

Testimony by Jojo Annobil

Legal Aid Society

Before the New York City Council Immigration Committee

Driver's license policies and their impact upon immigrants

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Good morning, Chair Kendall Stewart and council members. My name is Jojo Annobil and I am the supervising attorney of the Immigration Law Unit at The Legal Aid Society. The Legal Aid Society welcomes this opportunity to testify before the City Council concerning driver's license policies and their impact on immigrants. The Legal Aid Society is the oldest and largest not-for profit law firm for low income persons and was founded in 1876 to serve New York's immigrant community. For 130 years, the Society has not wavered in its commitment to serve low income immigrants of this City.

The Legal Aid Society is organized into three practice areas; Civil, Juvenile Rights and Criminal Defense. Each year, the Society's staff provides free legal services to nearly 275,000 indigent families and individuals in New York City. The Civil Practice Area provides direct legal assistance in over 30,000 individual civil cases annually, through a network of neighborhood legal services offices in all five boroughs of New York City and city-wide specialized units. The Society has maintained an Immigration Law Unit for several decades. The Unit, comprising 8 experienced attorneys and two paralegals, works collaboratively in all practice areas to serve Legal Aid's diverse immigrant clients through an a comprehensive service model. The Immigration Law Unit staff represents

immigrants before the United States Citizenship and Immigration Services (USCIS), before immigration judges in removal proceedings, in federal court on Petitions for Review, and on administrative and judicial appeals. The Unit also advises criminal defense attorneys within and outside the Society on the immigration consequences of criminal convictions, conducts outreach, clinics and training in immigrant communities and at immigration detention centers, and trains immigrant-serving front line workers from community-based organizations and State and local agency and legislative staff.

In addition to these projects, The Legal Aid Society provides a full range of civil legal assistance to immigrants at the Society's neighborhood based offices in all five boroughs and specialized city-wide units. Immigrants seeking immigration assistance can also obtain housing, public benefits, disability benefits, health, domestic violence, family law or tax representation through the Society.

The Legal Aid Society believes that driving is so essential to everyday life that it is sound public safety policy to allow all New York residents to obtain and maintain valid drivers licenses, once they prove that they are able and willing to obey traffic laws and regulations. Bringing everyone within the drivers' licensing system protects citizens and non-citizens by ensuring that everyone, regardless of immigration status, knows the rules of the road and has an incentive to obey them. This safety interest is so vital that any reliable documents which establishes a person's identity and community ties should be sufficient to facilitate the process of obtaining a driver's license. The New York State Department of Motor Vehicles'(DMV) current regulations, however, and the Federal

“Real ID Act of 2005” provisions¹, which limit immigrants’ access to drivers licences based on immigration status, subverts public safety.

Under the 2004 State regulations, applicants for drivers licenses are required to furnish the DMV with a valid social security number. Applicants ineligible to receive a social security number are required to obtain a denial letter from the Social Security Administration (SSA) and also submit current supporting documents from the United States Citizenship and Immigration Services (USCIS) that SSA examined to reach a determination of ineligibility.² These new regulations are wreaking havoc on immigrant communities in New York State. It is estimated that approximately 252,000 and 300,000 long-time immigrant workers may have been affected since the regulations were implemented.³

The immediate impact on long-time law abiding undocumented immigrant workers is quite obvious. Undocumented immigrants who are unable to furnish current documentation from immigration authorities to establish their ineligibility to receive a social security number have very limited options. Providing the DMV with current documentation that reveals their unlawful status will make them targets for Immigration and Customs Enforcement sweeps at DMV locations. Thus, thousands of these immigrant workers who drive to work or whose employment requires a driver’s license have to make a difficult choice between losing long-time employment which pays for their basic necessities of life and driving without a valid license. For a majority of immigrant workers, continuing to drive is the only viable choice. This increases the pool

of unlicensed and, therefore, uninsured motorists which makes our roads and highways unsafe.

The inability of undocumented immigrant workers to obtain and maintain a valid driver's license under the new regulations has also increased the demand for fraudulent drivers licenses. In purchasing and using fraudulent drivers licenses, however, immigrants risk detection, criminal felony prosecution for forgery and related offences under the New York Penal Code, and possible deportation/removal. Immigrants convicted of crimes related to forgery or possession of fraudulent documents could be found to have committed a crime involving moral turpitude, a ground of inadmissibility or deportability under immigration law. A conviction for a crime of moral turpitude could bar an undocumented immigrant from several forms of relief from removal. For instance, an application for adjustment of status through a qualified United States citizen family member, or an application for cancellation of removal, a discretionary form of relief available to an undocumented immigrant who has resided continuously in the United States for 10 years, and can establish good moral character and prove that removal would result in exceptional and extremely unusual hardship to a United States citizen or lawful permanent resident spouse, parent, or child could be jeopardized by virtue of a felony forgery conviction.

Under the current circumstances, any attempt to implement the Real ID Act's driver's license provisions would have a negative impact not only on undocumented immigrants but also on legal immigrants. The federal provisions establish minimum standards for

state-issued identification cards and drivers licenses that will be accepted by a federal agency for such purposes as accessing federal facilities or power plants, or boarding federally regulated commercial aircraft. The law's onerous provisions require proof of citizenship or legal presence, verification of all documents furnished by an applicant, and a check of legal status against a national immigration data base. The Real ID Act also provides for two tiers of drivers licenses, similar to New York's practice. Lawful residents and citizens would be granted regular drivers licenses while those with valid unexpired non-immigrant visas or non-immigrant visa status, such as students, would be granted temporary licenses 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 authorized stay. The federal provisions also require information sharing among the states. On the other hand, and most importantly, the provisions allow states to **opt out** of issuing drivers licenses based on the federal requirements. Any license issued by an "**opt out**" state must state on its face that it cannot be accepted by the federal government as identification.

Premising the issuance of drivers licenses on legal residence status and relying on DMV clerks to determine lawful immigration status is bound to result in the erroneous denial of applications submitted by lawful immigrant residents. Immigration law is very complex and highly technical. Immigration laws and regulations change constantly, requiring frequent memoranda or guidelines from immigration authorities explaining the changes. There are currently approximately 60 non-immigrant visa categories. The United States Citizenship and Immigration Services is notorious for missing files and not having up-to-date computer records on immigration cases. Determining whether a non-

citizen is in lawful status based on a myriad of immigration documents issued by the U.S. Citizenship and Immigration Services and the State Department is not a task which can be easily handled by DMV clerks. For instance, several City agencies and drug treatment programs which deal with court-referred clients have refused to provide benefits to lawful residents who have expired lawful permanent resident cards. These agencies have over the years refused to accept that under immigration regulations even though the permanent residence card expires after 10 years, a person's lawful status does not expire. Thus, it is more than likely that DMV clerks required to review several different complex documents will routinely erroneously deny applications submitted by lawful residents.

Moreover a two-tier system which provides for temporary drivers licenses for certain immigrants can be expensive for indigent immigrants who can barely survive on minimum wage incomes. A perfect example is a person granted withholding of removal, a discretionary form of relief from deportation similar to asylum. Such a person is in lawful status and cannot be removed to the country where he or she faces harm. Yet, under the federal provisions, persons granted withholding of removal would only be given a temporary driver's license and expected to renew the license each year.

In conclusion, we support City Council resolution 1009-A, adopted in December 2005, which calls for New York State to "opt out" of the Real ID Act of 2005 requirements. New York State should modify its driver's license regulations to make it easier for non-citizens irrespective of lawful status to obtain and maintain valid drivers licenses. We

also urge Congress to pass the overdue and much anticipated Comprehensive Immigration Reform bill. In May 2005, when Congress enacted the Real ID Act, strategists advising the White House said they hoped that by accommodating those calling for stricter enforcement, the White House could win support for a package of changes in immigration law including the guest worker program.⁴ That has turned out to be wishful thinking. Ultimately, a comprehensive immigration reform bill will make America safer and allow all residents to contribute towards the common good of the United States.

Endnotes

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1. See P.L. 109-13.
 2. The DMV's authority to implement these regulations was affirmed in Cubas v. Martinez, 819 N.Y.S.2d 10 (1st Dept. 2006), overturning a lower-court injunction.
 3. Deborah Orin, Fed's tough 'card' deal - 'Real ID' Law hits NYERS, N.Y. Post, May 12, 2005.
 4. Matthew L. Wald and David D. Kirkpatrick, U.S. may require scrutiny to get license, New York Times, May 3, 2005.