

**HISPANIC/LATINO ACCESS TO THE  
INDIANA DRIVER'S LICENSE:**

**A REPORT ON THE  
CHALLENGES OF OBTAINING AN  
INDIANA DRIVER'S LICENSE**

A REPORT TO THE INDIANA COMMISSION  
ON HISPANIC/LATINO AFFAIRS

Submitted By:  
The Sub-Committee on the Driver's License Issue

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## **EXECUTIVE SUMMARY**

### **I. Introduction**

The Indiana Commission on Hispanic/Latino Affairs (ICHLA) Driver's License Sub-Committee was formed in response to public concern regarding change in Bureau of Motor Vehicles (BMV) policy that restricts access to the Indiana driver's license. The Sub-Committee presents this report to inform policy makers on the driver's license policy rendering some Hoosier Hispanics/Latinos ineligible to obtain an Indiana driver's license, and to provide recommendations answering specific issues related to unlicensed motorists in Indiana.

### **II. Background**

The Hispanic/Latino population is growing throughout Indiana, currently estimated at 242,518. The 2000 U.S. Census counted over 214,000; and that year the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (BCIS) estimated 45,000 undocumented immigrant Hoosiers. Hispanics/Latinos have lived and worked primarily in northwest Indiana for most of the 20<sup>th</sup> century, recruited from the Texas-Mexico border and Mexico to work in the steel mills and on farms. The recent population boom in Hispanic/Latino Hoosiers displays a shift from the long-standing pattern of concentration in the Northwest sector to areas throughout the state, with eight counties (Marion, Lake, Elkhart, Allen, Saint Joseph, Tippecanoe, Porter and Kosciusko) experiencing up to 300 percent growth.

Indiana's strong economy, high demand for workers, available housing, and inviting family environment attract Hispanic/Latino newcomers. They in turn make significant developmental and cultural contributions to the economy, as evidenced by their rapid growth in business, media, leadership, church, and celebration. Their labor bestows a competitive edge to Hoosier industry, maintaining thousands of jobs that would otherwise risk relocation, and providing a crucial foundation as Indiana strives to compete nationally in growth sectors requiring specialized skills and training. Newcomers overcome natural challenges by the commitment to achieve a better life for their families. However, immigrants, in particular undocumented immigrants, face considerable barriers in the effort to obtain a driver's license.

### **III. Review of the Indiana Driver's License Policy: Past and Present Challenges**

Concerns regarding issues and challenges to the Hispanic/Latino community in obtaining a driver's license existed with past BMV policy, however they were mainly operational and the BMV was responsive in resolving past challenges. Such policy changes enhanced public safety by ensuring accurate identification and compliance with Indiana law. The more recent administrative changes to the driver's license policy present greater barriers, result in a significant number of unlicensed drivers, and create public safety concerns.

In reaction to the September 11, 2001 (9/11) terrorist attacks on the U.S., Indiana's Counter Terrorism and Security Task Force (CTASC) recommended that the six-point system be changed to close the loophole enabling non-residents to obtain a driver's license and simultaneously advised that the BMV adopt a legal presence requirement. The BMV accepted those recommendations, establishing a four-document requirement that satisfied both demands. The restrictive policies have resulted in undocumented immigrants' ineligibility for the driver's license while documented immigrants face greater difficulties in their efforts to obtain the driver's license.

The issue of denying a driver's license to people who would otherwise seek and receive a driver's license results in a struggle in balancing security and public safety interests. Opponents contend that restricting the driver's license preserves its integrity, maintains disincentives toward illegal immigration, and enhances national security. Proponents identify contributions of immigrants and consider restrictive policies to undermine public safety without deterring potential terrorists from obtaining identification or driver's licenses.

### **IV. Unlicensed Drivers Generally**

Hoosiers need to drive daily and they reasonably rely on the BMV to assure the safety of Indiana roads and highways through licensing drivers. Problems resulting from not licensing drivers include increased insurance rates, greater risk of accidents, and higher costs of policing roads and highways, negatively impacting all. Drivers ineligible for a license do not take BMV exams that are required for licensing, and they increase the number of uninsured motorists on Indiana roads and highways. Issuance of citations for driving without a license when drivers would otherwise observe the law increases the burden to courts and jails, increases the sale of

falsified documents and identification theft, and creates an incentive to BMV employees to receive bribes from applicants who are unable to comply with the requirements.

## **V. Federal Policy**

The National Commission on Terrorist Attacks Upon the United States (the “Commission”) recommended setting standards for the issuance of birth certificates and driver’s licenses. In response, Congress passed driver's license legislation in the "Intelligence Reform and Terrorism Prevention Act of 2004" (the Act) requiring the federal government to set federal driver’s license standards including identity documentation; processing standards to prevent fraud; standards for driver's license information; and security standards for resistance to tampering, alteration, or counterfeiting. The negotiated rulemaking process to set these standards includes state officials so that states maintain the power to set eligibility standards, while recognizing the need to prevent against identity theft and fraud.

In 2004, the National Governors Association and the American Association of Motor Vehicle Administrators requested adoption of language with input from state officials in the regulatory process, protection of state eligibility criteria, flexibility to incorporate best practices from around the states, as well as federal funding for any new federal standards. The National Conference of State Legislatures (NCSL) issued a policy statement supporting state level efforts addressing security concerns with driver’s license issuance and opposing federal attempts to usurp state authority over the driver’s license process or diminish the validity or usefulness of licenses awarded at the state level. National Hispanic/Latino organizations specifically opposed the imposition of additional federal immigrant driver's license requirements on the states. Mentioning the 2004 Act already passed by Congress, these organizations asserted that the appropriate level for driver’s license policy is State, not Federal government.

## **VI. State Policies**

State officials recognize the need to balance identification and licensing authority as they review public safety and security policies. Some states have developed a task force to study the issues regarding immigrant access to a driver’s license. State legislatures addressed documents that states should accept as proof of identification and what alternative documents are acceptable if an applicant is not eligible for a Social Security Number (SSN).

States vary greatly in what documents they accept as proof of identification from driver's license applicants and many recognize that for their foreign-born residents to obtain licenses, the state-licensing agency must accept a variety of foreign documents. Currently, 47 states, including Indiana, allow driver's license applicants who are not eligible to be issued an SSN to present an alternative, including an affidavit of ineligibility for an SSN, verification of ineligibility from the Social Security Administration, or an ITIN.

Alternatives to the driver's license include allowing ineligible immigrants to apply for the temporary license according to statutory or regulatory provisions. Another compromise measure to issuance of a driver's license, a certificate for driving, was passed in Tennessee. Neither alternative actually resolves the issues regarding driver's licenses for documented or undocumented immigrants, although they increase eligibility for permission to drive. Moreover, the driving certificate has been challenged on constitutional and discrimination charges.

Some states have repealed legal presence requirements in response to problems resulting from unlicensed and uninsured motorists. State officials report that fewer motorists flee after accidents and that there has been a significant drop in the rate of uninsured motorists, resulting in reduced insurance premiums.

## **VII. ICHLA Recommendations**

- The Governor and the BMV Commissioner should require review of administrative policy regarding issuance of the driver's license.
- The BMV should expressly re-evaluate the legal presence requirement restricting immigrant access to the driver's license.
- The BMV should allow the ITIN to be substituted for the SSN allowing immigrants who are ineligible for an SSN to apply for a driver's license and register and title their vehicles.
- The BMV should maintain its policy for the Affidavit of Ineligibility for people ineligible for the ITIN or the SSN.
- The legislature or the Governor should create a task force to study issues related to immigrant access to the driver's license.
- The BMV should continue to provide improved training for its employees on all forms of acceptable documentation under BMV policy and cultural sensitivity awareness training.

- The BMV should update and improve translated versions of the Indiana Driver's Manual and other documents as the English language versions are updated.
- The certificate of driving is recommended as a last resort and only if it can be implemented uniformly in accordance with human rights.

### **VIII. Conclusion**

The ICHLA Sub-Committee on the Driver's License Issue respectfully submits recommendations that the challenges to obtaining an Indiana driver's license be reviewed and eliminated. Access to the driver's license is a priority issue for the Hispanic/Latino community because the ability to prove one's identity and lawfully operate a motor vehicle is crucial. Accessibility to the Indiana driver's license for all Hoosiers will make Indiana a safer, more attractive state for growth of business, tourism, and families.

## **I. INTRODUCTION**

Hispanic/Latino Access to the Indiana Driver's License: A Report on the Challenges of Obtaining an Indiana Driver's License, has been prepared by the Indiana Commission on Hispanic/Latino Affairs (ICHLA) Driver's License Sub-Committee. The Sub-Committee was formed in response to a public outcry regarding the change in Bureau of Motor Vehicles (BMV) policy that restricted access to the Indiana driver's license. The Sub-Committee received input from advocates representing communities throughout the state, the insurance industry, immigration and public defense attorneys, university officials, business owners, representatives of the BMV, and members of ICHLA.

The report informs policy makers on the issue of the current Indiana driver's license policy that results in a significant segment of unlicensed Hoosier drivers. Specifically, the focus group is Hoosier Hispanic/Latino drivers who for various reasons addressed in this report are unable to obtain an Indiana driver's license. The report gives an overview of the tremendous population growth of Hispanic/Latino Hoosiers, their positive contributions to the state, and the unique challenges the current driver's license policy presents. The Sub-Committee provides a historical assessment of state policy and considers current and proposed State and Federal measures meant to address security interests.

The Sub-Committee study of Indiana's restrictive driver's license policy reveals that a policy intended to heighten security interests actually results in negatively impacting the following: law enforcement efforts, promotion of public safety, burdening Hoosiers who would otherwise comply with Indiana law, and increasing the risk of uninsured motor vehicle accidents. After careful review of all factors, and in full consideration of the need to balance national security interests with the full interests of states and their citizenry, the Sub-Committee provides recommendations for responding to the issues related to unlicensed motorists in Indiana.

## **II. BACKGROUND**

### **a. Hispanic/Latino population boom.**

The Hispanic/Latino population has grown exponentially throughout Indiana. In 2000, the U.S. Census confirmed that Indiana's Hispanic/Latino population numbers over 214,000. In addition,

the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (BCIS), estimated that 45,000 undocumented immigrants were living and working in Indiana in the year 2000. Indiana's Hispanic/Latino population continues to grow with current estimates placing the number at 242,518.

Until recent years, Hispanics/Latinos have not comprised a significant share of Indiana's population, but they have maintained a presence in the state for most of the 20<sup>th</sup> century. They could be found in sizable numbers, for most of this period, primarily in northwest Indiana. Their long-standing presence in such areas as the Lake County cities of Gary, East Chicago and Hammond, can be traced to the pioneering settlements of mostly Mexican-origin workers who were recruited by the areas' steel mills in the World War I era.

Migrant farm workers have also maintained a long-standing presence in Indiana. Historically, Hispanic/Latino migration to Indiana occurred in response to the farms that have been recruiting people in the Texas-Mexico border area and Mexico since the latter quarter of the 19th and the early 20th century. Today, fewer than 10,000 agricultural workers migrate to Indiana to work each year. Historical accounts suggest that no more than 25,000 of these workers migrated to Indiana in the past for seasonal agricultural work. Because they are temporary residents, they are often overlooked in statistical reports.

More recently, this boom occurred under the most favorable conditions: a strong economy, available housing, an abundance of jobs and a demand for workers in particular sectors, and because Indiana is seen as an ideal place for raising a family. These factors contributed to Hispanic/Latino population increases of up to 300 percent in eight counties: Marion, Lake, Elkhart, Allen, Saint Joseph, Tippecanoe, Porter and Kosciusko. U.S. Census data confirms that the Hispanic/Latino population has shifted away from the long-standing pattern of being concentrated only in the Northwest sector to areas throughout the state.

Like their predecessors, Hispanic/Latino newcomers make significant contributions to the local and state economy, a richer cultural and social environment, and a healthy population growth. Conversely, without their labor many industries including light manufacturing plants, hospitality

and maintenance service providers, construction and landscaping companies, and farmers would face a workforce shortage. Such a workforce shortage would render these industries less competitive, jeopardizing thousands of manufacturing jobs and risking relocation to overseas interests. As Indiana strives to compete nationally in advanced technology, life sciences, logistics, and other growth sectors that require higher skills and specialized training, it is critical that we maintain a strong workforce, which is a foundation for Indiana's future.

Hoosiers embrace the changing diversity that Hispanics/Latinos bring to Indiana, welcoming Hispanic/Latino families as an integral part of their communities, as evidenced by the rapid growth of Hispanic/Latino businesses, newspapers, media, television programs, community leadership, churches, and celebrations. Nevertheless, the Hispanic/Latino population, and in particular the newly arrived immigrants experience unique challenges adjusting to their new life in the Midwest. Largely, the challenges with language, differences in governance, cultural and social differences, are overcome by their commitment to achieve a better life for their families. Presently, immigrants, in particular undocumented immigrants, are facing the daunting task of obtaining an Indiana driver's license, due solely to their inability to provide documents establishing their federal immigration status.

### **III. REVIEW OF THE INDIANA DRIVER'S LICENSE POLICY: PAST AND PRESENT CHALLENGES**

The issue of difficulties experienced obtaining an Indiana driver's license has been consistently brought before the ICHLA since its inception in 1999. The main concerns shared were and are the challenges to the Hispanic/Latino community obtaining a driver's license. Problems have varied from the need for increased bilingual staff and the availability of translating the BMV driver's manual along with the driver's license exams, to concerns about the difficulty complying with the application requirements of the BMV, in addition to others. A review of the issues reveals that while there were difficulties with past BMV policy, they were mainly operational and BMV was responsive in resolving past challenges. The more recent administrative changes to the driver's license policy present greater barriers, result in a significant number of unlicensed drivers, and create public safety concerns.

**a. Prior BMV Policy: Six-Point System**

Until 2002, the BMV operated under a six-point system used for governing the establishment of identity when issuing the driver's license and the state identification card. Under that system, an applicant for the driver's license obtained a license upon providing sufficient documents to meet the six-point requirement. The BMV developed an acceptable documents form, listing 54 possible documents for use, assigning them a value ranging from one to three points. The BMV policy did not restrict proof of identification to any one document so long as the document was listed on the acceptable documents form.

During various ICHLA meetings, individuals testified about the challenges of the point system. Concerns centered on the requirement that all documents be translated. The requirement was additionally burdensome due to the lack of training and uniformity in implementing translation rules. Additionally, the BMV was asked to consider the inclusion of foreign national documents for newly arrived immigrant settlers. A separate concern shared was that BMV rules permitted only the driver and the driver examiner to be in the vehicle during the exam, while only two BMV branches actually employed bilingual driver examiners.

Responding to the concerns shared by ICHLA, the BMV made necessary changes that recognized the particular needs of its growing diverse and ever-changing Hoosier population. The BMV Commissioner established an immigrant review panel to consider the issues related to the Hispanic/Latino population and other immigrant groups. Upon review of the foreign national documents, the BMV approved the inclusion of the Mexican Federal Electoral Card and the Certificate of Matricula (matrícula consular) as proof of birth documents. In addition, the BMV increased the number of bilingual driver examiners and bilingual branch employees, provided immigrant and translated document training for BMV branch employees, translated the driver's license manual, and made other corresponding changes. These particular policy changes were important to public safety, ensuring that law enforcement officers were able to accurately identify individuals and assure full compliance with Indiana law.

**b. Current BMV Policy: Four-document requirement**

Due to the September 11, 2001 (9/11) terrorist attacks on the U.S., Federal and State officials raised public safety concerns as a result of the terrorists' ability to obtain State identification cards and driver's licenses. In Indiana, the Counter Terrorism and Security Task Force (CTASC) reviewed the driver's license issue with particular concerns about the state residency requirement due to reports that non-Indiana residents could easily obtain Indiana identification. Additionally, based on the fear that terrorists could obtain an Indiana driver's license, the legal presence requirement was also scrutinized. In the aftermath of terrorist attacks, the CTASC recommended that the six-point system be changed to close the loophole enabling non-residents to obtain a driver's license and simultaneously advised that the BMV adopt a legal presence requirement. A state residency requirement is demonstrated by providing a document that lists the applicant's Indiana address; a legal presence requirement is determined by documentation of U.S. citizenship or federally issued alien status.

In July 2002, the BMV accepted the CTASC recommendations and established a four-document requirement satisfying both demands. They believed this would protect Indiana against providing identification documents to potential terrorists. The four-document policy requires the applicant to present the following:

- One (1) Primary document;
- One (1) Secondary document;
- One (1) Proof of Social Security Number;
- One (1) proof of Indiana residency document.

Alternatively:

- Two (2) Primary documents;
- One (1) Proof of Social Security Number;
- One (1) Proof of Indiana Residency document. (Attachment A.)

A primary document is defined to include a U.S. Birth Certificate, a valid foreign passport with a Visa that includes the I-94 stamp indicating the duration of stay in the U.S. The BMV clarifies that Canadian passports are not required to have a Visa when entering the U.S. and therefore are

exempt from this requirement. The BMV lists nine (9) additional acceptable documents and other BCIS documentation subject to BMV Driver Services approval.

**c. BMV Policy Impact on Documented and Undocumented Immigrants**

Since 9/11, BMV restrictive policies result in the inability of undocumented immigrants to obtain the driver's license. In Indiana, implementation of CTASC recommendations impacts documented as well as undocumented residents. For the documented: legal residents, refugees, and foreign students, it is now more difficult to obtain a driver's license. The requirement that all foreign documents be processed centrally causes long delays in issuance of the driver's license; BMV employees' lack of awareness with policy regarding non-U.S. citizen Hoosiers and their unfamiliarity with BCIS documents results in lack of uniformity in issuance of the driver's license. For the undocumented, the legal presence requirement precludes individuals unable to provide BCIS documents from meeting BMV requirements.

**d. Balancing Security and Public Safety Interests**

The issue of denying a driver's license to people who would otherwise seek and receive a driver's license is a national debate. Many states are grappling with the balance between security interests and public safety interests. Indiana is no exception. Opponents tend to consider a driver's license a privilege reserved for people legally residing in this country. Their position centers on national security interests. They contend that restricting the driver's license preserves the integrity of the driver's license as a primary form of identification, maintains disincentives toward illegal immigration, and enhances national security. Proponents identify the economic and social contributions of immigrants. They posit that restrictive policies undermine public safety by decreasing the number of untrained drivers and increasing the number of uninsured motorists. Further, they consider that it is the duty of the Federal government to resolve complex immigration issues by working toward meaningful, comprehensive immigration reforms.

**i. Opponents**

Those opposed to allowing undocumented immigrants to obtain a driver's license argue that restricting access enhances national security. They maintain that the denial of a driver's license reduces exposure to identity theft and fraud, deters illegal immigration, restricts mobility of

undocumented immigrants, maintains disincentives toward illegal immigration, and preserves jobs and public services for U.S. citizens. They see the driver's license as a document that establishes a legitimate identity to obtain privileges normally reserved for citizens, and that allowing access to a license without the legal presence requirement validates undocumented migration. Early reports of the 9/11 attacks described driver's licenses as tools in planning terrorist attacks, implying that the terrorists relied on U.S. driver's licenses to blend into society and logistically coordinate the attacks, which fueled the perception of undocumented immigrants as potential terrorists, and provoked significant new legislation denying them driver's licenses. In their view, undocumented immigration is connected to the threat of terrorism, and the legal presence requirement for the driver's license is seen as a key state-level deterrent to these national issues.

## **ii. Proponents**

In contrast, proponents stress that undocumented immigrants have long lived and worked in Indiana, paying taxes, owning homes, opening bank accounts, and raising families. They reason that issuance of a driver's license is no more validation for being illegally present in the U.S. than employers' openness in giving them jobs, and the Federal government's allowance of the Individual Tax Identification Number (ITIN) to pay taxes. The ITIN is an identification number issued by the Internal Revenue Service (IRS) to people who are required to have a taxpayer identification number but are not eligible for a Social Security Number (SSN). Moreover, they argue that balancing Indiana's interest in public safety by requiring its residents to drive legally does not preclude the Federal government from controlling immigration in the U.S.

Proponents contend that overly restrictive policies encourage the proliferation of false documents, making licenses a less reliable means of establishing true identity, and impeding law enforcement officials from identifying and tracking people. Likewise, restricting access to the driver's license inhibits immigrants from complying with the law, thereby eroding trust relationships with police and undermining public safety. Such restrictions create a systematic imbalance, wasting valuable resources on minor offenses, keeping police officers from attending to more pressing security concerns, and burdening overloaded court systems.

Proponents insist that a lawful presence requirement for the driver's license will not ensure public safety. Indeed, confusing undocumented immigrants with potential terrorists is dangerously misleading because the terrorist hijackers all possessed other valid documents, including passports from their home countries. The proponents support the fight against terrorism, believing that it must be directly targeted through comprehensive measures. Focusing on the driver's license policy ignores that terrorists may meet restrictive documentation requirements or would be willing to obtain such documents fraudulently, and does nothing to further anti-terrorist initiatives. Proponents hold that the change in BMV policy has given Hoosiers a false sense of security and has instead damaged public safety without truly deterring potential terrorists from obtaining identification or driver's licenses in Indiana.

#### **IV. Unlicensed Drivers Generally**

Hoosiers need to drive to meet their daily obligations and contribute to society as workers and consumers. Since Hoosiers rely primarily on motor vehicles for transportation due largely to scarce public transportation in both urban and rural settings, it is unlikely that being unlicensed will prevent individuals from driving. Hoosiers reasonably rely on the BMV to assure the safety of Indiana roads and highways through licensing drivers. Further, problems resulting from not licensing drivers include increased insurance rates, greater risk of accidents, and higher costs of policing roads and highways, negatively impacting all Hoosiers.

Licensed drivers comply with BMV regulations that are designed to equip them to drive safely. In contrast, drivers ineligible for a license do not take BMV exams that are required for licensing, including vision screening, the written traffic proficiency exam, and the test of driving skills, nor do they affirm their physical capacity to drive. Furthermore, unlicensed drivers increase the number of uninsured motorists on Indiana roads and highways. As a result, all Hoosier motorists face two heightened risks: collision with an uninsured motorist, and the likelihood of a hit-and-run accident.

Issuance of citations for driving without a license is drastically inflated when drivers who would otherwise observe the law are barred from compliance, thus exacerbating the problem. This represents a greater burden to courts and jails, adding significantly to their costs. Further, the

inability to obtain a driver's license contributes to an increase in criminal activity on least at two levels: 1) An increase in the sale of falsified documents and identification theft; and 2) an incentive to BMV employees to receive bribes from applicants who are unable to comply with the requirements.

## **V. FEDERAL POLICY**

It is important to note that the U.S. Congress is considering measures to restrict immigrant's access to driver's licenses. The question of whether to tie immigration status to driver's licenses has been the topic of much debate in recent years, with the issue re-emerging during Congress's consideration of legislation to implement the 9/11 Commission's recommendations. The report of the National Commission on Terrorist Attacks Upon the United States (the "Commission") recommended setting standards for the issuance of birth certificates and driver's licenses. In response, Congress passed driver's license legislation in the "Intelligence Reform and Terrorism Prevention Act of 2004" (the Act).

The Act requires the federal government to set federal standards for driver's licenses including standards for documentation required as proof of identity of an applicant; standards for the processing of applications to prevent fraud; standards for information to be included on driver's licenses; and security standards to ensure that licenses are resistant to tampering, alteration, or counterfeiting. These standards are to be set by the Department of Transportation through a negotiated rulemaking process that includes relevant stakeholders such as state elected officials and state motor vehicle departments. This process allows the states to maintain their ability to set eligibility standards, while also recognizing the need to prevent against identity theft and fraud.

The House and Senate passed very different measures addressing the 9/11 Commission's recommendation in their respective intelligence reform bills, however the Senate provision (S.2845) was included in the measure that became public law (Pub.L. No. 108-458). The House measure (H.R.10) by contrast, pushed well beyond the parameters of the 9/11 Commission's recommendations for standardization by tying immigration status to driver's license eligibility. This provision would have barred federal agencies from accepting for any official purpose any

state-issued driver's license, or other comparable identification document, unless the state required the non-immigrant aliens to prove their immigration status.

In 2005, Representative Sensenbrenner (R-WI), the chief proponent of the House driver's license provision, has included the same driver's license provision in his bill, H.R. 418. Supporters of the immigration provisions in the House-passed intelligence reform bill argue that denying driver's licenses to undocumented immigrants will combat terrorism. Ironically, the 9/11 Commission recommended that: "Secure identification should begin in the United States. The Federal government should set standards for the issuance of birth certificates and sources of identification, such as the driver's license. . . . Sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

Without question, secure identification is an essential component of the 9/11 recommendations. Thus, conditioning acceptance of a document on immigrant status would severely and unrealistically restrict the scope of valid identity data on persons present in the U.S., alienate the very immigrant communities that we need to enlist in the war on terror, and undercut the national security goal of tracking persons within our borders.

**a. National Governors Association & American Association of Motor Vehicle Administrators: Position Regarding State Driver's License Policy**

In October, 2004 the nation's Governors and state motor vehicle administrators addressed the Senate Governmental Affairs Committee with their concerns regarding the security and integrity of state driver's license and identification card processes. Specifically, they requested that the conferees adopt the language of the Senate-passed bill, because it expressly called for input from state elected officials and motor vehicle administrators in the regulatory process, protected state eligibility criteria, and retained the flexibility necessary to incorporate best practices from around the states. In addition, the Senate bill included provisions critical to ensuring that any new federal standards would be workable and adequately funded by the federal government.

The State associations asserted their responsibility for the issuance of driver's licenses and other identification documents. Governors and motor vehicle administrators expressed commitment to

work cooperatively with the federal government to develop and implement realistic, achievable standards that would enhance efforts to prevent fraud and illegal use of driver's licenses and other identification documents. (Attachment B.)

**b. National Conference of State Legislatures (NCSL): Position Regarding Driver's License Policy**

In a policy statement issued by the National Conference of State Legislatures (NCSL), the NCSL supported the state level efforts addressing security concerns with driver's license issuance. The NCSL asserted that states are in the best position to strengthen the driver's license application process and address any inadequacies. States also are mindful of needs to protect consumers, taxpayers, business concerns and privacy, all while enhancing security and public safety. Currently, states are actively considering individual state legislative and regulatory actions, interstate compacts, model legislation, intergovernmental agreements, data sharing, standards development through recognized standards-developing entities, and enhanced legislative and executive branch coordination.

The NCSL explained that federal standards should be narrowly limited to those areas enumerated in the federal Act and should not limit State ability to innovate and strengthen the integrity of document verification and issuance. Further, NCSL did not find any compelling reason to establish national identification cards or national driver's licenses, and promised to work to ensure that such an establishment is not achieved. NCSL opposed federal attempts to usurp state authority over the driver's license process or diminish the validity or usefulness of licenses awarded at the state level. NCSL position opposed any federal effort requiring states to adopt specific model legislation or participate in an interstate compact. (Attachment C.)

**c. National Hispanic/Latino Organizations: Position Regarding Driver's License Policy**

The National Council of La Raza (NCLR), the League of United Latin American Citizens (LULAC), the Mexican American Legal Defense and Educational Fund (MALDEF), and the National Association of Latino Elected and Appointed Officials Educational Fund (NALEO) joined in a statement of their position against the "REAL ID Act," H.R. 418. They specifically

opposed the imposition of additional federal immigrant driver's license requirements on the states. Mentioning the 2004 Act already passed by Congress, these organizations asserted that the appropriate level for driver's license policy is State, not Federal government.

National Hispanic/Latino organizations identified access to the driver's license as a priority issue for the Latino community, and the ability to prove one's identity and lawfully operate a motor vehicle as crucial for all Americans. They believed that public safety improves when all drivers are properly licensed and insured, and that national security improves when all individuals are issued valid identification documents. (Attachment D.)

## **VI. STATE POLICIES**

Simultaneous to the Federal government and national interest groups, State legislative and executive branch officials have recognized the need to balance identification and licensing authority as they review public safety and security policies. In 2004, 25 states considered driver's license legislation. At least 46 bills were considered that addressed immigrants' access to state driver's licenses. While the California debate focusing on granting licenses to immigrants, regardless of their status, dominated the news coverage, the majority of bills did not address the issue of eligibility based on immigration status. Rather, most bills addressed which documents states should accept as proof of identification to obtain a license and what alternative documents are acceptable if an applicant is not eligible for an SSN. Nevertheless, there were attempts in four states to restrict the issuance of driver's licenses only to people who are lawfully present in the United States. All of those efforts failed. Significantly, the focus in New Mexico led to the elimination of legal presence requirements for the driver's license, although the border state shares concerns regarding its immigrant population similar to those of California.

### **a. Documents accepted as proof of identification**

States vary greatly in what documents they accept as proof of identification from driver's license applicants. Many states recognize that for their foreign-born residents to obtain licenses, the state-licensing agency must accept a variety of foreign documents. In 2004, approximately ten states considered bills that would have either expanded or restricted acceptance of foreign identification documents, including passports, birth certificates, and the *matrícula consular*.

South Dakota is the only state that passed a restriction law prohibiting state agencies, state-supported universities, or postsecondary technical institutes from accepting the matrícula consular card or “substantially similar document issued by the Mexican Consulate” as proof of identification for any purpose. Ten states currently accept the matrícula consular as a form of identification. In New Mexico the matrícula consular is accepted as a primary identification document for obtaining a driver’s license and in Indiana the BMV accepts the matrícula consular as one of the secondary documents meeting the four-document requirement.

**b. Alternatives to the Social Security Number Requirement**

Currently, 47 states allow driver’s license applicants who are not eligible to be issued an SSN to present an alternative when applying for a license, including presenting an affidavit verifying that the applicant is not eligible for an SSN, verification from the Social Security Administration that the applicant is not eligible for an SSN, or an ITIN. In 2004, Kansas and Illinois changed their policies with respect to such alternatives to the SSN. After passing a law in 2003 that allowed for the acceptance of the ITIN, in 2004 Kansas rescinded this provision and now accepts a sworn statement that the applicant is not eligible for an SSN. Illinois also changed its policy in 2004. Before the new law passed, Illinois required all driver’s license applicants to present an SSN, unless they had “bona fide” religious convictions against obtaining one. Supporters of the change argued that many lawfully present immigrants, such as students and family members of immigrants with work visas, are ineligible for an SSN and need to drive to attend school or for work. In Indiana, the BMV allows for an Affidavit of Ineligibility for applicants attesting that they have never been issued an SSN.

**c. Task Force Study of the Driver’s License Issue**

Driven by a desire to adequately consider the balance of various interests, such as State interest in security and public safety, some states have developed a task force to study the issues regarding immigrant access to a driver’s license. In Maryland the legislature created a task force comprised of representatives of the Motor Vehicles Administration (MVA), the state police, the state Department of Homeland Security, and others appointed by the governor. The task force was charged with studying, among other things, documents that the state MVA should accept as proof of license applicant identification and the feasibility of establishing procedures for

reviewing foreign documents. The Maryland legislative task force recently submitted a report recommending that the MVA revise some procedures and regulations, however it recommended against the Maryland General Assembly passing new laws regarding the documentation that driver's license applicants must present to the MVA. In Indiana, several bills restricting access to the driver's license were heard in the Public Safety and Homeland Security Committee. After hearing from opponents, the Committee amended House Bill 1842 to create an Interim Study Committee.

#### **d. Temporary Driver's License**

In addition to accepting the ITIN as a substitution for the SSN, Illinois enacted a law that will allow immigrants who are lawfully present in the United States but ineligible for an SSN to apply for a "Temporary Visitor's Driver's License." The law allows these immigrants to apply for the temporary license providing they can prove their Illinois residency and that their presence in the U.S. is lawful. The temporary license is valid for three years or for the period of time the person is authorized to remain in the U.S., whichever period is shorter. The statute instructs the Illinois Secretary of State to adopt rules regarding the design and content of the temporary license. Louisiana demonstrates an unusual approach granting temporary licenses to those in the agricultural industry regardless of immigration status but otherwise maintaining a lawful presence requirement.

#### **e. Certificate for Driving**

A compromise measure to issuance of a driver's license was passed in Tennessee. Responding to claims that the former law compromised state and national security interests, the state created a certificate for driving that is not valid for identification purposes. It restricts driver's license eligibility to U.S. citizens, lawful permanent residents, refugees, parolees, and asylees. In this manner, Tennessee prevents undocumented and other non-immigrants from holding a state issued driver's license. Further confusing the matter, all other applicants, regardless of immigration status, are now ineligible for the driver's license, but eligible for a certificate for driving. The policy ignores the lawful immigration status of foreign visa holders, such as students, excluding them from eligibility for the driver's license. The certificate bears the notation: "FOR DRIVING PURPOSES ONLY. NOT VALID FOR IDENTIFICATION."

Some problems identified with the certificate include lack of uniformity in implementation. Concerns were raised that certificate-holders risk being arrested if stopped for a traffic violation due to the fact that some jurisdictions within the state have indicated that their officers will not accept the certificate. As a result, certificate-holders face the uncertainty of arrest for simple traffic violations. These concerns prompted legal challenges on the constitutionality of the certificate based on claims that it establishes an irrebuttable presumption that non-citizens (other than lawful permanent residents) are a threat to homeland security, discriminating against them solely because of their alienage or national origin, and restricting their right to travel. Plaintiffs also charge that a law giving police officers virtually complete discretion to determine what constitutes satisfactory evidence of identification is unconstitutionally vague.

In Florida, the Governor endorsed a bill that would have allowed undocumented immigrants to obtain driving certificates, however the sponsor withdrew it under pressure from the Florida Sheriff's Association. The bill's critics charged that allowing undocumented immigrants to obtain driving certificates would legitimize their stay in the U.S., although the Governor's position was that such a policy would balance security interests with public safety interests recognizing the everyday need to drive. While immigrant advocates supported granting licenses to undocumented immigrants, many were concerned that the bill contained requirements making implementation impossible. For example, a requirement that foreign consulates obtain copies of applicant criminal records from the country of origin ignored foreign record keeping policies and the ability of consulates to comply.

#### **f. Elimination of Legal Presence Requirements**

Many states, including Indiana, changed state policies regarding legal presence requirements to issuance of a driver's license immediately after 9/11. In 2004, additional states sought to implement legal presence requirements for the driver's license unsuccessfully. In Michigan, Utah, Washington, and Wisconsin there were failed attempts to restrict eligibility for the driver's license only to people who are lawfully present in the U.S. The most heated battle took place in Utah, where an organization called UFIRE (Utahns for Immigration Reform and Enforcement) led a battle to overturn a 1999 law that allows immigrants who are ineligible for an SSN to obtain a license regardless of their status if they present alternative documentation. The UFIRE

claimed that the 1999 provision undermined national security. A diverse driver's license coalition comprised of immigrant advocates, religious leaders, and law enforcement was able to defeat the attempt to overturn it. Since Utah passed its law in 1999, over 50,000 new licenses have been issued to immigrants who have been tested and know the rules of the road. Utah officials balanced security interests with public safety concerns reasoning that if undocumented immigrants are not issued licenses, they will not be eligible for insurance or vehicle registration.

In New Mexico, passage of a law eliminating the legal presence requirement in 2003 resulted in approximately 19,000 new licenses issued to immigrants. Like Utah, New Mexico responded to the problems resulting from unlicensed and uninsured motorists. Since its passage, State officials report that fewer motorists flee after accidents and that there has been a significant drop in the rate of uninsured motorists. Responding favorably to the decreased risk of uncompensated accidents, the insurance industry reduced premiums.

## **VII. ICHLA RECOMMENDATIONS**

The ICHLA Driver's License Sub-Committee recommendations recognize the need to balance public safety and national security with Indiana's interest in safe roads. The recommendations reflect present experience with policies sought by states to address the problems related to unlicensed motorists.

### **a. Administrative Changes Regarding the Driver's License**

**The Governor and the BMV Commissioner should require review of administrative policy regarding issuance of the driver's license.**

Indiana law gives authority to the BMV Commissioner to administratively determine the application requirements for the driver's license. Using that authority the BMV developed the current acceptable document list for applicants. Immediately after changing the policy, BMV officials met with advocates, including some immigration lawyers, who brought to their attention that the list of acceptable BCIS (then INS) documents was not comprehensive resulting in documented aliens inability to obtain a driver's license. In response, the BMV added to the document list general language accepting "other INS documentation subject to BMV Driver

Services approval” and promised to continue review of the impact of the changes. The Sub-Committee recommends that the newly appointed Commissioner review the BMV policy.

**The BMV should expressly re-evaluate the legal presence requirement restricting immigrant access to the driver’s license.**

Although the lawful presence requirement is not explicit, BMV policy accepts valid foreign passports with a Visa that includes a valid I-94 in the passport indicating the length of stay in the U.S. making it implicit. The Sub-Committee recommends eliminating the proof of lawful presence by maintaining passports as a primary document, but removing the requirement of the Visa and the I-94 form.

Indiana is one of six states experiencing legal challenges to their legal presence requirements for driver’s license. In Indiana, two plaintiffs have challenged the BMV administratively imposed rules requiring that driver’s license applicants provide an SSN as well as proof that they are lawfully present in the U.S. These requirements took effect on July 15, 2002. The lawsuit was filed in 2002, and the parties filed cross motions for summary judgment, which are pending. *Roe v. Coleman*, Marion County Superior Court, Indiana.

**b. Substitution of the Individual Tax Identification Number for the Social Security Number**

**The BMV should allow the ITIN to be substituted for the SSN allowing immigrants who are ineligible for an SSN to apply for a driver’s license and register and title their vehicles.**

In states like Kentucky, New Mexico, North Carolina, Utah and West Virginia the ITIN is substituted for persons who do not qualify for an SSN. The ITIN is issued regardless of immigration status to assist resident and nonresident aliens in compliance with U.S. tax laws regarding tax return and payment responsibilities under the Internal Revenue Code. Use of the ITIN facilitates licensing and legitimately identifies the holder to law enforcement officers. Further, those states validate the economic contributions of their tax paying residents, regardless of immigration status.

The foremost impact to documented immigrants has been to those who hold a status that renders them ineligible to get an SSN. These are primarily the derivative beneficiaries, spouses and children of the primary Visa holder. In addition, this group includes over 12,000 foreign students who can no longer obtain an SSN due to recent changes in Social Security regulations. While the Affidavit of Ineligibility for an SSN will solve the issue of the driver's license for some of these people, it prevents them from titling and registering a vehicle, which requires use of the SSN. However, the BMV should maintain use of the Social Security Affidavit and add to this the ability to substitute an SSN with an ITIN. The Social Security Affidavit is especially useful to license and identify documented non-immigrant state residents who are neither eligible for an SSN or an ITIN.

**c. Creation of a Task Force/Study Committee**

**The legislature or the Governor should create a task force to study issues related to immigrant access to the driver's license.**

As of the writing of this report, members of the House Public Safety and Homeland Security Committee have amended H.B. 1842 to create an Interim Study Committee. The bill directs the Committee to study procedures for issuing licenses and permits under IC 9-24, identification issued by other jurisdictions, and identification issued by a foreign country. In addition, the bill imposes penalties for business entities that employ individuals without identifying employment eligibility, as required by the Immigration Reform and Control Act of 1986 (8U.S.C. 1324a) and directs the Committee to study procedures for investigating, apprehending, detaining, and transporting individuals who are in the U.S. without permission of the INS.

In the event that the bill is not passed, the Governor should create by Executive Order a task force to study issues related to immigrant access to the driver's license. A task force created by the Governor should minimally include representatives of the BMV; the immigrant and Hispanic/Latino communities; the insurance, business and banking industries, university and college officials; law enforcement officials and legal advocates; and an ICHLA representative.

#### **d. Training**

##### **The BMV should continue to provide improved training for its employees on all forms of acceptable documentation under BMV policy and cultural sensitivity awareness training.**

Placing BMV employees in the position of analyzing immigration documents requires that they be fully trained on laws and policies. Similarly, employees are not uniformly aware of the Social Security Affidavit. An immigration lawyer and a community leader testified that, from their experiences, some BMV workers were not aware of such documents as the BMV Social Security Affidavit.

The BMV has neither the authorization, nor the expertise to interpret immigration laws and documents. Restrictive licensing requires state motor vehicle administrators to become immigration law and document experts in order to evaluate properly an applicant's immigration status. Our immigration laws recognize approximately 60 ever-changing non-immigrant visa categories in addition to myriad classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, as well as applicants for extension, change, or adjustment of status, to name a few. The array of documents issued by federal agencies as evidence of these classifications is complicated and includes visa stamps, laminated cards, unlaminated handwritten cards, forms, letters, and many other documents or combinations of documents, which require specialized training. Additionally, due to delays in application processing, many immigrants and lawful non-immigrants will be unable to present documentation of their status. This task requires the interpretation and application of a complex body of law. Requiring BMV employees to understand and enforce immigration laws without requisite training will most likely result in legal U.S. residents facing wrongful license denials and revocations for reasons that are wholly unrelated to driver competence.

##### **The BMV should update and improve translated versions of the Indiana Driver's Manual and other documents as the English language versions are updated.**

Response to the tremendous growth of the Hispanic/Latino population has been positive and enabled limited English proficient Hoosiers to prepare for the driver's examination using the translated materials. The BMV is encouraged to continue to provide these materials. In

addition, the BMV is urged to strengthen efforts to recruit additional bilingual driver examiners and bilingual branch employees.

**e. Alternatives to the Driver's License**

**The certificate of driving is recommended as a last resort and only if it can be implemented uniformly in accordance with human rights.**

In a genuine effort to respond to the problem of the unlicensed driver, some states have passed or are considering laws creating alternatives to the driver's license. In Illinois and Louisiana, a temporary driver's license is available to only segments of the immigrant population and therefore does not fully respond to the needs of the immigrant population. Tennessee policy creating a driver's certificate broadening the availability of driving privileges to immigrants raised questions regarding constitutionality, enforcement, discrimination and state policy. In particular, the ICHLA Sub-Committee has strong reservations about recommending the driving certificate for the following reasons:

**1. Tennessee's experience implementing the law.**

The Tennessee Department of Safety and the Tennessee Office of Homeland Security sent a letter to the Tennessee Association of Chiefs of Police stating that the certificate is not a valid form of identification. In response, the Nashville Police Department and Tennessee Highway Patrol stated that their officers would accept the certificate, the Memphis Police Department stated that its officers will not accept it, and other jurisdictions have yet to take a position on the issue, leaving drivers subject to inconsistent enforcement policies. Due to the uncertainty and the lack of uniformity, the ICHLA Sub-Committee position is that implementation of a certificate in Indiana should not take place without approval from law enforcement officials.

**2. The certificate could lead to discrimination.**

In effect, the certificate identifies the bearer as an immigrant because only immigrants are certificate-holders, which could lead to possible discrimination. A lawsuit challenging the certificate's constitutionality argues that it establishes an irrebuttable presumption that noncitizens (other than lawful permanent residents) are a threat to homeland security, discriminates against them solely because of their alienage or national origin, and restricts their right to travel. Criticism of the law has come from multiple levels. Immigrants eligible to apply for the certificate fear it will mark them as being undocumented or will be confusing, while

immigration restrictionists, including some Tennessee legislators, feel that the certificate condones illegal immigration.

### **VIII. CONCLUSION**

After careful consideration of Indiana's history, population, policies, and great concern for public safety and security, the ICHLA Sub-Committee on the Driver's License Issue respectfully submits recommendations that the challenges to obtaining an Indiana driver's license be reviewed and eliminated. Access to the driver's license is a priority issue for the Hispanic/Latino community because the ability to prove one's identity and lawfully operate a motor vehicle is crucial. Issuance of the driver's license equipping people to prove their capability to comply with Indiana driving rules and regulations effectively improves both public safety and security. Public safety improves when all drivers are properly licensed and insured, and state security improves when individuals hold valid identification documents. Overly restrictive policies on the driver's license reduce both public safety and security in Indiana by encouraging the proliferation of false documents, and resulting in unlicensed and uninsured drivers, ultimately undermining public safety for all. Accessibility to the Indiana driver's license for all Hoosiers will make Indiana a safer, more attractive state for growth of business, tourism, and families.