

FIASCO

THE GOVERNOR'S PLAN TO
GRANT ILLEGAL ALIENS
DRIVER'S LICENSES IN NEW YORK STATE

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A Legislative Report
by Senator Frank Padavan

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Table of Contents

Introduction	1
A Note on the Majority Task Force on Immigration	3
I. The Plan	4
The Announcement	4
The Proposed Change in Policy	5
II. The Issues	7
Illegal Immigration	7
Green Cards, Visas and Naturalizations	8
The Non-Immigrant Visa Program	10
Applying for a Non-Immigrant Visa	12
Illegal Immigration and New York State	13
Illegal Immigration and Other Criminal Activity	15
Illegal Immigration and Driver's Licenses	17
The 9/11 Commission	18
The REAL ID Act	18
REAL ID Act Deadlines	20
III. The Senate Legislation	21
S.6484	21
Other Legislation	26
Conclusion	29

Introduction

Obtaining a driver's license in New York State is a privilege extended by the state; the Department of Motor Vehicles informs applicants -- and reminds drivers -- of this in its printed manual:

"Driving privilege" means the courtesy extended to out-of-state drivers which allows them to drive a motor vehicle in New York State. It also refers to **permission from New York State for an unlicensed person to obtain a New York State license**. A driving privilege can be suspended or revoked for the same reasons as are New York State driver licenses. Driving with a suspended or revoked privilege carries the same penalties as driving with a suspended or revoked license.^[1]

In the fall of 2007, Governor Eliot Spitzer sought to extend that privilege to illegal aliens in New York State. The Governor's plan to grant illegal aliens driver's licenses represented a significant change in policy, made without legislative input. The plan was contrary to the facts and the law. Former DMV Commissioner Raymond Martinez said of the plan:

People say this is a retreat from those security measures we enacted. I would disagree. It's a complete surrender that I believe makes New York and the United States less secure.^[2]

The plan ignored the recommendations of the 9/11 Commission and the requirements of the federal REAL ID Act. The Senate Committees on Homeland Security and Transportation held two joint-hearings on the Governor's plan, taking testimony from witnesses who outlined its

flaws. The Senate passed legislation to amend the Vehicle and Traffic Law to bring New York State into compliance with federal law, expressing its rejection of the Governor's plan in a bi-partisan vote. Public opposition remained over seventy (70) percent throughout.^[3] Nevertheless, for nearly two months the Governor refused to relent, announcing at one point a new, revised plan that left intact the granting of driver's licenses to illegal aliens.

Finally, although refusing to admit that the proposed change in policy was mistaken, and blaming everyone and everything but the plan itself, in the end, the Governor withdrew his plan. This report discusses the Governor's plan and places it in the context of state and federal policy relating to illegal immigration, and the security of New York State and the nation.

The first part of this report outlines the Governor's plan to grant illegal aliens driver's licenses, announced on September 21, 2007. Part II focuses on the issues raised by the proposed change in policy, including specifically security issues; and reviews the relevant law, regulation and DMV policies currently in effect. Part III discusses the legislative approaches introduced in the Senate, including S.6484, which passed on October 22, 2007.

A Note on the Majority Task Force on Immigration^[4]

Following landmark research by Senator Frank Padavan documenting the impact of federal immigration policy at the state and local level, the Senate Majority Task Force on Immigration was created in 1994. For over a decade, with Senator Padavan as its chairman, the Task Force has studied issues related to immigration, including specifically illegal immigration, alien smuggling, and border security.

Senator Padavan has released groundbreaking reports analyzing United States Census data and estimating the costs of federal immigration policy being borne by New York State and its localities. These reports include "*Our Teeming Shore*," released in 1994, based on extensive research and a series of public hearings; and "*The Golden Door*," released in 2005, which also reviewed the federal and state response to terrorism and described the need for federal-state cooperation with regard to illegal immigration.

The thesis of the Task Force reports on security is not that illegal immigration *causes* terrorism. However, illegal immigration, when and where it occurs, is often part of a general environment of lawlessness that facilitates terrorist activity.

Over a decade ago, the late Barbara Jordan, Chairwoman of the United States Commission on Immigration Reform, suggested the following immigration policy: "People who should get in, get in; people who should not enter, are kept out; and people who are deportable, should be required to leave."^[5] This remains the guiding principle of the Senate Majority Task Force on Immigration.^[6]

I. The Plan

The Announcement

On Friday, September 21, 2007, a newspaper in New York City reported that "illegal immigrants in New York will be allowed to obtain New York State driver's licenses under a new policy that the Spitzer administration is expected to announce shortly."^[7]

Starting in 2008, the Department of Motor Vehicles will accept foreign passports and birth certificates from immigrants as proofs of identification for new license applications. Immigrants will no longer need to provide legal status paperwork or a Social Security card.^[8]

The administration announcement came later that day, in the form of a press release.^[9] There had been no discussion regarding the change in policy with legislators; no discussion with the public; and even county clerks, who would have to implement the policy, had no input into the plan.

The plan, which represented a major shift in policy, was announced by the Governor as a *fait accompli*: the Department of Motor Vehicles would now grant driver's licenses in New York State "without regard to immigration status."^[10] New York City Mayor Michael Bloomberg expressed his concerns regarding the plan:

[T]his would make New York's state driver's licenses ineligible to be used to get on an airplane. I'm really skeptical that we should be issuing driver's licenses

willy-nilly, because it then leads to lots of other problems in terms of voter registration and other things.^[11]

The Proposed Change in Policy

Under current law, an applicant for a driver's license is required to provide either a social security number^[12] or a letter of ineligibility from the Social Security Administration.^[13] Also, under DMV policy established in 2001, an applicant who has no social security number is required to provide the immigration documents used by the Social Security Administration to determine ineligibility; current DMV regulation states:

An applicant for a license or a non-driver identification card or an applicant renewing such a license or such identification card must submit his or her social security number or provide proof that he/she is not eligible for a social security number.^[14]

In 2004, it was reported that "of the 11.2 million drivers in the state, the DMV has found 600,000 whose Social Security numbers did not check out with a national database."^[15]

Under Governor Spitzer's plan, as announced September 21, an applicant for a driver's license who has no social security number would not be required to provide a letter of ineligibility or any immigration documents. Licenses would therefore be obtainable by *illegal aliens* as readily as by citizens and other legal residents. Under the proposed change in policy,

an applicant would simply check a box on their application indicating ineligibility for a social security number.

Under the plan, proof of the applicant's identity for obtaining a driver's license would include a foreign passport. (The passport would substitute for the requirement to provide either a social security number or a letter-of-ineligibility). However, proof of the applicant's legal presence in the United States would not be required, contrary to the requirements of the REAL ID Act (see Part II of this report).

The REAL ID Act allows foreign passports to be used as proof of identity. However, under the REAL ID Act, anyone using a foreign passport is required to also provide either a social security number, if they are eligible to work in the United States, or, in the alternative, proof that they are legally present in the United States. This process under the REAL ID Act is therefore more secure than would be the process under the Governor's plan, because under REAL ID the foreign passport is supplemented by documents from the Social Security Administration and the Department of Homeland Security.

The main idea behind the Governor's plan would be to verify an applicant's *identity*, but to ignore his *status* -- i.e., whether the applicant is legal or illegal. Governor Spitzer specifically stated in announcing his plan that his purpose was to allow illegal aliens to obtain driver's licenses;^[16] only *residency* in New York State would be required to apply for a license.

II. The Issues

Illegal Immigration

It has been estimated that over twelve million illegal aliens currently reside in the United States^[17] (some estimates are even higher^[18]). Illegal aliens are those immigrants who enter the country without authorization, who cross the border from Mexico or Canada, or land by boat or plane, as well as those who enter legally but overstay their travel or work visas.^[19]

At the close of the twentieth century, the Immigration and Naturalization Service (INS) estimated that there were over seven million illegal aliens living in the United States, and that that figure was growing by one half-million annually.^[20] By 2003, there were over eight million illegal aliens in the United States, including approximately 78,000 from countries identified as "of special concern in the war on terror."^[21] According to the Center for Immigration Studies:

It is important to note that the 500,000 annual increase is the net growth in the illegal-alien population (new illegal immigration minus deaths, legalizations, and out-migration). In 1999 for example, the INS estimates that 968,000 new illegal aliens settled in the United States. This number was offset by 210,000 illegal aliens who either died or returned home on their own, 63,000 who were removed by the INS, and 183,000 illegal aliens who were given green cards as part of the normal "legal" immigration process.^[22]

The 2000 census confirms the INS estimate that the illegal-alien population grew by nearly one half-million annually during the decade of the 1990s.

The two "magnets" which attract illegal aliens are jobs and family connections. The typical Mexican worker earns one-tenth his American counterpart, and numerous American businesses are willing to hire cheap, compliant labor from abroad. In addition, communities of recently arrived legal immigrants help create immigration networks used by illegal aliens and serve as incubators for illegal immigration, providing jobs, housing, and entrée to America for illegal-alien relatives and fellow countrymen. The standard response to illegal immigration has been increased border enforcement. And, in fact, such tightening of the border was long overdue. But there has been almost no attention paid to enforcement at work-sites within the United States.^[23]

One recent study estimated that the net cost to the federal government of illegal immigration is \$10 billion annually^[24] -- as distinct from *legal* immigration, which has been estimated to be a net benefit at the federal level. This cost represents the difference between the use by illegal aliens of federal government services and the amount they pay in federal taxes.

Green Cards, Visas and Naturalizations

In 2006, **1,266,264** green cards were issued by the United States.

A legal permanent resident (LPR) or "green card" recipient is defined by immigration law as a person who has been granted lawful permanent residence in the United States. Permanent resident status confers certain rights and responsibilities. For example, LPRs may live and work permanently anywhere in the United States, own property, and attend public schools, colleges, and universities. They may also join certain branches of the Armed Forces, and apply to become U.S. citizens if they meet certain eligibility requirements.

The majority of new LPRs (65 percent) already lived in the United States when they were granted lawful permanent residence. Nearly two-thirds (63 percent) were granted permanent residence based on a family relationship with a U.S. citizen or legal permanent resident of the United States. The leading countries of birth of new LPRs were Mexico (14 percent), China (7 percent) and the Philippines (6 percent).^[25]

In 2006, **33,667,328** non-immigrant visas were issued by the United States.

Each year, millions of foreign nationals are admitted into the United States. Those who are admitted temporarily and for a specific purpose are referred to as non-immigrants. Most non-immigrants enter as tourists or business travelers on short-term trips while others, such as students, temporary workers, and foreign diplomats, stay for longer periods of time, ranging from a few months to several years.^[26]

A non-immigrant is a foreign national seeking to enter the United States temporarily for a specific purpose. Non-immigrants are admitted for a temporary period of time and, once in the country, are restricted to activities related to the purpose for which their visa was issued. They may have more than one type of non-immigrant visa but are admitted in only one status.

In general, foreign nationals seeking temporary admission to the United States must first apply for a visa at the American Embassy or Consulate with jurisdiction over their place of permanent residence. The type of non-immigrant visa required is defined by immigration law and relates to the purpose of travel. Visa applicants must also be admissible or have obtained a waiver for any ground of inadmissibility; be in possession of a valid passport; maintain a foreign residency, in most instances; show proof of financial support for their stay, if required; abide

by the terms and conditions of admission; and agree to depart at the end of their authorized stay or extension.^[27]

In 2006, **702,589** immigrants became naturalized citizens of the United States.

The leading countries of birth of new citizens were Mexico (83,979), India (47,542), Philippines (40,500), China (35,387), and Vietnam (29,917). The largest number of persons naturalizing lived in California (152,836), New York (103,870), and Florida (90,846).^[28]

To be naturalized, an applicant generally must fulfill certain requirements set forth in the Immigration and Nationality Act concerning age, lawful admission, and residence in the United States. These general naturalization provisions specify that a foreign national must be at least 18 years of age; have been granted lawful permanent residence in the United States (be a legal permanent resident, LPR); and have resided in the country continuously for at least 5 years. Additional requirements include the ability to speak, read and write the English language; knowledge of the U.S. government and U.S. history; and good moral character.^[29]

The Non-Immigrant Visa Program

Illegal aliens in the United States include immigrants admitted to the country under the non-immigrant visa program but who overstay their visas. The program has experienced what has been described as "explosive growth" in recent years, with a corresponding increase in the illegal alien population.^[30] In 1980, seven million non-immigrants were admitted to the United States; in 2001, thirty-three million were admitted.^[31] It has been estimated that forty percent of

the current illegal alien population in the United States originally entered the country under the non-immigrant visa program.^[32]

That is a troublingly high number of visa mistakes made each year, with profound security, fiscal, and social consequences. The most obvious of these was the attack on September 11, 2001, which was carried out by terrorists who entered the country on non-immigrant visas issued by U.S. consular officers.

Further, the non-immigrant visa program has evolved into an alternate entrée to permanent residence that is far less controlled than is the existing immigrant visa program.

Finally, the non-immigrant visa program is rife with fraud, which adjudicators have few effective tools to fight.^[33]

It has been observed that the non-immigrant visa program "is badly in need of attention from policy-makers, most obviously because of its attractiveness as an entry option to terrorists and other prospective illegal immigrants."^[34]

Applying For a Non-Immigrant Visa^[35]

To qualify for a non-immigrant visa, the purpose of the applicant's visit must fall within one of the defined categories and the applicant must prove to the consular officer and INS inspector that he is likely to return to a home in a foreign country.

The consular and INS officers are required to assume that the applicant intends to remain permanently in the United States, with the burden of proof on the applicant to show otherwise. Failure to demonstrate compelling ties to a home abroad is by far the most common reason for a non-immigrant visa to be refused (79 percent of all refusals in 2002).

Finally, the applicant must not be excludable under one of the grounds stipulated by the Immigration and Nationality Act. The statute excludes known criminals, terrorists, drug addicts, Nazis, draft dodgers, and those who have been deported previously, among other categories.

All non-immigrant visa applicants must submit the basic application form, passport photo, and other documents required for certain categories of applicant, such as evidence of acceptance at a university or approved petition for employment.

The regulations suggest that officers consider the applicant's overall financial situation, credibility of plans, and ties abroad. Therefore, a typical consulate will also require or encourage all applicants to submit a letter from their employer stating their position and salary and a letter from their bank stating how much money is in their accounts, or other evidence of their ties to their home country.

Illegal Immigration and New York State

It has been estimated that over 700,000 illegal aliens currently reside in New York State^[36] (some estimates are even higher^[37]). In 1994, we estimated that there were as many as 490,000 illegal immigrants in the state.^[38] In 1996, the RAND Corporation placed the figure at 540,000.^[39]

Most illegal aliens in New York State -- over eighty percent^[40] -- reside in New York City, "which has one of the country's highest concentrations of illegal residents."^[41] "The Newest New Yorkers 2000: Immigrant New York in the New Millennium," released by New York City in 2005, reports that Mexican immigrants, for example, rank as the fifth largest immigrant group in New York City.^[42] Yet the large increase in the city's Mexican-born population since the 1990 Census (when Mexican immigrants were the 17th largest immigrant group in the city) can not be accounted for by *legal* immigration; "nationally, 80 to 85 percent of all Mexican immigration since 1990 was undocumented."^[43] One demographer has concluded: "Any place that's getting a lot of new immigration from Mexico, virtually all of it is undocumented, and that certainly includes New York."^[44]

The cost to the state of illegal immigration -- like the number of illegal residents upon which the cost is based -- can only be estimated. One recent study found that "illegal immigration cost the taxpayers of California, for example, \$10.5 billion a year for education, health care and incarceration."^[45]

A key finding of the report by the Federation for American Immigration Reform (FAIR) said the state's already struggling kindergarten-through-12th-grade education system spends \$7.7 billion a year on children of illegal aliens, who constitute 15 percent of the student body.

The report also said the incarceration of convicted illegal aliens in state prisons and jails and uncompensated medical outlays for health care provided to illegal aliens each amounted to about \$1.4 billion annually. The incarceration costs did not include judicial expenditures or the monetary costs of the crimes committed by illegal aliens that led to their incarceration.^[46]

As our earlier reports have documented,^[47] "the United States is in the midst of a wave of unprecedented immigration."^[48] Uniquely affected have been the "emerging gateways" for immigration, including Nassau and Suffolk Counties on Long Island.^[49] As with more established immigrant destinations, new arrivals to Long Island, for example, come looking for work, most legally; however, as the *New York Times* has reported:

Many newcomers are here illegally or on temporary visas, but there is no definitive data on their numbers.

Immigrants arrived in droves in relatively small communities, making it impossible for residents to ignore their new neighbors. Some 80 percent of Long Islanders own their own homes, and there are few rental apartments, so laborers are often crammed into single-family homes.

Some towns took the change in stride; others rejected it outright, with angry residents attending town meetings to complain that the influx of immigrants has brought noise violations, littering, people drinking and urinating in public and driveways crammed with cars.^[50]

In 2004, of the 23,150 arrests made by Suffolk County police, 2,349 were of non-citizens -- more than 10 percent of the total.^[51] The result has been that, as the *New York Times* has reported, "the issue of illegal immigration is gathering political force" on Long Island:

"Public opinion has changed," said Sue Grant, one of several Farmingville residents who rise each morning to stand on street corners and demonstrate against the day laborers in their community. "More and more people are coming forward and saying, 'I'm sick of this.' They don't want this anymore."^[52]

Illegal Immigration and Other Criminal Activity

It has been observed that illegal immigration, when and where it occurs, is often part of a general environment of lawlessness; in August, 2005, for example, the governors of both Arizona and New Mexico declared states-of-emergency, focusing on their borders with Mexico, because of "the crime that facilitates illegal immigration -- automobile theft, identity theft, human trafficking."^[53] One news account reported:

U.S. law enforcement officials say Arizona and New Mexico's porous 350-mile border with Mexico has also become a magnet for crime, drug smuggling and gang violence. Border towns have been plagued by violence, much of it from organized crime. And since October of [2004], federal agents have recorded more than 500,000 arrests of illegal border-crossers in just two sectors of Arizona.^[54]

Governor Richardson of New Mexico added: I believe very strongly that there is no immigration policy, there is not enough resources at the border . . . Clearly in my stretch of 180 miles in New Mexico there's very little patrolling going on, and as Governor Napolitano [of Arizona] said . . . the traffic of human beings is spawning smuggling of drugs, desecration of property.^[55]

Smugglers and the aliens they transport into the United States often rely on fraudulent documents to either enter or remain in the United States, including illegally-obtained state driver's licenses.^[56]

Illegal Immigration and Driver's Licenses^[57]

A US-issued driver's license is the only identification anyone needs to board a domestic flight in America. Most states require driver's license applicants to present documents proving their identity and their status as legal state residents. However, some states do not. That is why hijackers were able to obtain licenses or motor vehicle ID cards from Florida, New Jersey, and Virginia. It is reasonable to assume they showed them on 9/11 to board the four planes they eventually used to kill more than 3,000 people. The horror of these acts shocked the public into the realization that the government has lost control over who is admitted to the United States and is often unable to find those who reside here illegally.

Although the majority of illegal immigrants wish us no harm and simply want a better life for themselves and their families, the stark reality is that their presence has spawned widespread document and identity-fraud throughout the United States that threatens our ability to distinguish illegal aliens from U.S. citizens and legal foreign residents.

Once here, illegal immigrants must work to support themselves. The immense demand for documents "proving" the right to work in the United States has led to the exploitation of loopholes in laws and regulations at every level of government. The offices that provide original or duplicate copies of these documents suffer from overwork, under-funding, and severe systems inadequacies.

Production and distribution of false documents has become a large and sophisticated industry. A wide variety of documents are involved, ranging from baptismal certificates to INS-issued documents. However, three seemingly innocuous documents form the core of the crisis the United States now faces in ensuring that its personal identification documents and databases are secure. They are U.S. birth certificates, Social Security numbers, and driver's licenses.



The 9/11 Commission

The 9/11 Commission found that the September 11th hijackers obtained thirteen (13) driver's licenses and twenty-one (21) other U.S. or state-issued identification cards.

The various forms of identification, including driver's licenses, facilitated the hijackers' activities, including passing through various checkpoints on September 11th, 2001 and in the weeks and months leading up to the attacks on that day.

The 9/11 Commission recommended improving the security of driver's licenses, including the adoption of federal standards:

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 drivers licenses. Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists.^[58]

These recommendations were incorporated into the federal REAL ID Act of 2005.

The REAL ID Act

The REAL ID Act requires that state-issued driver's licenses meet certain minimum standards, including standards for the acceptance of licenses by federal authorities; standards for

the documents provided by an applicant, and for their verification by the state; and standards for the issuance of licenses by the state. The REAL ID Act specifically requires states to verify the legal immigration status of applicants for a driver's license.

Non-compliance with the REAL ID Act would mean that driver's licenses issued by a non-compliant state would not be accepted by federal authorities for official purposes.

The REAL ID Act:

- (1) specifies what information and physical features must be present on driver's licenses;
- (2) sets minimum standards for documents that applicants must provide;
- (3) requires states to verify documents with their original issuing agency;
- (4) sets security standards regarding locations and employees involved with the production and issuance of licenses; and
- (5) requires states to retain digital copies of source documents in their databases, and to share their databases with other states.

Under the REAL ID Act, an applicant must provide his social security number, which must then be verified by the state, or he must provide proof that he is not eligible for a social security number. Also, no foreign document may be used as proof of identity other than a foreign passport. The REAL ID Act requires an applicant to provide proof that he is legally

present in the United States. Also, under the REAL ID Act, a driver's license issued to a legal immigrant must expire upon the expiration of his visa.

REAL ID Act Deadlines

The REAL ID Act provides that unless a state is certified by the federal government that it is in compliance with the Act, driver's licenses issued by that state will not be accepted by federal authorities for official purposes. The deadline for this is May 11, 2008. That deadline may be extended until January 1, 2010, by the state filing a request for an extension, and submitting a plan to meet the requirements (the request must be made between October 1, 2007 and February 1, 2008; the plan must be submitted by February 1, 2008).

States have until May 10, 2013 to replace all non-compliant cards for those cards to be accepted for federal identification. Non-compliant cards issued by the state after the deadline must indicate on their face that they shall not be accepted for federal identification; such licenses must be of a unique design and color.

III. The Senate Legislation

S.6484

S.6484 (introduced by Senator Padavan; and co-sponsored by Senators Flanagan, Leibell, Libous, Lanza, Alesi, Bonacic, Bruno, DeFrancisco, Farley, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Larkin, LaValle, Little, Maltese, Marcellino, Maziarz, Morahan, Nozzolio, Rath, Saland, Seward, Skelos, Trunzo, Volker, Winner, Wright, and Young) amends the vehicle and traffic law related to the application for and renewal of non-driver identification cards^[59] and driver's licenses.^[60] Specifically, the bill amends vehicle and traffic law sections 490 and 502 to require applicants without a social security number to provide proof of their ineligibility for a social security number, and adds a requirement to sections 490 and 502 that the applicant provide proof that he or she is legally authorized to be present in the United States. Also, the bill provides that a *temporary* non-driver identification card or driver's license expire when the applicant's temporary stay in the United States is set to expire; be identified as "temporary" on the card; and include the expiration date on the card. The bill is set to take effect immediately.

There are three objectives met by the bill: first, to address a problem identified by the 9/11 Commission; second, to begin the process of coming into compliance with the REAL ID Act; and third, to correct the Governor's proposed change in policy. It should be noted that the Governor's proposed change in policy ignored the first objective, and would have been in direct conflict with second.

The 9/11 Commission recommended that "secure identification should begin in the United States" and that "the federal government should set standards for the issuance of . . . sources of identification, such as driver's licenses"^[61] (see Part II of this report). The recommendation was based on the Commission's finding that there were more than nine (9) million illegal aliens in the United States (today there are estimated to be more than twelve (12) million illegal aliens in the United States); and that "all but one of the 9/11 hijackers acquired some form of U.S. identification document, some by fraud," which "assisted them in boarding commercial flights, renting cars, and other necessary activities."^[62] Specifically, the 9/11 hijackers obtained thirteen (13) driver's licenses (two of which were duplicates) and twenty-one (21) other U.S. or state-issued identification cards.

The federal REAL ID Act sets national standards for the issuance of driver's licenses and specifically requires states to verify the legal immigration status of applicants for a driver's license (see Part II of this report). The REAL ID Act requires an applicant for a driver's license to provide either his social security number or proof of ineligibility for a social security number. An applicant who is ineligible for a social security number must also provide proof that he is legally present in the United States. The REAL ID Act requires that temporary licenses be identified as "temporary" on the card and expire when the applicant's temporary stay is set to expire.

The Governor's plan ignored the recommendations of the 9/11 Commission and would have been in direct conflict with the REAL ID Act. The plan would not require proof of ineligibility for a social security number, for example. The plan would not

require proof that an applicant for a driver's license is legally authorized to be in the United States, in direct conflict with the REAL ID Act. And the plan would not require temporary licenses to expire when the applicant's temporary stay expires or to be identified as "temporary" on the card, again, in direct conflict with the REAL ID Act.

S.6484 amends the vehicle and traffic law requirement^[63] that an "applicant provide his or her social security number" to add "or proof of ineligibility to receive a social security number." The bill therefore codifies the interpretation of the statute (written into DMV regulation^[64]) that allows people not eligible to work in the United States, but who are nevertheless here *legally*, to have driver's licenses. The bill goes on to require: "In addition, an applicant who has provided proof of ineligibility to receive a social security number shall also provide proof that he or she is legally authorized to be in the United States." The requirements of proof of authorized presence in the United States in the bill are the same as those required by the REAL ID Act.

S.6484 provides that a temporary driver's license "shall be valid only for the period of the applicant's authorized stay in the United States, or one year if there is no definite end to the period of stay" and also "conspicuously indicate" that it is temporary and include its expiration date, all as required by the REAL ID Act.

These provisions of S.6484 apply both to driver's licenses and to non-driver identification cards, as required by the REAL ID Act.

S.6484 came up for a vote in the Senate on October 22, 2007.^[65] Before the roll was called, Senator Padavan, the bill's sponsor, closed debate:^[66]

It's been a long debate and a great deal has been said, and I'm not going to try and extend the time in which we've been in this chamber any longer than necessary. But there are just a few things that I'd like to address. Most of them, actually, are matters of fact.

Several of you, one after the other, said this bill takes effect, the REAL ID Act, in 2013. Where you got that from I don't know. But it takes effect in May of 2008. Now, a state can ask for an extension for a year, but they have to submit a plan by February of 2008 as to what they're going to do to implement the federal REAL ID Act. There's no question about that.

Several of you have said that nowhere in the 9/11 Commission report or study did they say anything about driver's licenses. They said it multiple times. But most importantly, in their recommendations under the general heading of "Immigration Law and Enforcement," "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 driver's licenses." And so they did, the federal REAL ID Act. "Fraud in identification documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are." That's in the 9/11 report. There is no doubt, no matter how you feel about this issue, that the bottom line is that what the Governor has recommended, through the DMV commissioner, is in direct violation of the REAL ID Act requirement. That is a fact.

Now, the REAL ID Act passed overwhelmingly in the Congress, including our two U.S. Senators, Schumer and Clinton . . . We have a Congressman from

Queens who's been very active. I'll quote him. Congressman Weiner said last week that he feels Governor Eliot Spitzer's controversial plan to issue driver's licenses to illegal aliens would run afoul of the standardized license requirements of the federal REAL ID Act. He said this concerned him because he didn't want New York [driver's] licenses to become second-class licenses.

I certainly hope that this bill will pass on a bi-partisan basis [and that] the Assembly will take it up at some point . . . It has a Democratic sponsor in that house. We hope that perhaps, in view of what's going on here, that the Governor might reconsider what he's doing. We hope something positive comes out of all of this.

Thank you, Madam President.^[67]

The bill passed by a vote of 39-19;^[68] the bill has not been voted on in the Assembly.^[69]

The vote in the Senate was recorded as follows:^[70]

Nay Adams	Aye Alesi	Aye Bonacic	Nay Breslin
Aye Bruno	Nay Connor	Aye DeFrancisco	Nay Diaz
Nay Dilan	Nay Duane	Aye Farley	Aye Flanagan
Aye Fuschillo	Aye Golden	Nay Gonzalez	Aye Griffo
Exc Hannon	Nay Hassell-Thompson	Exc Huntley	Aye Johnson C
Aye Johnson O	Aye Klein	Nay Krueger	Aye Kruger
Aye Lanza	Aye Larkin	Aye LaValle	Aye Leibell
Aye Libous	Aye Little	Aye Maltese	Aye Marcellino
Aye Maziarz	Nay Montgomery	Aye Morahan	Aye Nozzolio
Nay Onorato	Exc Oppenheimer	Aye Padavan	Nay Parker
Nay Perkins	Aye Rath	Aye Robach	Nay Sabini
Exc Saland	Nay Sampson	Aye Savino	Nay Schneiderman
Nay Serrano	Aye Seward	Aye Skelos	Nay Smith
Aye Stachowski	Nay Stavisky	Aye Stewart-Cousins	Aye Thompson
Aye Trunzo	Aye Valesky	Aye Volker	Aye Winner
Aye Wright	Aye Young		

Other Legislation

S.74 (introduced by Senator Padavan) also would prohibit illegal aliens from obtaining drivers' licenses^[71] by "requir[ing] applicants for a driver's license or non-driver identification card to submit satisfactory proof to the department of motor vehicles that the applicant's presence in the United States is authorized under federal law."^[72] Specifically:^[73]

This legislation would amend the vehicle and traffic law by adding a new section 502-b which would require every applicant for a driver's license or non-driver identification card to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law; prohibit the Department of Motor Vehicles from issuing a driver's license or non-driver identification card to any person who does not submit such proof; provide for cooperation between the Department of Motor Vehicles and the United States Bureau of Immigration and Customs Enforcement; and make it a misdemeanor for an applicant to violate this section.

S.74 last passed the Senate in 2005;^[74] the bill has never been voted on in the Assembly.^[75]

S.6250 (introduced by Senator Flanagan) "relates to the requirements of proof for certain licenses."^[76] Specifically, the bill provides as follows:^[77]

Section one of the bill amends subparagraph (i) of paragraph (a) of subdivision 3 of section 490 of the vehicle and traffic law to require the commissioner to obtain proof from any applicant for a non-driver identification card who cannot provide a social security number that they are ineligible for such social security number. This proof may be any documents issued by the United States Department of

Homeland Security that specify that the alien is not eligible for a social security number.

Section two of the bill amends subdivision 1 of section 502 of the vehicle and traffic law to require the commissioner to obtain proof from any applicant for a driver's license who cannot provide a social security number that they are ineligible for such social security number. This proof may be any documents issued by the United States Department of Homeland Security that specify that the alien is not eligible for a social security number.

Section three of the bill amends paragraph (a) of subdivision 6 of section 502 of the vehicle and traffic law to require the commissioner to obtain proof from any applicant for renewal of a driver's license who cannot provide a social security number that they are ineligible for such social security number. This proof may be any documents issued by the United States Department of Homeland Security that specify that the alien is not eligible for a social security number.

S.6250 passed the Senate on June 20, 2007;^[78] the bill has not been voted on in the Assembly.^[79]

S.6479 (introduced by Senator Lanza) "relates to specifying additional requirements for applications for a driver's license and a non-driver identification card to ensure compliance with federal law."^[80] Specifically, the bill provides as follows:^[81]

Subdivision 1 of section 502 of the vehicle and traffic law is amended by adding new paragraphs (a), (b), and (c).

Subparagraph (i) of paragraph (a) of subdivision 3 of section 490 of the vehicle and traffic law is amended to state that the commissioner shall require that an applicant for an identification card or renewal thereof provide all of the verifiable

identification documentation set forth in subdivision one of section five hundred two of this chapter.

The commissioner of motor vehicles shall certify compliance with the driver's license standards set forth in P.L. 109-13 to the Secretary of Homeland Security by March 1, 2008.

S.6523 (introduced by Senator Trunzo) "provides that the New York State driver's license of a resident from a foreign country, who has been issued a visa in this state, shall expire upon the expiration of the visa."^[82] Specifically:^[83]

Sections 503 and 491 of the Vehicle and Traffic Law will be amended to read that whenever a driver's license, learner's permit, or non-driver identification card has been issued to a legally documented alien who has been issued a visa, such New York State Department of Motor Vehicles (DMV) document shall expire upon the expiration date of the visa or upon the date such DMV document would otherwise expire, whichever comes first.

A person who has been issued a visa shall not renew a driver's license, learner's permit, or non-driver identification card without proof of a valid visa presented to the DMV prior to issuance.

Conclusion

On Saturday, October 27, 2007, Governor Spitzer announced a new, revised plan that left intact the granting of driver's licenses to illegal aliens.^[84] The new plan represented an obvious attempt to save the administration goal of granting driver's licenses in New York State "without regard to immigration status."^[85] As the *New York Times* reported:

When Governor Eliot Spitzer announced last month his plan to offer driver's licenses to illegal immigrants, he did so with little notice to lawmakers or advocates on either side of the issue, and even the administration was taken back by the intensity of the outcry.

Now Mr. Spitzer has taken everyone by surprise again, announcing on Saturday -- at a hastily scheduled news conference in Washington -- a proposal under which New York would offer three different types of licenses, including one available to illegal immigrants, while complying with new federal security rules.^[86]

On November 14, however, although refusing to admit that the proposed change in policy was mistaken, and blaming everyone and everything but the plan itself, the Governor withdrew his plan:^[87]

I continue to believe that my proposal would have improved an unsatisfactory situation. But I have listened to the legitimate concerns of the public and those who would be affected by my proposal, and have concluded that pushing forward unilaterally in the face of such strong opposition would be counterproductive.^[88]

Today, obtaining a driver's license in New York State remains a privilege extended by the state and available only to United States citizens, *legal* residents and other visitors. Governor Spitzer's plan to extend that privilege to illegal aliens, which represented a significant change in policy, made without legislative input, and which was contrary to the facts and the law, has been defeated.

The Governor's plan ignored the recommendations of the 9/11 Commission and the requirements of the federal REAL ID Act, as this report has outlined.

The Senate has passed S.6484, which would amend the Vehicle and Traffic Law to bring New York State into compliance with the federal REAL ID Act. In expressing its rejection of the Governor's plan in a bi-partisan vote, the Senate has also showed the way forward in this area. It is now the responsibility of the Assembly to pass the bill.

- [1] See "Driver's Manual," chapter 2, emphasis added; New York State Department of Motor Vehicles; *nysdmv.com*.
- [2] See *New York Post*, October 15, 2007.
- [3] See, e.g., "Illegal Immigrants Won't Get Licenses in New York," *USA Today*, November 14, 2007.
- [4] See Frank Padavan, "The Counterfeit Connection," 2005, Executive Summary; and "The Golden Door," 2005, Executive Summary.
- [5] Barbara Jordan, Chairwoman, United States Commission on Immigration Reform, prepared remarks, Subcommittee on Immigration and Refugee Affairs, Judiciary Committee, United States Senate, hearing, August 3, 1994; see also Frank Padavan, "The Golden Door," 2005, p. 75.
- [6] See Frank Padavan, "The Golden Door," 2005, Executive Summary, p. iii.
- [7] "Spitzer Policy Will Let Illegal Immigrants Get Driver's Licenses," *New York Sun*, September 21, 2007.
- [8] *Ibid.*
- [9] See Office of the Governor, press release, September 21, 2007.
- [10] *Ibid.*
- [11] "Spitzer's Driver's License Policy for Illegal Immigrants Draws Wide Criticism," *Buffalo News*, September 29, 2007.
- [12] Vehicle and Traffic Law section 502, as amended in 1995.
- [13] Department of Motor Vehicle Regulation 15 NYCRR section 3.9(a).
- [14] *Ibid.*
- [15] "DMV Action Spreads Fear Through Immigrant Areas," *New York Sun*, August 19, 2004.
- [16] See Office of the Governor, press release, September 21, 2007.
- [17] See "Number of Illegal Aliens Hits 12 Million," *Associated Press*, March 7, 2006.
- [18] See, e.g., "Going Underground," *Barron's*, January 3, 2005, p. 17: "Robert Justich, a senior managing director at Bear Stearns Asset Management in New York, makes a persuasive case in a forthcoming paper, 'The Underground Labor Force is Rising to the Surface,' that illegal immigrants actually number 18 million to 20 million."
- [19] See Frank Padavan, "Our Teeming Shore," 1994, pp. 7-8.
- [20] For the discussion of illegal immigration set forth herein, see Center for Immigration Studies; *cis.org*, Illegal Immigration.
- [21] *Ibid.*
- [22] *Ibid.*
- [23] *Ibid.*
- [24] "The High Cost of Cheap Labor: Illegal Immigration and the Federal Government," Center for Immigration Studies; *cis.org*.
- [25] See "U.S. Legal Permanent Residents: 2006," Annual Flow Report, March, 2007, Office of Immigration Statistics, U.S. Department of Homeland Security; *dhs.gov*.
- [26] See "Temporary Admissions of Non-Immigrants to the United States: 2006," Annual Flow Report, July, 2007, Office of Immigration Statistics, U.S. Department of Homeland Security; *dhs.gov*.
- [27] *Ibid.*
- [28] See "Naturalizations in the United States: 2006," Annual Flow Report, May, 2007, Office of Immigration Statistics, U.S. Department of Homeland Security; *dhs.gov*.
- [29] *Ibid.*
- [30] See "Shortcuts to Immigration," Center for Immigration Studies, January, 2003.

[31] *Ibid.*, p. 1.

[32] *Ibid.*

[33] *Ibid.*, pp. 1-2.

[34] *Ibid.*, p. 13.

[35] *Ibid.*, p. 8.

[36] See Frank Padavan, "The Counterfeit Connection," 2005; see also, e.g., "Immigrants Pull Weight in Economy, Study Finds," *New York Times*, November 26, 2007. For the discussion of illegal immigration specific to New York State set forth herein, see *fairus.org*, Immigration Impact -- New York.

[37] One estimate is approximately one million, for example, based on 8% of the estimated twelve million illegal aliens currently residing in the United States.

[38] See Frank Padavan, "Our Teeming Shore," 1994, p. 8.

[39] See "5 Million Illegal Immigrants: An Analysis of New INS Numbers," Center for Immigration Studies, 1997; the INS, based on the 2000 Census, has estimated the figure to be closer to half-a-million, however the methodology used by the INS to arrive at state estimates has been criticized in the past; see, e.g., "5 Million Illegal Immigrants: An Analysis of New INS Numbers," Center for Immigration Studies, 1997; see also "The Costs of Illegal Aliens to Californians," *fairus.org*; the INS estimates, for example, that there are approximately two million illegal aliens in California, while FAIR estimates that the figure is closer to three million, based on an analysis by the Urban Institute.

[40] See Frank Padavan, "Our Teeming Shore," 1994, p. 8.

[41] *fairus.org*, Immigration Impact -- New York.

[42] "Record Immigration Changing New York's Neighborhoods," *New York Times*, January 24, 2005, p. B1.

[43] *Ibid.*

[44] *Ibid.*, quoting Jeffrey Passel, a demographer with the Pew Hispanic Center.

[45] *fairus.org*, Immigration Impact -- New York; see "Illegal Aliens Cost California Billions," *Washington Times*, December 7, 2004.

[46] *Ibid.*

[47] See, e.g., Frank Padavan, "The Golden Door," 2005.

[48] See "The Rise of New Immigrant Gateways," The Brookings Institution, February, 2004; see also "The New Ellis Islands," Center for Immigration Studies, September, 2001.

[49] *Ibid.*

[50] "L.I. Clash on Immigrants Is Gaining Political Force," *New York Times*, November 29, 2004, p. A1.

[51] *Ibid.*

[52] *Ibid.*

[53] "U.S.-Mexico Border Disputes," *The NewsHour with Jim Lehrer*, August 18, 2005, *pbs.org*, quoting Arizona Governor Janet Napolitano.

[54] *Ibid.*, Gwen Ifill reporting.

[55] *Ibid.*, quoting New Mexico Governor Bill Richardson.

[56] See "Immigration's Impact Changing," *State News*, Council of State Governments, June/July, 2004, p. 37; see also "Albany Social Security ID Checks Threaten Driver's Licenses," *New York Times*, March 18, 2004.

[57] "America's Identity Crisis," Center for Immigration Studies, April, 2002, p. 1.

[58] 9/11 Commission Report, p. 390.

- [59] Vehicle and traffic law section 490.
- [60] Vehicle and traffic law section 502.
- [61] See 9/11 Commission Report.
- [62] Ibid.
- [63] Vehicle and traffic law section 502.
- [64] Department of Motor Vehicle Regulation 15 NYCRR section 3.9(a).
- [65] S.6484; calendar 2167; passed by the Senate, October 22, 2007.
- [66] See Senate Transcript, October 22, 2007; Candyco Transcription Service, Inc.; *senateonline*.
- [67] Ibid., pp. 6478-6483.
- [68] S.6484; voting.
- [69] Ibid.; delivered to the Assembly, October 22, 2007.
- [70] Ibid.; voting.
- [71] S.20-A, introduced January 8, 2003; S.407, introduced January 13, 2005.
- [72] S.74, introduced January 13, 2007, summary.
- [73] Ibid.; sponsor's memo.
- [74] S.407; passed by the Senate, June 21, 2005.
- [75] Ibid.; delivered to the Assembly, June 21, 2005.
- [76] S.6250, introduced June 15, 2007; summary; see also similar legislation, S.6502, introduced October 17, 2007.
- [77] Ibid.; sponsor's memo.
- [78] S.6250; passed by the Senate, June 20, 2007.
- [79] Ibid.; delivered to the Assembly, June 20, 2007.
- [80] S.6479, introduced October 9, 2007; summary.
- [81] Ibid.; sponsor's memo.
- [82] S.6523, introduced October 26, 2007; summary.
- [83] Ibid.; sponsor's memo.
- [84] See "Spitzer Tries New Tack on Immigrant Licenses," *New York Times*, October 28, 2007.
- [85] See Office of the Governor, press release, September 21, 2007.
- [86] See "Some Support, but Still Furor Over New Plan for Licenses," *New York Times*, October 29, 2007.
- [87] See "Spitzer Dropping Plan of Licenses for Illegal Immigrants," *New York Times*, November 14, 2007.
- [88] See Office of the Governor, "License Proposal Remarks," November 14, 2007.