

Driver Licensing for Undocumented Immigrants in 2013:

How States are Reacting and the Effects on the Motor Vehicle Community

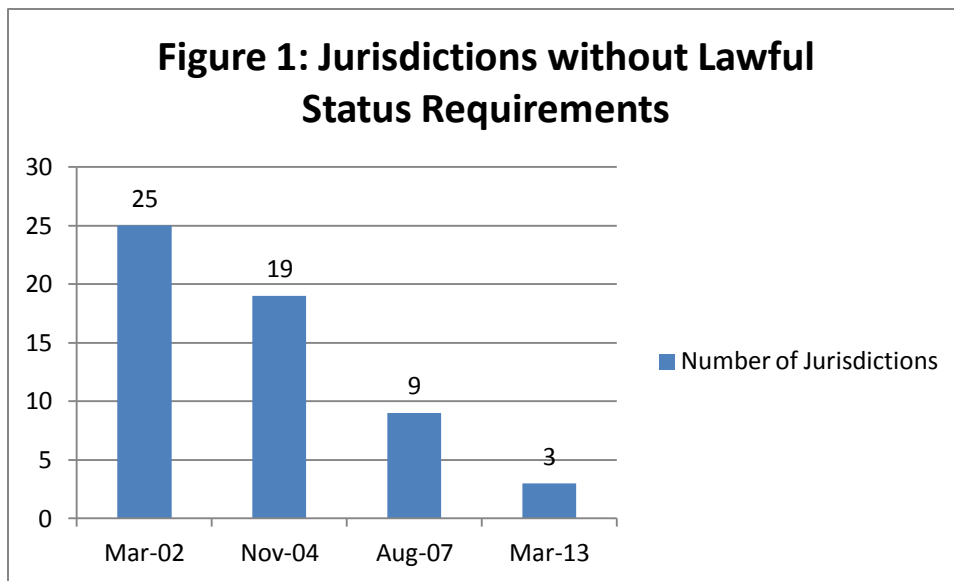
August 27, 2013

Executive Summary

Over the past year, granting driver's licenses and driving privileges to undocumented immigrants has become the focus of statehouses as comprehensive federal immigration legislation has taken shape and President Barack Obama issued a memorandum on June 15, 2012 introducing the "Deferred Action for Childhood Arrivals" (DACA) program for qualified individuals. State governments reacted to other changes in driver licensing over the past decade as well, such as REAL ID regulations which included lawful status requirements for the issuance of licenses that can be used for federal identification purposes. This paper analyzes the state legislative, executive, and administrative trends regarding the issuance of driver's licenses to the undocumented immigrant population that has occurred over the past decade.

I. Background

Since the turn of the new century, certain states have required that driver's license applicants provide proof of lawful status (legal presence) in addition to other documentation such as proof of identity and residency requirements. The American Association of Motor Vehicle Administrators (AAMVA) has conducted surveys and continually tracked which states have had lawful status requirements over the past decade. As of March 2002, 25 states did not require proof of lawful status; as of November 2004, this increased to 19. In August 2007, only 9 states did not have a lawful status requirement in place. As of March 2013, Alaska, New Mexico, and Washington were the only states that did not have lawful



status requirements for their standard issued driver's license. (Refer to Figure 1).

Congress passed the Real ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami

Relief, 2005 (H.R. 1268), and it was signed into law by the president on May 11, 2005.* The law required that the U.S. Department of Homeland Security (DHS) issue regulations regarding safeguards for driver's licenses and identification cards. DHS issued proposed regulations in March 2007 and then invited comments from the public. The final regulations were published in the Federal Register on January 29, 2008. These regulations established 18 benchmarks in which states had to meet so that each state's identification could be used for federal identification purposes. Some of these established the guidelines for lawful status requirements.

Particular states are pushing for the issuance of driver's licenses and driving privilege cards to immigrants who do not meet the lawful presence requirements of their states. In most cases, states granting licenses to undocumented immigrants mandate that they meet the state's driving standards, provide proof of identity and insurance, have been here for a certain amount of time, meet residency and other relevant requirements. New Mexico and Washington are two states, as of March 2013, which grant regular driver's licenses to illegal immigrants but do not require lawful status. As of March 2013, only two states, Utah and Illinois, had a process in place or had established a future date allowing for the issuance of driving privilege cards that are issued solely for driving purposes and do not serve as a form of identification. These temporary driving privilege cards generally have design standards that show they are different from regular driver's licenses, cannot be used for federal purposes, and have various obtainment processes for applicants.

On June 15, 2012, the Secretary of Homeland Security under the direction of President Barack Obama signed a memorandum directing the U.S. Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and U.S. Immigration and Customs Enforcement (ICE) to practice prosecutorial discretion towards qualified undocumented individuals who immigrated to the United States as children, referred to as the "Deferred Action for Childhood Arrivals" program. The Secretary of Homeland Security implemented the directive beginning on August 15, 2012. Individuals who request to be considered for deferred action must have:

- been under the age of 31 on June 15, 2012;
- arrived to the United States before reaching their 16th birthday;
- continuously resided in the United States from June 15, 2007 (last five years) to the present;
- been physically present in the United States on June 15, 2012, as well as at the time of requesting deferred action from USCIS;
- entered without inspection before June 15, 2012, or had any lawful immigration status expired on or before June 15, 2012;
- been in school at the time of application, or have already graduated or obtained a certificate of completion from high school, or have obtained a general education development (GED)

certificate, or are an honorably discharged veteran of the U.S. Coast Guard or the U.S. Armed Forces; and

- not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

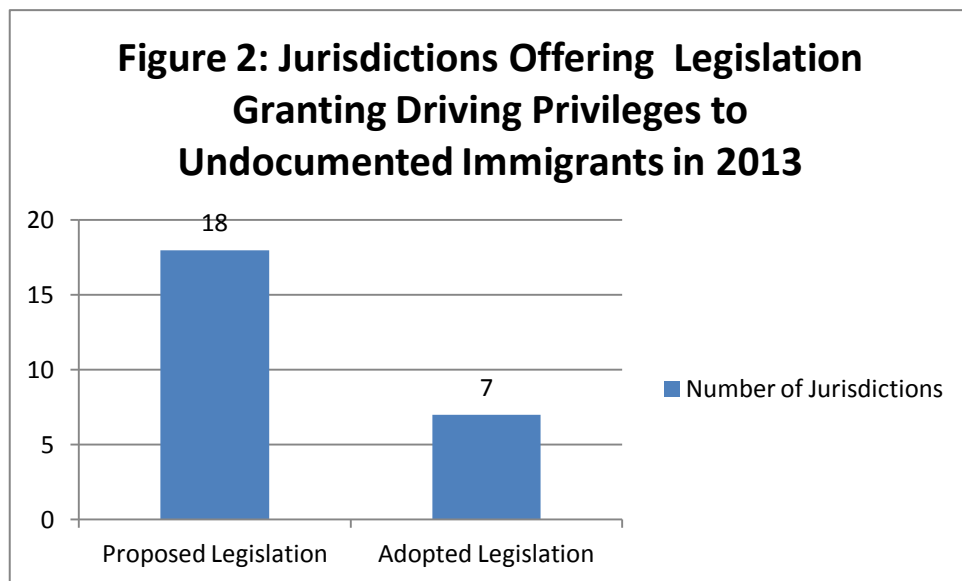
This subset of undocumented immigrants created a new categorical dilemma for state agencies in charge of driver's license issuance. Immediately, states such as Arizona and Nebraska released executive orders denying driver's licenses to DACA grantees. Administratively and legislatively, states have responded to this order by deciding whether or not to allow DACA grantees to be allowed driver's licenses. Some states have issued driver's licenses to this demographic, others have not, and other states have backtracked on their original verdict on whether or not to approve undocumented immigrants to receive them (such as Michigan and North Carolina). Lawsuits are also occurring as a result from immigrant and civil rights groups attempting to get bans struck down.

With political pressures and other forces necessitating a state response to the immigration issue, AAMVA presents and offers insights into the legislative, executive, and administrative trends regarding the issuance of driver's licenses to the undocumented immigrant population, including the DACA demographic. The trends observed will reveal the possible implications for motor vehicle and related agencies as they navigate an increasingly complex and evolving issue.

II. Current Trends

a) Licensing for Undocumented Immigrants

Three states, Alaska, New Mexico, and Washington, currently do not have lawful status requirements in order for individuals to obtain a standard driver's license, down from 25 in



March 2002. During this legislative year, 17 states and the District of Columbia have introduced legislation to allow for licenses for undocumented immigrants that cannot prove lawful status, with 7 adopting such legislation (Refer to Chart 1 and Map 1 in the Appendix and Figure 2).

The states that have adopted these legislative proposals each have their own distinctive way of issuing these driver's licenses and corresponding design standards, including what documents are needed to show proof of identity, date of birth, state residency, insurance requirements, length of life for the card issued, how the card must appear visually and what technical standards they must contain. For instance in Illinois, the second state to adopt a second tier of driving privilege cards specifically for undocumented immigrants, the state will issue the temporary visitor's driver's license to an applicant who has resided in the state for a period in excess of one year, is ineligible to obtain a social security number (SSN), and is unable to present documentation authorizing his/her presence in the U.S. Like Utah, Illinois's license may not be used to prove identity and will have a design standard to distinguish it from a standard issued one.

Similarly but with differing standards, to obtain a driver's license specifically for undocumented immigrants in Maryland, an applicant who cannot prove lawful presence or a valid SSN must provide documentation that he or she, for each of the previous two years, has filed a Maryland income tax return or has resided in the state and was claimed as a dependent by an individual who filed a Maryland income tax return. Additionally, the applicant must be otherwise eligible for the issuance of a standard driver's license, only lacking proof of lawful status or a valid SSN. This driver's license will have a distinct appearance.

As is evident from these two illustrations, all jurisdictions have their own standards for issuance and production. With the exception of Nevada, each state that issues or will issue a driving privilege card from this legislative season will have a distinctive demarcation noting that the card cannot be accepted for identification purposes. Nevada will contain "the same design as a driver's license and contain only the minimum number of changes" from a regular driver's license and a one year expiration date.

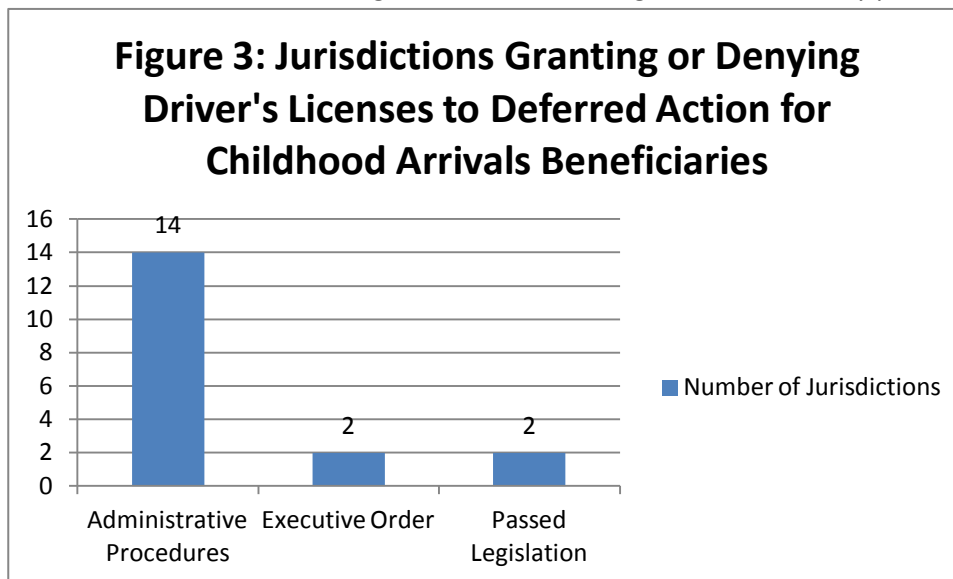
The first distribution date of this legislative season's new tier of temporary driver's licenses is scheduled to begin in November 2013, ten months after Illinois Governor Pat Quinn signed the state's bill into law. Chart 2 in the Appendix lists the other states that have adopted bills allowing for the issuance of driving privilege cards and the dates in which they will begin to be issued (ascending from the earliest issuance date):

b) Deferred Action for Childhood Arrivals

States have also reacted, not just legislatively, but also through administrative and executive actions to the issue of licensing undocumented immigrants. This specifically applies to a new subset of the undocumented immigrant population termed "Deferred Action for Childhood Arrivals" (DACA) beneficiaries. When the DACA memorandum was made public in June 15, 2012 by President Barack Obama, states immediately began preparing for the release and acceptance of applications by the U.S. Customs and Immigration Services (USCIS) for individuals who believed they were eligible for deferred action on August 15, 2012. AAMVA tracks which states have *explicitly* offered or denied driving privileges to those affected by the deferred action presidential directive through state executive orders,

administrative announcements, and passed legislation. AAMVA has employed this tracking procedure to understand the variety of methods states have utilized to respond to the order instead of direct inquiry and their reasoning for analytical purposes. Each state (Refer to Figure 3) differs as to why it chose to confer the decision it did. Certain states accepted deferred action as a basis for lawful status, or, in a completely opposite manner, others refused to recognize deferred action grantees as lawfully present residents.

Two states, Arizona and Nebraska, immediately put out executive orders denying driver’s licenses to DACA recipients. Arizona’s denial of licenses to DACA recipients was challenged in court by the Arizona



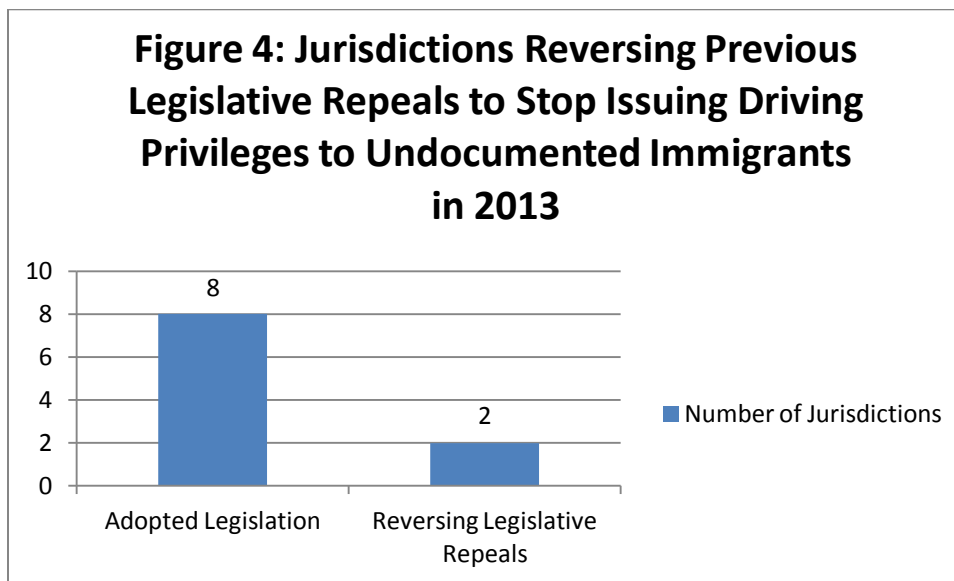
Dream Act Coalition, but a district federal court upheld the governor's executive order barring DACA recipients from receiving driver's licenses, refusing to issue a permanent injunction (*Arizona Dream Act Coalition, et. al. v. Brewer*). Similarly, the American Civil Liberties Union has filed a lawsuit in June against the state of Nebraska for its refusal to grant driving privileges to DACA recipients (*Hernandez v. Heineman*).

Legislatively, states have also seen movement of bills through their statehouses that would have implications for the DACA demographic. California passed into law Assembly Bill 2189 on September 30, 2012, which allows “Any federal document demonstrating favorable action by the federal government for acceptance of a person into the deferred action for childhood arrivals program shall satisfy the requirements of Section 12801.5”, the provision in the California code of statutes which requires a driver’s license applicant to provide documentation for lawful status. Reversely, both chambers of the Florida Legislature passed House Bill 235, which would have granted driver’s license privileges to DACA recipients, but the bill was vetoed by Governor Rick Scott on June 4, 2013 citing that “deferred action status does not confer substantive rights or lawful status upon an individual.”

Other states have made administrative announcements from state officials or licensing agencies through direct statements, website postings, or media inquiries, which have verified that DACA recipients would or would not be eligible for driver’s licenses. This includes Alabama, Connecticut, Iowa, and Michigan.

c) Reversals

Having adopted legislation for driver's licenses for undocumented immigrants or having reached decisions for driver's licenses to be bestowed to eligible DACA recipients, a number of jurisdictions have teetered back and forth on their decisions to grant licenses to these residents. Certain states that will begin issuing driver's licenses to undocumented immigrants in the next few years have already previously issued them and reversed their decision in the past. Maryland and Oregon are two states that have done so. All of these reversals occurred due to state executive pressure, but many cite the same reasons noted under Section "III. b) Possible Negative Setbacks" of this paper for motor vehicle agencies for the issuance of licenses to undocumented immigrants. Chart 3 in the Appendix lists the states that have reversed their decisions in previous years, the year the decision was repealed, and where the repeal was codified.



After a brief denial of driver's licenses to DACA recipients since the August 15, 2012 deferred action commencement date, states, such as Michigan and North Carolina, garnered intense media scrutiny for their DACA decisions. At first, both states decided they would not issue licenses to grantees. Michigan reversed its decision on February 1, 2013 after the Michigan Secretary of State issued a press release determining that DACA recipients have lawful status so should be able to receive driver's licenses pursuant to Michigan state law. In North Carolina, the state decided that it would issue driver's licenses after an opinion from the state's attorney general was given in favor of granting licenses on the grounds that DACA recipients possess lawful status. The North Carolina licenses have a distinctive "LEGAL PRESENCE NO LAWFUL STATUS" differentiating them from the standard license class. These are not the sole states to have made reversed decisions this legislative season but were notable cases nation-wide.

III. Significance to the AAMVA Community

The motor vehicle community finds itself at the center of interactions between undocumented immigrants and the state governments that have created special classes of driving privileges or have issued licenses in response to the federal deferred action directive. These acts have economic, social, and political implications for the motor vehicle community – some that foster the mission and operations of the motor vehicle community and those that create potential difficulties for it. Below is a list of such consequences:

a) Possible positive implications:

- Increasing insured and licensed drivers meeting state driving standards enhances the motor vehicle and law enforcement agencies' mission of public safety.
- Scrutinizing new licenses and standards would lead to improvements in the integrity of driver's license and issuance processes.
- Issuing special driving privilege licenses or certificate separates driving privileges from identifications in order to follow legislation, administrative orders, or executive directives without compromising identification standards.
- Decreases the number of undocumented immigrants avoiding contact with state and local law enforcement and also increases the pool of those present in identity systems.

b) Possible negative setbacks:

- Requiring special training and mechanisms for the issuance of new driver's licenses and the associated rise in costs for licensing agencies.
- Increases in other states' residents coming to a state that issues licenses to immigrants and using fraudulent documents to obtain a driver's license. A new tier of licenses also lends to an increase in the likelihood of forgery of them.
- Reciprocity and consistency problems between states will cause difficulties for law enforcement to impose out-of-state laws and also for states to follow state-specific reciprocity agreements.
- Granting certificates could be viewed as legitimizing unauthorized immigrants for law enforcement purposes as well as other enterprises who use driver's licenses in transactions, such as for use of entry into drinking establishments or use of identification at financial institutions.
- Creating troubles for law enforcement owing to the driving privilege licenses or certificates not properly identifying its carrier.
- Contributing to a potential rise in incidences of uninsured motorists. Driving certificates grant immigrants the privilege of driving with many states requiring car insurance, but many may revoke their coverage after showing such proof.

- Designing multiple tiers of driving privilege licenses and certificates, thus, various classifications of residences which could be interpreted as discriminatory, raises the likelihood for state agencies to be sued for civil rights' infractions.

IV. Trend Outlook

With a slew of states proposing legislation this year to permit undocumented immigrants to possess driving privileges and nearly half of them adopting their proposed measures, the trends suggest an increase in the likelihood that states will pass similar legislation in future years, especially if federal legislation takes greater hold in the public opinion arena. The probability is also strong if a state has previously issued such licenses but revoked their statute like Maryland and Oregon have done in the past (both have opted to reissue the licenses). Furthermore, a correlation exists between states that have given deferred action status grantees the right to obtain driver's licenses - five of these states granted undocumented immigrants driving privileges or will have granted DACA recipients licenses, according to AAMVA's tracking.

States that have decided to grant driver's licenses to illegal immigrants may also reverse their decisions, as has been seen with seven previous states in less than the past decade, resulting from public or political backlash. Public discord may also occur against states that have decisively determined not to issue driver's licenses through executive orders. These states may also encounter further lawsuits from opposition. States that have adopted design standards for the driver's licenses to set them apart from the standard ones may also encounter groups opposed to the creation of new license classes, citing discriminatory practices.

Of the eight states that instituted driver's licenses for undocumented immigrants this year, only one is led by Republican governors. For DACA recipients, the one state that vetoed the bill allowing them to receive licenses was Republican as well. Republican governors also issued the executive orders barring illegal immigrants from obtaining driver's licenses in Arizona and Nebraska. Based on these observations alone, Republican executives may indicate states where the issuance of driver's licenses to illegal immigrants becomes more difficult.

V. Conclusion

Lawful status decisions over the past decade, legislative actions for granting licenses to unauthorized immigrants, and reactions to the president's Deferred Action for Childhood Arrivals have culminated in trends that might forecast what state governments will do later this year and in future years regarding their undocumented immigrant populations. Since almost all jurisdictions have made lawful status a requirement for the obtainment of a driver's license (with REAL ID as an impetus for many of them), a strong possibility exists that states will continue to grant driving privileges for those residents who cannot prove lawful status requirements. States are more likely to do so also if they have already granted DACA recipients the right to drive or are under Democratic leadership. Similarly, states that

have previously granted driver's licenses to undocumented immigrants may decide to reverse their previous legislative repeals, but, this subject is two-fold. Conversely, states may also reverse this year's adopted legislation if the political, economic, or social consequences become too burdensome for motor vehicle agencies or the broader community. States on both sides of the policy decision also face court challenges as some already have, such as Arizona. If the court decisions are set in federal court, the opinions could set precedence for all states. Federal immigration legislation could also standardize the procedures for issuing driver's license. Nonetheless, states are still ultimately responsible for the issuance of driver's licenses, so an assortment of procedures will exist for the immediate future.

As this issue continues to evolve, AAMVA will update this document periodically with the latest trends and analysis to keep current.

For more information regarding the issue of driver licensing for undocumented immigrants, please contact Cian Cashin, Senior Manager, Government Affairs, at ccashin@aamva.org or Andrew Guevara, Coordinator, Government Affairs, at aguevara@aamva.org.

Appendix:

Map 1: Jurisdictions Proposing Legislation Granting Driving Privileges to Undocumented Immigrants in 2013 (including the District of Columbia)

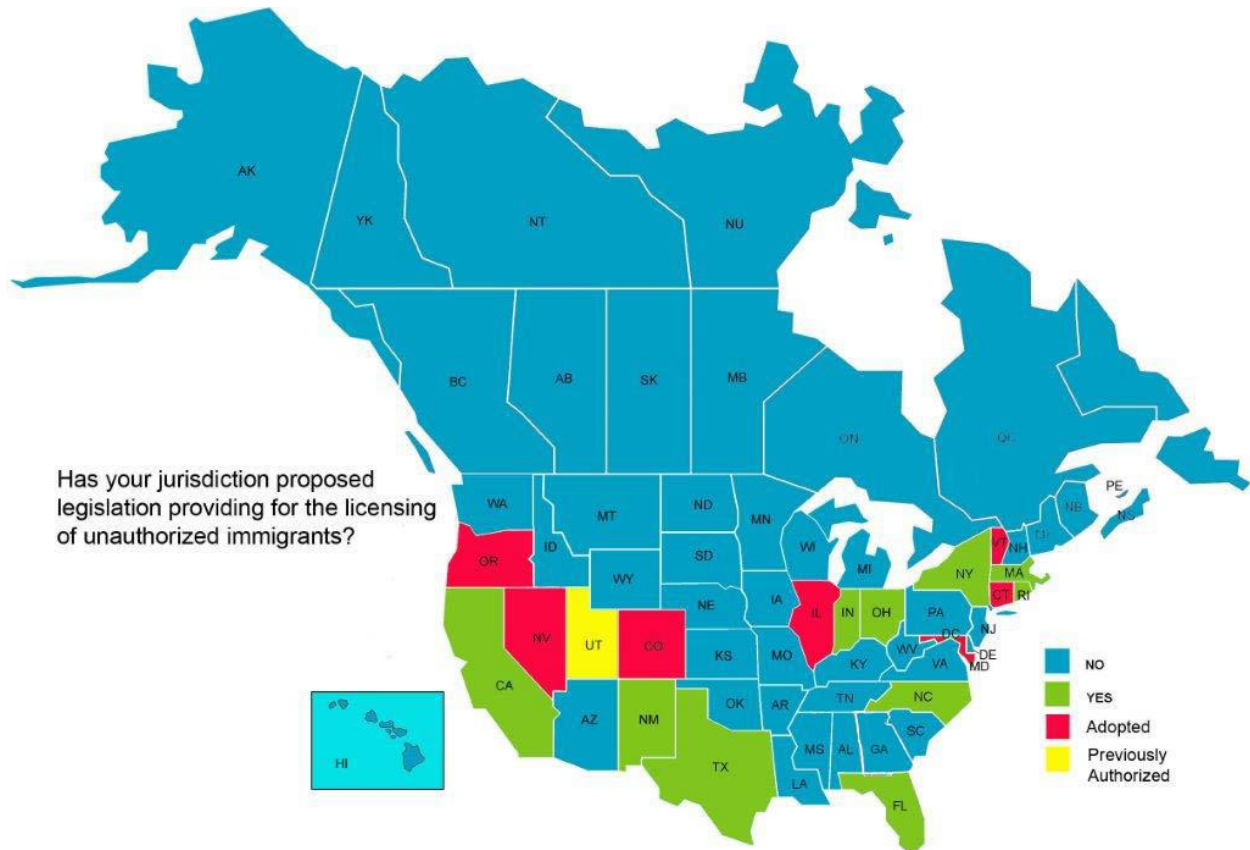


Chart 1: Jurisdictions Proposing Legislation Granting Driving Privileges to Undocumented Immigrants in 2013	
Jurisdiction	Proposed Legislation
California	2013 A.B. 60
Colorado	2013 S.B. 251
Connecticut	2013 H.B. 6495, Amend. LCO 765
District of Columbia	2013 L.B. 275
Florida	2013 H.B. 235
Illinois	2011 S.B. 957
Indiana	2013 S.B. 550
Maryland	2013 H.B. 789; S.B. 715

Massachusetts	2013 H.B. 3285
New Mexico	2013 H.B. 606; S.B. 521
Nevada	2013 S.B. 303
New York	2013 S.B. 1320
North Carolina	2013 H.B. 786
Ohio	2013 S.B. 62
Oregon	2013 S.B. 833
Rhode Island	2013 S.B. 422; 2013 S.B. 768
Texas	2013 H.B. 21; 2013 H.B. 3206
Vermont	2013 H.B. 289; 2013 S.B. 38

Chart 2: States Adopting Legislation Granting Driving Privileges to Undocumented Immigrants in 2013		
State	Issuance Date	Legislation
Illinois	November 2013	2011 S.B. 957
Maryland	January 1, 2014	2013 S.B. 715
Oregon	January 1, 2014	2013 S.B. 833
Vermont	January 1, 2014	2013 S.B. 38
Nevada	January 2, 2014	2013 S.B. 303
Colorado	August 1, 2014	2013 S.B. 251
Connecticut	January 1, 2015	2013 H.B. 6495, Amend. LCO 765

Chart 3: States Repealing Legislation Granting Driver's Licenses to Undocumented Immigrants		
State	Year	Citation
Hawaii	2010	2010 H.B. 134
Maryland	2009	2009 H.B. 387
Maine	2008	2008 H.P. 1669/L.D. 2309
Michigan	2008	2008 H.B. 4505
Oregon	2008	2008 S.B. 1080
Tennessee	2008	2004 S.B. 3430
California	2003	2003 S.B. 1

VII. Resources

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