

October 3, 2012

Hon. Senator Peg Flory, Chair
Study Committee on Migrant Worker Access to
Driver's Licenses and Non-Driver Identification Cards
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Dear Senator Flory and members of the Study Committee:

The National Economic and Social Rights Initiative (NESRI) is pleased to provide the following written testimony for consideration by the Study Committee on Migrant Worker Access to Driver's Licenses and Non-Driver Identification Cards. As an organization that works with communities to advance the human rights and inherent dignity of each individual, we are encouraged by your consideration of this issue, and hope that our research and perspective will facilitate a solution to this challenge that upholds the universality and equity that all Vermont residents seek and deserve.

This letter is divided into three sections.¹ The first section discusses the amendments in Vermont laws that are necessary to make drivers' licenses/ID for undocumented residents both possible and accessible. The second section focuses on several alternatives to address fraudulent applications, including a discussion on how the states of New Mexico and Washington dealt with this issue. The last section discusses how the REAL ID Act and REAL ID-complaint licenses can coexist with standard drivers' licenses.

Creating Access: There are no federal laws or policies that prohibit Vermont from extending its driving privileges to undocumented residents. In fact, many states have at one time or another allowed undocumented residents to obtain standard licenses. The states of New Mexico and Washington currently provide for the issuance of licenses to undocumented residents. Since Vermont currently prohibits the licensing of its undocumented residents, as a threshold matter, the Legislature must remove from 23 V.R.A § 603(d) the requirement that non-citizens submit proof of legal status in order to obtain drivers' licenses/IDs as well as the provision limiting the period of licenses/IDs for non-citizens to the duration of their lawful status. These changes are necessary to give many residents who do not have easy access to the currently acceptable documentary proofs a realistic opportunity to obtain a license/ID.

- a) Vermont currently requires non-citizens to provide a valid Social Security number or

¹ NESRI understands that Vermont is considering providing undocumented Vermont residents with a standard license or identification card, as opposed to alternative options. NESRI believes this choice is prudent in

proof of ineligibility to participate in the Social Security program.² There is no federal or state statute requiring that Vermont do so,³ and in fact several states have no Social Security requirement.⁴ Vermont should also allow, but not require, persons to use an Individual Tax Identification Number (ITINs) in lieu of a Social Security number, which are available to immigrants who do not have lawful status.⁵

- b) As for proofs of identity, Vermont currently accepts several Canadian government-issued IDs.⁶ The Legislature should expand the list of acceptable documents to include other foreign drivers' licenses, voter identification cards, consular identification documents,⁷ certified birth certificates (with translation), and foreign passports even if these passports do not contain a visa stamp. The DMV Commissioner should be authorized to evaluate the relative integrity of these documents, with the administrative power to update this list of acceptable documents from time to time.⁸ This type of flexible system is preferable to a fixed list of documents that can only be changed by legislative action. Proof of identity can, and usually is, supplemented with other forms of identification cards like school and employer IDs. Flexibility and breadth are two important features of an inclusive identity verification scheme.⁹
- c) The list of residency documents Vermont already accepts is relatively broad,¹⁰ but the Legislature should expand the list to emulate more inclusive states like Oregon¹¹ to create

² Vt. Dep't of Motor Vehicles, *State Requirements for Driver Licenses/Permits/ID's*, <http://dmv.vermont.gov/licenses/driver's/requirements>.

³ Title 23, Chapter 9 of the Vermont Statutes, which regard Operators' Licenses, and does not mention the term "Social Security."

⁴ Among these states are New Mexico and Washington.

⁵ See generally, IRS, *Taxpayer Identification Numbers (TIN)* <http://www.irs.gov/businesses/small/international/article/0,,id=96696,00.html>.

⁶ Vt. Dep't of Motor Vehicles, *Required Identity Documents*, <http://dmv.vermont.gov/licenses/driver's/requirements/identity>. Canadian drivers' licenses and Canadian certified birth certificates are currently acceptable documents

⁷ Some literature questions the security of consular identification cards ("CIDs"), but much of the evidence is dated and fails to take into account increasing security and fraud-prevention features. CIDs are already used in other contexts including banking and law enforcement identification.

⁸ Something similar exists in Ohio. Ohio accepts "any other genuine and reliable document approved by BMV [Bureau of Motor Vehicles] Registrar." ODPS Ohio Bureau of Motor Vehicles, *Acceptable Identification Documents*, http://www.bmv.ohio.gov/acceptable_id_documents.stm.

⁹ For example, New York and New Jersey have predetermined the reliability value they place on certain forms of identification proof, and require applicants for drivers' licenses to reach a requisite total value (i.e., "points") based upon the number of types of documents submitted. This approach expands the number of acceptable documents, while still having a protocol robust enough to identify many fraudulent applications. See N.Y. Proofs of Identity Form, <http://www.dmv.ny.gov/forms/id44.pdf>; N.J. 6-Point Identification Verification Program, http://www.state.nj.us/mvc/pdf/Licenses/ident_ver_posterprint.pdf.

¹⁰ These documents include a statement from a housemate of the applicant. The statement must be given by the housemate in person and coupled with one form of the housemate's proof of residency. Vt. Dep't of Motor Vehicles, *Proof of Residency*, <http://dmv.vermont.gov/licenses/driver's/requirements/residency>.

¹¹ Among the acceptable documentation in Oregon are a verbal statement from any person residing at the same residence address of the applicant as listed on the application; Oregon vehicle title or registration card; utility hook up order or utility statement; any document issued by a financial institution such as a bank statement, loan statement, student loan statement, dividend statement, credit card bill, mortgage document, closing paperwork, property tax statement or retirement account statement, any item delivered by the United States Postal Service, FedEx or UPS sent by a verifiable business or government agency; any document issued by an insurance company

the necessary flexibility and breadth needed by undocumented Vermont residents.

Addressing Fraud Concerns: Vermont currently utilizes several tools to combat fraudulent license/ID applications. State laws impose fines or prison terms.¹² The DMV has internal fraud prevention programs, including on-site document inspection and electronic verification systems. These could be supplemented with increased training – both in-state and in conjunction with other states.¹³ Vermont could also require undocumented Vermont residents to provide two or three items from an expanded list of proofs of residency documents that have been shown to be reliable, such as a signed statement from a hospital, shelter, landlord, employer, coworker, roommate, or community resident. Signed statements signify that a second person or entity affirms under oath that the applicant is a state resident. This proof can be bolstered by limiting the type of persons or entities that can sign a residency affidavit to Vermont residents or organizations qualified to do business in the state, thereby enhancing their credibility.

The Legislature could also incorporate best practices of other states such as New Mexico and Washington. For example, New Mexico requires that non-citizens applying for a license make an appointment by telephone, and then the New Mexico DMV tracks addresses or phone numbers of persons making the appointment to identify suspicious activity such as calls from out-of-state telephone numbers or a large volume of calls from a single telephone number. Washington requires undocumented residents to make two visits to the DMV, the second of which is scheduled through a letter mailed to the purported residence. The various local DMV offices in Washington share facial recognition data in an effort to reduce forum shopping.¹⁴

Fraud prevention laws, however, should avoid unnecessarily singling out undocumented migrant workers and discouraging valid applications. The International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted and ratified by the United States, prohibits any distinctions based on national or ethnic origin that put groups on unequal footing relative to others in the arena of human rights and fundamental

or agent such as an insurance card, binder or bill; any document issued by an educational institution such as transcripts, report cards or enrollment confirmation, the rental/lease agreement that includes the original signature of the lessor or landlord; a loan agreement, payment booklet/voucher, or loan statement; W2 or 1099 tax form; a medical or health benefits card (this does not include the Commercial Drivers License Medical card); an unexpired professional license issued by an agency in the U.S.; an approved letter from a state hospital, homeless shelter, transitional service provider or halfway house dated within 60 days of the application certifying the applicant's residence address (must include a business card from the representative signing the letter); or a letter on an employer's letterhead certifying that the applicant lives at a non-business residence address owned by the business or corporation (must be signed by the human resources division, manager, or supervisor and must include a business card of the person who signed the letter). See Oregon Dep't of Motor Vehicles, *Driver & ID Information*, <http://cms.oregon.gov/odot/dmv/pages/driverid/index.aspx>.

¹² See generally 23 V.R.A. § 203(a) (up to \$1000 fine for obtaining a false license); 47 V.R.A. § 2030 (criminal prosecution for identity theft).

¹³ Washington and New Mexico would be helpful sources of training collaboration. Other states may soon join this group, as Oregon and California are seriously considering providing undocumented residents with access to drivers' licenses. Vermont currently allows the DMV officer to request two additional proofs of identity from non-citizens applying for drivers' licenses. See Vermont Dep't of Motor Vehicles, *State Requirements for Driver Licenses/Permits/ID's*, <http://dmv.vermont.gov/licenses/driver's/requirements>. This should be expanded to proofs of residency, as well as expanded to apply to U.S. citizens that raise the suspicions of the DMV officer.

¹⁴ The American Association of Motor Vehicle Administrators has noted that 23 states and D.C. share facial recognition data to help prevent cross-state fraud.

freedoms. The Fourteenth Amendment's Equal Protection Clause also applies to Vermont's undocumented residents, prohibiting unnecessary discrimination against them. We are concerned that while stiffening criminal penalties for fraudulent applications may appear to achieve some deterrence function, it may have a chilling effect on valid applications. Harsher criminal penalties could potentially reduce the willingness of co-residents or employers to affirm the residency of a license applicant (undoubtedly among the only forms of proof of residency that some undocumented residents may be able to supply). The severity of the punishment might also have significant collateral consequences on applicants, impairing their opportunities for certain forms of current or future immigration relief.

REAL ID Considerations: The REAL ID Act does not require Vermont to issue REAL ID-compliant licenses. Further, the REAL ID Act also does not require REAL ID compliant states to exclusively issue REAL ID-compliant licenses, but states can offer both REAL ID-compliant licenses and also standard licenses. For example, several states offer all eligible residents an option between compliant licenses or standard licenses,¹⁵ which are more convenient to obtain for all residents¹⁶ and do not implicate the privacy concerns of some individuals.¹⁷ While standard licenses/IDs will not provide its holders with access to airports or federal buildings,¹⁸ there is no legal reason why a standard license/ID should not be acceptable for state identification purposes.

The Department of Homeland Security has stated that the standard licenses and non-driver identification cards only need to be clearly distinguishable in color, lettering and/or format from REAL ID-compliant cards, which can be accomplished with as simple a step as adding a gold star to the compliant cards.¹⁹ Accordingly, Vermont would not be required to invest significant funds to provide this federally required distinction standard licenses/IDs and REAL ID compliant cards. We believe it is imperative that no indication of immigration status be included on the non-compliant license/ID, as this indicator is neither federally required nor consistent with creating a universal, non-discriminatory system.

Conclusion: We hope this letter has addressed many of the questions the Study Committee has with respect to the legal steps and considerations pertaining to providing undocumented residents with expanded access to drivers' licenses in Vermont. We have attached two appendices (A & B) to this testimony. Appendix A is an initial survey of the identification and residency requirements for NON-CITIZEN Drivers Licenses by state. Appendix B sets forth the countries that offer Consular Identification and the conditions relating thereto. These are "Working Draft" documents based on initial surveys.

Please do not hesitate to reach out to NESRI if you have any additional questions or

¹⁵ For example, Connecticut and Washington states.

¹⁶ See Conn. Office of Legal Research, *OLR Backgrounder: Real ID Implementation in Connecticut*, <http://www.cga.ct.gov/2011/rpt/2011-R-0103.htm>.

¹⁷ See generally, NYCLU, Report: No Freedom Without Privacy: The Real ID Act's Assault On Americans' Everyday Life (2009), <http://www.nyclu.org/publications/report-no-freedom-without-privacy-real-id-acts-assault-americans-everyday-life-2009>.

¹⁸ Also, the REAL ID Act and regulations state that non-complaint cards must be distinguishable from compliant cards, although exactly how they are to be distinguishable is largely left to the states (subject to federal approval).

¹⁹ DHS, REAL ID Frequently Asked Questions at Q10, <http://www.dhs.gov/secure-driver's-licenses#2>.

concerns about this important issue.

Respectfully Submitted,

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