

THE BEST OF BOTH WORLDS: FINDING MIDDLE GROUND IN THE HEATED DEBATE CONCERNING ISSUING DRIVER'S LICENSES TO UNDOCUMENTED IMMIGRANTS IN ILLINOIS*

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I. INTRODUCTION

Cesar Quesada moved to the United States when he was just three years old.¹ The son of an organic farmer, Cesar spent most his life battling a rare form of cancer and recently lost the battle at the young age of seventeen.² Life was anything but easy for Cesar, who was forced to endure eight rounds of chemotherapy and seventeen surgeries.³ One thing that made life a little easier was a New Mexico law giving undocumented immigrants⁴ driving privileges.⁵ Before he died, Cesar wrote a letter to the Archbishop of Santa Fe expressing gratitude for the archbishop's support of the law that enabled Cesar's parents to lawfully drive him to and from treatment.⁶

Xian Liu Yue was a beneficiary of the same New Mexico law, but in a drastically different manner.⁷ Xian, an undocumented Chinese immigrant, used the law to help carry out a criminal scheme that involved using

* Best Legal Comment (2013), Southern Illinois University Law Journal.

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1. Milan Simonich, *Lawmaker Says Driver's Licenses for Illegal Immigrants Are All About Humanity*, DEMING HEADLIGHT (Feb. 28, 2013), http://www.demingheadlight.com/deming-news/ci_22690280/lawmaker-says-drivers-licenses-illegal-immigrants-are-all.

2. *Id.*

3. *Id.*

4. Throughout this Comment, the terms "undocumented immigrant" or "undocumented alien" are used to refer to those people who are present in the United States illegally, without permission. For arguments against the use of the label "illegal immigrant," see Cindy Y. Rodriguez, *Language Like "Illegal Immigrant" Seen as a Challenge During Immigration Debate*, CNN (Apr. 4, 2013), <http://www.cnn.com/2013/04/04/us/illegal-immigrant-term-still-a-challenge>.

5. Milan Simonich, *New Mexico Catholic Bishops Favor Continuation of Driver's License Law for Illegal Immigrants*, EL PASO TIMES, Jan. 16, 2013, http://www.elpasotimes.com/newupdated/ci_22385019/new-mexico-catholic-bishops-favor-continuation-drivers-license.

6. *Id.*

7. See *Chinese Ring Leader Found Guilty of Peddling New Mexico Driver's Licenses to Out-of-State Illegal Immigrants*, N.M. TAX'N AND REVENUE DEPARTMENT (Sept. 28, 2011), available at <http://www.tax.newmexico.gov/Press%20Release%20Document%20Library/pr01-09282011.pdf> [hereinafter *Chinese Ring Leader*] (explaining how Xian fraudulently obtained driver's licenses for out-of-state undocumented immigrants).

fraudulent residential documents to help other undocumented immigrants procure New Mexico driver's licenses.⁸ Although her clients lived in New York, Xian rented out apartments in their names in the Albuquerque area in order to create the residential documentation needed to obtain the driver's licenses.⁹ Xian reportedly charged between \$500 and \$1000 per client for her services and was eventually convicted of conspiracy for her role in helping undocumented immigrants fraudulently acquire New Mexico driver's licenses.¹⁰

Contrasting stories like those described above make picking sides in the heated immigration reform debate a difficult task. Regardless of ideologies, two things seem apparent: the current immigration system has flaws, and Americans are pushing for change.¹¹ With as many as twelve million immigrants in the country illegally, the United States is in the midst of an immigration crisis that involves emotional and challenging issues.¹² Indeed, in his State of the Union address, President Barack Obama argued that "now's the time" to replace an immigration system he called "out of date and badly broken."¹³

One of the newest controversies within the debate on immigration reform is whether undocumented immigrants should receive lawful driving privileges.¹⁴ As the most basic form of identification, it comes as no surprise that undocumented immigrants relentlessly pursue possessing a driver's license.¹⁵ While the federal government has exclusive power over immigration policy,¹⁶ states retain "the power to require the procurement of a license before one may operate a motor vehicle on the public highways."¹⁷ Controlling the issuance of a driver's license is a state's valid exercise of its police power to regulate highway use in the best interests of the public.¹⁸

8. *Id.*

9. *Id.*

10. *Id.*

11. See Gabrielle Giffords, *Immigration Reform: The Time Is Now*, ARIZ. ATT'Y, July/Aug. 2009, at 29, http://www.myazbar.org/AZAttorney/PDF_Articles/0709ImmGiffords.pdf ("Democrats and Republicans agree our immigration system is broken.")

12. *Id.*

13. Dan Lothian et al., 'Now's The Time' to Move on Immigration, Obama says, CNN (Jan. 30, 2013), <http://www.cnn.com/2013/01/29/politics/immigration-reform>.

14. Spencer Garlick, *License to Drive: Pioneering A Compromise To Allow Undocumented Immigrants Access to the Roads*, 31 SETON HALL LEGIS. J. 191, 192 (2006).

15. Lornet Turnbull, *DOL Tightens Rules for New Driver's Licenses to Stop Fraud*, SEATTLE TIMES, Nov. 4, 2010, http://seattletimes.com/html/localnews/2013350427_driverslicense05m.html.

16. *DeCanas v. Bica*, 424 U.S. 351, 354 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power.")

17. Marjorie A. Shields, Annotation, *Validity of State Statutes, Regulations, or Other Identification Requirements Restricting or Denying Driver's Licenses to Illegal Aliens*, 16 A.L.R.6TH 131 (2006); see also *Kane v. New Jersey*, 242 U.S. 160, 167 (1916) ("The power of a state to regulate the use of motor vehicles on its highways has been recently considered by this court and broadly sustained.")

18. Shields, *supra* note 17.

What seems like an ordinary matter is anything but in the immigration context,¹⁹ as this country is especially cautious to extend privileges or benefits to immigrants after the horrific 9/11 terrorist attacks.²⁰ There are undocumented aliens like Cesar who need a law legalizing their driving privileges in order to live a meaningful life and complete everyday tasks, such as driving to work or school.²¹ The problem is that for every person like Cesar, there is often a person like Xian, who seeks to exploit the system for personal gain and legitimizes arguments opposing the licensing law.²²

In early January 2013, after approval by the Illinois Senate and the House of Representatives,²³ Governor Pat Quinn signed into law Senate Bill 957 (SB 957),²⁴ making Illinois only the fourth state to grant undocumented aliens permission to drive.²⁵ Like other immigration issues, this law carries with it passionate supporters and critics alike.²⁶ Advanced as a public safety measure, whether the law has sufficient safeguards in place to

19. 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, 92-93 (2008) ("Prior to 9/11, what would appear to be the most mundane of matters, the obtaining of a driver's license, has now become a battleground in our country's debate regarding immigration policy.").

20. Garlick, *supra* note 14, at 192.

21. See, e.g., Rafael Guerrero & Antonio Olivo, *Illegal Immigrants Clear to Hit the Road*, CHI. TRIB., Jan. 9, 2013, http://articles.chicagotribune.com/2013-01-09/news/ct-met-immigrant-drivers-licenses-20130109_1_illegal-immigrants-federal-immigration-temporary-visitor-driver-s-licenses (telling the story of Juan Vicente Urbina, who has no driver's license and fears deportation each morning he drives his seven year-old daughter to school).

22. See, e.g., *Chinese Ring Leader*, *supra* note 7 (listing several other individuals who have either been convicted or charged with violating New Mexico's law allowing undocumented immigrants to obtain driver's licenses, including: Jaroslaw Kowalczyz, a man who pleaded guilty to transporting undocumented immigrants from Illinois to New Mexico in order to obtain forged documents; Ana Hernandez, who was indicted on over 300 felony charges for helping undocumented immigrants obtain New Mexico driver's licenses by creating fake residency documents; and Christian Sobral, who was charged with two counts of conspiracy to commit fraud for flying Brazilians into New Mexico to obtain driver's licenses).

23. Gustavo Valdes & Catherine E. Shoichet, *Illinois Approves Driver's Licenses for Undocumented Immigrants*, CNN (Jan. 8, 2013), <http://www.cnn.com/2013/01/08/us/illinois-immigrant-drivers-licenses>. The bill was approved by the Senate in a 41-14 vote and the House by a 65-46 vote. *Id.*

24. 625 ILL. COMP. STAT. 5/6-105.1 (2010) (amended 2013). SB 957, an amendment to 625 ILL. COMP. STAT. 5/6-105.1, reads, in relevant part:

(a-5) The Secretary of State may issue a temporary visitor's driver's license to an applicant who (i) has resided in this State for a period in excess of one year, (ii) is ineligible to obtain a social security number, and (iii) is unable to present documentation issued by the United States Citizenship and Immigration Services authorizing the person's presence in this country. The applicant shall submit a valid unexpired passport from the applicant's country of citizenship or a valid unexpired consular identification document issued by a consulate of that country as defined in Section 5 of the Consular Identification Document Act (5 ILCS 230/5).

25. Regina Garcia Cano, *Fraud Concerns Linger Over New Ill. License Law*, USA TODAY, Jan. 27, 2013, <http://www.usatoday.com/story/news/nation/2013/01/27/concern-ill-license-law/1868091/>.

26. See *id.* (explaining how while some view the new law as "an important step for immigration rights," others point to the problems faced by other states that have passed similar laws, namely fraud).

prevent the serious problems faced by other states remains to be seen.²⁷ As it stands now, the Illinois law is susceptible to fraud, and certain provisions jeopardize successful compliance. This Comment takes the position that adding mandatory restrictions to Illinois's new law will help prevent fraud while benefitting the undocumented immigrant population it truly intends to support: the hardworking, law-abiding, productive contributors to society.

Section II of this Comment gives a general overview of citizenship and immigration status categories, followed by a short history of immigration in Illinois. That Section then discusses SB 957 in greater detail, including an explanation of specific provisions, reasons behind the law's passage, and public apprehension related to the new law. For comparison purposes, Section II also discusses similar undocumented immigrant driving programs, abolished and existing, in other states. Section III analyzes proven and potential problems and offers solutions on how best to prevent those problems in Illinois. This Comment concludes with a summary of key points in Section IV and suggests how the new law may affect Illinois residents in the future.

II. BACKGROUND

In order to fully appreciate the new Illinois law, it is important to understand the hierarchy on immigrants and citizenship. This Section describes different types of immigrants, followed by a historical view of immigration law in Illinois. The Section then details specific provisions of SB 957, explains the main reasoning for its passage, and touches on public concerns related to the new law. Finally, in an effort to demonstrate possible vulnerabilities of SB 957, this Section reviews similar laws in other states and problems that arose.

A. Citizenship and Immigration Status

Citizenship and immigration status can be broken down into four primary categories: U.S. citizens, aliens²⁸ or immigrants,²⁹ nonimmigrants,³⁰ and undocumented aliens.³¹ Most people are U.S.

27. *Id.*

28. Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(3) (2012) (“The term ‘alien’ means any person not a citizen or national of the United States.”).

29. § 1101(a)(15) (“The term ‘immigrant’ means every alien except an alien who is within . . . [a] class[] of nonimmigrant aliens. . .”).

30. *See* § 1101(a)(15)(A)-(V) (listing classes of nonimmigrant aliens).

31. § 1101(a)(13)(A) (“The terms ‘admission’ and ‘admitted’ mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.”).

citizens as a result of being born in this country,³² but others become U.S. citizens through naturalization.³³ Immigrants, or lawful permanent residents (frequently referred to as LPRs or Green Card holders), are people who have been given permission by the government to come to the United States and live here permanently.³⁴ Even though LPRs are given a perpetual stay, they are not U.S. citizens and thus not entitled to certain rights, such as voting.³⁵ However, they are here lawfully and may be eligible for naturalization to U.S. citizenship after meeting certain requirements.³⁶

Nonimmigrants refer to those who are lawful temporary visitors to the United States, such as foreign exchange students.³⁷ Nonimmigrants hold visas that authorize their stay in the United States and are renewable periodically.³⁸ Finally, there are undocumented aliens (illegal aliens), who are physically present in the United States without the government's

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32. 8 U.S.C. § 1401(a) (2012); *see also* *Citizenship*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a2ec6811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=a2ec6811264a3210VgnVCM100000b92ca60aRCRD> (last updated Jan. 17, 2013).
33. § 1101(a)(23) (“The term ‘naturalization’ means conferring of nationality of a state upon a person after birth, by any means whatsoever.”); *see also* *Citizenship Through Naturalization*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=d84d6811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=d84d6811264a3210VgnVCM100000b92ca60aRCRD> (last updated Jan. 22, 2013). Naturalization is defined as “the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).” *Id.*
34. § 1101(a)(20) (“The term ‘lawfully admitted for permanent residence’ means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”); *see also* *Green Card (Permanent Residence)*, U.S. CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=ae853ad15c673210VgnVCM10000082ca60aRCRD&vgnnextchannel=ae853ad15c673210VgnVCM10000082ca60aRCRD> (last updated May 13, 2011) (“A Green Card holder (permanent resident) is someone who has been granted authorization to live and work in the United States on a permanent basis.”).
35. *See* *Citizenship*, *supra* note 32. An individual who is approved for naturalization is “rewarded with all the rights and privileges that are part of U.S. citizenship.” *Id.*
36. *See generally* 8 U.S.C. §§ 1401-1504 (2012) (covering nationality and naturalization).
37. § 1101(a)(15)(F)(i).
38. § 1101(a)(26) (“The term ‘nonimmigrant visa’ means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this chapter.”); *see also* *Visas*, TRAVEL.STATE.GOV, http://travel.state.gov/visa/visa_1750.html (last visited Apr. 2, 2013) (explaining how citizens from foreign countries must obtain a nonimmigrant visa to authorize a temporary stay in the United States, with limited exceptions); *Questions About Visas?*, TRAVEL.STATE.GOV, http://travel.state.gov/visa/questions/questions_1253.html#4 (last visited Apr. 2, 2013) (explaining how visas are renewable but there is a requirement to repeat the visa application process).

permission.³⁹ An undocumented alien becomes so by either unlawfully entering the country⁴⁰ or remaining in the country after a visa expires.⁴¹

B. Immigration Law in Illinois

The new law in Illinois finds support from historical actions of the Illinois General Assembly and judiciary alike. Passing legislation allowing undocumented aliens driving privileges in Illinois parallels past immigration policies in the state,⁴² policies viewed as the least restrictive in the Midwest.⁴³ Less than two years ago, Illinois signed into law its version of the DREAM Act,⁴⁴ becoming the first state in the country to adopt such a measure.⁴⁵ Scrutinizing these liberal policies becomes all the more important in light of the number of people to which the law directly applies. The size of Illinois's immigrant population ranks sixth in the United States, with 95% of Illinois immigrants living in the Chicago metro area.⁴⁶ The foreign-born population in Illinois has steadily increased over the last twenty years,⁴⁷ and the new driver's license law is expected to apply to an estimated 250,000 people unlawfully residing in the state.⁴⁸

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39. See § 1101(a)(13)(A). An alien entering the country without proper "admission" effectively makes him or her an illegal alien. See *id.*
40. See William La Jeunesse, *Stats Show Surge in Illegal Immigrant Border Traffic Dispute Napolitano Claims*, FOXNEWS.COM (Apr. 5, 2013), <http://www.foxnews.com/politics/2013/04/05/stats-show-surge-in-illegal-immigrant-border-traffic-despite-napolitano-claims/> (discussing the number of undocumented immigrants illegally crossing the U.S. border).
41. See Dan Well, *Forty Percent of Illegal Immigrants Here on Expired Visas*, NEWSMAX (Feb. 19, 2013), <http://www.newsmax.com/Newsfront/immigration-reform-visas-congress/2013/02/19/id/490962> (explaining how 40% of undocumented immigrants arrive in the United States with an authorized visa, but are labeled with illegal status once the visa expires and they remain in the country).
42. See, e.g., 30 ILL. COMP. STAT. 105/6z-8a (2010) (creating an Immigration Reform and Control Fund); 15 ILL. COMP. STAT. 205/6.6 (2010) (establishing an Immigrant Assistance Program).
43. See KATHERINE FENNELLY, MIDWEST COAL. ON IMMIGR. AND THE REGION'S FUTURE, ILLINOIS 1 (2012), available at [http://chicago.dpdev.cla.umn.edu/sites/chicago.dpdev.cla.umn.edu/files/IllinoisRevised\(1\).pdf](http://chicago.dpdev.cla.umn.edu/sites/chicago.dpdev.cla.umn.edu/files/IllinoisRevised(1).pdf). The Illinois public health program provides coverage for all eligible low-income persons regardless of citizenship status. *Id.* Also, children who entered the United States as unauthorized immigrants are still eligible to receive in-state college tuition in Illinois. *Id.*
44. *Illinois DREAM Act Signed By Governor Quinn*, HUFFINGTON POST (Aug. 2, 2011), http://www.huffingtonpost.com/2011/08/02/illinois-dream-act-signed_n_915434.html#s320008&title=Illinois_Dream_Act (explaining how the Act creates a privately-funded account to hold money for school grants and scholarships for both documented and undocumented children of immigrants).
45. *Governor Quinn Will Sign the Illinois DREAM Act Into Law Monday*, HUFFINGTON POST (July 30, 2011), http://www.huffingtonpost.com/2011/07/29/governor-quinn-will-sign_n_913708.html.
46. See Fennelly, *supra* note 43.
47. See *id.* at 3 (showing that immigrants made up 8% of Illinois's total population in 1990, 12% in 2000, and 14% in 2010).
48. See Cano, *supra* note 25.

Similarly, the new legislation in Illinois is consistent with past judicial decisions in the state.⁴⁹ Prior to allowing undocumented aliens to apply for driver's licenses, an Illinois federal court addressed the issue in *Doe v. Edgar*.⁵⁰ In that case, the plaintiffs alleged that Illinois Secretary of State Jim Edgar intentionally discriminated against them as a result of their status as undocumented aliens, in violation of their statutory and constitutional rights.⁵¹ Specifically, the plaintiffs challenged the constitutionality of an Illinois statute requiring driver's license applicants to provide a social security number.⁵² While the plaintiffs' motion for summary judgment was denied,⁵³ the court allowed the plaintiffs to overcome the defendant's motion for summary judgment in order to pursue discovery on the question regarding the discriminatory intent of the Illinois General Assembly in enacting the law.⁵⁴ Additionally, the court held that the plaintiffs presented sufficient proof to withstand summary judgment on the question of whether the classification was sufficiently related to a legitimate governmental objective.⁵⁵ This glimpse of support for the plaintiffs' case was in stark contrast to how several other courts have interpreted challenges to state driver's license laws by undocumented aliens.⁵⁶

49. See, e.g., *Castillo v. Jackson*, 594 N.E.2d 323, 332-35 (Ill. 1992) (holding that alien plaintiffs were permanently residing in the United States under color of law before the effective date of the Immigration Reform and Control Act and thus eligible for unemployment benefits); *People v. Correa*, 485 N.E.2d 307, 309, 312 (Ill. 1985) (holding that defendant, who pled guilty to an offense, served his sentence, and was taken into custody by the Immigration and Naturalization Service, was entitled to bring a motion for post-conviction relief (because he was still on mandatory supervised relief) and, as a result of poor counsel advice, his guilty plea was deemed involuntary); *Econ. Packing Co. v. Ill. Workers' Comp. Comm'n*, 901 N.E.2d 915, 920-22 (Ill. App. Ct. 2008) (holding that aliens working for another pursuant to a hiring contract are "employees" under the Workers' Compensation Act, regardless of immigration status, and neither conflict nor field preemption bars undocumented immigrants from receiving permanently and totally disabled benefits).

50. No. 88 C 579, 1989 WL 91805 (N.D. Ill. Aug. 4, 1989).

51. *Id.* at *1.

52. *Id.*

53. *Id.*

54. *Id.* at *3 ("[T]he court notes that the parties have not pursued discovery based on their belief that this matter may be resolved on summary judgment. The court will give the plaintiffs an opportunity to pursue discovery.").

55. *Id.* at *6. It should be noted that there is no subsequent case history on how this matter was eventually resolved.

56. See, e.g., *League of Latin Am. Citizens (LULAC) v. Bredesen*, No. 3:04-0613, 2004 WL 3048724, at *6 (M.D. Tenn. Sept. 28, 2004) (holding Tennessee's law valid that prohibited undocumented aliens from obtaining driver's licenses and only allowed them to obtain a driving certificate because it did not create an unconstitutional classification under the Equal Protection Clause); *John Doe No. 1 v. Ga. Dep't. of Pub. Safety*, 147 F. Supp. 2d 1369, 1372-75 (N.D. Ga. 2001) (holding the Georgia law that restricted access to driver's license for undocumented aliens constitutional because it did not violate the right to travel or equal protection); *Sanchez v. State*, 692 N.W.2d 812, 819 (Iowa 2005) (holding Iowa's law that required producing a social security number or federal documentation authorizing legal presence in the country was constitutional).

1. SB 957: Details

Under the new Illinois law, which is expected to take effect in or around November 2013,⁵⁷ licenses already available to foreigners in the country legally (temporary visitor driver's licenses)⁵⁸ would also be available for undocumented immigrants.⁵⁹ A person becomes eligible to apply for a driver's license after living in Illinois for at least one year and must provide documentation as proof.⁶⁰ Acceptable documents include a lease copy, utility bills, a valid passport, or a consular identification card.⁶¹ Additionally, applicants must show they are ineligible for a social security card.⁶² The license is renewable every three years and requires applicants to be photographed in order to enter their picture into the state's facial recognition database to verify identities.⁶³ The license will have a blue background, as opposed to the red background on traditional driver's licenses, and will be invalid for identification purposes.⁶⁴ Therefore, holders would not be able to use the license to vote, purchase guns, or board airplanes.⁶⁵ Applicants must pass vision, written, and road tests and are required to carry automobile insurance.⁶⁶ Additionally, each applicant must pay a thirty-dollar fee.⁶⁷

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57. Monique Garcia, *Illinois Illegal Immigrant Driver's Licenses Available in 10 Months*, CHI. TRIB., Jan. 27, 2013, http://articles.chicagotribune.com/2013-01-27/news/ct-met-quinn-immigrant-drivers-licenses-0128-20130129_1_licenses-illinois-illegal-immigrant-consular-identification-card (explaining how it will be at least ten months from the date of her article before the new driver's licenses are available). It is important to note that this Comment is being written prior to the law taking effect.
58. *Id.*; see also 625 ILL. COMP. STAT. 5/6-105.1(a) (2010) (amended 2013) ("The Secretary of State may issue a temporary visitor's driver's license to a foreign national who (i) resides in this State, (ii) is ineligible to obtain a social security number, and (iii) presents to the Secretary documentation, issued by United States Citizenship and Immigration Services, authorizing the person's presence in this country.").
59. STAT. 5/6-105.1(a-5); see also Cano, *supra* note 25.
60. Garcia, *supra* note 57.
61. *Id.*
62. STAT. 5/6-105.1(a-5); Garcia, *supra* note 57; see also Ill. Sec'y of State, *Driver's License/State ID Card*, CYBERDRIVEILLINOIS.COM, http://www.cyberdriveillinois.com/departments/drivers/drivers_license/drlicid.html#tvdl (last visited Apr. 26, 2013) (to prove ineligibility for a social security number, an applicant must present documentation issued by the Social Security Administration, within ninety days of applying for the temporary driver's license, proving such ineligibility).
63. Cano, *supra* note 25.
64. Garcia, *supra* note 57; see also STAT. 5/6-105.1(b-5).
65. Garcia, *supra* note 57.
66. STAT. 5/6-105.1(d-5); Garcia, *supra* note 57. A license effectively becomes invalid if the holder does not carry automobile insurance. *Id.* So, if a temporary license holder is pulled over and does not have automobile insurance, that person can be ticketed for driving without insurance and driving without a license. *Id.*
67. Garcia, *supra* note 57.

2. *SB 957: Reasoning*

One of the primary reasons for passing this law was to combat the risk presented by the more than 250,000 undocumented immigrant motorists driving unlawfully in Illinois.⁶⁸ Proponents argue that the law will encourage undocumented immigrants to apply for licenses, receive driver's education training, and make roads safer for the public.⁶⁹ Additionally, the law was passed with a desire to reduce the estimated \$64 million in annual damage claims involving undocumented immigrants in Illinois.⁷⁰ The hope is that by increasing the number of insured drivers in Illinois, residents will benefit from a corresponding premium decrease.⁷¹ Similarly, more insured drivers should result in more covered losses and avoid the premium increases that result from innocent drivers being forced to use their own insurance policy to pay for uninsured car accidents.⁷² Lastly, the law will provide better access for undocumented immigrants to travel to and from job locations and afford them the opportunity to contribute to and strengthen the state economy.⁷³

3. *SB 957: Concerns*

Fraudulent abuse of SB 957, whether through identity theft or the use of counterfeit documents to obtain a driver's license, is the primary argument advanced by opponents of the law.⁷⁴ Critics of laws comparable to SB 957 reason that a state government should not make it easier for undocumented immigrants to establish a life and have privileges similar to those of citizens.⁷⁵ By doing this, critics argue, the state government is

68. See Cano, *supra* note 25.

69. *Id.*; see also Amanda Peterson Beadle, *How Allowing Undocumented Immigrants to Obtain Driver's Licenses Can Save Lives*, THINKPROGRESS (Jan. 16, 2013), <http://thinkprogress.org/justice/2013/01/16/1455661/how-allowing-undocumented-immigrants-to-obtain-drivers-licenses-can-save-lives/> (stating that a California study found unlicensed drivers three times more likely to cause a fatal car crash than a licensed driver). The public safety argument is also supported by empirical evidence, which shows traffic fatality rates of unlicensed drivers to be five times greater than licensed drivers. 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, 447 (2008).

70. Greg Botelho, *New Illinois Law Allows Undocumented Immigrants to Get Driver's Licenses*, CNN (Jan. 29, 2013, 5:26 PM), <http://www.cnn.com/2013/01/28/us/illinois-immigrant-licenses>.

71. *Id.*; see also Warner Todd Huton, *Illinois Passes Drivers Licenses for Illegal Immigrants*, BREITBART (Jan. 9, 2013), <http://www.breitbart.com/Big-Government/2013/01/08/Illinois-Passes-Drivers-Licenses-for-Illegal-Immigrants> (explaining how one supporter of the bill, Representative Edward Acevedo, estimates that if only half of the 250,000 undocumented immigrants in Illinois obtain a temporary license, Illinois policyholders would save approximately \$46 million annually).

72. Garlick, *supra* note 14, at 202-03.

73. Botelho, *supra* note 70.

74. See Cano, *supra* note 25.

75. Odegaard, *supra* note 69, at 450.

overlooking undocumented immigrants' illegal status and in fact rewarding them for living in the United States illegally.⁷⁶ Even more, the law attracts undocumented immigrants to the state to take advantage of this rare licensing opportunity.⁷⁷ Another concern is that undocumented immigrants will fail to maintain automobile insurance and continue driving uninsured.⁷⁸ Other opponents raise constitutional challenges, including the idea that by passing legislation like SB 957, states are "intrud[ing] into an area of exclusive federal concern" and "attempt[ing] to influence immigration law."⁷⁹ In Illinois, there is a persisting concern that SB 957 will generate problems faced by other states attempting similar programs, especially fraud.⁸⁰

C. Other State Laws Regarding Driver's Licenses for Undocumented Immigrants

As mentioned above, three other states passed comparable laws prior to Illinois's SB 957. New Mexico and Washington are the only two states to allow undocumented immigrants to obtain driver's licenses; Utah issues permits that are valid only for driving purposes.⁸¹ While the laws in New Mexico, Washington, and Utah are all still in place (albeit with varying levels of success), other states have not fared as well and canceled programs like the one set to take place in Illinois. This Section discusses one of those defunct programs first, then turns to programs still in effect in New Mexico, Washington, and Utah.

1. Tennessee

Prior to 2004, there was no requirement in Tennessee of legal presence in order to receive a driver's license, but a bill passed that year imposed that condition.⁸² The bill contained a provision allowing applicants who were ineligible for a driver's license, specifically undocumented aliens, to apply for a Certificate for Driving (CFD).⁸³ The CFDs were supposed to be used for driving purposes only and not valid for

76. Garlick, *supra* note 14, at 199.

77. Richard F. LaMountain, *Driver's Licenses Would Draw Illegal Immigrants to Oregon: Guest Opinion*, OR. LIVE (Apr. 10, 2013, 5:12 AM), http://www.oregonlive.com/opinion/index.ssf/2013/04/drivers_licenses_would_draw_il.html.

78. Garlick, *supra* note 14, at 201-02.

79. Odegaard, *supra* note 69, at 459-60.

80. Cano, *supra* note 25.

81. *See id.*

82. Odegaard, *supra* note 69, at 442.

83. *Id.*

identification.⁸⁴ While immigrant rights groups criticized the new program as creating an inferior class of drivers, critics argued that the CFDs gave undocumented aliens “an undeserved legitimacy.”⁸⁵ As reports of CFD applicants using fraudulent documents and bribing public officials began to pour in, the program was suspended indefinitely.⁸⁶ On October 1, 2007, the state canceled the CFD program.⁸⁷ Now, Tennessee issues a Temporary Driver’s License to immigrants that carries with it a legal residency requirement and expires on the date of the expiration of the immigrant’s approved stay in the United States.⁸⁸ Thus, undocumented immigrants are no longer eligible for driving privileges of any kind in Tennessee.⁸⁹

2. *New Mexico*

In an effort to reduce the number of unlicensed and uninsured drivers in the state, New Mexico passed legislation in 2003 allowing undocumented immigrants to procure driver’s licenses.⁹⁰ Unlike the laws in Utah and Illinois, in New Mexico there is no way to distinguish between licenses issued to legal residents and those issued to undocumented immigrants.⁹¹ The lenient, less stringent documentation requirements in New Mexico have led some to argue that the law makes the state a “magnet for fraud.”⁹² Indeed, the number of instances that the New Mexico law has been abused is alarming⁹³ and has led state officials to question the law’s existence.⁹⁴ Since being elected Governor of New Mexico in 2010, Susana

84. *Id.* at 443.

85. *Id.*

86. *Id.* at 444.

87. *Id.*

88. *Id.*

89. See Daniel Connolly, *Bill Puts Brakes on ‘International Driver’s License’ Sham in Tennessee*, COM. APPEAL (May 13, 2010), <http://www.commercialappeal.com/news/2010/may/13/bill-puts-brakes-on-license-sham/> (noting how undocumented immigrants in Tennessee cannot obtain legal driver’s licenses).

90. Marc Lacey, *License Access in New Mexico Is Heated Issue*, N.Y. TIMES, Aug. 23, 2011, http://www.nytimes.com/2011/08/24/us/24licenses.html?pagewanted=all&_r=0.

91. *Id.*; see also Joseph J. Kolb, *New Mexico Plan Giving Licenses to Illegals to Backfire in 2013, Governor Martinez Warns*, FOXNEWS.COM (Oct. 15, 2012), <http://www.foxnews.com/us/2012/10/15/new-mexicos-granting-licenses-to-illegals-to-backfire-in-2013-warns-governor/>. Governor Martinez “claims there will be no way to differentiate between state IDs issued to residents who furnish federally-required documentation and those issued to illegal immigrants based on less stringent requirements.” *Id.*

92. Nathan Koppel, *Are Out-of-State Drivers Flooding New Mexico?*, WALL ST. J., Aug. 1, 2011, <http://blogs.wsj.com/law/2011/08/01/are-out-of-state-drivers-flooding-new-mexico/>.

93. See *Chinese Ring Leader*, *supra* note 7 (displaying a list of individuals either charged with or convicted of violating New Mexico’s law allowing undocumented immigrants to obtain driver’s licenses).

94. See Gustavo Valdes, *New Mexico Governor Takes Aim at Immigrant Driver’s Licenses*, CNN (Jan. 24, 2013), <http://www.cnn.com/2013/01/23/us/new-mexico-immigrant-licenses> (discussing

Martinez has repeatedly tried to have the law repealed, but to no avail.⁹⁵ In response to fraud concerns, New Mexico Senate Republican Leader Stuart Ingle introduced Senate Bill 521, which Governor Martinez endorses.⁹⁶ The proposal creates two distinct types of driver's licenses.⁹⁷ The first type of license would comply with the federal Real ID Act, requiring strict proof of citizenship (such as a birth certificate or a passport) and remain valid for eight years.⁹⁸ The second type requires foreign nationals to provide proof of identity, evidence showing they have lived in New Mexico for at least six consecutive months, and verification of driver's education completion.⁹⁹ While this proposal is not quite as strict as the system in place in Utah,¹⁰⁰ it appears to be a step in the right direction to controlling the fraud threat in New Mexico.

3. Washington

Washington is the other state to issue driver's licenses, functional for identification purposes, to undocumented immigrants.¹⁰¹ Similar to results seen in New Mexico, Washington experienced a surge in applications from out-of-state undocumented aliens.¹⁰² To reduce the number of people fraudulently obtaining driver's licenses, Washington has tightened residency requirements.¹⁰³ In 2007, the Washington Department of Licensing required all applicants to provide proof of residency;¹⁰⁴ however, the state dropped the requirement in 2010 after it became a "hassle."¹⁰⁵ Due to fraud concerns, the proof-of-residency requirement has since been

New Mexico Governor Susana Martinez's desire to repeal the state law giving driver's licenses to undocumented immigrants).

95. *Id.*

96. Steve Terrell, *Martinez Embraces Senate Republican's Compromise on Immigrant Licenses*, SANTA FE NEW MEXICAN (Feb. 13, 2013), <http://www.santafenewmexican.com/LocalNews/021413xgrDRIVERSLICENSES#.UTRHgo5pJUQ>.

97. *Id.*

98. *Id.*

99. *Id.*

100. *See id.* Ingle originally desired a bill similar to the Utah law, i.e., issuing permits to undocumented immigrants and regular driver's licenses to citizens. *Id.* Negotiations with the governor led to the current substance of SB 521. *Id.*

101. *See* Lacey, *supra* note 90.

102. Stephen Clark, *States Revise Rules on Driver's Licenses for Illegal Immigrants as National ID Approaches*, FOXNEWS.COM (Feb. 17, 2011), <http://www.foxnews.com/politics/2011/02/17/states-revise-rules-drivers-licenses-illegal-immigrants-national-id-approaches/>; Lacey, *supra* note 90; Turnbull, *supra* note 15 (stating that the number of out-of-state residents without social security numbers who obtained driver's licenses in the state doubled from 2007 to 2010).

103. Clark, *supra* note 102.

104. Turnbull, *supra* note 15 (explaining how the proof-of-residency requirement was implemented as a result of officials uncovering scams involving individuals charging a fee to undocumented immigrants to help the immigrants obtain Washington driver's licenses).

105. *Id.*

reinstated but is applicable only to individuals without a social security number.¹⁰⁶ The state has also cracked down on the types of documents accepted to prove Washington residency and the process for validating the documents.¹⁰⁷ The Washington Senate Transportation Committee is reviewing a bill that would require applicants to prove *legal* residency before being granted a driver's license.¹⁰⁸ Washington's Democrat governor, Chris Gregoire, has confirmed that she would sign a bill restricting driver's licenses to legal residents if the legislature passed such a measure.¹⁰⁹

4. Utah

Utah's driving certificate program has arguably been the most successful law related to undocumented alien driving privileges.¹¹⁰ In March 2005, Utah passed legislation that allowed drivers who were unable to prove legal residency in the United States to apply for Driving Privilege Cards (DPC).¹¹¹ Similar to the law in Illinois, these cards may be used only for driving and cannot serve as identification.¹¹² Under the Utah program, DPC holders fall into one of two categories.¹¹³ The first category consists of documented individuals who can show proof of legal presence in the United States, but do not qualify for a social security number.¹¹⁴ DPCs in this category expire five years from the date of issuance or when the corresponding legal presence documents have run their course, whichever occurs sooner.¹¹⁵ The second category applies to undocumented individuals who are not eligible to receive a social security card.¹¹⁶ In this category, the DPC expires one year after the card is issued and individuals must acquire an Individual Taxpayer Identification Number from the IRS.¹¹⁷ In 2011, the Utah State Legislature amended the law to require fingerprints from

106. *Id.*

107. *Id.* Before the proof-of-residency requirement was dropped, Washington accepted a broad range of documents to prove residency, including utility bills, cell phone bills, and automobile insurance cards. *Id.* Realizing some of these documents were highly susceptible to deceit, certain documents are no longer valid to prove state residency, such as cell phone and cable bills. *Id.* Similarly, the process to validate residency documents has become more rigorous. *Id.* Documents are now examined by department technicians, who provide applicants with a non-photo, temporary authorization to drive, pending validation of the residency documents. *Id.*

108. *Id.*

109. Lacey, *supra* note 90.

110. Odegaard, *supra* note 69, at 444.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

undocumented immigrant applicants.¹¹⁸ If an applicant's fingerprint check shows a felony on record, the state must notify Immigration and Customs Enforcement.¹¹⁹ If the check shows the applicant has an outstanding misdemeanor warrant, the state is required to notify the proper agency responsible for the arrest.¹²⁰ Even with this stricter system in place, there are still people in Utah who test the law and its susceptibility to fraud.¹²¹

The review of state laws allowing undocumented immigrants to obtain driver's licenses strongly suggests that, while the laws undoubtedly serve beneficial purposes, there is ample room for improvement to limit shortcomings, namely fraud abuse. After the Obama Administration implemented the Deferred Action for Childhood Arrivals (DACA) program,¹²² the U.S. Department of Homeland Security announced it was up to state officials to determine what to do with regards to issuing driver's licenses to qualified individuals under the program.¹²³ Since DACA launched, many states have declared that they will begin issuing driver's licenses to eligible individuals under the program, regardless of their illegal status.¹²⁴ The trend towards extending driving privileges to undocumented immigrants provides further reasoning to scrutinize these laws. Depending on the requirements of the law and characteristics of the license, the new laws, at least to some degree, have potential to implicate state and national security alike.¹²⁵

III. ANALYSIS

The above survey of state laws allowing undocumented immigrants driving privileges makes clear that the Illinois law carries certain risks. At

118. Cano, *supra* note 25.

119. *Id.*

120. *Id.*

121. *Sentencing Set in Driver's License Fraud Case*, ABC4.COM (Feb. 13, 2012), <http://www.abc4.com/mostpopular/story/Sentencing-set-in-drivers-license-fraud-case/FIdTHp15UEGMGxuHZ11sZw.csp> (explaining the story of Evevia Nez, who pleaded guilty to a bribery charge for assisting undocumented immigrants in fraudulently obtaining driver's licenses).

122. Michael Biesecker, *Undocumented Immigrant Licenses With Pink Stripe In North Carolina Cause Debate*, HUFFINGTON POST (Feb. 22, 2013), http://www.huffingtonpost.com/2013/02/22/undocumented-immigrant-license_n_2740822.html. DACA grants valid federal work permits to eligible individuals who were brought to the United States without legal authorization as children.

Id.

123. *Id.*

124. *Id.* (discussing states making this declaration, including Oregon and Georgia). *But see* Emily Deruy, *Susana Martinez Renews Push to Repeal Licenses for Undocumented*, ABCNEWS (Jan. 24, 2013), http://abcnews.go.com/ABC_Univision/Politics/mexico-gov-martinez-opposes-licenses-undocumented-immigrants/story?id=18305031#.UVoo045pJUR (stating that Arizona and Michigan will not issue licenses to immigrants eligible under DACA).

125. If an undocumented immigrant is issued a driver's license that in no way differs from licenses issued to U.S. citizens, the undocumented immigrant is effectively granted rights and abilities he would not have possessed without the license, such as boarding an airplane.

the forefront of these potential problems is the danger of fraud and undocumented immigrants using counterfeit or fake documents to acquire driver's licenses. Similarly, not having strong assurances built into the law to confirm that an undocumented immigrant purchases and maintains automobile insurance may defeat one of the law's main purposes and hinder progress. Hidden behind these larger threats is the argument that allowing a longer period of validity for driver's licenses granted to undocumented immigrants jeopardizes successful compliance with the program. Finally, once Illinois implements SB 957, the state may face additional problems unforeseen by officials, including constitutional and profiling challenges. Officials could also use the new law as an opportunity to encourage naturalization. In order to offer solutions, it is critical to examine the system already in place in Illinois, as well as the state's proposal on how it plans to prevent or minimize these problems.

A. Fraud

Fraud is one of the more frequently advanced arguments against passing legislation allowing undocumented immigrants to procure driver's licenses.¹²⁶ To be clear, there are two types of fraud that critics are concerned with: identity fraud and the use of fraudulent documents to obtain driver's licenses. Opponents of SB 957 have pointed to hundreds of cases of fraud in New Mexico, Washington, and Utah to support their position against the bill.¹²⁷ Critics worry there are not enough safeguards in place to prevent fraud, and they fear that Illinois will inevitably face the same pitfalls as the other states allowing the practice.¹²⁸ Supporters of the law respond by claiming that the facial recognition technology currently utilized in Illinois is reliable enough to prevent fraud;¹²⁹ however, this argument ignores the potential value of fingerprint requirements and leaves unanswered what restrictions are in place to guard against the use of fraudulent residency documents to obtain licenses.

1. *Illinois Facial Recognition Technology*

Beginning in 1997, in an effort to prevent identity theft, Illinois started using biometric facial recognition technology in its driver's license

126. Kevin R. Johnson, *Driver's Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 228 (2004).

127. Cano, *supra* note 25.

128. *Id.*

129. *Id.*

application process.¹³⁰ Whenever an applicant has his photo taken, the picture is sent to a massive database and compared to thousands of other photos already in the system.¹³¹ The process involves the use of algorithmic facial recognition, first taking the picture and matching it to previous licenses and identification cards, then matching the picture to other Illinois driver's licenses with different names.¹³² In short, the program searches for any duplicate images from other driver's licenses or identification cards.¹³³ Any matches are sent to the Illinois Secretary of State Driver Services Fraud Unit, and the unit conducts further investigation to determine whether there is possible identity fraud.¹³⁴ The program has been largely successful, finding over 5000 cases of identity fraud from 1997 to 2007.¹³⁵

Identical to legal residents applying for driver's licenses, undocumented immigrants will have their pictures taken, which will then be entered into the state's facial recognition system to verify identity.¹³⁶ Additionally, undocumented immigrants must present documentation proving Illinois residency in excess of one year as well as "a valid unexpired passport from the applicant's country of citizenship or a valid unexpired consular identification document issued by a consulate of that country."¹³⁷ The statute vests power in the Illinois Secretary of State to

130. Chandler Harris, *Biometrics Stems Driver's License Fraud*, GOV'T TECH. (June 25, 2008), <http://www.govtech.com/pcio/Biometrics-Stems-Drivers-License-Fraud.html>.

131. *Id.* The database was built with facial recognition information from licenses that were new and renewed with the department. *Id.*

132. *Id.*; see also Cano, *supra* note 25 ("The program uses an algorithm to match more than a dozen facial features that are not easy to alter, such as eye sockets and sides of the mouth.")

133. Harris, *supra* note 130. The program also "enable[s] the secretary of state and law enforcement investigators to compare facial images from the driver's license image database with video surveillance photos, snapshots, sketches and composite photos." *Id.*

134. *Id.*

135. *Id.*

136. Cano, *supra* note 25.

137. 625 ILL. COMP. STAT. 5/6-105.1(a-5) (2010) (amended 2013). See also 5 ILL. COMP. STAT. 230/5 (2010) (amended 2013), which reads:

§ 5. Definition. As used in this Act, "consular identification document" means an official identification card issued by a foreign government that meets all of the following requirements:

(1) The consular identification document is issued through the foreign government's consular offices for the purpose of identifying a foreign national who is living outside of that nation.

(2) The foreign government requires an individual to provide the following to obtain the consular identification document: (A) proof of nationality; (B) proof of identity; and (C) proof of residence in the consular district.

(3) The foreign government includes the following security features in the consular identification document: (A) a unique identification number; (B) an optically variable feature such as a hologram or color-shifting inks; (C) an ultraviolet image; (D) encoded information; (E) machine readable technology; (F) micro printing; (G) secure laminate; and (H) integrated photograph and signature.

determine the requirements for proof of identification and residency through promulgating administrative regulations.¹³⁸

An examination of the undocumented immigrant driver's license laws already in place and the instances of fraud related to such produces a common sense statement: the more safeguards Illinois puts in place and the more hoops a deceitful applicant has to jump through, the less likely exploitations of the law will occur. In New Mexico, where cases of fraud are seemingly most prevalent,¹³⁹ the law related to the issuance of driver's licenses to undocumented immigrants is arguably most lenient.¹⁴⁰ These lax standards have led New Mexico to be known as the "go-to place for driver's licenses" and resulted in some states no longer recognizing the New Mexican driver's license as a valid form of identification.¹⁴¹ Washington and Utah took notice of the threat of fraud and have since made changes to the laws in their respective states.¹⁴² The Washington State Department of Licensing now specifically addresses, on its website, the use of facial recognition technology and how it is used to prevent identity theft.¹⁴³ The fact that fingerprints are required for DPCs in Utah and that the DPCs are not valid for identification¹⁴⁴ surely discourages dishonest applicants and reduces fraudulent practices.

(4) The consular identification document includes the following data: (A) the name and address of the individual to whom it is issued; (B) the date of issuance; (C) the date of expiration; (D) the name of the issuing consulate; and (E) an identification number. The consular identification document must include an English translation of the data fields.

(5) The issuing consulate has filed with the Department of State Police a copy of the issuing consulate's consular identification document and a certification of the procedures that are used to satisfy the requirements of paragraphs (2) and (3).

138. STAT. 5/6-105.1(b-5)(c)(2) ("The Secretary shall adopt rules for . . . establishing criteria for proof of identification and residency of an individual applying under subsection (a-5) . . .").

139. See *supra* note 22 and accompanying text.

140. For a comparison on the requirements for an undocumented immigrant to obtain a driver's license in New Mexico, Washington, and Utah, see generally *How to Get a New Mexico Driver License*, N.M. MVD ONLINE, <http://www.mvd.newmexico.gov/Drivers/Licensing/pages/How-to-get-a-New-Mexico-Driver-License.aspx> (last visited Apr. 1, 2013); *Getting a License*, WASH. ST. DEPARTMENT LICENSING, <http://www.dol.wa.gov/driverslicense/gettingalicense.html> (last visited Apr. 1, 2013); *Driver License Division – Utah Driving Privilege Card (DPC)*, UTAH DEPARTMENT PUB. SAFETY, <http://publicsafety.utah.gov/dld/dpc12.html> (last visited Apr. 1, 2013) [hereinafter *Utah Driving Privilege Card*]. New Mexico is the only state out of the three to accept cable or satellite bills as proper proof of residency. See *How to Get a New Mexico Driver License, supra*. Additionally, there is no required timeframe an undocumented immigrant must live in New Mexico before becoming eligible for a license. *Id.*

141. Monica Ortiz Uribe, *Immigrant Driver's Licenses A Hot Topic in New Mexico*, KPBS (Jan. 11, 2013), <http://www.kpbs.org/news/2013/jan/11/immigrant-drivers-licenses-hot-topic-new-mexico/>.

142. See Clark, *supra* note 102; Cano, *supra* note 25.

143. *Proof of Identity*, WASH. ST. DEPARTMENT LICENSING, <http://www.dol.wa.gov/driverslicense/idproof.html> (last visited Apr. 1, 2013).

144. Odegaard, *supra* note 69, at 444.

In Illinois, the facial recognition technology in place is reliable,¹⁴⁵ but no technology is absolutely free from error. Also, the question remains as to just how useful the technology is for undocumented immigrants applying for licenses for the first time and having no existing photographs in the system's database to confirm their identity. While this may prevent identity theft in some cases, it leaves open the opportunity for an undocumented immigrant to use a name or identity (with or without permission) not in the database, such as the name of another undocumented immigrant who resides in Illinois but does not apply for a license. This situation not only allows the applicant to pass the facial recognition test, but also to use or steal residency documents from the other Illinois undocumented immigrant to fraudulently acquire a license.

2. *Fingerprint Requirements*

Requiring undocumented immigrants who are applying for driver's licenses to submit fingerprints provides further assurance that the law will operate as intended. States have the right to require fingerprints from license applicants, and the mandate does not violate substantive due process.¹⁴⁶ Granted, there are methods to manipulate fingerprints,¹⁴⁷ and any additional procedure implemented into the licensing process for undocumented immigrants will cost the public more money. Nevertheless, the idea remains that providing additional obstacles to the licensing process discourages fraud and decreases the likelihood of abuse. Also, Illinois has established a Driver Services Administration Fund (the Fund) into which all fees collected for the issuance of temporary visitor driver's licenses are to be deposited.¹⁴⁸ By following the practice in place in Utah and charging a small fee for fingerprint processing,¹⁴⁹ the money generated into the Fund can help cover the costs of this additional safeguard.

The argument made against fingerprinting is that it will discourage undocumented immigrants in Illinois, who fear deportation, from applying for the temporary visitor driver's licenses.¹⁵⁰ Not everyone in the state sees

145. See Harris, *supra* note 130. "In a controlled environment—where lighting, head angle and distance of the subject can be directed—facial recognition technology is considered reliable. A test by the National Institute of Standards and Technology found that facial recognition in a controlled environment has an error rate of 1 percent or less." *Id.*

146. Shields, *supra* note 17.

147. See Harris, *supra* note 130 (explaining how detectives in California discovered that identity thieves sometimes use liquid glue or hair spray to change their fingerprints).

148. 625 ILL. COMP. STAT. 5/6-105.1(f) (2010) (amended 2013).

149. See *Utah Driving Privilege Card*, *supra* note 140 (stating how Utah charges a \$25 fingerprint processing fee in addition to a \$25 licensing fee).

150. See Cano, *supra* note 25.

merit in this argument, particularly law enforcement personnel.¹⁵¹ Not only will fingerprinting alert law enforcement to undocumented immigrants who committed past crimes (either in Illinois, another state, or their home country),¹⁵² but it will also effectively create a more complete identity record for a group of people who are commonly referred to as a “shadow population.”¹⁵³ In turn, a more complete state database of fingerprints and identities will aid law enforcement in future investigations. Similarly, knowing their illegal status is already on record may lead undocumented immigrants to increasingly report their traffic accidents or other non-criminal activities.¹⁵⁴ Further, fingerprinting undocumented immigrants helps identify applicants who used fraudulent residency documents to obtain a license. For example, suppose an undocumented immigrant from another state uses fraudulent documents to acquire a temporary visitor driver’s license in Illinois and then moves back to the original state. In the future, having the applicant’s fingerprints surface somewhere outside of Illinois would raise red flags and alert authorities to a possible investigation into the listed residency information.

Of central importance to this recommendation is whether the federal government should have access to the state’s database containing the fingerprints and identities of the undocumented immigrants. To answer this question, one must reflect on the undocumented immigrants this law was truly designed to benefit: those who seek to capitalize on this new driving opportunity in a productive, legal manner and yearn for a more active role in society. In requiring fingerprints for a temporary visitor driver’s license, Illinois should follow an approach analogous to that in Utah¹⁵⁵ and notify federal authorities whenever a processed fingerprint returns a past crime or felony. The practice of punishing only the criminal undocumented aliens is also consistent with the approach at the federal level.¹⁵⁶ This approach may drastically reduce the number of undocumented applicants, but SB 957 did not pass to provide benefits to immigrants who are in this country without permission and not adhering to our laws. To relieve concerns of the undocumented immigrants who have not committed past crimes, those applying for a driver’s license and submitting fingerprints could be promised immunity from information-sharing with federal authorities, conditional on maintaining lawful behavior. An agreement of this type has

151. *Id.* (explaining how local law enforcement agencies favor a fingerprinting requirement for undocumented immigrants because it will help them determine who has committed past crimes).

152. *Id.*

153. Johnson, *supra* note 126, at 224; Garlick, *supra* note 14, at 193-94 (quoting Plyler v. Doe, 457 U.S. 202, 218 (1982)).

154. Garlick, *supra* note 14, at 201 (arguing that licensing undocumented immigrants will result in greater cooperation with law enforcement and less flight).

155. Cano, *supra* note 25.

156. *Secure Communities*, ICE, http://www.ice.gov/secure_communities/ (last visited Apr. 2, 2013).

potential to bring out the intended beneficiaries of SB 957 while discouraging criminal activity in the process.

3. *Verifying Residency Documentation*

Rather than finding out the hard way about the importance of a rigorous proof-of-residency validation process like Washington,¹⁵⁷ the Illinois Secretary of State (the Secretary) must adopt strict requirements to ensure a detailed examination of residency documents. Currently, Illinois has generous guidelines for acceptable residency documentation compared to other states.¹⁵⁸ Relaxed verification of residency opens the door to fraud and is precisely one of the causes of the ongoing problems in New Mexico.¹⁵⁹ To avoid this, the Secretary must limit acceptable documentation for an undocumented immigrant to prove residency, making it more restrictive than that required of citizens and temporary visitors. Additionally, the Secretary needs to implement a tough screening process designed to limit deceit. The process should include meticulous training to help staff identify fraudulent documents and stiff penalties for any applicant who knowingly submits these documents. Another safeguard would involve routine audits, either by phone or in person, to confirm an applicant's listed residence.

The threat of fraud involved in issuing driver's licenses is present regardless of the types of people to whom the state chooses to extend the driving privilege. As the group of potential recipients becomes larger, the threat of fraud becomes more serious. Extending the driving privilege to undocumented immigrants requires Illinois officials to re-examine its driver's licensing policy as applied to legal citizens and temporary visitors and make the necessary adjustments to minimize risks. Mandating that undocumented immigrants submit fingerprints prior to license approval and pass an in-depth residency verification process best achieves this task.

157. Clark, *supra* note 102 (explaining how Washington had to tighten driver's license requirements to prevent fraud after receiving a surge in applications from out-of-state immigrants).

158. Ill. Sec'y of State, *Illinois Secretary of State Document Requirements to Obtain a Driver's License/State ID Card*, CYBERDRIVEILLINOIS.COM (2012), available at http://www.cyberdriveillinois.com/publications/pdf_publications/dsd_x173.pdf. Unlike New Mexico, Washington, or Utah, the State of Illinois accepts cell phone bills as valid documentation for proof of residency. *See id.*

159. *See* Uribe, *supra* note 141 (“[E]vidence of fraud is stacked in manila folders at the DA's office. Each is fat with hundreds of documents from titles to vehicles sitting in junkyards, fake utility bills and forged signatures on false rental agreements.”).

B. Insurance

As stated above, one of the purposes of SB 957 is to help undocumented immigrants obtain automobile insurance and reduce the number of uninsured losses.¹⁶⁰ The same reasoning applied to other states deciding to pass similar laws, and the results appear promising.¹⁶¹ The lingering question, however, is whether undocumented immigrants, after receiving driver's licenses, will be able to acquire and maintain automobile insurance.¹⁶² Given undocumented immigrants' nonexistent driving history and the unpredictable nature of the insurance risk involved, insurers may be unwilling to insure the new drivers.¹⁶³ Likewise, it is common to hear stories of undocumented immigrants being exploited and underpaid in the labor market. Because most undocumented applicants will not have a previous driving or insurance record, they may have to pay hundreds of dollars more in premiums than the average citizen.¹⁶⁴ If finances are tight, monthly premium payments will surely concede to costs for more essential living expenses. This long-term thinking may resonate with undocumented immigrants and lead to questioning the decision to purchase automobile insurance.

The new Illinois law requires undocumented immigrants to carry automobile insurance and invalidates their license for not doing so, but only after the license holder is caught.¹⁶⁵ The drawback of penalizing undocumented immigrants only after they are caught disobeying the requirement is the potential for the law to have a reverse effect. Rather than

160. Botelho, *supra* note 70.

161. See Garlick, *supra* note 14, at 202. After Utah began licensing undocumented immigrant motorists, the uninsured driver rate in the state decreased from 23% in 1997 to 3% in 2006. *Id.* The number of uninsured drivers in New Mexico dropped from 33% in December 2002 to 17% in 2004, while also experiencing decreases in insurance premiums and less motorists fleeing accident scenes. *Id.* See also Odegaard, *supra* note 69, at 447 n.82 (stating how the number of uninsured drivers from 2000-2006 dropped approximately 80% in Utah and 60% in New Mexico). But see Joseph Kolb, *Undocumented Immigrant Drivers License Law Fails to Boost Number of Insured*, FOX NEWS LATINO (Sept. 9, 2012), <http://latino.foxnews.com/latino/politics/2012/09/09/new-mexico-undocumented-driver-license-law-fails-to-raise-number-insured/>. In 2000, before the law took effect in New Mexico, 26.3% of drivers in the state were uninsured. *Id.* In 2008, the number of uninsured drivers increased to 29.5%, ranking the state first in the country for total number of uninsured drivers. *Id.* But ultimately, it is almost impossible to determine what percentage of the uninsured drivers are undocumented immigrants. *Id.*

162. Garlick, *supra* note 14, at 201.

163. *Id.* at 208.

164. Tim Mitchell, *Illegal Immigrants' Licenses Won't Come Cheap*, NEWS-GAZETTE (Feb. 17, 2013), <http://www.news-gazette.com/news/local/2013-02-17/illegal-immigrants-licenses-wont-come-cheap.html>.

165. 625 ILL. COMP. STAT. 5/6-105.1(d-5) (2010) (amended 2013) ("A temporary visitor's driver's license is invalid if the holder is unable to provide proof of liability insurance as required by Section 7-601 of this Code upon the request of a law enforcement officer, in which case the holder commits a violation of Section 6-101 of this Code.")

reducing the number of uninsured accidents and drivers, the law may grant undocumented immigrants (who would not otherwise be driving) driver's licenses only for the driver to ignore the insurance requirement. Consequently, there would be more uninsured drivers on the road, and more importantly, more undocumented immigrant drivers on the road. The obvious result is that, following a car accident and fearing deportation, the uninsured undocumented immigrant panics and flees, increasing hit-and-run accidents and diluting the goal of decreasing uninsured losses.

To prevent the problem described above, Illinois should require proof of insurance at the time an undocumented immigrant applies for a temporary driver's license. This measure would require some cooperation on the part of insurers¹⁶⁶ and some additional legwork up front for the applicant, but it is legwork that, ideally, the applicant would do anyway. Also, doing this work up front makes the applicant more invested in the process and increases the likelihood of compliance with the temporary visitor driver's license program as a whole. The Illinois Department of Motor Vehicles (DMV) offices could require applicants who do not own vehicles to provide a short list of vehicles they expect to drive, complete with proof of insurance on each vehicle, and limit the validity of the license to driving those vehicles. The insurance policies presented for each vehicle would need to list the hopeful immigrant driver as an additional insured. Alternatively, insurers could provide a form of contingent insurance that only becomes effective upon confirmation from the DMV of license approval for the undocumented applicant. Another option is for the state to issue a temporary paper license, valid only for a short time, until the applicant provides valid proof of insurance. The additional administrative resources these changes require are worth the time saved and problems avoided in the future.

Requiring automobile insurance prior to driver's license approval also assists the fight against fraud. Insurers usually offer substantial discounts when a policyholder chooses to add coverage to an already-existing policy with the insurer.¹⁶⁷ In most cases, the existing policies are homeowners or renters insurance, complete with the address of the insured location. If the insured has any prior losses on file, it is expected that the insurer sent a claims adjuster to the property to assess the damage. If this information is on record, the insurer could provide a stamp of address confirmation to the automobile policy. An undocumented applicant could then use both policies as further, perhaps more reliable, documentation to prove residency

166. See Johnson, *supra* note 126, at 220 (explaining how some insurers may require drivers to be licensed before insuring them).

167. See, e.g., *Get Covered With State Farm Homeowners Insurance*, STATE FARM, <http://www.statefarm.com/insurance/homeowners/homeowners.asp> (last visited Apr. 2, 2013) (explaining how State Farm offers discounts for multiple-line policies).

requirements. Additionally, providing the insurer with an opportunity to bundle policies not only lowers costs for the applicant, but also creates a business incentive for the insurer and makes insurance more readily available for undocumented immigrants.

An obligation to provide proof of automobile insurance before temporary visitor's driver's licenses become effective is a small change that could lead to valuable benefits. In addition to soliciting participation from the applicant early in the process, pre-approved automobile insurance has potential to create stronger, more reliable proof of residency and discourage fraud. The concern related to an undocumented immigrant's ability to maintain insurance can be accommodated by a proposed change in the current driver's license renewal procedure, discussed further below.

C. License Renewal

Under SB 957, a temporary visitor driver's license granted to an undocumented immigrant is valid for a period of three years¹⁶⁸ and renewable at the end of that timeframe.¹⁶⁹ This provision poses a couple of potential problems. First, insurance policies typically have a one-year policy period, at the end of which the policy can be renewed or cancelled by the insurer. Illinois's SB 957 does not address what, if anything, state officials will do to ensure an automobile policy is in effect for the entire three-year period the temporary driver's license is valid. This silence could present a problem if either the driver or the insurer chooses not to renew the policy. Admittedly, it is not practical to ensure that each undocumented immigrant driver has an effective insurance policy at all times throughout the validity of the license. However, a shorter renewal period would at least decrease the likelihood of an undocumented immigrant driving without automobile insurance. By matching the validity of the temporary driver's license with the life of the insurance policy, whether it be one or two years, state officials can require an updated proof of insurance before renewing the license.

The second problem with the renewal process in SB 957 is that the process applied to undocumented immigrants is more generous than the process applied to *legal* foreign visitors.¹⁷⁰ Under Illinois law, a foreign national who resides in the state, cannot obtain a social security number, and presents proof of legal presence in the country is eligible to receive a temporary visitor driver's license that is "valid for 3 years, or the period of time the individual is authorized to remain in this country, *whichever ends*

168. STAT. 5/6-105.1(b).

169. Cano, *supra* note 25.

170. STAT. 5/6-105.1(b).

*sooner.*¹⁷¹ By giving undocumented immigrants a more favorable renewal period compared to legal foreign visitors, the law lacks meaningful incentive for the undocumented population to naturalize and discounts the efforts of those who came to our country legally. This logic provides further reasoning for shortening the driver's license renewal period for undocumented immigrants.

Perhaps the best compromise would contain a graduating renewal period based on compliance. By requiring shorter renewal periods at the commencement of the law (such as one year) and adding an additional year to the renewal period for each year of compliance, the program would weed out those who are unwilling to conform with the basic rules. More importantly, a graduated program would provide significant encouragement to comply with the law for the undocumented population who recognize and appreciate the value of driving.

D. Additional Problems: The License Appearance

As mentioned above, the driver's licenses available to undocumented immigrants in Illinois will have a blue background, different from the red background found on lawful citizens' driver's licenses. Having this distinguishing characteristic on licenses for undocumented immigrants effectively creates a separate group of drivers and has caused controversy in other states, including North Carolina.¹⁷² In that state, driver's licenses issued to eligible undocumented immigrants under DACA were designed to include a bright pink stripe and the words "NO LAWFUL STATUS" written in bold.¹⁷³ The design proposal raised branding and stigmatization concerns, as opponents argued it would create a second-class driver's license.¹⁷⁴ State officials have discarded the pink stripe idea and will now include the words "LEGAL PRESENCE" before the language "NO LAWFUL STATUS."¹⁷⁵ Although groups opposing the pink stripe see the change as a positive step, the same concerns remain regarding the bold language.¹⁷⁶

With the liberal, pro-immigration policies and court decisions in Illinois, state officials need to be aware of these arguments and have

171. *Id.* (emphasis added).

172. Biesecker, *supra* note 122.

173. *Id.*

174. *Id.*

175. Rob Schofield, *ACLU Praises Decision to Ditch Pink Stripe on Licenses*, PROGRESSIVE PULSE (Mar. 22, 2013), <http://pulse.npolicywatch.org/2013/03/22/aclu-praises-decision-to-ditch-pink-stripe-on-licenses/>.

176. Chris Liu-Beers, *A Step in the Right Direction: NC Drops Offensive Pink Driver's License Stripe*, N.C. COUNCIL OF CHURCHES (Mar. 25, 2013), <http://www.ncchurches.org/2013/03/nc-drops-offensive-pink-drivers-license-stripe/>.

responses prepared. Two foreseeable challenges to the distinguishing blue background on temporary visitor's driver's licenses are that it constitutes a violation of equal protection and will cause racial profiling.¹⁷⁷

1. Equal Protection Challenges

Undocumented aliens are entitled to protection under the Equal Protection Clause.¹⁷⁸ The standard of review in equal protection cases depends on if the classification disadvantages a "suspect class" or infringes upon a "fundamental right."¹⁷⁹ If the classification is suspect (based on race, gender, or national origin), strict scrutiny review of the challenged law is proper, but if the classification is not suspect (such as based on residency), the court will use a rational basis standard of review.¹⁸⁰ The U.S. Supreme Court has based suspect classifications upon immutable characteristics—characteristics over which a person has no control and cannot change.¹⁸¹ In doing so, the Court has concluded that an immigrant's undocumented status is not an "absolutely immutable characteristic" because "it is the product of conscious, indeed unlawful, action."¹⁸² This reasoning was applied in *Doe v. Edgar*, where the court further stated that undocumented immigrants do not have a "fundamental right" to a driver's license in Illinois and applied a rational-basis standard of review to the challenged statute.¹⁸³ Under a rational-basis review, "legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest."¹⁸⁴ Plaintiffs can also prove an equal protection violation by showing "that the sole purpose of the regulation[']s classification] was the desire to injure a particular class of persons."¹⁸⁵ Thus, "[t]he court must first consider the stated purpose of the challenged provision."¹⁸⁶

Even with the strong history of immigration support in Illinois, the chances for success if undocumented immigrants challenge the distinguishing marker on the temporary visitor driver's licenses is doubtful. First, the main purpose of SB 957 is to provide driver's education to undocumented immigrants, some of whom likely drove unlicensed before

177. Garlick, *supra* note 14, at 210.

178. *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

179. *Id.* at 216-17.

180. Garlick, *supra* note 14, at 210-11.

181. *Plyler*, 457 U.S. at 216 n.14 ("Legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish.").

182. *Id.* at 220.

183. No. 88 C 579, 1989 WL 91805, at *4 (N.D. Ill. Aug. 4, 1989).

184. *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring).

185. *Edgar*, 1989 WL 91805, at *4.

186. *Id.* at *5.

the law, in order to make roads safer for the general public in Illinois.¹⁸⁷ Regulating driving and highway safety in the interest of the public is an undisputed legitimate state interest;¹⁸⁸ legislation intended to educate unlicensed, untrained drivers presumably furthers this interest and is rationally related. Second, the blue background distinguishes undocumented immigrants from lawful citizens and permanent residents, most likely as a state and national security measure. Again, national security is a legitimate state interest.¹⁸⁹ Distinguishing undocumented immigrants through the license design prevents them from engaging in multiple activities that could pose threats to national security, such as boarding planes with terrorist intentions or buying guns. In turn, the classification created by the blue background rationally relates to the legitimate state interest in preserving national security. Lastly, the classification created under SB 957 did not deprive undocumented immigrants of rights they had before the law passed; the legislation created new privileges and opportunities for the undocumented class by extending to them lawful driving capabilities.

2. Racial Profiling Challenges

Racial profiling and fears of deportation are additional concerns that may surface in Illinois as a result of the distinguishing blue background.¹⁹⁰ These concerns lack merit for a couple reasons. First, similar to the DPCs in Utah, the Illinois temporary driver's licenses are valid for driving purposes only and state as much on the license.¹⁹¹ The inability to use the license for identification purposes is a key aspect of the law and likely a central component in earning bipartisan support for the bill—it is safe to assume this part of the law will not change. Accordingly, like the situation in North Carolina, even if the blue background is banished, the “not valid for identification” language will remain on the license and create the same anxieties.

Second, holding a recognizable temporary visitor driver's license does little to increase profiling or deportation apprehensions after considering the repercussions of not possessing the license at all. The license holder has been authorized by the state to drive for three years, so presumably that person has implied permission to remain in the country that long. Alternatively, the unlicensed, undocumented immigrant who is pulled over

187. Botelho, *supra* note 70.

188. *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 442 (1978) (“[A] State has a legitimate interest in regulating motor vehicles using its roads in order to promote highway safety.”).

189. *Lawrence*, 539 U.S. at 585 (O'Connor, J., concurring).

190. Garlick, *supra* note 14, at 212.

191. Garcia, *supra* note 57.

by law enforcement should have legitimate deportation concerns, as his fate is less clear. It seems unlikely to think that law enforcement would profile a temporary license holder any more so than if that person had no license or identification at all and could not prove lawful status. So ultimately, regardless of its physical appearance, the temporary visitor driver's license should ease, not escalate, racial profiling and deportation concerns.

E. Path to Naturalization

As a final recommendation, rather than completely ignoring the unlawful status of immigrants applying for licenses under SB 957, the state should make an effort to initiate, or at least educate, the undocumented immigrant population on naturalization procedures. These efforts could include something as simple as handing out a pamphlet or brochure explaining the process to each applicant. Again, there needs to be incentives built into the law to motivate drivers to comply with the system. Possible inducements could range from cheaper renewal fees to an expedited legalization process. Encouraging compliance through a legitimate rewards system would inspire the intended beneficiaries of the law and facilitate successful results.

IV. CONCLUSION

As arguably the most successful program to issue driver's licenses to undocumented immigrants, it is not surprising that Utah has stringent requirements for granting this privilege. With stricter laws comes disincentive to wrongdoers. Pending financial feasibility, it would be prudent for Illinois to borrow the standards from the strictest system already in place and add additional safeguards, at least initially. Doing so would reduce the number of undocumented drivers, but, more importantly, limit attempts to abuse the new law and success rates.

At the top of the list of potential safeguards is the requirement for undocumented immigrants to submit fingerprints before receiving a driver's license. This extra precaution complements the facial recognition technology already in place and helps create a more comprehensive profile for undocumented immigrants in Illinois. Secondly, requiring proof of insurance, or something similar, prior to approving undocumented license applicants is worth exploring, as it would conceivably help thwart future problems. Likewise, aligning the license renewal period with the life of the applicant's insurance policy would assist state officials in confirming drivers' insured status on a more frequent basis. Officials must recognize potential challenges to the new licenses, including constitutional and profiling claims, and be ready to respond. Lastly, the state should make a

concerted effort to build incentives into the licensing scheme, which may include naturalization benefits.

While the proposals offered in this Comment may seem harsh on their face, it is important to keep in mind the unlawful status of the individual applying for the driver's license. In Illinois, driving is a privilege, not a right.¹⁹² The opposition advocating to deport each and every undocumented immigrant in Illinois is not thinking practically and must consider a more realistic approach. There are an estimated 250,000 people unlawfully residing in Illinois,¹⁹³ some present for unlawful reasons, but most simply trying to provide their families with a respectable life. Rather than ignoring this population of undocumented immigrants and continuing to allow them to blend into the shadows, Illinois has chosen to pass laws to enable certain members from this undocumented group to establish a more meaningful role in society. Supporters argue that the new law will give parents more opportunities to find better jobs, provide children with easier access to schools, and make driving in Illinois a safer task.¹⁹⁴ However, the law must be structured in a way to spotlight the undocumented immigrants who will make these contentions realities. By tightening requirements of SB 957 and closing loopholes, the new legislation achieves a compromise and serves Illinois well now and into the future.

192. *People v. Jung*, 733 N.E.2d 1256, 1259 (Ill. 2000).

193. *Cano*, *supra* note 25.

194. *See id.*