



Immigrant-inclusive State and Local Policies Move Ahead in 2014-15



THE NATIONAL IMMIGRATION LAW CENTER is one of the leading legal advocacy organizations in the United States exclusively dedicated to defending and advancing the rights and opportunities of low-income immigrants and their families. Our work focuses on key issues that affect low-income immigrants' lives. These include paths to citizenship and legal status, access to health care and economic support programs, workers' rights, access to education and training, and immigration enforcement policy reforms. A distinctive feature of our approach is that we use core, integrated strategies—litigation, policy analysis and advocacy, and strategic communications—to advance our mission.

NILC is at the forefront of many of the country's greatest challenges when it comes to immigration issues. Over the past 35 years, we have won landmark legal decisions protecting basic human and civil rights, and advanced policies that reinforce our nation's values of equality, opportunity, and justice. Headquartered in Los Angeles with an office in Washington, DC, NILC has decades of federal advocacy experience combined with a long history of connections with state and local groups across the country. Policymakers, community organizers, legal advocates, and the media recognize NILC staff as experts on a wide range of issues that affect the lives of low-income immigrants.

PHOTO CREDITS

Cover and p. 4, Tanya Broder; p. 6, Nebraska Appleseed; p. 10, Tennessee Immigrant & Refugee Rights Coalition; p. 13, Health4All Coalition

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ACKNOWLEDGMENTS

THE PRINCIPAL AUTHORS OF THIS REPORT are Tanya Broder, Ignacia Rodriguez, Avidesh Moussavian, Melissa Keaney, Matthew Lopas, Joshua Stehlik, and Alvaro M. Huerta.

Special thanks to Darcy Tromanhauser, Julio Calderon, Denisse Rojas, and Betzabel Estudillo, whose advocacy is featured here.

The authors also thank the following NILC staff and consultants for reviewing and providing helpful suggestions for the report: Adela de la Torre, Joan Friedland, Jenny Rejeske, Kelly Richter, and Marielena Hincapié. Richard Irwin edited, designed, and formatted the report.

After a landmark year in 2013,¹ the immigrant-inclusive state measures enacted that year were implemented and gained ground in 2014–15. States continued to expand access to higher education, driver’s licenses, health care, and professional licenses for eligible immigrants, regardless of their immigration status. Cities and counties adopted policies aimed at disentangling local law enforcement from federal immigration enforcement and explored providing access to legal counsel, health care, and municipal identification documents to their residents. State and local governments established offices charged with integrating immigrants and invested in assistance for people seeking U.S. citizenship or other immigration relief. Although a few restrictive measures passed—and though some serious threats are ongoing—immigrants’ rights advocates and allies defeated virtually all of the significant anti-immigrant proposals filed in the past two years.

The November 2014 elections and President Barack Obama’s announcement that month that several million people could become eligible for temporary administrative immigration relief altered the state and local landscape profoundly. Republicans captured several governor’s offices, gained strength in already red states, and now control both legislative chambers in 30 states.² The proposed expansion of the Deferred Action for Childhood Arrivals (DACA) program and the creation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program generated substantial backlash but also offered opportunities for state and local communities to integrate their residents more fully. In December 2014, a 26-state coalition challenged the new and expanded deferred action programs in court. In contrast, the District of Columbia and 15 states (home to over half of the DACA- and DAPA-eligible population); 84 mayors and county officials; law enforcement leaders; educators; and children’s, labor, civil, immigrants’, and other rights groups have weighed in to support administrative relief.³ In February 2015, a federal district court judge in Texas issued an order that temporarily blocks the DAPA and expanded DACA programs from being implemented. After a court of appeals panel upheld this order, the United States asked the Supreme Court to review the case.⁴

A resurgence of restrictive state bills, including measures aimed at undermining the president’s deferred action programs, were introduced in 2015. State officials also threatened to unravel longstanding policies, such as Texas’s tuition equity law, which have been in place for over a decade. Civic engagement by immigrant communities helped defeat dozens of anti-immigrant bills, including proposals to repeal Texas’s tuition equity law, restrict access to health care for children with special needs, and

entangle local officials in federal immigration enforcement. Attempts to deny driver's licenses to immigrants in Georgia and Kansas and to restrict the employment of individuals with deferred action in Kansas similarly failed. Indeed, Nebraska's Republican-controlled legislature voted 34-10 to provide driver's licenses to deferred action recipients, overriding their governor's veto. Although there were a few setbacks, advocacy and litigation preserved access to in-state tuition, driver's licenses, professional licenses, and health care for DACA recipients in other states.

In November 2014, the Obama administration also announced that the controversial "Secure Communities" immigration enforcement program would be eliminated and that it would be replaced by a "Priority Enforcement Program" (PEP). In response to organizing, litigation, and the likelihood that counties could be liable for the costs of detaining people for immigration purposes, over 350 localities across the country adopted policies limiting their response to federal immigration detainer requests.⁵ States and localities are determining how to promote trust between immigrant communities and local law enforcement under PEP, given the problems associated with its predecessor and concerns that the new program will raise similar issues. Recent events, such as a fatal shooting by an immigrant in San Francisco,⁶ have fueled new backlash against community trust policies. These policies are being defended and debated at the federal, state, and local levels. Policymakers in several states have filed or have threatened to file bills that prevent localities from limiting their entanglement with U.S. Immigration and Customs Enforcement (ICE).

The hostile rhetoric in the current presidential race, as well as attempts by governors and other elected officials to shut the door on refugees fleeing Syria,⁷ could undermine efforts to create a welcoming climate for immigrant residents or, equally, could backfire against politicians hoping to secure the votes of Latinos, Asian Americans, and new citizens.⁸ Either way, the groundwork done in the state and local campaigns can help preserve inclusive policies and influence the national conversation on immigration.

EXPANDING ACCESS TO DRIVER'S LICENSES

Successful Efforts to Expand Access

Once a politically toxic issue, efforts to make driver's licenses available to undocumented immigrants have enjoyed remarkable success in the past few years. In 2013 alone, eight states—California, Colorado, Connecticut, Illinois, Maryland, Nevada, Oregon, and Vermont—as well as the District of Columbia and the Commonwealth of Puerto Rico enacted laws granting driver's licenses to eligible applicants regardless of their immigration status. Three states—New Mexico, Utah, and Washington—already issued licenses to their otherwise-eligible residents. Although **Oregon's** law was overturned by a referendum in November 2014, the other states moved forward to implement the laws in 2014 and 2015.

This year, two more states—**Hawaii** and **Delaware**—enacted laws expanding access to driver's licenses. As a result, *approximately 40 percent of the nation's*

car impoundments or, in some cases, to deportation. Another benefit became apparent just months after California implemented its new law: The number of people volunteering to become organ donors increased significantly.¹²

States implementing the new driver's license laws tackled logistical and other challenges, such as establishing documentation requirements, appointment procedures, and privacy policies; developing linguistically accessible materials; and engaging in effective community outreach.¹³ In some states, legislatures and agencies revised laws or procedures to address these issues. Applicants in Illinois initially experienced delays in securing appointments, but the process's pace eventually picked up.¹⁴ Nevada's applicants may not have been aware that they would be tested on the spot, leading to a 90 percent fail rate on the written test in the first month. After a few months of community education, however, the pass rate improved.¹⁵ A legislative budget committee in Colorado declined to use the revenue generated by applicants to fund offices issuing the state's new licenses; the five offices originally designated were insufficient to meet the need. The committee proposed to fund only one office but, in response to strong pushback by immigrants and advocates, the legislature ultimately compromised on three.¹⁶ Advocacy to direct this funding toward eligible applicants will continue.¹⁷

California's investment in its new law, including outreach and education, meetings with stakeholders, and staffing, has shown impressive results: In the first nine months, over a half million "AB 60" licenses had been issued.¹⁸ This reflects not only a significant commitment by the state agency, but the active involvement of community-based organizations working to address ongoing implementation issues.

More information on driver's license campaigns and laws is available in NILC's Access to Driver's Licenses Toolkit, www.nilc.org/DLacesstoolkit1.html.

Access to Driver's Licenses for DACA Recipients

Although the rules and document requirements vary, every state now makes driver's licenses available to youth who have received deferred action under the DACA program, if they are otherwise eligible.¹⁹ **Arizona** was ordered to do so after a federal district court and the Ninth Circuit Court of Appeals found that the state's policy of denying driver's licenses to DACA recipients was discriminatory. On



January 22, 2015, the district court issued an order permanently halting Arizona's policy.²⁰

In May 2015, **Nebraska's** legislature

SHIFTING THE TIDE

How Immigrant Youth Won Driver’s Licenses for DACA Recipients in Nebraska

In 2015, the Nebraska Legislature passed a law providing driver’s licenses to youth granted deferred action under DACA. This victory was a result of strong organizing and local conversations by DACA youth across the state, with support from a wide range of allies, including the Nebraska Cattlemen, Nebraska Restaurant Association, League of Nebraska Municipalities, all three major chambers of commerce and small town chambers, Nebraska Catholic Conference, safety groups, educators, city officials, and small-town newspaper editorials. With overwhelming bipartisan support, the legislature voted 34 to 10 to override the governor’s veto of the measure. Supporters included 20 Republicans, 13 Democrats, and 1 Independent in Nebraska’s officially nonpartisan unicameral legislature. Before the law was enacted, Nebraska had been the only state in the country that continued to deny driver’s licenses to DACA youth.

The success was not only an important policy change that made an enormous practical difference in the lives of young Nebraskans and the communities that benefit from their talents, but it also represented a larger shift in the conversation on immigration in Nebraska. After speaking with DACA youth, legislators had a clearer and more personal sense of the issue, and of immigrant youth and families’ contributions in their districts. During the floor debate, legislators talked about the importance of commonsense immigration policies (including updated federal laws) for Nebraska’s future and the message these policies send to talented young people about how they are included in Nebraska communities.

Two key factors that helped accomplish the success were (1) several years of alliance-building that brought together an increasingly broad range of Nebraska perspectives in support of commonsense federal immigration laws and local integration policies (more than 50 diverse Nebraska organizations representing thousands of Nebraskans support fixing the outdated federal immigration laws), and (2) widespread efforts by hundreds of DACA youth across the state (supported by Young Nebraskans in Action, Heartland Workers Center, Justice for Our Neighbors, Centro Hispano, Unity in Action, and others) holding local conversations and events with their state legislators and city leaders, which led to deep community support for the bill and new allies.

More information is available at <https://neappleseed.org/blog/18739>.

—Darcy Tromanhauser, Nebraska Appleseed

overrode Governor Pete Ricketts’s veto of a bill confirming that driver’s licenses are available to all non–U.S. citizens listed in the REAL ID Act of 2005, including people who have received deferred action.²¹ With this legislative victory and the litigation blocking Arizona’s restrictive policy, *all 50 states now issue driver’s licenses to immigrant youth granted deferred action under DACA.*

In contrast, efforts to impose new restrictions on driver's licenses for DACA or DAPA recipients gained no traction. A Kansas bill that would have denied driver's licenses to recipients of either DACA or DAPA and prohibited employers from hiring them or deducting wages paid to them as a business expense did not even receive a committee hearing. A legislative attempt in Georgia to deny licenses to DACA recipients also died.



The driver's license issue has been central in *State of Texas, et al. v. United States, et al.*, a case brought by Texas and 25 other states to challenge President Obama's policy of making deferred action available, via DAPA and expanded DACA, to certain longtime residents of the U.S. Texas claims that the cost of issuing licenses to deferred action recipients constitutes an injury that gives it standing to sue in federal court. Others have argued that granting deferred action and driver's licenses to a state's longtime residents will benefit the state economically and socially.²² Having a driver's license can help DACA recipients secure jobs that better match their skills, and, as their incomes rise, their tax contributions increase as well.²³

PRESERVING AND EXPANDING ACCESS TO HIGHER EDUCATION

States continued to improve access to higher education by providing in-state tuition rates, financial aid, or scholarships to immigrant students.

Tuition Equity

Tuition equity policies allow students who attend a state's high schools for a certain number of years and meet other criteria to pay in-state tuition rates when they attend a state college or university, regardless of their immigration status.

After **Florida** enacted a tuition equity law in 2014, at least 21 states had tuition equity laws or policies in place.²⁴ Advocates have been working to ensure that students can benefit from these laws and policies. This year, **Connecticut** improved access to in-state tuition by reducing from four to two the number of years of in-state high school attendance required to qualify for college in-state tuition and by ensuring that survivors of trafficking and other serious crimes granted T or U nonimmigrant status would be able to qualify for the in-state rates.

Over 75 percent of foreign-born people in the U.S. now live in a state with a tuition equity law or policy.

Financial Aid and Scholarships

A growing number of states also invested in financial or institutional aid or scholarships for immigrant students.

In 2014, **Washington** enacted a law providing state needs grants to students who meet certain criteria, regardless of their immigration status. The measure, sponsored by a Republican senator, passed with strong bipartisan support.

California established a DREAM loan fund to fill in the gap for students who are eligible for state but not federal financial aid. In 2015, **Utah** enacted a law providing access to privately funded scholarships for students regardless of their immigration status. And **Oregon**'s governor signed a law making state financial aid, grants, and scholarships available to students who qualify for the state's tuition equity law.

At least 8 states— California, Hawaii, New Mexico, Minnesota, Oklahoma, Oregon, Texas, and Washington—now offer state financial aid to students who are eligible for in-state rates, regardless of their immigration status. California, Illinois, Minnesota, and Utah offer institutional aid or scholarships.

Benefits of Expanding Access to Higher Education

Campaigns to expand access to higher education for immigrant students continue to gain ground and are expected to proceed next year. Tuition equity bills were filed in at least 12 states in 2015: Arizona, Indiana, Massachusetts, Mississippi, Missouri, New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and the District of Columbia. Proposals offering state financial or institutional aid to students regardless of their immigration status were introduced in at least 8 states: Connecticut, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, South Carolina, and Utah.

As numerous studies have shown, improving access to higher education increases the earning capacity of a state's residents as well as potential revenue to fund

Winning and Implementing Tuition Equity in Florida

After 11 years of advocacy, immigrant youth persuaded the Florida legislature to enact a tuition equity law. Weeks before it passed, dozens of students took over the capital to show support for the bill. The Republican-controlled legislature approved the legislation by a vote of 26-13 in the Senate and 81-33 in the House.

Governor Rick Scott signed the bill into law on June 9, 2014.

The legislation allows students, regardless of immigration status, who attended a Florida high school for three consecutive years to apply for the in-state tuition waiver. Students must apply for admission to a higher education institution (college, university, technical or vocational school) within 24 months of graduating from high school.

Julio Calderon and the FLIC staff have been working to ensure that eligible students can benefit from the new law, and will continue to advocate to expand access to higher education for seasonal workers, older students returning to school, and students who need additional credits to graduate.

—Julio Calderon, Florida Immigrant Coalition Inc. (FLIC)

Access to Education for DACA Recipients

U.S. Citizenship and Immigration Services (USCIS) has clarified that students granted deferred action under the DACA program are lawfully present in the U.S. and are not precluded by federal law from establishing domicile in the U.S.²⁸ In states that don't have tuition equity policies (as described above), students with DACA may qualify for in-state tuition rates, depending on how their state or institution defines state residence, documentation requirements, and other factors. States as diverse as Arizona, Alabama, Massachusetts, New Hampshire, Ohio, Virginia and others have determined that DACA recipients may establish residency for tuition purposes under existing rules.

In May 2015, the **Arizona** Board of Regents adopted a policy allowing DACA recipients who meet other residency requirements to pay in-state tuition rates at the public colleges under its jurisdiction. The board's decision followed a superior court ruling that DACA recipients, as lawfully present students, are not barred by Arizona's Proposition 300 from paying in-state tuition rates. The ruling allowed the Maricopa Community College District to restore access to students with DACA and prompted other Arizona colleges to offer access to in-state rates for these students. Arizona's attorney general has appealed this decision.

A **Tennessee** bill that would have secured DACA recipients' access to in-state tuition fell one vote short of being passed in 2015. The bill's status will be preserved next year, when it will need to pass only one of the legislature's chambers before going to the governor.

In **Missouri**, where the governor vetoed a bill that denies certain scholarships to students who are neither U.S. citizens nor lawful permanent residents, the state legislature overrode the veto. The measure, which targets DACA recipients, could deny scholarships to refugees, asylees, and other lawfully present students as well.

In addition, the preamble to a Missouri appropriations bill states that funds will be denied to public higher education institutions that offer students with an "unlawful immigration status" a lower tuition rate than international students pay. In response, some colleges began to charge higher tuition rates to DACA recipients. The governor questioned whether the appropriations language is enforceable, since it does not alter the statute. Several lawsuits have been filed against colleges that have charged Missouri residents with DACA a nonresident tuition rate.²⁹

Georgia remains among the most restrictive states, banning DACA recipients from *enrolling* in its five competitive colleges. Advocacy and litigation challenging these restrictions and seeking access to in-state tuition for DACA recipients in Georgia continue. The Georgia Budget and Policy Institute has concluded that Georgia could add an estimated \$10 million per year to state and local treasuries through higher incomes from better-skilled workers if it allowed all Georgia residents with work authorization to pay in-state tuition rates at any public college or university.³⁰

ACCESS TO PROFESSIONAL LICENSES

Licenses to Practice Law

As an increasing number of immigrant youth graduate from college, their interest in pursuing graduate school and obtaining professional licenses is growing. The rules governing immigrant eligibility for professional licenses vary by state, and often by agency. Some states or agencies restrict access to applicants who do not have a Social Security number or who do not have a specific immigration status. Nevertheless, efforts to expand access to professional licenses for immigrants have advanced in recent years.

The first wave of advocacy on professional licenses for immigrants focused on licenses to practice law. The Supreme Court of **California** examined whether Sergio Garcia, an undocumented immigrant, could qualify for a law license. In October 2013, while this case was pending, the California legislature enacted a measure clarifying that individuals who are not lawfully present in the U.S. could be admitted to practice law. The court confirmed that, in light of this statute, Sergio Garcia could be admitted to the state bar.³¹

In March 2014, the **Florida** Supreme Court issued an advisory opinion concluding that, absent a new state law, undocumented immigrants are ineligible to obtain a law license in that state. In May 2014, Florida's governor signed a bill providing access to law licenses for people brought to the U.S. as minors, who have work authorization and a Social Security number, and who have lived in the U.S. for more than 10 years.



Pioneers Opening Access to Careers in Health

Pre-Health Dreamers (PHD) has worked tirelessly to improve access to careers in health and science for undocumented youth. PHD was formed in 2012 by Denisse Rojas, New Latthivongskorn, and Angel Ku, who aspired to pursue graduate degrees in the health sciences. They faced significant barriers due to their immigration status, including a lack of information about graduate programs that might admit them and how to finance their education.

PHD worked with a coalition of education, civil rights, and immigrants' rights organizations on a proposal to expand access to professional licenses, regardless of the applicant's immigration status. At the time, many talented Californians were barred from practicing in their profession or pursuing professional degrees because the application for licensure required a Social Security number. The measure, signed in September 2014, allows applicants to use an Individual Taxpayer Identification Number (ITIN), in lieu of an SSN, to qualify for licenses administered by about 40 state boards.

Voices from the undocumented community were key in passing the legislation. Ms. Rojas testified on the importance of fulfilling the career aspirations of talented youth and how passage of the measure would help California's economy. PHD members educated policymakers, participated in media campaigns, and shared written testimonies. These first-hand accounts persuaded legislators to support the bill.

PHD's advocacy and education has helped immigrant students gain access to reduced medical school application fees, medical and dental schools, as well as other graduate programs and career paths.

For more information, visit www.phdreamers.org.

—Denisse Rojas, co-founder of Pre-Health Dreamers

Finally, the Supreme Court of **New York's** Appellate Division held that the state judiciary's rules provide sufficient authority, even in the absence of a statute, for DACA recipients to practice law in the state.³²

In 2015, **Illinois** enacted a measure allowing DACA recipients to obtain a law license.

Licenses to Teach

Immigrant youth have also pursued access to the teaching profession. In May 2015, **Nevada's** governor signed a measure allowing people with work authorization, including DACA recipients, to qualify for teaching licenses. Teach for America encourages DACA recipients to pursue teaching opportunities and has placed 50 DACA recipients in 10 regions across the country in 2015.³³

Other Professional or Occupational Licenses

California legislators reached further, introducing a measure that allows anyone, regardless of their immigration status, to obtain any professional license for which they are otherwise eligible. The law, which passed with bipartisan support in 2014, will be implemented by January 2016. It allows applicants who have an Individual Taxpayer Identification Number (ITIN) to qualify for dozens of occupational licenses, if they are otherwise eligible.³⁴ Similar campaigns are expected in other states next year.

ACCESS TO HEALTH CARE

Affordable Care Act: Gaps and Barriers

The Affordable Care Act (ACA), which was intended to make health insurance available to most U.S. residents, nevertheless left significant gaps in coverage, especially for immigrant families. The implementation of the new ACA health insurance marketplaces shone a bright light on the law's inequities that affect immigrants. Not only are a significant percentage of immigrants left without any access to the health coverage system created by the ACA, but their family members who *are* eligible for coverage and subsidies under the ACA must overcome significant barriers to obtain those benefits.

Some states have funded enrollment assisters in immigrant communities, developed communications in multiple languages, and adjusted verification procedures in order to encourage immigrant families to secure coverage. However, the difficulties in enrolling these households—and the millions left ineligible—underscore the ongoing need to break down barriers and provide inclusive care. States and localities across the country considered new options for covering the remaining uninsured.

State Efforts to Fill Gaps

California advocates and health care groups launched the Health for All campaign in order to ensure that all of the state's residents, regardless of their immigration status, have access to health care coverage. Health coverage, they emphasized, improves access to health care as well as health outcomes. Access to preventive care helps catch problems early, before they become more complicated and costly emergencies. Increasing access to health coverage can also help ensure that the state's workforce and children remain healthy and productive. One study found that investing in health coverage for all low-income California residents would cost only 2 cents on each dollar currently spent on the state's Medicaid program (Medi-Cal) and would be offset substantially by other savings.³⁵

This year, California enacted a law ensuring that the state's children, regardless of their immigration status, will become eligible for Medi-Cal no sooner than May 2016. The Health for All participants plan to continue their advocacy in 2016. They hope to secure Medi-Cal for all low-income adults and seek federal permission to allow all moderate income adults to buy coverage in the state's ACA health insurance



marketplace. During the past two years, several counties in California, including **Los Angeles**, launched or expanded programs providing health services for residents whose immigration status makes them ineligible for state or federal programs. And the boards of supervisors of **Santa Clara and Contra Costa Counties** recently approved pilot programs to offer access to care for residents regardless of their immigration status or age.

Similar initiatives gained momentum in other states and localities. In October 2015, **New York City** introduced “Direct Access,” a pilot program that will use a combination of public and private funds to cover about 1,000 people, most of whom are expected to be undocumented. The Office of the Mayor of New York City had convened a taskforce of stakeholders, including immigrants’ rights advocates, to inform the development of the program. The Hastings Center and the New York Immigration Coalition published a report with recommendations for filling gaps in health coverage in New York and potentially other localities.³⁶

Hawaii is providing assistance to low-income residents who are lawfully present in the U.S., to help them pay health insurance premiums for coverage purchased in the health care marketplace. And **Illinois** ensured that noncitizens with end-stage renal disease receiving emergency renal dialysis can qualify for a kidney transplant, if they are otherwise eligible.

Medicaid and CHIP Coverage

States continued to take advantage of federal options in the Medicaid and Children’s Health Insurance Program (CHIP) to cover lawfully residing children and pregnant women, without a waiting period, or to provide prenatal care under CHIP regardless of the woman’s immigration status.

In 2014, the **Colorado** legislature funded the state’s election to cover lawfully present children in its Medicaid and CHIP programs, allowing the policy to take

Health for All Campaign in California

The California Immigrant Policy Center (CIPC) and Health Access California lead the Health for All campaign, a coalition of more than 80 organizations comprised of immigrants' rights, health advocacy, labor, and faith-based groups. Formed in 2014, the coalition advocates for health programs that cover all families, regardless of their immigration status. In 2015, it played a critical role in expanding the state's Medi-Cal program to undocumented children and in advocating for county safety-net care. CIPC and the campaign engage immigrant communities and ensure that directly affected individuals are at the table when discussing strategy.

Community-driven efforts raise the visibility of these issues, as families courageously share their stories and advocate for reform. The campaign uses cultural events, press conferences, and op-eds from experts and individuals to reach legislators and the public. In building momentum for expanding health care coverage, for example, CIPC organized the Undocu-CAREvan, a van filled with undocumented and uninsured activists who traveled 300 miles across the state to share testimonies at community forums, mobilize immigrants, and highlight the urgency of making Health for All a reality.

Due to the tremendous work of community members and advocates, this year Governor Jerry Brown signed measures extending health coverage to children regardless of their immigration status. The Health for All campaign will continue its state and local advocacy to expand health coverage to all adults. CIPC and its allies remain committed to the principle that increasing access to health care will improve the quality of life for all Californians.

—Betzabel Estudillo, California Immigrant Policy Center

effect. During the past two years, several other states, including **Ohio**, **West Virginia**, and **Wyoming** elected the federal option to cover lawfully residing children and/or pregnant women. **Oregon** expanded statewide its coverage of prenatal care regardless of the woman's immigration status. In total, *35 states have elected one or more of these federal options to cover immigrant children or pregnant women.*³⁷

MUNICIPAL IDENTIFICATION DOCUMENTS

Benefits of Making Municipal IDs Available

Across the country, several cities have begun issuing municipal identification cards to their residents regardless of immigration status. While the cards are designed to benefit all residents, they can be particularly important for vulnerable populations, including undocumented immigrants, people who are homeless,

seniors, and others who may face barriers in obtaining government-issued identification.

Among other benefits, municipal ID cards may offer access to important services. For example, having an ID can make it possible to open a checking or savings account or to get a library card.³⁸ Municipal ID cards allow people who face difficulty obtaining other forms of identification to establish their identity in other settings, such as hospital emergency rooms, clinics, their children’s schools, and when interacting with law enforcement officials.

Having an identification document can help make immigrants feel more comfortable reporting crimes and interacting with government agencies.³⁹ As a result, municipal ID cards promote immigrant integration into civic life and overall community safety.

Municipal ID Programs and Prospects

In 2007, New Haven (CT) was the first city to issue municipal IDs to its residents. Since then, a growing number of municipalities, including Los Angeles, Oakland, Richmond, and San Francisco (CA); Washtenaw County (MI), Asbury Park, Mercer County, and Plainfield (NJ); New York City (NY); and Washington, DC, have passed or implemented municipal ID programs.

In 2015, **Hartford** (CT); **Newark**, **Perth Amboy**, and **Roselle** (NJ); and **Johnson County** (IA)—a pioneer in the Midwest—adopted these policies. Most recently, the **Milwaukee County** (WI) Board of Supervisors voted 14-3 to create a municipal ID card for 2016.

In January 2015, **New York City** rolled out its new municipal ID card, and by June over 350,000 local residents had enrolled to receive one.⁴⁰ The program’s success is attributed in large part to the fact that the cards offer free or discounted membership to 33 cultural institutions around the city, encouraging both U.S. citizen and noncitizen residents to apply for one.⁴¹

Other municipalities currently considering whether to issue municipal identification cards include Phoenix and Tucson (AZ); Bridgeport (CT); Chicago (IL); New Orleans (LA); Boston (MA); Ann Arbor (MI); Bridgeton, Elizabeth, Hudson, and Union Counties (NJ); Philadelphia and Pittsburgh (PA); Richmond (VA); Nashville (TN); Austin, Brownsville, and El Paso (TX); and Seattle (WA).⁴²

Restrictions Enacted in North Carolina

Although municipal ID cards are intended to benefit all residents, integrate immigrants, and promote community safety, at least one state has attempted to restrict their use. The **North Carolina** legislature passed a bill at the end of its 2015 session that would prohibit judges, law enforcement officers, or other government officials from accepting municipal ID cards or IDs issued by nonprofit organizations, with a narrow exception.⁴³ Law enforcement officials, who had supported an identity document developed by a faith-based organization in Greensboro, helped secure an exception to allow officers to accept municipal and privately issued ID cards from people who have no other form of ID.⁴⁴

ACCESS TO LEGAL COUNSEL

States and localities have begun to address the need for people who are in immigration proceedings to have meaningful access to legal representation.

Need for and Benefits of Programs Providing Access to Counsel

Despite all that is at stake when an immigrant “respondent” has to appear in immigration court—the possibility of being ordered deported and separated permanently from family members in the U.S.—the U.S. government does not provide counsel to low-income immigrants who are in removal proceedings.⁴⁵ As a result, most people who are in such proceedings face the potentially devastating outcomes without being meaningfully informed or represented by a legal expert. In 2014, 45 percent of noncitizens in removal proceedings across the country (75,570 people) whose cases were completed did not have a lawyer when they went to immigration court.⁴⁶ The first national study of access to counsel in U.S. immigration courts found that, from 2007 to 2012, only 14 percent of detained respondents had legal representation, compared with 66 percent of nondetained respondents.⁴⁷ Even in large cities with vibrant legal services communities, the rates of representation in immigration proceedings, particularly for those who are in immigration detention, remain low.

Representation has a dramatic effect on outcomes. A 2011 study found that only 3 percent of the *unrepresented and detained* people who went through immigration proceedings in New York City’s immigration courts were allowed to stay in the U.S., compared with 74 percent of those who were *represented and not detained*.⁴⁸

Programs That Provide Access to Counsel

Publicly and privately funded efforts have begun to address this crisis in our immigration courts and to fill the tremendous gap in access to justice. Some have focused explicitly on certain populations. **California**, for example, responded to the increased number of vulnerable children fleeing violence in Central America, during the summer of 2014, with an emergency \$3 million grant towards immigration legal services.

Other efforts, such as the New York Immigrant Family Unity Project (NYIFUP), pushed for a permanent and universal representation model that provides appointed counsel to all detained immigrants—regardless of the relief sought or their age—during the entire length of their removal proceedings. NYIFUP began as a pilot project in 2013 in **New York City** Immigration Court and has since expanded to a fully funded program which ensures that every detained immigrant appearing in the courts that comprise New York City Immigration Court has a lawyer during removal proceedings. Last year, New York City allocated \$4.9 million to the program, which is projected to improve outcomes for detained immigrants by 1,000 percent.⁴⁹

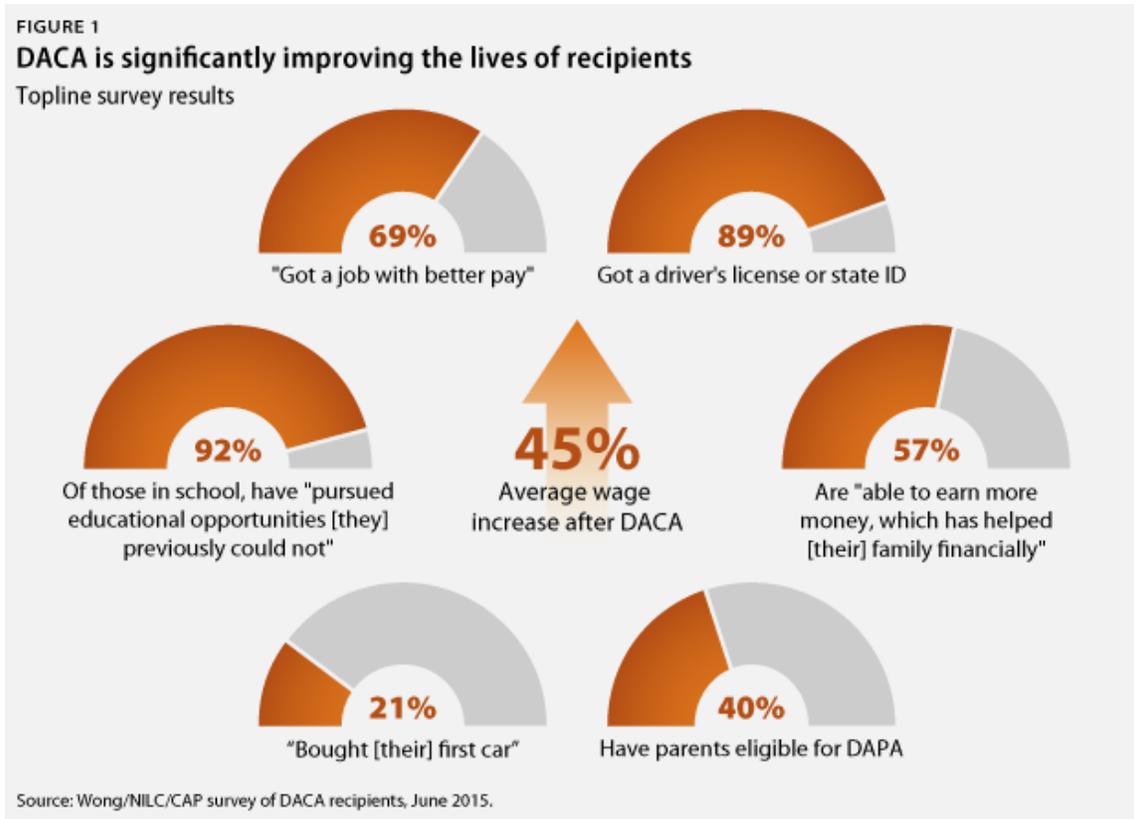
As a result of NYIFUP’s success, a similar program now operates in the Buffalo Federal Detention Center in **Batavia, New York**, with plans to expand to the detention jail in **Ulster County, New York**, by the end of this year. In **Newark, New Jersey**, a similar privately funded pilot program is under way.

These policy victories were won not only by arguments rooted in fundamental due process rights, but also because of data that demonstrate the very significant and calculable savings—including by the foster care system, by employers, and by the health care system—that an access-to-counsel program provides.⁵⁰ Campaigns to promote the universal representation of detained noncitizens are being considered in other cities, including Arlington (VA), Baltimore, Boston, Los Angeles, San Diego, and San Francisco. The representation programs inevitably will lead to a decline in detention costs and greater efficiency in immigration courts.

DEFENDING AND INVESTING IN IMMIGRATION RELIEF

Benefits of Investing in Immigration Relief

Many state and local governments have recognized the value of ensuring that their longtime residents have access to immigration relief and authorization to work in the U.S. For example, since 2012, 681,345 youth have been granted deferred action and the opportunity to work lawfully in the U.S. under the DACA program.⁵¹ The program has been hugely successful, not only for these youth, but for their families and the communities in which they live. A nationwide survey revealed that after receiving DACA, immigrant youth were able to increase their earnings, help their family financially, improve their educational opportunities, obtain a driver’s license, and purchase their first car.⁵²



States, Cities, Law Enforcement, and Others Register Their Support for DAPA and Expanded DACA

On November 20, 2014, President Barack Obama announced an expansion of the DACA program and the creation of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). Together, these two initiatives would extend protection from deportation and the possibility of obtaining work authorization to over 4.4 million eligible immigrants with close ties to the U.S.⁵³

A month after the announcement, however, 26 states, led by Texas, filed a lawsuit challenging the president’s authority to exercise the federal government’s prosecutorial discretion (by granting deferred action to individuals under the DAPA and *expanded* DACA programs) and to grant work authorization to those who would qualify under the programs. In February 2015, just a few days before the expansion of DACA was to take effect, a federal district court in Texas issued an order that temporarily halted both the expanded DACA and DAPA programs. On November 9, 2015, a panel of the Fifth Circuit Court of Appeals upheld the district court’s order. On November 20, 2015, the U.S. Department of Justice filed a request with the U.S. Supreme Court asking it to review the district court’s decision.⁵⁴

Groups that filed “amicus” (friend-of-the-court) briefs in support of the new programs—and urging the Supreme Court to review the Texas district court’s decision—included one made up of 15 states and the District of Columbia; another of 84 mayors, cities, and local governments, as well as the National League of Cities and the U.S. Conference of Mayors; another of 40 current and former chiefs of police and sheriffs, joined by the Major Cities Chiefs Association and the Police Executive Research Forum; another of 224 immigrants’ rights, civil rights, labor, and immigrant service–provider organizations; another of 218 current U.S. senators and representatives; a bipartisan group of former members of Congress; and a group of former federal immigration and Homeland Security officials.⁵⁵ Over half of the people who are potentially eligible for one of the new programs live in the states that joined in filing the “states and DC” amicus supporting DAPA and expanded DACA.

The amicus briefs highlight the economic and social benefits of the existing DACA program, as well as the potential benefits of expanding the availability of deferred action under the programs announced in November 2014. The various groups emphasize that allowing eligible residents to live and work lawfully without the constant fear of being separated from their families would be a wise investment in the health and well-being of local communities.

Rallies and Other Actions in Support of Expanded Immigration Relief

Immigrants and advocates across the country organized rallies, protests, vigils, fasts, and civil disobedience actions in support of expanded DACA and DAPA. In **New Orleans**, Louisiana, for example, a number of immigrants’ rights protesters rallied outside of the Fifth Circuit Court of Appeals courthouse during oral argument on the *Texas v. U.S.* case. Meanwhile, over a dozen immigrants were arrested for blocking the streets outside of the U.S. Immigration and Customs Enforcement office

a few miles away, in protest of the continued detention and deportation of people who have longstanding ties to their stateside communities.⁵⁶

While the president’s administrative actions to expand access to immigration relief have been held up in the courts, the original DACA program—the one announced in June 2012—remains in effect. State and local governments have supported outreach to their residents who are potentially eligible for DACA as well as to people who may be eligible for a permanent lawful immigration status or U.S. citizenship. In 2015, **California** allocated \$15 million for legal assistance to residents seeking naturalization or deferred action. **Minnesota** similarly considered awarding assistance grants to nonprofit organizations, to help people seeking deferred action. And in December 2015, **New York City**’s mayor announced the creation of ActionNYC, a \$7.9 million initiative to “provide high quality immigration-related information and legal support to thousands of New Yorkers starting in early spring 2016.”⁵⁷

DISENTANGLING LOCAL OFFICIALS FROM IMMIGRATION ENFORCEMENT

Momentum for “Community Trust” Policies Builds

In 2014 an overwhelming shift occurred toward policies that disentangle state and local criminal justice systems from federal immigration enforcement. Such policies often are referred to as “community trust” policies because they reflect a goal of rebuilding trust between immigrant communities and police—trust that has been undermined by police entanglement in immigration enforcement, by racial profiling practices, and by police killings of community members. Each policy differs in its details, but they share the aim of limiting the involvement of local officials in immigration enforcement. At the close of 2013, three states—California, Colorado, and Connecticut—had passed laws limiting police engagement in immigration enforcement, and a handful of localities had adopted similar policies.⁵⁸ By the end of 2014, **Rhode Island** and over 300 counties and cities had embraced this approach.⁵⁹

The tremendous momentum in support of these policies in 2014 was driven by community members who spoke powerfully about the chilling effect that results from police involvement in immigration enforcement and their fears of coming forward as victims of or witnesses to crime. Also critical to this movement’s success was a decision by a federal district court in Oregon finding that law enforcement officials in Clackamas County had violated a woman’s constitutional rights by keeping her in custody solely on the basis of an immigration hold, or “detainer” request, issued by ICE.⁶⁰ Several other courts similarly concluded that such detentions can be challenged as violating the Fourth Amendment.⁶¹ Based in part on concerns about liability, numerous counties and cities adopted policies limiting the circumstances under which people would be detained based on ICE’s requests. In **California**, every single county adopted such a policy limiting compliance with ICE requests for detention.

California Addresses Workers' Rights, Racial Profiling, Criminal Justice Reforms, and More

In the 20 years since Proposition 187 passed,ⁱ immigrants in California have organized, naturalized, and voted in record numbers.ⁱⁱ Anti-immigrant policies increasingly have been viewed as politically fatal, and many of the newly elected legislators not only come from, but are accountable to, immigrant communities.

As a result of years of strategic advocacy, California has enacted a series of inclusive measures, expanding access to higher education, health care, driver's licenses, and professional licenses for immigrants, protecting workers' rights, and building trust between immigrants and local law enforcement. And in 2014, the legislature formally removed Proposition 187's language from the books.ⁱⁱⁱ

This year, California enacted a package of bills, extending health coverage to children, protecting workers' rights, prohibiting discrimination and racial profiling, facilitating access to immigration status, and reforming criminal justice procedures.^{iv}

The new laws:

- **prohibit discrimination** based on citizenship, immigration status and primary language, codifying existing interpretations of the state's civil rights laws
- **impose civil penalties on employers who misuse E-Verify** (the federal government's Web-based employment eligibility verification system) in ways that violate federal rules, such as using the program to prescreen job applicants
- **preserve access to workers' compensation** regardless of the worker's immigration status
- **protect against wage theft** by strengthening the ability of the California labor commissioner to collect on judgments for unpaid wages and creating new penalties for employers who fail to satisfy final judgments for unpaid wages
- **address racial profiling**, prohibiting racial or identity profiling by law enforcement agencies, and requiring data collection, reporting, and oversight
- **ensure accurate advice regarding immigration consequences of proposed dispositions**, by codifying court rulings requiring defense counsel to provide accurate advice on the immigration consequences of proposed dispositions, and requiring prosecutors to take immigration consequences into account in plea negotiations
- **allow withdrawal of a plea if the person completes a deferred entry of judgment**, so that people who commit certain drug-related offenses may withdraw their original guilty plea upon completion of a "deferred entry of judgment" program (e.g., a drug rehabilitation program)
- **protect against disclosure of juvenile records to federal officials** absent a court order

- **facilitate access to Special Immigrant Juvenile Status** for youth who have been neglected, abandoned, or abused
- **require law enforcement agencies to issue U-visa certifications to survivors of serious crimes** who have been, or are likely to be helpful in, detecting, investigating, or prosecuting these crimes
- **confirm that the immigration status of a child is irrelevant in seeking remedies or liability** under any applicable law

In the coming year, advocates plan to pursue immigrant-friendly changes to health care, education, workers' rights, criminal justice, and other policies that build upon these laws.

“Secure Communities” Replaced by Priority Enforcement Program

On November 20, 2014, the federal government responded to the growing rejection of ICE requests for detention and the continuing opposition to the “S-Comm” immigration enforcement program, announcing that S-Comm would be replaced by a new initiative called the Priority Enforcement Program (PEP).⁶²

The memo announcing this change says that any ICE request for a local law enforcement agency to detain someone for immigration enforcement purposes will be supported by probable cause and, presumably, will avoid the constitutional problems raised by S-Comm. The memo explains that, in general, only people convicted of certain offenses will be scrutinized to determine whether they meet an ICE priority for enforcement. But, critically, under both S-Comm and PEP, a person's fingerprints and information are shared with ICE when the person is arrested and booked—*prior to conviction*.

Since the announcement, DHS has engaged in a concerted effort to bring jurisdictions that had passed community trust policies “back into the fold” by trying to convince them that PEP will address all the concerns raised by the earlier S-Comm program. But community groups that fought hard against S-Comm are concerned that the new PEP program will repeat many of the harmful practices they witnessed under S-Comm. As a result of activists' efforts and organizing, localities continued to pass community trust policies in 2015, bringing the total number of counties and cities with such a policy to over 350.⁶³

Response to Tragic Shooting in San Francisco

As localities considered how to respond to the new PEP program—and whether to amend their existing community trust policies—a July 1, 2015, tragedy in San Francisco brought the issue into the national spotlight. A fatal shooting, allegedly by an undocumented immigrant who had been released from the San Francisco Sheriff Department's custody, sparked a vitriolic national debate about “sanctuary” policies.⁶⁴ An attempt to deny federal funding to jurisdictions with community trust

policies was defeated in the U.S. Senate in October.⁶⁵ Local elected officials, law enforcement leaders, labor unions, advocates for domestic violence survivors, and others opposed the federal bill, arguing that it would harm low-income residents, compromise public safety, and impede the ability of local police to work with immigrant communities in preventing and solving crimes.⁶⁶

During the same period, **North Carolina** enacted a law barring localities from limiting the enforcement of federal immigration law and prohibiting the acceptance of consular, municipal, and faith-based identification documents, with a narrow exception. Since then, legislators in several other states have filed or have threatened to introduce similar bills.

By contrast, the **San Francisco** Board of Supervisors affirmed the city and county's longstanding commitment to community trust policies. One supervisor, who spoke passionately about the need to maintain the policy, declared, "We can talk all we want about improving public safety in this building, but if people in our community don't trust law enforcement, no level of police staffing is going to make our community safe."⁶⁷

CONCLUSION

In the absence of federal legislative reform, inclusive policies have been achieved through strategic alliances, organizing, and advocacy aimed at improving immigrants' daily lives. As civic participation by immigrants and communities of color increases, policymakers will need to take positions on issues that are important to these communities—and will be held accountable for their commitments. Educators, businesses, labor, and faith-based, civil rights and community leaders have recognized that inclusive policies yield economic and social benefits.

By contrast, local officials, law enforcement agencies, and business owners have witnessed the negative fiscal, public safety, and political consequences of restrictive policies. Although there is a continued need for defense, the next few years present opportunities to promote immigrant integration, racial justice, and criminal justice reforms and to engage in the national discussion led by the Movement for Black Lives. The progress and power built in state and local campaigns will shape the national conversation on these issues.

NOTES

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- ⁴⁸ Peter L. Markowitz, et al. (the steering committee of the New York Immigrant Representation Study Report), “Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings,” 33 *Cardozo Law Review* 2, 2011, www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf, p. 383.
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- ⁵⁰ *Id.*
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- ⁵⁴ “Cert Petition Filed in the Case of Texas vs. United States,” *supra* note 4.
- ⁵⁵ See, e.g., *Amicus Briefs Filed with the Supreme Court Make the Case for Lifting the Injunction Against DAPA and Expanded DACA* (NILC, Dec. 8, 2015), www.nilc.org/USAvTxAmicusPoints.html; “Coalition of Immigration, Civil Rights, Labor and Social Service Groups Urges Supreme Court to Protect President’s Executive Actions on Immigration,” NILC news release, Dec. 1, 2015, www.nilc.org/nr120115.html; “Cities and Counties File Legal Brief Urging U.S. Supreme Court Action on Immigration Reforms,” Cities United for Immigration Action news release, Dec. 4, 2015, <http://citiesforaction.us/statement120415/>. Earlier in the year, groups had filed amicus briefs with the Fifth Circuit Court of Appeal. See *Diverse Groups File Briefs in Support of the President’s Executive Actions*, (NILC, Apr. 7, 2015), www.nilc.org/TXvUSamicusNov6.html.
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- ⁵⁹ “Detainer Map,” *supra* note 5.
- ⁶⁰ *Miranda-Oliveras v. Clackamas County*, No. 3:12-cv-02317-ST (D. Or. April 11, 2014).
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⁶⁷ Emily Green, “Supervisors Say SF’s Sanctuary City Policies Are Just Fine,” *San Francisco Chronicle*, Oct. 20, 2015, www.sfgate.com/bayarea/article/Supervisors-say-SF-s-sanctuary-city-policies-6580287.php. See also Laura M. Holson, “San Francisco Votes to Keep Shielding Immigrants from Deportation Officials,” *New York Times*, Oct. 20, 2015, www.nytimes.com/2015/10/21/us/san-francisco-votes-to-keep-shielding-immigrants-from-deportation-officials.html.

NOTES: California Addresses Workers’ Rights, Racial Profiling, Criminal Justice Reforms, and More (pp. 20–21)

ⁱ Proposition 187 was a California ballot initiative adopted by voters in 1994 that would have, among other things, denied access to public education, health care and other public services to certain immigrants, and would have required schools, government agencies and law enforcement officials to report individuals suspected of being undocumented to immigration authorities. Federal courts held that almost all of its provisions were unconstitutional and blocked their implementation.

ⁱⁱ Matt Barreto, “The Prop 187 Effect: How the California GOP Lost Their Way and Implications for 2014 and Beyond,” *Latino Decisions*, Oct. 17, 2013, www.latinodecisions.com/blog/2013/10/17/prop187effect/.

ⁱⁱⁱ Patrick McGreevy and Phil Willon, “Gov. Brown Repeals Unenforced Sections of Prop. 187,” *Los Angeles Times*, Sept. 15, 2014, www.latimes.com/local/political/la-me-pc-gov-brown-repeals-unenforced-sections-of-prop-187-20140915-story.html. See also Gabriela Villareal, *The California Blueprint: Two Decades of Pro-Immigrant Transformation*

(California Immigrant Policy Center, May 2015), www.caimmigrant.org/wp-content/uploads/2015/05/The-California-Blueprint-1.pdf; S. Karthick Ramakrishnan & Allan Colbern, “The California Package: Immigrant Integration and the Evolving Nature of State Citizenship,” 6 *Policy Matters* 3 (U.C. Riverside School of Public Policy, Spring 2015), <http://policymatters.ucr.edu/wp-content/uploads/2015/06/pmatters-vol6-3-state-citizenship.pdf>; *Inclusive Policies*, *supra* note 1.

^{iv} See, e.g., Angie Junck, “On Immigration Reform, California Issues a Bold Message,” *Huffington Post*, Oct. 21, 2015, www.huffingtonpost.com/angie-junck/on-immigration-reform-cal_b_8341600.html.