

ILLEGAL IMMIGRANTS AND DRIVING

N.C. Legislature Should Stop Helping Illegal Immigrants Obtain Licenses

S U M M A R Y : North Carolina makes it very easy for illegal immigrants to obtain driver's licenses. Instead of requiring Social Security Numbers to get a license, the state accepts IRS-issued Individual Taxpayer Identification Numbers (ITINs), even though they primarily are issued to illegal immigrants. To make matters worse, the state does not even require that people prove their lawful status in the country. In 2005, the state's own auditor warned against accepting ITINs, yet the legislature still has failed to take any action.

The North Carolina legislature decided to make it easy for illegal immigrants to receive driver's licenses or state identification cards.¹ By passing legislation² in 2001 that allows individuals to obtain licenses, in part by using Individual Taxpayer Identification Numbers (ITINs) instead of Social Security numbers (SSNs), the legislature has made North Carolina a haven for illegal immigrants seeking licenses. This policy is especially problematic since there is no requirement that individuals prove lawful status in the country.

An ITIN is a number developed by the Internal Revenue Service (IRS) for the sole purpose of allowing those unable to obtain Social Security numbers to pay their taxes.³ It should be noted that almost anyone in the country, including *legal* immigrants, can receive Social Security numbers.⁴ As a result, most of those obtaining ITINs, as the IRS has recognized,⁵ are likely illegal immigrants. This Spotlight provides some background on the law, explains the problems with accepting ITINs, especially without requiring evidence of lawful status, and addresses why North Carolinians should worry about illegal immigrants obtaining driver's licenses in the state.

Legal Background

Before 9/11, North Carolina did not accept ITINs. Ten days later, on Sept. 21, 2001, the legislature ratified an appropriations bill that did the following:

- 1) Deleted the following language that existed in the law: "The Division [of Motor Vehicles] shall not issue a license to an applicant who fails to provide the applicant's social security number."

- 2) Added the following language: "If an applicant does not have a valid

200 W. Morgan, #200
Raleigh, NC 27601
phone: 919-828-3876
fax: 919-821-5117
www.johnlocke.org

The John Locke Foundation is a 501(c)(3) nonprofit, nonpartisan research institute dedicated to improving public policy debate in North Carolina. Viewpoints expressed by authors do not necessarily reflect those of the staff or board of the Locke Foundation.

social security number and is ineligible to obtain one, the applicant shall swear to or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service to that person.”

Five days later, on Sept. 26, 2001, just two weeks after 9/11, Governor Easley signed the bill into law.⁶ In all fairness, this language was part of a much larger appropriations bill, and some legislators may not have known it existed. However, since that time, nothing has been done to repeal the acceptance of ITINs in lieu of SSNs or to require proof of lawful status.

This issue *may* be a moot point in two years. By May 11, 2008, states must comply with a new federal law passed in 2005 called the REAL ID Act.⁷ The federal government will not recognize any driver’s license issued by a non-complying state. This law requires several new changes to the licensing process including evidence of lawful status.⁸ Whether North Carolina will comply with the law should not necessarily be assumed—however, the cost seems too great to ignore for even supporters of licenses for illegal immigrants.

The Problem with ITINs

The North Carolina Division of Motor Vehicles (DMV) estimates that it accepts an incredible number of ITINs—anywhere from 75,000 to 100,000 ITINs a year.⁹ As the Office of the State Auditor has indicated, North Carolina is one of only nine states that accept the ITIN in lieu of a SSN. In its report on the licensing process, the Office of the State Auditor warned:

ITINs are intended to be used for federal tax purposes only and are obtained with minimal identification, such as a foreign voter’s registration card. The Division [of Motor Vehicles] does not have access to a database for verifying ITINs as it does for Social Security numbers. Most states have found that the ITIN card is easy to illegally reproduce and only eight states other than North Carolina now accept it.¹⁰

The IRS stressed in the 2003 letter sent to all governors and directors of motor vehicle departments that an ITIN should not be used:

Also, since we issue ITINs for tax filing purposes only, we do not verify applicants’ legal presence in the U.S. — the tax code classifies aliens based on their physical presence (resident or non-resident), not their legal status in this country. ... If your state is considering legislation to accept ITINs as proof of identity for driver’s licenses, please alert your legislators to potential security risks. State-issued photo identification provides unrestricted access to most U.S. air and ground transportation systems and entry to public buildings.

If your state currently accepts ITINs as proof of identity for driver’s licenses, please alert your staffs that IRS issues ITINs for tax purposes only. Please do not direct driver’s license applicants to us for ITINs; we do not issue the numbers for non-tax reasons.¹¹

A Social Security number implies legal status in the country—an ITIN generally implies illegal status. By accepting ITINs instead of SSNs, without evidence of lawful status, North Carolina certainly is providing licenses to illegal immigrants.

Why Should We Even Care If Illegal Immigrants Receive Driver’s Licenses?

The national association representing motor vehicle administrators has expressed clear concern regarding issuing licenses to illegal immigrants. The American Association of Motor Vehicle Administrators, which develops standards and best practices for members, has recommended and adopted in a formal resolution: “All jurisdictions should not grant a photo driver’s license/identification card to an undocumented immigrant.”¹²

However, some argue that since illegal immigrants are going to drive anyway, they should be able to get a license, which will ensure that they have insurance. In North Carolina, before obtaining a driver’s license, an individual must show proof of liability insurance.¹³

Many illegal immigrants, though, certainly will use fake insurance documentation. Sometimes illegal immigrants

do not even have to create very convincing fake documents (or possibly any fake documents at all). North Carolina's state auditor specifically identified situations where the DMV has improperly allowed "insurance information without name of applicant, policy number, and issue and expiration date."¹⁴ The insurance requirement becomes meaningless in these situations.

More importantly, illegal immigrants could have liability insurance when obtaining a license, but this does mean they will have insurance once they are on the road. Illegal immigrants can obtain short-term insurance and simply not renew the policy.

Even if there are benefits from allowing illegal immigrants to obtain licenses for insurance purposes, they are greatly outweighed by the following costs:

- *The Key to American Life.* A driver's license is the primary means of identification that allows Americans to do everyday activities, from renting a car or apartment to getting a library card. The license is the key that unlocks many of the benefits of American life, and without the key, there might be less incentive to be here illegally. It also is a key that generally ensures that a person can enjoy an American life without ever having to raise suspicions of being an illegal immigrant or to falsify documents.

Allowing illegal immigrants to obtain driver's licenses also is an ethics issue—individuals should not be rewarded for being in the country illegally nor should they, for the most part, receive all the benefits of being an American.

- *National Security Concerns.* A driver's license also is the key to engage in activities that have clear national security risks associated with them. The direct and obvious benefit of a driver's license is the ability to drive a vehicle. Driving is more than just being able to get behind the wheel for a joy ride. Driving is freedom of movement and the most common way Americans get to their destinations. In the context of terrorism, freedom and ease of movement is critical. There is no government monitoring of one's movement. An illegal immigrant with nefarious objectives can freely move across the entire country under the radar screen.

There are many other risks besides driving. To get through security at an airport and to board an airplane, an individual only needs to show a driver's license and his boarding pass. A driver's license can be used as a primary means of identification to set up checking accounts and to cash checks. Wire transfers, including international transfers of money,¹⁵ can all be conducted using a driver's license for identification.¹⁵ A driver's license allows individuals to enter most governmental buildings, when identification is required.¹⁶

The 9/11 terrorists knew the importance of state issued photo identification. According to the 9/11 Commission Report: "Several [of the terrorists] also obtained new photo identification, first in New Jersey and then at the Virginia Department of Motor Vehicles..."¹⁷ In a post 9/11 world where theoretically there is more attention paid to security matters, the need to use driver's licenses, as opposed to any foreign documents, would be even more critical for terrorists that seek to stay hidden in the shadows.

- *North Carolina Is a Magnet for Illegal Immigrants.* North Carolina's lax requirements make the state a magnet for illegal immigrants seeking licenses. In its report on the state's driver's licensing process, the Office of the State Auditor stated, "Having less restrictive requirements appears to encourage individuals from other states to travel to North Carolina to obtain a driver's license."¹⁸

Jeff Jordan from the U.S. Bureau of Immigration and Law Enforcement, who heads federal immigration enforcement in North Carolina, indicated that it is no secret that North Carolina has fewer requirements to obtain a driver's license than other states.¹⁹

He recently stated, "We often apprehend folks coming down in van loads, folks who are coming from other states for the sole purpose of obtaining a North Carolina driver's license using counterfeit documents."²⁰

These lax requirements also could be another reason that illegal immigrants are moving to North Carolina in huge numbers. According to the Pew Hispanic Center:

Since the mid-1990s, the most rapid growth in the number of undocumented migrants has been in states that previously had relatively small foreign-born populations. As a result, Ari-

zona and North Carolina are now among the states with the largest numbers of undocumented migrants.²¹

North Carolina has approximately 300,000-400,000 illegal immigrants — this is the ninth-highest number in the country.²² As the number of illegal immigrants does rise, it could mean higher costs for schooling, health care, and other services that are provided to illegal immigrants.

This is not to imply that the ease in obtaining a driver's license is a primary reason for illegal immigrants moving to the state. However, it is not hard to believe that the ease in obtaining a driver's license could be a major incentive to stay in the state. Once an illegal immigrant has a valid driver's license, why would he ever again take a risk in trying to obtain another license in another state? The "key" to most American benefits has already been obtained. The risk of moving to another state may, in many instances, outweigh any benefits.

Simple Recommendations and Conclusion

North Carolina should immediately stop accepting ITINs and require proof of an individual's lawful presence in the country. The fact that the federal government has imposed a massive unfunded mandate on states, the REAL ID Act (which many states are having a hard time complying with²³), is due in part to states like North Carolina being lax when it comes to driver's licenses. Legislators should act immediately to stop undermining our immigration system and national security. The fact that North Carolina is a magnet for illegal immigrants across the country to obtain licenses is an embarrassment to all North Carolinians.

Daren Bakst, J.D., LL.M., is Legal and Regulatory Policy Analyst for the John Locke Foundation.

Notes

1. This Spotlight uses "driver's licenses" or "licenses" to also cover state identification cards (unless discussing the "privilege" of driving). It should be noted that the requirements to receive both a North Carolina driver's license and North Carolina Identification Card are the same (except for the driving tests). See www.ncdot.org/dmv/other_services/general/pictureID.html.
2. S.L. 2001-424, § 27.10A.(a) at www.ncga.state.nc.us/Sessions/2001/Bills/Senate/HTML/S1005v7.html. For an excellent discussion on passage of this law and the problems with driver's licenses for illegal immigrants, see former state senator Fern Shubert's 2004 gubernatorial campaign web site at www.forfern.com/dlicense2.htm.
3. See the IRS web page on ITINs at www.irs.gov/individuals/article/0,,id=96287,00.html.
4. "New Rules for Getting a Social Security Number and Card," SSA Publication No. 05-10120, March 2006, at www.socialsecurity.gov/pubs/10120.html.
5. Dinerstein, Marti, "Giving Cover to Illegal Aliens: IRS Tax ID Numbers Subvert Immigration Law," Center for Immigration Studies, October 2002, citing Oscar Avila, "Tax ID numbers open door wider for illegal immigrants," *Chicago Tribune*, April 15, 2002 at www.cis.org/articles/2002/back1202.html.
6. *Op. cit.*, note 2.
7. The Real ID Act passed in an emergency appropriations bill, P.L. 109-13 at thomas.loc.gov/cgi-bin/bdquery/z?d109:h.r.01268.
8. *Ibid.*
9. Taft Wireback, "NC Driver's license rules under fire," *Greensboro News & Record*, January 16, 2005. This article can be accessed on the Americans for Legal Immigration web site at www.alipac.us/modules.php?name=News&file=article&sid=165.
10. "Performance Audit of the North Carolina Department of Transportation Division of Motor Vehicles: Driver's Licensing Process," North Carolina Office of the State Auditor, July, 2005, p. 8.
11. IRS Letter to Governors and Department of Motor Vehicles Directors, August 8, 2003 at www.irs.gov/pub/irs-utl/itin_dmv_info.pdf. The date of this letter can be seen at www.forfern.com/dlicense2.htm.
12. "AAMVA DL/ID Security Framework," American Association of Motor Vehicle Administrators, February, 2004, p. 23.
13. See the N.C. Division of Motor Vehicles web page on how to obtain a driver's license at www.ncdot.org/dmv/driver_services/drivingpublic/applying.html
14. *Op. cit.*, note 10, at 18.
15. See, e.g., the Western Union web page (question 10) at www.westernunion.com/info/faqMT.asp?country=US#tstfaq1_15 and the Coalition for a Secure Driver's License web page on quick facts regarding driver's licenses at www.securelicense.org/site/PageServer?pagename=IC_quickfacts.
16. *Op. cit.*, note 11.
17. "The 9/11 Commission Report," the 9/11 Commission, p. 243, www.9-11commission.gov/report/911Report.pdf.
18. *Op. cit.*, note 10, at 7.
19. Adam Shub, "Officials: Illegals target N.C. license," *News 14 Carolina*, February 10, 2006, at www.news14charlotte.com/content/headlines/?SecID=41&ArID=113097.
20. *Ibid.*
21. Passel, Jeffrey S., "Estimates of the Size and Characteristics of the Undocumented Population," Pew Hispanic Center, March 21, 2005, pewhispanic.org/reports/report.php?ReportID=44.
22. "Fact Sheet: Estimates of the Unauthorized Migrant Population for States Based on the March 2005 CPS," Pew Hispanic Center, April 26, 2006, pewhispanic.org/files/factsheets/17.pdf.
23. See e.g. "REAL ID Act: State Implementation Recommendations," provided to the U.S. Department of Homeland Security by the National Conference of State Legislatures, National Governors Association, and the American Association of Motor Vehicle Administrators, at www.ncsl.org/programs/press/2006/060426REALID.htm.