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Real ID Act

By Ryan Stark Lilenthal

On May 11, 2005, President Bush signed into law the REAL ID Act of 2005, a law that pushes immigrants – documented and undocumented – further into the shadows of U.S. communities. As its name suggests, the READ ID Act was promoted as a tool to prevent document fraud related to identity so that U.S. citizens will be safer from terrorists. Like other recent immigration-related, government initiatives, the REAL ID Act is not only harmful to immigrant communities, but is also self-defeating to U.S. citizens.

The REAL ID Act seeks to standardize, and toughen access to, state-issued driving licenses; to limit the ability of individuals fighting removal from the United States and wanting access to federal courts; and to expand the grounds that make immigrants removable from the United States. While much can be said about the misguided belief that the REAL ID Act will protect U.S. citizens from terrorists, this article specifically comments on the driving license provisions of the REAL ID Act.

Essentially, the REAL ID Act usurps state authority to determine the criteria for issuing driving licenses, and deters states from giving driving licenses to undocumented immigrants. Significantly, the changes in the law will adversely impact not only undocumented immigrants, but U.S. citizens, permanent residents, and temporary visitors and workers, as well.

All driving license applicants will be required to produce specific documents to prove identity. These documents must, in turn, meet REAL ID Act criteria. Consequently, even U.S.

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citizens may find that documents, such birth certificates, may be rejected when offered as proof of identity under the new rules.

Foreign nationals in lawful temporary status (including students, temporary workers, asylum applicants, temporary protected status recipients and applicants, and adjustment of status applicants) can only be granted temporary driving licenses that expire when their status expires. Such licenses must indicate that they are temporary and state the date of expiration. The Real ID Act requires states to confirm the legal status of driving license applicants, as well as the validity of their Social Security numbers, before licenses can be issued.

Interestingly, the REAL ID Act opens the possibility that states may issue driving permits to undocumented immigrants. But, such documents must clearly state that they are not acceptable by federal agencies. Many individuals in immigrant communities see this as a positive opportunity to legally drive. Immigrant advocates, however, have expressed concern that separate permits for undocumented immigrants highlight an individual's undocumented status. In the traffic-stop context, undocumented drivers who produce such permits may end up in immigration removal proceedings if pulled over by anti-immigrant police officers.

On the other hand, undocumented drivers without permits or with fraudulent driving licenses would probably be reported to immigration, anyway. At least with permits, undocumented immigrants will presumably be driving legally; be eligible for car insurance; and be capable of registering a car – which will make our roads safer for all travelers.

Immigrant advocates will have to work hard, however, to ensure that legislative developments related to driving privileges for immigrants produce positive results. Generally,

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the REAL ID Act is bad news for immigrants, and reflects the uphill battle immigrants face to secure rights in the United States. In response to the REAL ID Act, New Jersey lawmakers will hopefully create a driving privilege program that enables undocumented immigrants to drive legally without the fear that their participation in the program, or their possession of a driving permit, puts them at additional risk of deportation. A driving privilege program that gives confidence to immigrants to come out of the shadows of U.S. communities may achieve something the REAL ID Act as a whole does not - enhance the safety of all individuals living in the United States.