

MEMORANDUM

From: CONECT
Re: Driver's License Fraud in Other States
Date: May 3, 2013

SUMMARY

You asked for data on the prevalence of fraud in other states that grant driver's licenses to undocumented immigrants. This memo provides data for New Mexico and debunks the 30 percent figure cited by others for that state. It also provides information about Washington, though we have been able to find less data there. Finally, by way of comparison, it provides information on driver's license fraud in states that *deny* driver's licenses to undocumented immigrants.

The bottom line is that New Mexico data shows that fraud rates are low, while Washington data shows that fraud is controllable. And driver's license fraud is also problem in states that deny driver's licenses to undocumented immigrants. Indeed, there is no good data indicating that allowing undocumented immigrants to apply for licenses would increase fraud at all.

Finally, it is worth noting that the main concern about fraud is about people applying from out-of-state, albeit using their true identities. This is both a less concerning type of fraud than identity fraud, and also much less likely to happen with any frequency in Connecticut as the number of states allowing undocumented immigrants to apply for licenses grows.

I. NEW MEXICO

The rate of attempted fraud in New Mexico is quite low. Fraud in driver's license *applications* has only been detected in 5% of the overall applications submitted to the Tax Fraud Investigations Division of the Taxation and Revenue Department for review.¹ The rate of successful identity fraud is even lower. An ongoing audit found that more than 99% of foreign national drivers in New Mexico who received driver's licenses used their true identity.² The rate of fraud by out-of-state foreign residents may be even lower still. According to the League of Women Voters, as of early 2012, New Mexico had issued 90,000 licenses to foreign nationals, with only four cases of non-New Mexico residents fraudulently obtaining a driver's license.³ It is also worth noting that the New Mexico Senate has passed further fraud-prevention measures, but the Governor opposed these, instead favoring full repeal.

¹ New Mexico Motor Vehicle Division — S.U. Mahesh, Public Relations Chief, Department of Transportation (as reported by the ACLU of Maryland).

² New Mexico Motor Vehicle Division — Ken Ortiz, Director (as reported by the ACLU of Maryland).

³ League of Women Voters, Fact Sheet on Drivers' License for All: A Public Safety Issue 2012, at 5, <http://www.lwvnm.org/newsletters/Winter12.pdf>.

New Mexico's conservative Republican Governor, Susanna Martinez, has long opposed the state's 2003 law allowing residents to obtain driver's licenses regardless of immigration status. The Martinez Administration has tried to spread claims from an illegal and invalid "study" that she created when she came into office in 2011, purporting to show that 30 percent of licenses granted to undocumented immigrants were the subject of fraud. However, further investigation into the study's methodology shows that it has no validity. Immigration advocates insisted that the program "was meant to fan pro-repeal sentiment in time for a 2011 special session of lawmakers."⁴

After taking office, Governor Martinez created, without legislative authorization, the "Foreign National Residency Certification Program." The program randomly selected 10,000 of the 80,000 foreign nationals who hold driver's licenses under New Mexico law and mailed them letters asking them to "show up in person at MVD centers in Albuquerque or Las Cruces to reverify their New Mexico residency."⁵ In a state as vast as New Mexico, these locations were often hours away from the resident's home. In fact, the program bears close resemblance to a tactic called "voter caging" that Republicans such as Jesse Helms have used to purge minority voters from the voter rolls. The Brennan Center at the NYU Law School calls voter caging "notoriously unreliable"⁶ and the Department of Justice has sued to challenge such practices, successfully obtaining consent decrees.⁷

The New Mexico certification program was itself declared illegal and halted. The Mexican American Legal Defense Fund (MALDEF), a major civil rights organization, brought suit on behalf of a group of New Mexico legislators and residents. In September 2011, Judge Singleton of the First Judicial District of New Mexico issued a temporary restraining order, holding that "irreparable injury will occur in the form of constitutional deprivations to the applicants if Defendant is not immediately restrained."⁸ Then, in October 2012, the parties settled and Judge Singleton permanently halted the program. The New Mexico Taxation and Revenue Department, which administered the program, was ordered to pay plaintiffs' attorneys' fees and other costs within 30 days, barred Secretary Padilla and the MVD from sending out new

⁴ Kent Paterson, Salem News, New Mexico Immigrant Advocates Hail Court Action, October 7, 2012, <http://www.salem-news.com/articles/october072012/immig-driving-law.php>

⁵ Capitol Report New Mexico, August 24, 2011, <http://www.capitolreportnewmexico.com/2011/08/lawsuit-filed-in-response-to-gov-martinez-action-on-re-verifying-drivers-licenses-for-foreign-nationals/>

⁶ Brennan Center for Justice at New York University School of Law, Voter Challenges & Caging November 9, 2012, <http://www.brennancenter.org/analysis/voter-challenges-caging>. Andrew Allison Justin Levitt, Brennan Center for Justice at New York University School of Law, Reported Instances of Voter Caging, June 29, 2007, <http://www.brennancenter.org/analysis/reported-instances-voter-caging>.

⁷ Andrew Allison and Justin Levitt, Brennan Center for Justice at New York University School of Law, Reported Instances of Voter Caging, June 29, 2007, <http://www.brennancenter.org/analysis/reported-instances-voter-caging>.

⁸ Garcia v. Padilla, 2011 WL 4427748, Sept. 13, 2011.

communications related to the driver's license certification program, and prohibited from suspending or canceling licenses solely because the letter was returned undeliverable.⁹

The program was also implemented in a racially discriminatory manner, treating Latino and non-Latino license holders differently. For example, a lawyer for MALDEF reported that, "in some cases Latinos, especially Mexican nationals, were not allowed to leave the MVD [Motor Vehicle Department] office to fetch additional documents required by the state agency, while Anglo immigrants were permitted to do so and return with the paperwork."¹⁰ When a Motor Vehicles Department employee, Laura A. Montañó, objected to her supervisor about these improper and discriminatory acts, she was fired. MALDEF then brought a whistleblower lawsuit on her behalf:

The many improper acts alleged by the whistleblower include: MVD's refusal to allow a Latina mother who was in labor to reschedule her appointment; the cancellation of driver's licenses for failure to provide information not required by state regulations; MVD's refusal to provide adequate Spanish language speaking services for Spanish-speaking drivers; and a commitment by MVD to cancel as many ID cards and driver's licenses as possible.¹¹

Despite these serious problems with the recertification program, Governor Martinez has used the results of the program to spread the notion that there is widespread fraud. In particular, her administration has spread the claim that, because 3,100 of the 10,000 letters were returned undeliverable, one can conclude that 30 percent of licenses were obtained fraudulently. Of course, there is no such logical connection between undeliverable mailings and the conclusion of fraud. MALDEF lawyers inspected the letters but were "able to identify only a 'handful' in which it appeared the person might have never lived at an address given to the MVD."¹² In the "vast majority" of cases, the letters were "likely returned because the person had moved or otherwise done nothing else wrong."¹³ Indeed, the similar policy of "voter caging" is considered "notoriously unreliable,"¹⁴ not to mention racially discriminatory and often illegal.¹⁵

⁹ Kent Paterson, Salem News, New Mexico Immigrant Advocates Hail Court Action, October 7, 2012, <http://www.salem-news.com/articles/october072012/immig-driving-law.php>

¹⁰ Kent Paterson, Salem News, New Mexico Immigrant Advocates Hail Court Action, October 7, 2012, <http://www.salem-news.com/articles/october072012/immig-driving-law.php>

¹¹ MALDEF Sues New Mexico Motor Vehicle Division (MVD) for Retaliating Against Whistleblower, http://www.maldef.org/news/releases/nm_mvd/

¹² Kent Paterson, Salem News, New Mexico Immigrant Advocates Hail Court Action, October 7, 2012, <http://www.salem-news.com/articles/october072012/immig-driving-law.php>

¹³ *Id.*

¹⁴ Brennan Center for Justice at New York University School of Law, Voter Challenges & Caging November 9, 2012, <http://www.brennancenter.org/analysis/voter-challenges-caging>. Andrew Allison Justin Levitt, Brennan Center for Justice at New York University School of Law, Reported Instances of Voter Caging, June 29, 2007, <http://www.brennancenter.org/analysis/reported-instances-voter-caging>.

¹⁵ Andrew Allison and Justin Levitt, Brennan Center for Justice at New York University School of Law, Reported Instances of Voter Caging, June 29, 2007, <http://www.brennancenter.org/analysis/reported-instances-voter-caging>.

II. WASHINGTON

Washington has been successful in deterring out-of-state applications by changing its rules to require proof of residency. Washington allows undocumented immigrants and others without a Social Security number to obtain a driver's license if they can prove identity and residence in the state.¹⁶ The current residency verification policies date from 2010. The residency policies were introduced to ensure that only Washington residents obtain Washington driver's licenses.¹⁷

Their residency policies have been quite successful. Before the rules were implemented, it appears that Washington did not require any proof of residency, and the percentage of applicants without a Social Security number had peaked at 27.5 percent of all applicants, far above the percentage of Washington's population that is estimated to be undocumented. Since Washington implemented these new verification policies in April 2011, the percentage of applicants for driver's licenses without Social Security numbers has fallen dramatically, to monthly rates ranging from 5.1 percent to 12.1 percent of applications.¹⁸ This demonstrates that basic documentary requirements are effective at preventing out-of-state applicants from applying for driver's licenses.

FRAUD IN STATES THAT DENY LICENSES TO UNDOCUMENTED IMMIGRANTS

Whenever governments distribute benefits, some people will seek to fraudulently obtain those benefits. This is true of driver's licenses regardless of whether they are available to undocumented immigrants. Indeed, the black market for identity documents has proliferated in states that deny driver's licenses to immigrants based on immigration status. Examples of recent fraud in states that deny DL's to undocumented immigrants:¹⁹

- In 2005, several Colorado MVD employees were convicted of selling DL's for \$2,500.
- Fraud doubled from 2008 to 2009 in North Carolina leading the state to centralize its DL issuing process in 2009.
- In Connecticut, two men, including an MVD employee, were convicted in 2009 for racketeering, conspiracy to commit forgery, and bribery for steering hundreds of people to illegally purchase DL's for \$600 at a local MVD.
- In 2009, seven Florida MVD employees were arrested for collecting over \$2 million to illegally issue 1,500 DL's to people who presented fraudulent documents.

¹⁶ See generally Washington State Department of Licensing, Proof of Identity, <http://www.dol.wa.gov/driverslicense/idproof.html>.

¹⁷ Wash. Dep't of Licensing, Policy Change for First Time Driver License Applicants Will Reduce Fraud (Nov. 4, 2010), <http://www.dol.wa.gov/about/news/2010/201011policychangereducefraud.html>

¹⁸ One America With Justice for All, Change to Current Driver's License Laws and Policies Unnecessary and Costly (2011), <https://www.weareoneamerica.org/sites/weareoneamerica.org/files/DL%20Fact%20Sheet%20on%20New%20Admission%20Policies%2011%2017%2011.pdf>

¹⁹ Somos Unido un Pueblo, Fraud Fact Sheet, <http://www.somosunpueblounido.org/DLNews/facts-about-fraud/>

- In 2011, a federal court found MVD workers in Georgia provided DL's to hundreds of undocumented immigrants who paid \$500 each.

CONCLUSION

Driver's licenses for undocumented immigrants do not present a distinct fraud problem from driver's licenses in general. In both cases, there is some fraud, but the rate is low, and sound policy can control it. Meanwhile, the benefits of including undocumented immigrants in a licensing regime are large.