driving without a license, has led to a high hit-and-run rate among undocumented drivers.¹⁴¹ This in turn feeds rising insurance rates. Thus, allowing undocumented drivers to obtain a license and have access to auto insurance presents an opportunity to help break the cycle of increasing insurance premiums.

134. *See id.*

135. *See March 18, 2013 Hearing, supra* note 17, at 1:50:12 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).

136. MINN. STAT. § 65B.48 (2012).

137. Garlick, *supra* note 42, at 202.

138. *March 18, 2013 Hearing, supra* note 17, at 1:49:22 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).

139. *Id.* at 1:50:15.

140. *Id.* at 1:49:55.

141. *See* Odegaard, *supra* note 89, at 446–47; *see also* *March 18, 2013 Hearing, supra* note 17, at 1:49:22 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).

Experiences in other states have demonstrated the positive impact of driver's license reform on insurance rates. After Utah began offering driver's licenses to undocumented residents, the number of uninsured drivers decreased from 23% in 1997 to 3% in 2006.¹⁴² In New Mexico, uninsured drivers dropped from 33% in December of 2002 to 17% in 2004.¹⁴³ New Mexico also saw auto insurance premiums drop and fewer drivers fleeing after accidents.¹⁴⁴ These notable outcomes in Utah and New Mexico provide strong support for the contention that S.F. 271 would have a positive effect on insurance participation and premiums in Minnesota.

C. Cooperation with Law Enforcement

1. Building Relationships Between the Immigrant Community and Law Enforcement

A third major argument in support of S.F. 271 focuses on the relationship between undocumented immigrants and law enforcement. Effective law enforcement requires cooperation and trust between police and immigrant communities.¹⁴⁵ Currently, an undocumented driver who is unable to obtain a license knows that a simple traffic stop might lead to an arrest and possibly deportation.¹⁴⁶ This fear transforms everyday interactions with police into tense and dangerous situations, where the risk of flight is higher than during a typical traffic stop.¹⁴⁷

As a policy, many police departments throughout the country prohibit police officers from asking about the immigration status of witnesses, victims, or suspects in order to encourage immigrants to cooperate with law enforcement.¹⁴⁸ When undocumented immigrants are arrested for driving without a license, it fuels immigrants' perception of local police officers as the enforcers of immigration laws.¹⁴⁹ Proponents of the bill argue that providing undocumented immigrants with driver's licenses would make

142. Garlick, *supra* note 42, at 202.

143. *Id.*

144. *Id.*

145. See Johnson, *supra* note 37, at 226.

146. See *id.* at 244.

147. See Garlick, *supra* note 42, at 201.

148. See Johnson, *supra* note 37, at 226.

149. *Id.*

immigrant communities more comfortable interacting with local law enforcement, leading to better relationships between immigrant populations and police officers, which could in turn lower crime rates.¹⁵⁰

Additionally, undocumented immigrants may fear reporting crimes to the police and turning to law enforcement when they are the victims of violence or exploitation. As Professor Maria Pabon Lopez writes, “Currently the undocumented who report violations of legal norms do so at their own peril, since they are living in this country as a shadow population.”¹⁵¹ After studying perceptions of law enforcement in the Latino community specifically, Professor Nik Theodore reports:

Many Latinos feel isolated from the law enforcement officers who are sworn to protect them. More than four in ten say that because police are more involved in enforcing immigration laws they have become less likely to volunteer information about crimes because they fear getting caught in the web of immigration enforcement themselves or bringing unwanted attention to their family or friends.¹⁵²

Unsurprisingly, surveys have indicated that undocumented immigrants are substantially less likely to contact law enforcement authorities if they are victims of a crime.¹⁵³ Thus, undocumented immigrants’ fear of interactions with the police curtails cooperation between immigrant communities and law enforcement.

Arresting and prosecuting undocumented drivers draws significant resources away from other law enforcement efforts. As Krystell Escobar testified, “This has . . . been a drainer of capacity for a lot of . . . the metro area. . . . This has taken up a lot of time for our law enforcement officers”¹⁵⁴ Attorney Bruce Nestor argues that a measure like S.F. 271 would conserve public resources, and notes that jailing individuals for driving without a

150. See *March 18, 2013 Hearing*, *supra* note 17, at 38:40 (statement of Minneapolis City Councilmember Robert Lilligren); Garlick, *supra* note 42, at 201.

151. Lopez, *supra* note 37, at 127.

152. NIK THEODORE, DEP’T OF URBAN PLANNING & POLICY, UNIV. OF ILL. AT CHI., *INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT*, at ii (2013), available at http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf.

153. *Id.* at i.

154. *March 18, 2013 Hearing*, *supra* note 17, at 1:48:15 (statement of Krystell Escobar, Chairperson, Minnesota Chicano Latino Affairs Council).

license diverts tax dollars away from other programs.¹⁵⁵ Nationwide, various law enforcement officials have expressed support for measures similar to S.F. 271.¹⁵⁶

Because of these factors, some law enforcement leaders throughout Minnesota have publicly pledged their support for providing driving privilege cards to undocumented immigrants. In a letter to the Senate Committee on Transportation and Public Safety, Minneapolis Chief of Police Janeé Harteau expressed her support of S.F. 271, writing, “This is a public safety issue for our city and state that affects us all.”¹⁵⁷ She concluded her letter by reminding senators that “we all win when local governments collaborate with immigrant communities.”¹⁵⁸ Additionally, the Saint Paul Chief of Police and the Sheriff’s office in Winona, Minnesota have expressed public support for driving privilege cards for undocumented immigrants.¹⁵⁹ Reforms such as those proposed in S.F. 271 would provide support for law enforcement as they work to build relationships with immigrant communities.

2. *Providing Identifying Information to Law Enforcement*

Furthermore, without driver information in a driver’s license database, if law enforcement officers wish to find an undocumented person, they have no reliable database to utilize.¹⁶⁰ As attorney Margaret Stock, a nationally known expert on immigration and national security law, explains, “The collective DMV databases are the largest law enforcement databases in the country, with records on more individual adults than any other law

155. *February 27, 2013 Hearing, supra* note 123, at 56:50 (statement of Bruce Nestor).

156. *See Driver’s Licenses for All Immigrants: Quotes from Law Enforcement*, NAT’L IMMIGR. L. CENTER (Oct. 2004), <http://www.nilc.org/document.html?id=881> (quoting law enforcement officers throughout the nation expressing support for driver’s license reform).

157. *March 18, 2013 Hearing, supra* note 17, at 40:19 (statement of Minneapolis City Councilmember Robert Lilligren) (quoting Minneapolis Chief of Police Janeé Harteau).

158. *Id.* at 40:45.

159. *Driver’s License Application Procedures and Requirements Modified: Hearing on H.F. 348 Before the H. Comm. on Transp. Fin.*, 2013 Leg., 88th Sess., at 17:05 (Minn. 2013), available at <http://ww2.house.leg.state.mn.us/audio/mp3ls88/tranfin032113.mp3> (statement of Rep. Karen Clark).

160. *See* Margaret D. Stock, *Driver Licenses and National Security: Myths and Reality*, 10 BENDER’S IMMIGR. BULL., Mar. 1, 2005, at 2, available at LEXIS.

enforcement databases. The collective DMV databases are the only comprehensive internal security database.”¹⁶¹ Other databases, such as Social Security records, passport records, and IRS records, are all limited in significant ways.¹⁶² For example, these sources are infrequently updated and do not contain information about undocumented individuals.¹⁶³ The practices of the DHS demonstrate the importance of driver’s license data: DHS primarily relies upon state driver’s license databases when it attempts to locate a person.¹⁶⁴ Driver’s license databases provide a wealth of voluntarily given biometric data that can be crucial in police investigations.¹⁶⁵ As Stock further contends:

Those who are opposed to illegal immigration view the granting of driver licenses to illegal immigrants as a sort of reward and acknowledgement of complicity in their violation of the law. In fact, their opposition to granting licenses (and identification documents) to illegal immigrants is quite puzzling if one views the matter from a law enforcement and security perspective. Refusing to give driver licenses to illegal immigrants means taking 20 million illegal immigrants out of the largest law enforcement database in the country. Thus, denial of licenses is a policy prescription that hampers law enforcement far more than it enhances it.¹⁶⁶

In Minnesota, allowing undocumented immigrants to voluntarily offer personal identifying information could assist law enforcement efforts when they need to locate an individual in connection with a criminal investigation.

D. Community Participation and Human Rights

The final major argument in support of S.F. 271 is the most difficult to evaluate with concrete data, but is an important part of the justification for the bill nonetheless. Many proponents of S.F. 271 speak of promoting human rights and bringing undocumented immigrants “out of the shadows.”¹⁶⁷ Minneapolis

161. *Id.*

162. Odegaard, *supra* note 89, at 454–55.

163. *Id.*

164. Stock, *supra* note 160.

165. *Id.*

166. *Id.*

167. *March 18, 2013 Hearing, supra* note 17, at 39:44 (statement of Minneapolis

City Councilmember Robert Lilligren described an “underlying sense of fear” in immigrant communities for even the most casual interactions with law enforcement.¹⁶⁸ Angel Alejandro Gomez, a young man that grew up in Minnesota with undocumented parents, testified about being “tormented” by the constant fear of having his parents deported and going into the foster care system.¹⁶⁹ Dean Kevin Johnson argues that “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.”¹⁷⁰ Because driving is a common avenue for immigrants to come into contact with law enforcement, lack of access to driver’s licenses greatly exacerbates these fears.

Mixed-status families testified in support of S.F. 271 about the need for family stability and for their U.S.-citizen children to receive equal opportunities to participate in U.S. society.¹⁷¹ Senator Patricia Torres Ray argued on the Senate floor that parents and women are uniquely affected by driver’s license restrictions, and that preschool children are paying a high price for not being able to get to school.¹⁷² The U.S. Supreme Court has upheld the right of the children of undocumented immigrants to receive an equal public education to the children of citizens.¹⁷³ Some commentators have framed the ability to receive transportation to school as a potential extension of this right.¹⁷⁴ The ability to physically access school is closely tied to a child’s ability to receive the equal education to which he or she is constitutionally entitled.

Furthermore, lack of access to driving privileges contributes to human rights abuses in the immigrant community. As Dean Kevin Johnson describes, “[U]nscrupulous employers who do not comply

City Councilmember Robert Lilligren).

168. *Id.* at 38:30.

169. *March 18, 2013 Hearing, supra* note 17, at 45:42 (statement of Angel Alejandro Godinez).

170. Johnson, *supra* note 37, at 224.

171. *See March 18, 2013 Hearing, supra* note 17, at 45:29 (statement of Angel Alejandro Godinez).

172. *May 18, 2013 Debate, supra* note 12, at 15:30 (statement of Sen. Patricia Torres).

173. *See Plyler v. Doe*, 457 U.S. 202 (1982).

174. *See, e.g., JOHN W. BORKOWSKI, LEGAL ISSUES FOR SCHOOL DISTRICTS RELATED TO THE EDUCATION OF UNDOCUMENTED CHILDREN 6* (Lisa E. Soronen ed., 2009), available at <http://www.ncpie.org/WhatsHappening/UndocumentedChildrenNov2009.pdf>; Lopez, *supra* note 37, at 120–21.

with the law may surmise that an employee without a license is undocumented and subject to exploitation.”¹⁷⁵ He further emphasizes that lack of a driver’s license does not prevent an immigrant from getting a job—it simply “relegates a person to the secondary labor market, with low wages and poor conditions This underground market flourishes, even though such employment is unlawful.”¹⁷⁶ Undocumented immigrants who cannot drive often find themselves in abusive work environments, and more serious reports of “slave-like” conditions for some undocumented workers are on the rise.¹⁷⁷ Because federal labor law does not fully protect undocumented workers who are fired for organizing for better working conditions, there are few effective legal protections against such exploitation.¹⁷⁸

V. EVALUATING THE POTENTIAL RISKS OF SENATE FILE 271

This section addresses four of the common arguments advanced by opponents of S.F. 271: (1) equal protection concerns, (2) immigration fraud, (3) national security, and (4) federal preemption.¹⁷⁹ This section briefly summarizes each of these arguments, and then advances how S.F. 271 addresses these concerns.

A. *Equal Protection Concerns*

Some have argued that multi-tiered driver’s license systems, like the one proposed by S.F. 271, violate the Constitution’s Equal Protection Clause by creating a separate class of drivers distinguished by alienage.¹⁸⁰ The U.S. Supreme Court has held generally that classifications based on alienage,¹⁸¹ like those based

175. Johnson, *supra* note 37, at 227.

176. *Id.* at 222.

177. Odegaard, *supra* note 89, at 449–50.

178. Johnson, *supra* note 37, at 227.

179. *See infra* Part V.

180. *See* Odegaard, *supra* note 89, at 463. *See generally* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 917–18 (3d ed. 2009) (providing background information on equal protection analysis and alienage classifications).

181. CHEMERINSKY, *supra* note 180, at 917 (“Alienage classifications refer to discrimination against non-citizens. This type of discrimination should be distinguished from national origin classifications that discriminate against individuals because of the country that a person, or his or her ancestors, came from.”).

on nationality or race, are “inherently suspect” and therefore subject to strict judicial scrutiny.¹⁸² However, the Court has also carved out large exceptions to this general rule.¹⁸³ For example, laws related to the democratic process and federal laws that discriminate against aliens need only meet rational basis review.¹⁸⁴ Thus, voting regulations and federal laws drawing distinctions based on alienage are upheld provided they serve a legitimate interest of the federal government and are not “wholly irrational.”¹⁸⁵ In contrast to this deference for federal legislation, strict scrutiny is typically used for alienage classifications imposed by state governments.¹⁸⁶

Equal protection arguments have previously been litigated in regard to driver’s licenses for undocumented immigrants. In *League of United Latin American Citizens (LULAC) v. Bredesen*, the plaintiffs unsuccessfully argued that by creating a distinct driver’s license status for undocumented immigrants, Tennessee created an alienage classification in violation of the Equal Protection Clause.¹⁸⁷ The court concluded that the classification did not draw a distinction based on alienage, but rather distinguished between “citizens and lawful permanent resident *aliens* on the one hand, and illegal *aliens* and those *aliens* who are not permanent lawful residents, on the other hand.”¹⁸⁸ Accordingly, the court concluded that the driver’s license law did not distinguish among people based on any protected classification.¹⁸⁹

The driver’s licensing system proposed under S.F. 271 would withstand equal protection scrutiny on the same grounds as Tennessee’s law.¹⁹⁰ S.F. 271 would essentially draw a distinction

182. See *Graham v. Richardson*, 403 U.S. 365, 372 (1971) (holding that welfare laws conditioning benefits on citizenship and imposing longer durational residency requirements on aliens violated the Equal Protection Clause).

183. CHEMERINSKY, *supra* note 180, at 918; Odegaard, *supra* note 89, at 463.

184. CHEMERINSKY, *supra* note 180, at 926 (“The Supreme Court has ruled that the federal government’s plenary power to control immigration requires judicial deference and that therefore only rational basis review is used if Congress has created the alienage classification or if it is the result of a presidential order.”).

185. *Id.* at 927.

186. *Id.*

187. See *League of United Latin Am. Citizens (LULAC) v. Bredesen*, No. 3:04-0613, 2004 WL 3048724, at *3 (M.D. Tenn. Sept. 28, 2004).

188. *Id.*

189. See *id.*

190. See Garlick, *supra* note 42, at 212 (“Under this holding, current and

between those who can prove legal residence in the country and those who cannot.¹⁹¹ Such a distinction between legal residents and undocumented residents is rational when issuing state identification, considering the many applications of traditional driver's licenses, such as voting and airline travel. Accordingly, S.F. 271 should meet the rational basis test. Since the court in *LULAC* held that distinguishing between legal and undocumented individuals does not draw a distinction based on a protected classification, S.F. 271 should withstand an equal protection challenge.¹⁹²

B. Immigration Fraud

One of the most commonly cited objections to expanding license eligibility to undocumented immigrants is that such licensure would undermine the immigration control efforts and increase document fraud.¹⁹³ Opponents of S.F. 271 have expressed concern that despite the driving privilege cards' narrow intended use, the cards would be used for travel or for employment in violation of the country's immigration laws.¹⁹⁴

Some researchers have argued, in response, that driving privilege cards are not likely to significantly affect rates of undocumented immigration or employment of undocumented workers. As Dean Kevin Johnson notes:

[T]he 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

future driver's license legislation based on the same principles that Tennessee used should be able to overcome Equal Protection challenges.”).

191. S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment § 1 (Minn. 2013) (as amended) (indicating that driving privilege licenses are issued to “a person who is unable to demonstrate legal presence in this country”).

192. See *LULAC*, 2004 WL 3048724, at *3. See generally Garlick, *supra* note 42, at 211.

193. See Johnson, *supra* note 37, at 226–27.

194. See *March 18, 2013 Hearing*, *supra* note 17, at 1:30:20 (statement of Sen. David Osmeck) (expressing concerns about “unintended consequences” such as using driver's licenses to fill out employment paperwork, vote, or pass through airport security).

the country in violation of the law and employers are prohibited from employing them.¹⁹⁵

Dean Johnson's reasoning reflects a common contention that undocumented residents of the United States will continue to drive out of practical necessity, regardless of whether they have access to driver's licenses.¹⁹⁶

Furthermore, acceptance of reliable foreign documents to verify driver identities may help reduce fraud in immigration and identification documents. When undocumented immigrants cannot obtain identification, the document fraud industry rises up to fill this void.¹⁹⁷ Unscrupulous *notarios* (notaries) often exploit undocumented immigrants' desires to have identification by making false promises and providing fraudulent documents.¹⁹⁸ The availability of legitimate forms of identification could help limit demand for such fraudulent documents, thereby increasing the integrity of legitimate identification and immigration documents.

C. National Security

Related to concerns about immigration document fraud are concerns about national security. Indeed, many of the current laws requiring proof of residency to obtain a driver's license were developed in the aftermath of the 9/11 terrorist attacks.¹⁹⁹ Opponents of bills such as S.F. 271 argue that driver's licenses make it easier for terrorists to get access to resources and function in American society.²⁰⁰ While national security has been repeatedly cited as a reason to restrict driver's license provision, there is little scholarly treatment of the subject. When examining the connection between terrorism and driver's licenses, commentators have observed that "[w]hile the issue remains a primary topic for politicians and pundits, this seems to have more to do with its resonance with the public than with any real factual basis."²⁰¹ Attorney Margaret Stock further contends that the national debate about the connection between driver's licenses and national

195. Johnson, *supra* note 37, at 226.

196. See LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1228; Johnson, *supra* note 37, at 224–26.

197. Johnson, *supra* note 37, at 230.

198. *Id.*

199. See *supra* Part II.B.

200. LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1227.

201. Odegaard, *supra* note 89, at 455.

security “has been characterized by misinformation, and a lack of appreciation of the role that driver license and state identification play in national security and law enforcement.”²⁰²

Many pundits have cited the fact that some 9/11 terrorists were able to obtain state driver’s licenses that they used to board planes.²⁰³ However, Margaret Stock argues that it is a myth that driver’s licenses helped these terrorists board planes.²⁰⁴ She notes that a potential terrorist could board a plane using a wide variety of government-issued identification documents, including a U.S. or foreign passport.²⁰⁵ Furthermore, she notes that information obtained from driver’s license records of the hijackers was invaluable after 9/11 in tracking where the terrorists had been and locating suspects. Information contained in driver’s license databases was “used to prosecute many individuals who would not have been discovered otherwise.”²⁰⁶ Thus, denying driving privileges to undocumented immigrants could harm national security interests by “depriving law enforcement officials of critical information on substantial numbers of adults who are physically present in the United States.”²⁰⁷

D. Preemption

The preemption doctrine, derived from the Supremacy Clause,²⁰⁸ holds that any state law that interferes with or is contrary to a federal law must yield to federal authority.²⁰⁹ There are three primary ways to identify preemption: (1) a federal law expressly preempts a state or local law;²¹⁰ (2) federal regulation has wholly

202. Stock, *supra* note 160, at 1.

203. LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1225.

204. Stock, *supra* note 160, at 424.

205. *Id.*; see also LEGOMSKY & RODRÍGUEZ, *supra* note 42, at 1225 (“Those who offer that observation [that several 9/11 hijackers used state driver’s licenses] do not always candidly acknowledge that, even without drivers’ licenses, the same terrorists could easily have boarded by displaying their passports.”).

206. Stock, *supra* note 160, at 424.

207. *Id.*

208. U.S. CONST. art. VI, cl. 2 (“[The Constitution and federal law] shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

209. *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 108 (1992) (quoting *Felder v. Casey*, 487 U.S. 131, 138 (1988)).

210. *Arizona v. United States*, 132 S. Ct. 2492, 2500–01 (2012).

occupied a field;²¹¹ or (3) the state law conflicts with federal law—either because the state law makes it physically impossible to comply with federal law or the state law frustrates the objectives of the federal scheme.²¹² Many opponents of licensing undocumented immigrants argue that issuing such licenses falls into this third category of preemption, as such licensure would frustrate the objectives of federal immigration laws.²¹³

While the preemption argument has not received extensive attention in the courts, courts have generally “defer[red] to the authority of state legislatures to pass driver’s license laws as they see fit.”²¹⁴ Courts have consistently denied preemption challenges to laws that prevent undocumented immigrants from obtaining driver’s licenses.²¹⁵ For instance, in *LULAC*, the court found “no indication that the federal government intend[ed] to completely occupy the field of driver’s licenses issuance for immigrants,” since administering driver’s license standards has traditionally been left to state governments.²¹⁶ Thus, when it comes to laws that *restrict* driver’s license access for undocumented individuals, courts have generally found that federal immigration laws do not preempt state licensing laws.²¹⁷

Conversely, laws that *allow* driver’s license access for undocumented residents should not be invalidated due to preemption principles. As the Court explained in *De Canas v. Bica*, “[S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country”²¹⁸ While the power to regulate

211. *Id.* at 2501.

212. *Id.*

213. *See, e.g., Franz, supra* note 100, at 539–41 (arguing that the 2003 California driver’s license law was “an unconstitutional attempt to usurp power from the federal government”).

214. Odegaard, *supra* note 89, at 461.

215. Kari E. D’Ottavio, Comment, *Deferred Action for Childhood Arrivals: Why Granting Driver’s Licenses to DACA Beneficiaries Makes Constitutional and Political Sense*, 72 MD. L. REV. 931, 948 (2013); *see supra* Part V.A.

216. *See League of United Latin Am. Citizens (LULAC) v. Bredesen*, No. 3:04-0613, 2004 WL 3048724, at *6–7 (M.D. Tenn. Sept. 28, 2004).

217. D’Ottavio, *supra* note 215, at 949.

218. *De Canas v. Bica*, 424 U.S. 351, 355 (1976) (holding that a California code prohibiting an employer from knowingly employing an undocumented alien if such employment would have adverse effect on lawful resident workers was not

immigration is certainly an exclusively federal power, “the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted by this constitutional power.”²¹⁹ Driver’s license reform, such as that proposed in S.F. 271, does not infringe on the federal government’s control over which individuals are admitted to or allowed to remain in the country; the reform merely allows states to determine for themselves which drivers can safely share the road.²²⁰ Because there is no complete federal control of state driver’s license laws, the federal government can defer to the state’s power to regulate the safety of its own roads.²²¹ Consequently, S.F. 271 should not be invalidated on preemption grounds.

VI. CONCLUSION: A PRAGMATIC PUBLIC SAFETY MEASURE ADDRESSING CONSTITUTIONAL CONCERNS

S.F. 271 represents a compromise between proponents and opponents of expanded driver’s license provisions. Rather than focusing on the “black and white” decision of whether to deny or provide full driver’s licenses to undocumented immigrants, S.F. 271 follows the lead of a select number of states choosing a compromise solution: the driving privilege card.²²² Since its inception, amendments to S.F. 271 have made the bill more moderate.²²³ In response to opponents’ concerns that full licenses could be used for improper federal identification purposes, bill authors amended the proposal to allow undocumented immigrants to obtain only a “driving privilege card” with a clear notice about its permissible usage.²²⁴ In response to concerns about undocumented immigrants attempting to use the cards for voting, proponents

unconstitutional as a regulation of immigration or as being preempted under the supremacy clause by the Immigration and Nationality Act).

219. *Id.* at 354–55.

220. *See* Garlick, *supra* note 42, at 206; Odegaard, *supra* note 89, at 461–62.

221. *See* Odegaard, *supra* note 89, at 462.

222. *See* S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment (Minn. 2013) (as amended); Garlick, *supra* note 42, at 194.

223. *Compare* S.F. 271, 2013 Leg., 88th Sess., 1st Engrossment (Minn. 2013), *with* S.F. 271, 2013 Leg., 88th Sess., 3d Engrossment (Minn. 2013) (as amended) (showing amendments to the bill to provide only a “Driving Privilege Card” rather than a traditional driver’s license, and mandating education for election officials about the new driving privilege cards).

224. *See supra* Part I.B (noting that driving privilege cards must be clearly marked “FOR DRIVING ONLY”).

amended the bill to provide for additional election judge training.²²⁵ In response to concerns that S.F. 271 would somehow hinder law enforcement efforts, proponents elicited the support of Minnesota's law enforcement leaders and sought their opinions about how the bill could improve community policing.²²⁶

The amended version of S.F. 271 represents a compromise in which both proponents and opponents of expanded licensing have ceded ground. Like other states looking to ameliorate the financial and safety problems that come with high rates of unlicensed drivers,²²⁷ Minnesota now has the opportunity to allow greater licensure while still complying with the mandates of federal legislation.²²⁸ Such a compromise reaps the benefits of increased insurance coverage and safer communities,²²⁹ while still being respectful of federal identification laws.²³⁰

S.F. 271 also represents a pragmatic solution that prioritizes safety over ideology. While concerns that licensing the undocumented condones illegality are valid, the fact remains that large numbers of undocumented immigrants continue to live, work, and drive in Minnesota despite the status of federal immigration law.²³¹ However valid the concern about condoning illegal presence may be, this concern must be balanced against the argument that "since it may not be feasible to deport all undocumented immigrants, it may make more sense to simply recognize this portion of the population."²³² S.F. 271 is an attempt to confront this reality while expanding driver's safety education, decreasing the rates of uninsured drivers, and facilitating cooperation between immigrant communities and police officers.²³³

225. See *supra* Part I.B (discussing amendments that mandate election judge training to ensure that election officials understand that driving privilege cards cannot be used for voting purposes).

226. See *supra* Part IV.C (discussing law enforcement leaders' support for the measure in Minneapolis, St. Paul, and Winona).

227. See *supra* Part III (discussing other states' efforts at reform to allow undocumented drivers to receive driving privileges).

228. Garlick, *supra* note 42, at 194 (arguing that driving privilege cards allow states to grant driving privileges to undocumented immigrants while still complying with the mandates of federal legislation).

229. See *supra* Part IV.A–B.

230. See *supra* Part II.B.

231. See *supra* Part IV.D.

232. Garlick, *supra* note 42, at 199–200.

233. See *supra* Part IV.

Furthermore, S.F. 271 is a pragmatic solution because it reduces the need for local police officers and driver's bureau agents to act as immigration experts in an increasingly complex system. As Minneapolis immigration attorney Susan de Leon noted, immigration laws are tremendously complex and change daily.²³⁴ Her clients—who include those applying for immigration relief as child arrivals, victims of violence, or political asylees—can be undocumented one day and documented the next.²³⁵ As Attorney Margaret Stock notes, “It is not possible today for a state or local law enforcement official to pick up the telephone and find out immediately if a given person is ‘legal’; it can take hours or even days to figure this out, and often the immediate information provided by DHS about a person’s status can be wrong.”²³⁶ Because it is exceedingly difficult for law enforcement and driver's bureau officials to make accurate determinations about an individual's immigration status,²³⁷ it makes practical sense to limit their concerns to identifying the individual and ensuring they can safely drive. By allowing driver's bureau officials and police officers to focus on their respective core functions rather than the nuances of immigration law, they can more effectively perform their duties for the public. Thus, S.F. 271 is a pragmatic solution because it removes the need for local officials to make determinations about complex national immigration laws.

S.F. 271 also successfully addresses constitutional concerns about equal protection and preemption.²³⁸ Because the proposed licensing laws under S.F. 271 do not draw a distinction based on alienage, no equal protection concerns are implicated.²³⁹ S.F. 271 also helps avoid future equal protection claims by ensuring that the children of undocumented parents have equal access to public

234. *February 27, 2013 Hearing, supra* note 123, at 52:17 (statement of Susana de Leon).

235. *Id.* at 52:30; *see also* Stock, *supra* note 160, at 424 (“Immigration law is extremely complicated, and immigration status is a moving target. A person can be legal one day and illegal the next; illegal one day and legal the next.”).

236. Stock, *supra* note 160, at 423.

237. *See id.* at 424 (“DHS often tries to deport US citizens under the mistaken belief that these US citizens are illegal immigrants. If DHS can’t figure out whether someone is a citizen or an alien . . . how is a state DMV employee going to do so?”).

238. *See supra* Parts V.A, D.

239. *See supra* Part V.A.

educational opportunities that require private transportation.²⁴⁰ Additionally, by limiting the purposes of the card to driving privileges and prohibiting federal use, S.F. 271 avoids preempting federal control of immigration.²⁴¹ Thus, considering both equal protection and preemption concerns, S.F. 271 is a constitutionally sound measure.

Regardless of the fate of S.F. 271 in the 2014 legislative session, the question of driving privileges for undocumented Minnesotans will remain both contentious and relevant.²⁴² If Minnesota is to maintain its reputation for welcoming immigrants and protecting human rights, it should embrace measures that allow immigrants—both documented and undocumented—to safely drive, to contribute to the insurance system, and to interact cooperatively with law enforcement.

240. See *supra* Part V.A.

241. See *supra* Part V.D.

242. See Herrera, *supra* note 29.