

“HAVE YOU BEEN AN UN-AMERICAN?”:¹ PERSONAL IDENTIFICATION AND AMERICANIZING THE NONCITIZEN SELF-CONCEPT

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1. DAVID BOWIE, *Young Americans*, on YOUNG AMERICANS (RCA Records 1975).

I. INTRODUCTION: THE CURRENT IMMIGRATION DEBATE

In contemporary American politics and social discourse, the topic of illegal immigration has become incendiary. Broaching the topic in conversation is likely to ignite deep passions and incite visceral reactions among most parties involved. One's reaction to the issue may have much to do with the face that one attributes to America's current population of undocumented immigrants. In his latest book, *State of Emergency: The Third World Invasion and Conquest of America*,² conservative commentator and three-time Republican presidential candidate Patrick Buchanan dedicates an entire chapter to establishing his characterization of undocumented immigrants.³ The examples that he uses to describe this population are telling:

MS-13, the largest and most violent gang in northern Virginia . . .

. . . .

. . . has 8,000 to 10,000 members in thirty-three states. . . . Although some members were born in America . . . MS-13 is still "composed primarily of illegal immigrants from El Salvador." . . . MS-13 roams from North Carolina to New England. . . . In Boston, six MS-13 members were charged with gang-raping two deaf girls, one of whom, a victim of cerebral palsy, was in a wheelchair.

This is not *West Side Story*.

It is the story of a policy of "open borders" and virtually unrestricted immigration⁴

Contrast Mr. Buchanan's narrative with that of Rodrigo Nunez:

Each morning is the same for Rodrigo Nunez. He wakes up, eats a banana and has a cup of coffee saturated with sugar and milk, and then throws on his ratty jeans and mud-caked boots, ready for yet another day of hard labor and monotony.

It will take him an hour and a half to ride the Metro bus from his Denver Harbor area apartment to get to where he needs to go, a ride that he often looks forward to because he is able to sleep on the trip to the construction site.

"The sun wakes me up on the bus right before I get there," Nunez said. "Today we are digging a ditch to run the pipes through. It is hard because it is so hot during the day"

. . . .

Although Nunez concedes that his job is not easy work, and the pay is just above minimum wage, he is happy to have it. Nunez says that

2. PATRICK J. BUCHANAN, *STATE OF EMERGENCY: THE THIRD WORLD INVASION AND CONQUEST OF AMERICA* (2006).

3. *Id.* at 19–35.

4. *Id.* at 19–22 (footnotes omitted). In the same chapter, Buchanan refers to the collective body of undocumented immigrants as "an assembly line of diseases." *Id.* at 29 (quoting George Putnam, *One Reporter's Opinion: 'Illegal' Health Risk*, NEWSMAX.COM, May 22, 2004, <http://archive.newsmax.com/archives/articles/2004/5/20/141632.shtml>).

some of his friends in Mexico do not make enough money to feed their children. He does not want that to be him.

"I work very hard, but for me it is a lot of money," Nunez said. "I miss my family, but I am happy with my life here."

If he can, Nunez sends \$200 to his remaining family in San Pablito, Puebla, Mexico, and saves the rest to support his wife and his eight-year-old daughter, Mariana. Although he would like to return to Mexico someday, when he has made enough money, Nunez knows his daughter will have a better education and a better future here.

"I hope that she will become a doctor someday," Nunez said. "She is very intelligent, I can see that already."⁵

With such conflicting conceptions of who undocumented immigrants are and what role they play within American society, emotional and irrational responses from all sides of the debate are possible. In a time when stories of border fences and sanctuary cities have become fixtures in the daily news cycle,⁶ ideological polarization occurs all too naturally. However, when sculpting and implementing statutes, ordinances, or legal policies, it is vital that reason and rationality win the day.

One of the most hotly disputed questions surrounding illegal immigration is to what extent undocumented immigrants, specifically those who are already living in the United States, should be integrated into American society and, perhaps most importantly, to what extent those immigrants should have access to public benefits.⁷ Administrators, legislators, and other policy makers are forced to balance seemingly conflicting interests, including national security, fiscal responsibility, and human compassion.⁸ Often, these decisions directly affect

5. Matt Dougherty, *A Day in the Life of an Illegal Immigrant*, WORLD INTERNET NEWS COOPERATIVE, Oct. 6, 2005, http://soc.hfac.uh.edu/artman/publish/article_270.shtml.

6. See, e.g., Carl Hulse & Rachel L. Swarns, *Senate Passes Bill on Building Border Fence*, N.Y. TIMES, Sept. 30, 2006, at A10 (discussing Senate approval of bill proposing construction of seven-hundred mile fence along United States-Mexico border); Michael Luo, *A Closer Look at the 'Sanctuary City' Argument*, N.Y. TIMES, Nov. 29, 2007, at A26 (defining "sanctuary city" as one that "turn[s] a blind eye to federal immigration laws" and discussing accusations during 2007 Republican presidential primary debate that former New York City Mayor Rudolph W. Giuliani utilized "sanctuary city" policies during his mayoral term).

7. See, e.g., *Plyler v. Doe*, 457 U.S. 202, 230 (1982) (holding Texas law restricting undocumented immigrants' access to public schools violated Fourteenth Amendment's Equal Protection clause); Joseph Berger, *Debates Persist Over Subsidies for Immigrant College Students*, N.Y. TIMES, Dec. 12, 2007, at B8 (discussing debate regarding whether undocumented immigrants should have access to in-state college tuition rates); Karin Brulliard, *At Odds Over Immigrant Assimilation*, WASH. POST, Aug. 7, 2007, at A1 (discussing slow assimilation and integration of modern Latino immigrants); Julia Preston, *Texas Hospitals' Separate Paths Reflect the Debate on Immigration*, N.Y. TIMES, July 18, 2006, at A1 (discussing Texas hospital policy of denying care to undocumented immigrants); Ray Rivera, *Immigrant Rights Groups Fight License Proposal*, WASH. POST, May 6, 2005, at B5 (discussing how REAL ID Act's national security protections create barriers for immigrants looking to obtain personal identification).

8. See, e.g., Mary Fitzgerald, *Illegal Immigrants' Cost to Government Studied*, WASH. POST, Aug. 26, 2004, at A21 (examining Center for Immigration Studies' research indicating large financial burden placed on government benefit programs by undocumented immigrants); Rivera, *supra* note 7

undocumented immigrants' ability to integrate within American society and access its most important institutions—including hospitals,⁹ universities,¹⁰ and public schools.¹¹ An important ingredient in the immigrant-integration debate is the extent to which undocumented immigrants should have access to personal identification.¹²

Within the past decade, personal identification (“ID”) has become both increasingly ubiquitous¹³ and increasingly restricted.¹⁴ As Americans, we are frequently required to present some form of ID in order to gain access to a variety of goods and services.¹⁵ Fear of terrorism has been a recent driving force behind the adoption of mandatory ID policies;¹⁶ however, the same fear has spawned initiatives that make obtaining personal identification more difficult.¹⁷ For undocumented immigrants, this perfect storm of ID regulations has left many marooned on an island of illegitimacy. Incapable of meeting the strict application requirements, undocumented immigrants often do not possess any form of personal identification, and are subsequently unable to gain access to those goods and services for which identification has become a prerequisite.¹⁸

This Comment discusses the ID conundrum facing undocumented immigrants in America and examines the extent to which access to personal identification is related to immigrant integration. By leveraging the central concepts of identity and social identity theory, this Comment posits that providing undocumented immigrants with personal identification, and thereby allowing them to more fully access various facets of American society, will increase the extent to which undocumented immigrants view themselves as part of the American societal collective. By adopting American norms and ideals within their individual self-concepts, undocumented immigrants will become cooperative members of society who seek to advance its common goals, rather than resentful outsiders who, relegated to the shadows of American's citizenry,

(discussing national security concerns as rationale for implementation of heightened restrictions on driver's licenses).

9. Preston, *supra* note 7.

10. Berger, *supra* note 7.

11. *Plyler*, 457 U.S. at 230.

12. See *infra* Part III for a discussion of scholarly articles debating the benefits and drawbacks of providing personal identification to undocumented immigrants.

13. See *infra* Part II.A for a discussion of the need for personal identification in modern American society.

14. See *infra* note 57 and accompanying text for a discussion of recently implemented laws and policies that restrict access to personal identification.

15. See *infra* notes 21–23 and accompanying text for a discussion of situations in which it is necessary to present personal identification.

16. See, e.g., Richard Willing, *Airline ID Requirement Faces Legal Challenge*, USA TODAY, Oct. 11, 2004, at 12A (noting mandatory ID policies were adopted by airline industry to help prevent terrorist attacks).

17. See *infra* Part II.B.1 for a discussion of the REAL ID Act and the stringent application requirements it imposes on those seeking personal identification.

18. See Kevin O'Neil, *Consular ID Cards: Mexico and Beyond*, MIGRATION INFO. SOURCE, Apr. 1, 2003, <http://www.migrationinformation.org/Feature/print.cfm?ID=115> (noting many undocumented immigrants lack personal identification and suffer because of it).

become uncooperative,¹⁹ or, at worst, directly hostile towards the rest of society.²⁰

Part II.A discusses the prevalence of ID requirements in American society, and the obstacles undocumented immigrants face due to their lack of such identification. Part II.B highlights the four major routes by which undocumented immigrants have thus far attempted to gain access to personal identification (driver's licenses, local identification cards, the Matrícula Consular, and fraudulent documentation) and the seemingly conflicting goals of broadening access to ID while simultaneously guarding against terrorism and identity fraud. To provide the reader with some context within which to consider how this Comment contributes to the ongoing debate, Part III offers a cross-section of other scholarly articles addressing noncitizen identification. Part IV introduces the concepts of identity and social identity theory, and those concepts are then applied to the discussion of noncitizen identification in Part V. The discussion of identity and social identity theory builds a foundation for this Comment's overarching proposition: providing undocumented immigrants with access to personal identification will help ingrain an Americanized self-concept, which will benefit not only the current community of undocumented immigrants, but American society as a whole.

II. UNDOCUMENTED IMMIGRANTS AND PERSONAL IDENTIFICATION

A. *The Need for Personal Identification*

In our interconnected, technologically advanced, and security-conscious society, any person residing within the borders of the United States of America is guaranteed to encounter a number of situations in which his possession of personal identification will be necessary. Whether accessing municipal services,²¹ conducting financial transactions,²² or boarding an airplane,²³ use of personal

19. See Christopher Heredia, *Thieves Preying on Undocumented Immigrants, Police Say*, S.F. CHRON., Feb. 13, 2007, at B2 (noting undocumented immigrants routinely fail to report crimes due to fear of deportation even when they themselves are victims).

20. See Craig S. Smith, *Angry Immigrants Embroil France in Wider Riots*, N.Y. TIMES, Nov. 5, 2005, at A1 (reporting on extensive youth rioting in France's poorly integrated immigrant neighborhoods).

21. The New York Public Library, for example, requires an applicant to present "current, traceable identification that includes both name and address" as a prerequisite to obtaining a library card. The New York Public Library, Library Cards, <http://www.nysl.org/books/cards.html> (last visited Dec. 22, 2008).

22. Most financial institutions require customers to provide some form of valid personal identification prior to accessing their services. See, e.g., Wachovia, Free Checking Application, https://www.wachovia.com/personal/app_access/byb/1,8,00.html (last visited Dec. 22, 2008) (requiring driver's license, state ID, or military ID to open checking account); Western Union - Frequently Asked Questions - Sending Money from an Agent Location, http://www.westernunion.com/WUCOMWEB/staticMid.do?method=load&pagename=faqMTLocation#tstfaq3_2 (last visited Dec. 22, 2008) (requiring government-issued ID in order to receive money transfer).

23. Transportation Security Administration: Travel Assistant, <http://www.tsa.gov/travelers/>

identification has become omnipresent. The unfortunate corollary to such requirements is that any lack of identification creates a barrier to full participation in American society. It is against this barrier that millions of undocumented workers struggle each and every day while attempting to integrate within America's population.²⁴

Although accommodating illegal immigrants may seem like a counterproductive pursuit, the fact that a vast and ever-increasing body of such individuals currently exists in the United States, and will continue to do so for the foreseeable future, has become unavoidable.²⁵ Indeed, recent estimates put the total number of undocumented immigrants at more than eleven million.²⁶ Although persons in this group are commonly referred to as "illegal immigrants," this designation is not entirely accurate.²⁷ There are numerous categories of persons who are permitted to continue residing in the United States even though their presence may be technically unlawful.²⁸ Furthermore, even if an alien is deemed deportable, after being identified as an illegal entrant and having undergone removal proceedings, the federal government may still permit such an individual to remain in the country, or even become a citizen.²⁹ As murky as their legal status may be, it is clear that the presence of undocumented immigrants has become inevitable. Many of these individuals, however, do not possess, or have access to, any form of personal identification.³⁰ Consequently, they are unable to functionally integrate within American society.³¹

airtravel/assistant/index.shtml (last visited Dec. 22, 2008) (noting additional screening will take place at airport security checkpoints if government-issued photo ID is not presented).

24. See O'Neil, *supra* note 18 (discussing challenges faced by undocumented immigrants due to lack of identification).

25. The number of undocumented immigrants living in the United States increased from an estimated 5.8 million in 1996 to 7 million in 2000. Terry Frieden, *INS: 7 Million Illegal Immigrants in United States*, CNN.COM/U.S., Feb. 1, 2003, <http://www.cnn.com/2003/US/01/31/illegal.immigration/>. It is estimated that today there are as many as eleven million undocumented immigrants living in America. PEW HISPANIC CENTER, FACT SHEET: ESTIMATES OF THE UNAUTHORIZED MIGRANT POPULATION FOR STATES BASED ON THE MARCH 2005 CPS (2006), <http://pewhispanic.org/files/factsheets/17.pdf>.

26. PEW HISPANIC CENTER, *supra* note 25.

27. At least one organization has taken to referring to undocumented immigrants as "unauthorized migrant[s]" to more accurately reflect the true legal status of such persons. *Id.* Regardless of the semantics, these labels are commonly understood to refer to aliens who have either entered the country illegally or have overstayed their visas. *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 485 (M.D. Pa. 2007).

28. Some examples include those who apply for asylum or withholding of removal, those who have their status adjusted to "lawful permanent resident," those who apply to have their deportation suspended, those temporarily paroled into the United States, and those undergoing the complicated and lengthy status adjustment process. *Lozano*, 496 F. Supp. 2d at 530-31.

29. *Id.* Among those who may avoid removal are the relatives and spouses of U.S. citizens, victims of domestic abuse, and "those seeking protection from persecution or torture under the Convention Against Torture." *Id.* at 532. In addition, the Attorney General has the discretion to cancel deportation if the alien meets certain statutory criteria. *Id.*

30. See O'Neil, *supra* note 18 (discussing undocumented immigrants' lack of personal identification).

31. A large number of services and community benefits are unavailable to those who lack

As a result of their inability to obtain ID, undocumented immigrants face a variety of hardships and suffer injury to both their physical and economic integrity. The first, and perhaps most shocking, is that undocumented immigrants are routinely targeted for robbery.³² Caustically termed “amigo checking,” the selective mugging of Hispanic immigrants is driven by an assumption that, because undocumented immigrants often cannot open bank accounts and, additionally, because they stockpile money to send back to their home countries, they tend to carry large sums of cash.³³ Further, due to a fear of deportation, undocumented immigrants are unlikely to report such crimes, thereby diminishing the effectiveness of law enforcement.³⁴ Lacking bank account access,³⁵ many immigrants are also forced to use check-cashing and wire-transfer services that impose exploitatively high transaction fees.³⁶

Without proper identification, many undocumented workers are precluded from accessing legitimate employment opportunities.³⁷ Rather than preventing them from working at all, this often relegates undocumented immigrants to the “secondary labor market,” where they face a higher probability of exploitation.³⁸

Finally, lack of personal identification has a negative effect on undocumented immigrants’ interaction with law enforcement.³⁹ Fear of deportation is deeply ingrained, and many fear that even a minor infraction could land them back in their country of origin.⁴⁰ To increase public cooperation with law enforcement efforts, some cities have enacted “sanctuary laws,” which prevent local police from inquiring about immigration status absent suspicion

personal identification. See *supra* notes 21–23 and accompanying text for a few examples of such benefits and services.

32. Heredia, *supra* note 19.

33. *Id.*; see also O’Neil, *supra* note 18 (noting lack of personal identification prevents undocumented immigrants from opening bank accounts). Because the perpetrators of these attacks have no way to determine the legal status of their victims, they indiscriminately target “anyone who looks like they might be [an illegal immigrant],” which ultimately results in crimes against Hispanics in general, regardless of their immigration status. Nora Ankrum, *School Days*, AUSTIN CHRON., Dec. 1, 2006, www.austinchronicle.com/gyrobase/Issue/Story?oid=oid%3A426520.

34. Heredia, *supra* note 19.

35. As of 2003, it was estimated that as many as forty-three percent of Latinos in the United States did not have a bank account; this number was expected to be significantly higher for undocumented immigrants. O’Neil, *supra* note 18.

36. *Id.* A number of wire-transfer companies settled a class action suit alleging deceptive advertising and exploitatively high transfer fees. *In re Mex. Money Transfer Litig.*, 267 F.3d 743, 745–46 (7th Cir. 2001); see also Kevin R. Johnson, *Driver’s Licenses and Undocumented Immigrants: The Future of Civil Rights Law?*, 5 NEV. L.J. 213, 229 (2004) (discussing *In re Mexico Money Transfer Litigation*).

37. Johnson, *supra* note 36, at 227.

38. *Id.* at 222. To make matters worse, many immigrants cannot obtain relief from exploitation because federal labor laws do not offer the same protections to *undocumented* workers that they do to *documented* workers. *Id.* at 227 (citing *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 150 (2002)).

39. *Id.* at 224.

40. *Id.*

that an individual has committed a felony or other serious crime.⁴¹ However, the adoption of such laws is not universal and, due to increasing controversy, it is unclear whether sanctuary policies will remain a legally viable option.⁴²

B. Attempts to Obtain Personal Identification for Undocumented Immigrants Enjoy Only Marginal (and Perhaps Temporary) Success

To better facilitate integration into American society and avoid the aforementioned hardships, members of the federal, state, and local governments have made a number of attempts to secure personal identification for undocumented immigrants.⁴³ There have been large-scale efforts made at the state level to allow increased access to driver's licenses,⁴⁴ and smaller initiatives at the local level to provide municipal ID cards.⁴⁵ When unable to secure American forms of identification, many Mexican immigrants have pushed for acceptance of Mexico's *Matrícula Consular*⁴⁶ and, unfortunately, many others, upon finding themselves unable to obtain legitimate identification, resort to using fraudulent documents.⁴⁷ The following sections briefly detail these attempts and identify the controversy each has created. It is important to note, however, that the purpose of this section is not to identify the most promising alternative for supplying undocumented immigrants with personal identification, but rather to indicate the insufficiency of the status quo, illustrate the degree of resistance mounted against each effort, and acknowledge the fragility of any successes so far achieved.

1. Driver's Licenses

In the effort to secure identification for undocumented immigrants, some of the most significant attempts have focused on accessing state-issued driver's licenses.⁴⁸ Although first introduced in Rhode Island in 1908 as a means for

41. Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 600–05 (2008) (explaining that many major cities, including San Francisco, New York, Los Angeles, and Seattle, as well as some small towns, have adopted sanctuary laws).

42. *Id.* at 628; see also Jesse McKinley, *Immigrant Protection Rules Draw Fire*, N.Y. TIMES, Nov. 12, 2006, at National Desk 22 (discussing controversy surrounding sanctuary laws).

43. See *infra* Part II.B.1–4 for a discussion of some such attempts. See Press Release, The White House, Office of the Press Secretary, President Bush Proposes New Temporary Worker Program (Jan. 7, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html> (outlining President George W. Bush's plan for temporary worker program, which included temporary worker ID card).

44. See *infra* Part II.B.1 for a discussion of driver's license access.

45. See *infra* Part II.B.2 for an examination of New Haven, Connecticut's Elm City Residence Card as an example of locally distributed municipal identification.

46. See *infra* Part II.B.3 for a discussion of the mixed reactions toward increased acceptance of the *Matrícula Consular*.

47. See *infra* Part II.B.4 for a discussion regarding the prevalence of, and punishments for, use of fraudulent documents.

48. The idea of providing driver's license access to undocumented immigrants has at times received substantial support from local leaders. In fall 2007, New York Governor Eliot Spitzer proposed a plan to make state driver's licenses available to all New Yorkers without regard to

increasing roadway safety,⁴⁹ driver's licenses have transformed into a "de facto national identification card."⁵⁰ Aside from granting the cardholder permission to operate a motor vehicle, possession of a driver's license provides access to a wide array of services and opportunities.⁵¹ Of particular significance for undocumented immigrants, employers are permitted to use state-issued driver's licenses, along with a number of other forms of documentation, when verifying employment eligibility.⁵²

Access to driver's licenses, however, has become increasingly restricted within the past few years.⁵³ Before September 11, 2001, fifteen states were considering proposals that would have permitted undocumented immigrants to more easily obtain state-issued driver's licenses.⁵⁴ However, the attacks of September 11 raised significant security concerns, especially in light of the fact that most of the hijackers were noncitizens who had obtained state-issued driver's licenses.⁵⁵ In addition, many Americans at the time were victims of, or feared they would become victims of, identity theft.⁵⁶ The combination of these fears resulted in significant political resistance; laws that would have permitted

immigration status. See Nina Bernstein, *Spitzer Grants Illegal Immigrants Easier Access to Driver's Licenses*, N.Y. TIMES, Sept. 22, 2007, at B1 (announcing Governor Spitzer's driver's license policy). Regrettably, due to severe political backlash, the plan was ultimately scrapped before it ever left the ground. See Danny Hakim, *Spitzer Dropping His License Plan*, N.Y. TIMES, Nov. 14, 2007, at A1 (discussing termination of Governor Spitzer's driver's license policy).

49. María Pabón López, *More Than a License To Drive: State Restrictions On the Use of Driver's Licenses by Noncitizens*, 29 S. ILL. U. L.J. 91, 108–09 (2004).

50. *Id.* at 100.

51. See *supra* notes 21–23 and accompanying text for a discussion of some of the many services that are accessible only upon production of personal identification.

52. 8 U.S.C. § 1324a(b)(1)(D) (2006). It is important to acknowledge that, due to their undocumented status, many such immigrants would still fail to meet employment eligibility requirements even if they had access to state driver's licenses because they would lack other forms of necessary documentation.

53. See *infra* note 57 for some examples of state laws restricting access to driver's licenses.

54. Nat'l Immigration Law Ctr., *Immigrant Driver's License Proposals and Campaigns: Surprising Progress Since 9/11*, IMMIGRANTS' RIGHTS UPDATE, May 14, 2002, <http://www.nilc.org/immspbs/DLs/DL002.htm>.

55. Johnson, *supra* note 36, at 217.

56. Alexander L. Mounts, *A Safer Nation?: How Driver's License Restrictions Hurt Immigrants & Noncitizens, Not Terrorists*, 37 IND. L. REV. 247, 248 (2003) (citing *Identity Theft: How It Happens, Its Impact on Victims, and Legislative Solutions: Hearing on Pub. Law 105-318 Before the S. Subcomm. on Tech., Terrorism, and Gov't Info. of the Subcomm. on the Judiciary*, 106th Cong. 31–32 (2000) (statement of Beth Givens, Director, Privacy Rights Clearinghouse)). Due to changes in technology, certain financial and insurance company practices, and increased use of social security numbers as a personal identifier, identity theft had been steadily increasing throughout the 1990s, and reached record levels at around the time of the September 11th attacks. *Id.* In 2000, it was estimated that 500,000 to 700,000 people were victims of identity theft. *Id.* This number has increased to 8.4 million in 2007, with a total one year fraud amount of \$49.3 billion. PRIVACY RIGHTS CLEARINGHOUSE, *HOW MANY IDENTITY THEFT VICTIMS ARE THERE? WHAT IS THE IMPACT ON VICTIMS?* (2007), <http://www.privacyrights.org/ar/idtheftsveys.htm#Jav2007> (citing MARY T. MONAHAN, JAVELIN STRATEGY & RESEARCH, 2007 IDENTITY FRAUD SURVEY REPORT (2007)).

noncitizens to obtain licenses have been quashed, and a number of states have enacted new laws prohibiting such access.⁵⁷

The piece of legislation likely to have the greatest prohibitory impact on undocumented immigrants' access to driver's licenses is the REAL ID Act (the "Act"), relevant portions of which are slated to take effect in 2009.⁵⁸ Attached as a rider to the emergency supplemental bill titled *Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, and Tsunami Relief*,⁵⁹ the Act was introduced with the purported goal of "prevent[ing] another 9/11-type attack by disrupting terrorist travel."⁶⁰ To reach this goal, the Act seeks, inter alia,⁶¹ to "improve[] security for drivers' licenses and personal identification cards."⁶² This improved security is to be achieved through national driver's license standards,⁶³ federal minimum pre-issuance verification requirements,⁶⁴ and a provision requiring states to check the legal status of all applicants prior to issuing licenses.⁶⁵ Although this last provision still permits states to issue driver's licenses to *legal* immigrants, a temporary immigrant is only eligible if his status meets a narrow statutory definition.⁶⁶ Furthermore, all

57. Johnson, *supra* note 36, at 216 n.22 (citing Nevada law denying undocumented immigrants access to driver's licenses); Nat'l Immigration Law Ctr., *supra* note 54; see also Julia Preston, *State Proposals on Illegal Immigration Largely Falter*, N.Y. TIMES, May 9, 2006, at A24 (discussing proposals that would restrict driver's license access for undocumented immigrants). *But see* Brendan Farrington, *Gov. Bush Backs Licenses for Immigrants*, WASH. POST, Apr. 7, 2004, at A32 (discussing Florida bill that would allow driver's licenses for undocumented immigrants). For a more current example, see *supra* note 48 and *infra* note 231 for discussion of the rise and fall of former New York Governor Eliot Spitzer's immigrant driver's license plan.

58. Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Pub. L. No. 109-13, 119 Stat. 231, 312.

59. Arianna Garcia, Comment, *The Real ID Act and the Negative Impact on Latino Immigrants*, 9 SCHOLAR 275, 286 (2007).

60. *Id.* at 285 (quoting Editorial, *A Mistaken ID Bill*, BOSTON GLOBE, Apr. 27, 2005, at A22).

61. Other major provisions of the bill include: "(1) preventing terrorists from obtaining asylum or relief from removal; (2) waiver of laws to facilitate borders at barriers; (3) judicial review of orders of removal; (4) inadmissibility and deportability due to terrorist and terrorist-related activities; . . . and (6) improving border infrastructure and technology integration." *Id.* at 287. See generally CONG. RESEARCH SERV., 109TH CONG., CRS REPORT FOR CONGRESS, IMMIGRATION: ANALYSIS OF THE MAJOR PROVISIONS OF THE REAL ID ACT OF 2005 (2005) (Michael John Garcia, Margaret Mikyung Lee, and Todd Tatelman, Legislative Attorneys, American Law Division) (discussing changes imposed by REAL ID Act).

62. CONG. RESEARCH SERV., *supra* note 61, at 38.

63. REAL ID Act § 202; CONG. RESEARCH SERV., *supra* note 61, at 41-42. Other requirements of the REAL ID Act include employing technology to capture digital images of all application documents and holding the images for a minimum of ten years, compelling each applicant to submit to a "mandatory facial image capture," implementing security protocols for the physical location in which licenses are issued, and imposing security clearance requirements for all personnel working at license centers. CONG. RESEARCH SERV., *supra* note 61, at 41-42.

64. Application requirements include verification of legal status, personal identification, date of birth, Social Security information, and proof of address. REAL ID Act § 202(b); CONG. RESEARCH SERV., *supra* note 61, at 40-41.

65. REAL ID Act § 202(c)(2)(B); CONG. RESEARCH SERV., *supra* note 61, at 40-41.

66. CONG. RESEARCH SERV., *supra* note 61, at 41 n.131. An immigrant is only eligible for a temporary license if they can prove that they

licenses for temporary immigrants must expire on the date when the immigrant will no longer be authorized to remain in the United States, and the cards must clearly indicate their temporality.⁶⁷

2. Local Identification: The Elm City Residence Card

Due to the problems with accessing personal identification at the state level, one city has implemented a program to provide its residents with ID at the local level. In the summer of 2007, New Haven, Connecticut introduced the Elm City Residence Card program, which allows New Haven residents to apply for a municipal ID card—regardless of their immigration status.⁶⁸ When explaining the program's goals, the city mentioned its desire to encourage cooperation with law enforcement and increase access to bank accounts.⁶⁹ It is important to note that the card does not grant its holder any legal rights, nor does it grant them citizenship, or access to state or federal benefits.⁷⁰ What the card does provide is the ability to check books out of the library, access municipal services and facilities (including public beaches, golf courses, and the city landfill), and an option to link the card with a debit account for use at city parking meters and local stores.⁷¹ To make the card more accessible to its increasingly large immigrant population,⁷² the city has decided to accept foreign documents, including the Matrícula Consular, during the application process.⁷³ Because foreign documents are likely to be unfamiliar to municipal employees, the city has implemented a verification-training program through which municipal

(1) have a valid, unexpired non-immigrant visa or non-immigrant visa status for entry into the United States; (2) have a pending or approved application for asylum in the United States; (3) have entered into the United States in refugee status; (4) have a pending or approved application for temporary protected status in the United States; (5) have approved deferred action status; or (6) have a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

Id.; see also REAL ID Act § 202(c)(2)(B)(i–ix) (setting forth requirements for temporary drivers' licenses or identification cards).

67. REAL ID Act § 202(c)(2)(C); CONG. RESEARCH SERV., *supra* note 61, at 41.

68. New Haven's *Elm City Resident Cards* — Fact Sheet, http://www.cityofnewhaven.com/pdf_whatsnew/municipalidfactsheet.pdf (last visited Dec. 22, 2008).

69. *Id.*

70. Mary E. O'Leary, *Residents Can Apply July 24 for Elm City ID*, NEW HAVEN REG., July 5, 2007, at A1.

71. *Id.* When the program was first introduced, approximately fifty stores had chosen to participate in the program. *Id.*

72. By one estimate, up to 15,000 undocumented immigrants currently reside in New Haven, which has a total population of approximately 120,000. Caitlin Carpenter, *New Haven Opts to Validate Its Illegal Residents*, CHRISTIAN SCI. MONITOR, July 17, 2007, at 2.

73. City of New Haven, Office of New Haven Residents, Elm City Resident Card Application Form, available at http://www.cityofnewhaven.com/pdf_whatsnew/ApplicationForm.pdf. Other forms of acceptable identification are U.S. driver's licenses, birth certificates, national identification cards, foreign driver's licenses, voter registration cards, military identification cards (United States or foreign), current visas, or individual taxpayer identification number cards. *Id.*

workers will receive training from fraud specialists and representatives from the Mexican and Guatemalan embassies.⁷⁴

There was significant early interest in the Elm City ID program—the city issued more than 3,200 cards within the first few weeks.⁷⁵ Interviews with immigrants reveal their support for the program; they say it has fostered hope for employment opportunities, provided access to bank accounts, and, as one resident explained, “[I]f I’m stopped by the cops, I’ll have something to show them.”⁷⁶ Furthermore, by taking the initiative on this issue, New Haven has inspired other cities to consider adopting similar programs; at the time of this writing, both New York City and San Francisco have expressed interest in issuing some form of local identification.⁷⁷

As with any government activity involving undocumented immigrants, the New Haven program has met its share of resistance. At six o’clock in the morning on June 6, 2007, just two days after the city approved the Elm City ID program, the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) conducted a city-wide “sweep” that resulted in the arrest of thirty-one individuals alleged to be illegal immigrants.⁷⁸ Although ICE insisted that the raid had been planned for months and had nothing to do with the Elm City ID program, New Haven Mayor John DeStefano, Jr., accused ICE of “‘terrorizing’ the immigrant community” in retaliation for the city’s new ID program.⁷⁹ The raid also prompted a number of Connecticut lawmakers to launch an investigation into the events, including a letter written to Secretary of Homeland Security Michael Chertoff requesting DHS information to determine whether protocol violations had occurred.⁸⁰ The Elm City Resident Card is also

74. O’Leary, *supra* note 71. The fact that the city chose representatives from these embassies is a reflection of New Haven’s immigrant population; many of New Haven’s undocumented immigrants are from Mexico, Ecuador, or Guatemala. Lucy Nalpathanchil, *Illegal Immigrants to Get ID Cards in Connecticut*, REUTERS, July 22, 2007, <http://www.reuters.com/article/topNews/idUSN2227446920070722?feedType=RSS&sp=true>.

75. Jeff Holtz, *This Summer’s Surprise Hit: An Elm City ID*, N.Y. TIMES, Sept. 16, 2007, at 14CT6. In fact, the city expected to exceed its goal of issuing 5,000 cards within the first year. *Id.* (reporting statement of Mayor John DeStefano, Jr.).

76. *Id.*

77. Nina Bernstein, *Bill for New York City ID Card To Be Introduced by Councilman*, N.Y. TIMES, July 24, 2007, at B3; Wyatt Buchanan, *City Has a Plan for Immigrant ID Card*, S.F. CHRON., Sept. 7, 2007, at B4.

78. Jennifer Medina, *Arrests of 31 in U.S. Sweep Bring Fear in New Haven*, N.Y. TIMES, June 8, 2007, at B1. The newspaper reported that federal officials entered the homes of suspects, demanded to see identification while separating men from women, and then, after inquiring which women had children, took nonparent suspects into custody. *Id.*

79. *Id.* The June 6, 2007 raid was the first of its kind “in recent memory” for New Haven. *Id.* According to a spokesperson for the Mayor, “this is too much to be a coincidence, this is a retaliation.” Andrew Mangino, *Feds Arrest Dozens of Illegal Immigrants in New Haven Raids*, YALE DAILY NEWS, June 6, 2007, <http://www.yaledailynews.com/articles/view/21076> (quoting Jessica Mayorga, spokeswoman for Mayor John DeStefano, Jr.).

80. Letter from Joseph I. Lieberman, Christopher J. Dodd & Rosa L. DeLauro, Senators and Congresswoman, to Michael Chertoff, Secretary of Homeland Security, U.S. Department of Homeland Security (June 11, 2007), available at <http://dodd.senate.gov/index.php?q=node/3936>.

causing unrest among groups of New Haven residents who view it as evidence that the city is “selling out legal Americans,”⁸¹ and as a threat to citizens’ job opportunities.⁸² At least one such group, Southern Connecticut Citizens for Immigration Reform, has suggested that they may bring a legal challenge against the ID program.⁸³

3. The Matrícula Consular

Issued by the Mexican government for the past 131 years, the Matrícula Consular identification card keeps track of Mexican citizens living abroad, aids tax collection, tracks personal data, and ensures that Mexican citizens have a form of personal identification when they are not residing in Mexico.⁸⁴

Proponents of the Matrícula Consular see it as a pre-existing and convenient form of personal identification that rivals American state-issued driver’s licenses in terms of security.⁸⁵ Due in part to a well-organized educational campaign,⁸⁶ the Matrícula Consular has been accepted by more than seventy banks and fifty-six credit unions,⁸⁷ enabling immigrants to open bank accounts and transfer money back to their home countries.⁸⁸ The Matrícula Consular has also gained the support of as many as eight hundred local police and sheriffs’ departments, which accept it as a valid form of personal identification.⁸⁹ Finally, a number of local governments accept the Matrícula Consular for accessing municipal services and facilities.⁹⁰

Although the Matrícula Consular has received some support, it has not been without controversy. Critics of the card claim its acceptance encourages

Secretary Chertoff responded with assurances that no violations had taken place, and emphasized that “it is not [the Department of Homeland Security’s] policy . . . to conduct ‘raids,’ or take an ad hoc approach to enforcing immigration law; rather, the policy is to focus . . . efforts on specific fugitive aliens and specific locations.” Lea Yu, *Immigrant Raid Fallout Continues*, YALE DAILY NEWS, Aug. 31, 2007, <http://www.yaledailynews.com/articles/view/21110>.

81. Carpenter, *supra* note 72 (quoting Bill Farrel, member of Yankee Patriot Association). The Yankee Patriot Association is a New England anti-illegal immigration group. *Id.*

82. Holtz, *supra* note 75.

83. O’Leary, *supra* note 71.

84. O’Neil, *supra* note 18.

85. *Id.* The cards have tamper-proof holograms to avoid forgery and the Mexican government is planning to implement a computer network that will give authorities instant access to cardholder information. *Id.*

86. *Id.*

87. *Id.* State Farm Bank, for example, expressly permits the use of a Matrícula Consular for opening checking, savings, and money market accounts. State Farm Bank, Banking Frequently Asked Questions, http://www.statefarm.com/bank/sr_center/faq.asp (last visited Dec. 22, 2008).

88. O’Neil, *supra* note 18.

89. *Id.* Explanations for this support by law enforcement include: (1) by facilitating bank access, Matrícula Consulars help reduce immigrant robberies; (2) by providing valid identification, they encourage immigrants to report crimes and act as witnesses, and make them less likely to run from police; and (3) the cards make it easier for police and emergency medical personnel to identify dead or unconscious people. *Id.*

90. *Id.* Some examples include applying for library cards and business licenses, accessing public buildings, and registering children for public school. *Id.*

illegal immigration,⁹¹ argue that the card itself is unreasonably susceptible to fraud,⁹² and offer evidence purporting to link the Matrícula Consular to crime and terrorism.⁹³ A number of politicians have latched on to the anti-Matrícula Consular controversy,⁹⁴ prompting some to introduce legislation that would completely prohibit the card's acceptance as a valid form of personal identification.⁹⁵ In fact, the REAL ID Act specifically prohibits states from accepting the Matrícula Consular as a legitimate form of ID.⁹⁶

In addition to political resistance, there has also been civilian backlash against the Matrícula Consular; this discontent tends to be directed at companies that accept the card for personal identification purposes.⁹⁷ One civilian protest group, the National Illegal Immigration Boycott Coalition ("NIIBC"), has organized an Internet-based movement to boycott the Bank of America over its decision to accept Consular IDs.⁹⁸ The NIIBC, through its website, has launched an active campaign encouraging Bank of America customers to file complaints, cancel their accounts, and request congressional action.⁹⁹

91. Johnson, *supra* note 36, at 230.

92. *Consular Identification Cards: Hearing Before the Subcomm. on Immigration, Border Security, and Claims of the H. Comm. on the Judiciary*, 108th Cong. 111 (2003) (statement of Steven McCraw, Assistant Director, Office of Intelligence, Federal Bureau of Investigation), available at <http://www.fbi.gov/congress/congress03/mccraw062603.htm>.

93. *Id.* For example, critics argue that the card itself can be easily forged, and that the cards facilitate establishment of false identities. *Id.* Some other criticisms include the lack of a centralized database to track card issuance and issuance based on easily forgeable Mexican birth certificates. *Id.*

94. See, e.g., Congressman Gary Miller, Fact Sheet: The Loophole Elimination and Verification Enforcement Act (LEAVE Act), <http://garymiller.house.gov/UploadedFiles/LEAVE%20Act%20Fact%20Sheet.pdf> (last visited Dec. 22, 2008) (proposing legislation that would prohibit use of Matrícula Consular as valid identification in financial and nonfinancial institutions).

95. See, e.g., Press Release, Congressman Tom Price, Price Challenges Others to Help Close Illegal Immigration Loophole (Mar. 8, 2007), available at <http://tom.house.gov/html/release.cfm?id=264> (discussing sponsorship of *Photo Identification Security Act* (H.R. 1314), which would prohibit government and financial institutions from accepting Matrícula Consular as personal identification). However, legislation of this kind has met substantial resistance from those who are more sympathetic toward undocumented immigrants, and who argue that prohibiting the use of Consular IDs will only push immigrants into the "underground financial economy," thereby frustrating law enforcement and intelligence gathering activities. National Immigration Law Center, *Anti-Matrícula Proposal Defeated; Financial Institutions Can Continue Accepting Consular IDs*, IMMIGRANTS' RIGHTS UPDATE, Sept. 21, 2004, <http://nilc.org/immspbs/DLs/DL019.htm> (quoting Ohio Congressman, Michael Oxley).

96. CONGRESSIONAL BUDGET OFFICE, 110TH CONG., COST ESTIMATE FOR H.R. 418, REAL ID ACT OF 2005, at 5 (Feb. 7, 2005), available at <http://www.cbo.gov/ftpdocs/60xx/doc6072/hr418.pdf>.

97. See, e.g., Jonathan Stempel, *Bank of America Defends Immigrant Card Program*, REUTERS, Feb. 22, 2007, <http://www.reuters.com/article/domesticNews/idUSN2247507320070222> (discussing NIIBC boycott of Bank of America).

98. Bank of America Boycott, <http://www.bankofamericaboycott.com> (last visited Dec. 22, 2008).

99. Press Release, Americans For Legal Immigration Political Action Committee, *Illegal Immigration Coalition to Boycott Bank of America!* (Feb. 16, 2007), available at <http://www.alipac.us/modules.php?name=Newsfile=article&sid=1945&mode=&order=0&thold=0>.

4. Fraudulent Documentation

Unfortunately, some undocumented immigrants are forced to obtain personal identification through less legitimate channels. During 2001, Immigration and Naturalization Services (“INS”)¹⁰⁰ intercepted more than 114,000 fraudulent documents from aliens attempting to gain entrance to the United States.¹⁰¹ Once inside the country, some undocumented immigrants resort to fraudulent documents to obtain employment.¹⁰² Federal immigration laws require those seeking work to produce valid documentation establishing both identity and work eligibility,¹⁰³ however, the burden of verifying such documentation falls on the employer.¹⁰⁴ Because most employers lack the experience and technical skill necessary to identify fraudulent documents, this requirement is satisfied through a minimal “good faith attempt.”¹⁰⁵ Not surprisingly, this system is ripe for fraud and counterfeit. In a twenty-month study by the INS, approximately 50,000 unauthorized aliens were identified using as many as 78,000 fraudulent documents while attempting to gain employment.¹⁰⁶ Not only does such fraud violate immigration laws, it has also been linked to drug trafficking and terrorism.¹⁰⁷ Finally, those found to be involved in the use or production of fraudulent documents are subject to severe penalties including fines, imprisonment, or permanent inadmissibility to the United States.¹⁰⁸ Unfortunately, with the lack of other more legitimate means of

100. Creation of the Department of Homeland Security dissolved INS and divided its former duties among three government agencies: U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, and U.S. Customs and Border Protection. U.S. Dept. of Homeland Security, History: Who Became Part of the Department?, http://www.dhs.gov/xabout/history/editorial_0133.shtm (last visited Dec. 30, 2008).

101. U.S. GEN. ACCOUNTING OFFICE, GAO-02-830T, IDENTITY FRAUD: PREVALENCE AND LINKS TO ALIEN ILLEGAL ACTIVITIES 7 (2002) (statement of Richard M. Stana, Director, Justice Issues), available at <http://www.gao.gov/new.items/d02830t.pdf>. These documents included border crossing cards, alien registration cards, nonimmigrant visas, U.S. passports and citizenship documents, foreign passports and citizenship documents, re-entry permits and refugee travel documents, and immigrant visas. *Id.*; see also Jerry Markon, *Va. Official Accused in Driver's License Fraud Probe*, WASH. POST, July 13, 2005, at B4 (discussing Department of Motor Vehicles employee charged with selling driver's licenses to illegal immigrants for up to \$3,500 per license).

102. U.S. GEN. ACCOUNTING OFFICE, *supra* note 101, at 8.

103. Immigration Reform and Control Act (“IRCA”) of 1986 § 101, 8 U.S.C. § 1324a(b) (2006); see also U.S. GEN. ACCOUNTING OFFICE, *supra* note 101, at 8 (discussing IRCA).

104. U.S. GEN. ACCOUNTING OFFICE, *supra* note 101, at 8.

105. 8 U.S.C. § 1324a(b)(6)(A).

106. U.S. GEN. ACCOUNTING OFFICE, *supra* note 101, at 8. This study, which was conducted from October 1996 through May 1998, found that sixty percent of the fraudulent documents were INS documents, thirty-six percent were Social Security cards, and four percent were other documents (including driver's licenses). *Id.*

107. *Id.* at 9–12. However, most of the fraudulent documents used by undocumented immigrants are related to employment verification, see *id.* at 8, so the connection to terrorism and drug trafficking is more likely to be a symptom of widespread counterfeiting as a whole, rather than specifically related to immigration.

108. Immigration and Nationality Act of 1952 § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i) (2006); 18 U.S.C. § 1028(b) (2006); see also CONG. RESEARCH SERV., 109th CONG., CRS REPORT FOR

obtaining identification, the possibility of receiving these severe punishments is apparently a risk that many undocumented immigrants are willing to take.

III. OTHER SCHOLARLY DISCUSSION REGARDING IDENTIFICATION FOR UNDOCUMENTED IMMIGRANTS

As the foregoing discussion illustrates, undocumented immigrants' access to identification is tenuous at best.¹⁰⁹ It should also be obvious that the topic has generated significant controversy, which, not surprisingly, has provoked a fair amount of scholarly discussion. It is helpful to briefly examine a selection of current literature to better understand how this Comment contributes to the existing dialogue. Although much of the current material dealing with identification focuses solely on driver's licenses,¹¹⁰ scholars offer a variety of arguments—ranging from broad sociopolitical theories to narrow interpretations of constitutional authority—regarding the propriety or impropriety of allowing undocumented immigrants to access government-issued ID.

A. *The Sociopolitical Argument: Social Control*

One author suggests that licensing regulations serve as a means for enacting social control over the undocumented immigrant population.¹¹¹ Such regulations display the power of the state over the life of the noncitizen, and may represent a form of punishment for entering or remaining in the country unlawfully.¹¹² These regulations also tend to create a binary categorization, such as “citizen/noncitizen” or “legal/illegal,” which further punishes the undocumented immigrant by relegating him to the disfavored category.¹¹³ This labeling scheme ultimately serves as a way to brand undocumented immigrants so that society can determine “who belongs and who does not belong in the United States.”¹¹⁴ The author suggests that any turmoil surrounding the current noncitizen driver's

CONGRESS, IMMIGRATION-RELATED DOCUMENT FRAUD: OVERVIEW OF CIVIL, CRIMINAL, AND IMMIGRATION CONSEQUENCES 2–8 (2006) (Michael John Garcia, Legislative Attorney, American Law Division) (discussing penalties for document fraud).

109. See *supra* Part II.B for a discussion of attempts to establish personal identification for undocumented immigrants.

110. See, e.g., Paul L. Frantz, *Undocumented Workers: State Issuance of Driver Licenses Would Create a Constitutional Conundrum*, 18 GEO. IMMIGR. L.J. 505, 540–41 (2004) (arguing that state issuance of licenses to undocumented immigrants is unconstitutional intrusion on federal power); Garcia, *supra* note 59, at 298–307 (discussing impact of REAL ID Act on undocumented immigrants' access to driver's licenses); Spencer Garlick, *License to Drive: Pioneering a Compromise to Allow Undocumented Immigrants Access to the Roads*, 31 SETON HALL LEGIS. J. 191, 205–13 (2006) (discussing legislative compromise allowing undocumented immigrants to drive legally); Johnson, *supra* note 36, at 216–35 (discussing civil rights implications involved in denying driver's licenses to undocumented immigrants); López, *supra* note 49, at 110–15 (arguing denial of driver's licenses constitutes social control of undocumented immigrants); Mounts, *supra* note 56, at 269–74 (suggesting license restrictions are ineffective as means to prevent terrorism and identity theft).

111. López, *supra* note 49, at 110–15.

112. *Id.* at 111.

113. *Id.* at 112.

114. *Id.* at 114–15.

license debate is a result of our struggle “to reconcile the unwelcome contradiction of [America’s] immigration law and policy failures, and the reality of the millions of undocumented workers needed for the economy.”¹¹⁵ Ultimately, the author argues that the binary classification system allows government leaders to stake out their respective positions on the immigration issue as a political tactic,¹¹⁶ and also serves as a way for them to enact “their own forms of punishment and social control of noncitizen[s].”¹¹⁷

B. *The Moralistic Argument: Civil Rights*

From another perspective, restrictions on licensing undocumented immigrants should be viewed in the context of civil rights.¹¹⁸ The current debate over licensing regulations has taken on an increasingly racial hue, often unearthing conspicuously nativist and anti-immigrant sentiments.¹¹⁹ Suspiciously blind to the fact that immigration laws disproportionately impact Latinos,¹²⁰ courts take a deferential stance toward regulations that discriminate against noncitizens.¹²¹ However, immigration status may simply be a “facially-neutral prox[y]” acting as a substitute for race—a mask on racism that facilitates covert discrimination.¹²² Enforcement of certain immigration laws has resulted in the de facto segregation of undocumented immigrants, suggesting the emergence of a “new Jim Crow.”¹²³ By viewing the issue of noncitizen driver’s licensing through a civil rights lens, lawmakers can better identify the ways in which certain regulations may have a disproportionate effect on particular minority groups and, perhaps more importantly, society as a whole can more readily acknowledge the racial tensions underlying the current debate over granting licenses to undocumented immigrants.¹²⁴

C. *The Consequentialist Argument: Ineffective Policies*

Another author suggests that two of the recent justifications for strict restrictions on driver’s licenses—terrorism and identity fraud prevention—are unfounded.¹²⁵ The intense societal fear resulting from the attacks of September 11, 2001, compounded with the rising specter of identity theft, resulted in a barrage of legislative proposals intended to expand restrictions on driver’s

115. *Id.* at 113.

116. López, *supra* note 49, at 113–14.

117. *Id.* at 127.

118. Johnson, *supra* note 36, at 216–35.

119. *Id.* at 218–19.

120. Noting that estimates suggest more than half of all undocumented immigrants are Mexican, Johnson argues that any laws regulating immigration will necessarily have a disproportionate effect on persons of Mexican ancestry. *Id.* at 223.

121. *Id.* at 219–20.

122. *Id.* at 235.

123. Johnson, *supra* note 36, at 239.

124. *Id.* at 236.

125. Mounts, *supra* note 56, at 269–71.

license access.¹²⁶ However, evidence suggests that rather than accomplishing these goals, such restrictions instead resulted in a number of unintended, negative consequences.¹²⁷ For example, many immigrants continue to drive despite their lack of a driver's license or automobile insurance, resulting in more than \$4 billion in insurance losses per year.¹²⁸ Ironically, certain measures enacted to prevent identity theft have actually *caused* identity theft by increasing the amount of personal information required for license applications.¹²⁹ These concerns, the author argues, should prompt lawmakers to reconsider the effectiveness of current regulations and the reasonableness of using driver's license regulation as a means to prevent terrorist activity.¹³⁰

D. *The Constitutional Argument: Federalism*

By engaging in a constitutional analysis, one author argues that state attempts to offer driver's licenses to noncitizens amount to an unconstitutional usurpation of federal power—namely, the power to regulate and control immigration and naturalization.¹³¹ Because state regulatory schemes permitting noncitizens to access licenses necessarily implicate immigration law, the author argues that the federal government's exclusive authority over immigration matters preempt these state laws.¹³² By permitting undocumented immigrants to obtain licenses, permissive state policies frustrate those federal laws that restrict the rights of noncitizens.¹³³ Therefore, opponents of such state immigration laws argue that any proposals to reform America's current immigration policy must be addressed to the federal government because it is the only regulatory body with proper authority over immigration matters.¹³⁴

In contrast to the foregoing literature, this Comment discusses the impact of licensing regulations on undocumented immigrants' construction of identity.¹³⁵ In reaching these conclusions, this Comment relies on established sociopsychological concepts such as role identity, identity salience, commitment, and self-categorization. Therefore, it is necessary to establish at least a summary understanding of the underlying theories prior to transplanting these concepts into the discussion of immigrant identification.

126. *Id.* at 247–48, 251–52.

127. *Id.* at 269–73.

128. *Id.* at 271.

129. *Id.* at 272.

130. Mounts, *supra* note 56, at 273–74.

131. Frantz, *supra* note 110, at 508.

132. *Id.* at 536–39.

133. *Id.* at 539–41.

134. *Id.* at 541.

135. See *infra* Part IV.A–B for discussions of the psychological and sociological theories of identity construction.

IV. IDENTITY AND SOCIAL IDENTITY THEORIES AND CONCEPTS

In the field of social psychology, there are two prominent theories used to describe self-concept and explain how this concept of self is either altered or reinforced by one's existence within society.¹³⁶ Both theories understand "self" as a collection of discrete "identities" which ultimately converge to create each individual's unique self-concept.¹³⁷ However, the focus of each theory differs; identity theory, which has its roots in psychology, offers an explanation of *individualistic* behavior, whereas social identity theory, which rests on a sociological foundation, is concerned with the interactions and relationships between *groups*.¹³⁸ Each theory provides valuable insight into how one's self-concept manifests itself through behavior, and, most pertinently, each is applicable to the ongoing discussion regarding the role of undocumented immigrants within American society.

A. *Identity Theory*

Originally formulated by Sheldon Stryker in 1968,¹³⁹ identity theory is based on the proposition that "as a reflection of society, the self should be regarded as a multifaceted and organized construct."¹⁴⁰ This multifaceted construct is composed of numerous "role identities," which are defined as "distinct components of self . . . for each of the role positions in society that we occupy."¹⁴¹ Because each individual will typically occupy multiple roles at any given time, and because the combination of roles occupied by each individual will likely differ from those occupied by others, there is a tremendous variety among individual self-concepts.¹⁴²

The process by which we assign roles to our own self-concept is known as "self-categorization."¹⁴³ Self-categorization theory is grounded in the concept of a "named and classified world" in which identifiable social positions (known as "roles") establish specific expectations and behavioral norms for their

136. Michael A. Hogg, Deborah J. Terry & Katherine M. White, *A Tale of Two Theories: A Critical Comparison of Identity Theory with Social Identity Theory*, 58 SOC. PSYCHOL. Q. 255, 255 (1995). The term "self-concept" refers to "an idea of the self constructed from the beliefs one holds about oneself and the responses of others." NEW OXFORD AMERICAN DICTIONARY 1537 (2d ed. 2005).

137. Hogg et al., *supra* note 136, at 255.

138. *Id.*

139. Sheldon Stryker, *Identity Salience and Role Performance: The Relevance of Symbolic Interaction Theory for Family Research*, 30 J. MARRIAGE & FAM. 558 (1968). Stryker has been called the originator of identity theory. Hogg et al., *supra* note 136, at 256.

140. Hogg et al., *supra* note 136, at 256.

141. *Id.* One example offered to illustrate this concept involves an individual woman whose role identities include her being "a mother, a wife, a daughter, a social worker, and a blood donor." *Id.* Roles can also be defined as "a set of expectations prescribing behavior that is considered appropriate by others." *Id.* at 257.

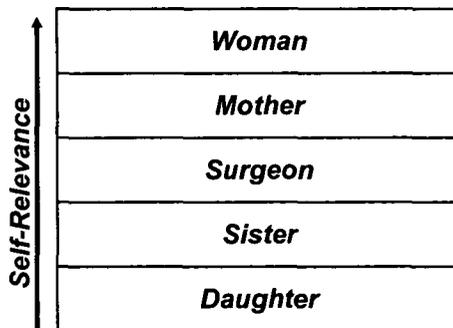
142. *Id.* at 256.

143. Jan E. Stets & Peter J. Burke, *Identity Theory and Social Identity Theory*, 63 SOC. PSYCHOL. Q. 224, 224 (2000) (emphasis omitted).

occupants.¹⁴⁴ As a result of existing in a world of distinct social classifications, people reflexively categorize others and themselves within the established grid of social roles and, by doing so, create expectations regarding the normative behavior associated with each role.¹⁴⁵ By establishing one's "identity" as a collection of roles, self-categorization provides meaning for the self-concept both by firmly defining the self and by contrasting the roles that one occupies with the roles occupied by others.¹⁴⁶ Ultimately, any sense of self-worth is based on the perception that one is living up to the behavioral expectations attached to each occupied role, and any perceived divergence from established role norms will typically result in behavior modification as an attempt to regain congruence.¹⁴⁷

Another important component of identity theory is the concept of "identity salience."¹⁴⁸ The term "identity salience" describes the hierarchical arrangement of roles within one's self-concept, and is defined as "the likelihood that the [role] will be invoked in diverse situations."¹⁴⁹ Roles with greater "self-relevance" will be placed higher in the self-concept hierarchy and will be invoked more often in social situations.¹⁵⁰

Figure A. Role Hierarchy¹⁵¹



144. *Id.* at 225.

145. *Id.*

146. Hogg et al., *supra* note 136, at 256. As an example, the role of "doctor" gains additional meaning when it is contrasted with the role of "nurse." *Id.* at 256–57.

147. *Id.* at 257.

148. *Id.*

149. *Id.*

150. Hogg et al., *supra* note 136, at 257.

151. Figure A was created by the Author using concepts presented in Hogg et al., *supra* note 136, at 257.

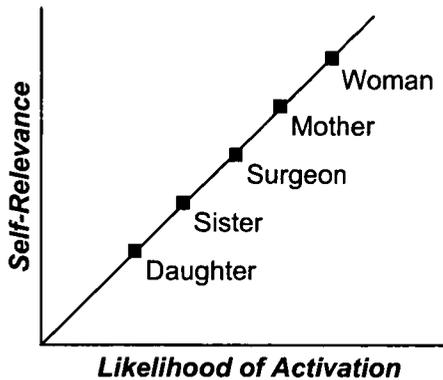
Figure B. Saliency¹⁵²

Figure A represents the hierarchy of roles within the self-concept. For the person described in Figure A, the role of “woman” has a higher level of “self-relevance” within her self-concept than does the role of “mother,” which in turn has higher self-relevance than the role of “surgeon,” and so on. The position of each role within the self-concept hierarchy has a direct effect on behavior,¹⁵³ as depicted in Fig. B, which illustrates the notion that roles positioned nearer the top of the hierarchy are more likely to be invoked during various social situations (i.e., the likelihood of “activation”).¹⁵⁴ Therefore, saliency expresses the notion that two people with the same role composition may behave differently in any given social situation because of variances within their self-concept hierarchies.¹⁵⁵ Finally, the saliency of a particular role is directly related to the level of self-worth or self-deficiency one experiences as a result of his or her role performance.¹⁵⁶

The saliency of any particular role is often dependent on the social relationships that are anchored in one’s adoption of that role.¹⁵⁷ This correlation between saliency and social relationships is known as “commitment,” and has

152. Figure B was created by the Author using concepts presented in Hogg et al., *supra* note 136, at 257.

153. Hogg et al., *supra* note 136, at 257.

154. *Id.* The invocation of a role is also known as “activation.” Stets & Burke, *supra* note 143, at 229.

155. Hogg et al., *supra* note 136, at 257. For example, one surgeon-mother may skip her daughter’s little league game to attend a medical conference and, upon arriving at the conference, find herself sitting next to an empty seat that was reserved for another surgeon-mother who decided to forego the conference so she could watch her little Suzie play shortstop.

156. *Id.* at 258. This concept is encapsulated in the following pronouncement by psychologist William James:

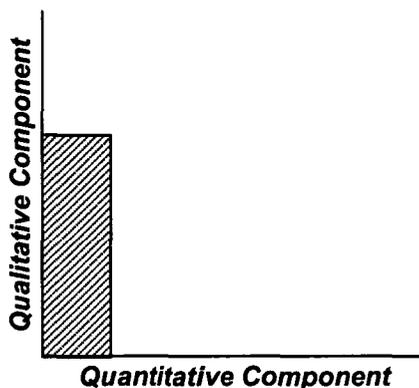
I, who for the time have staked my all on being a psychologist, am mortified if others know much more psychology than I. But I am contented to wallow in the grossest ignorance of Greek. My deficiencies there give me no sense of personal humiliation at all. Had I “pretensions” to be a linguist, it would have been just the reverse.

Id. (quoting 1 WILLIAM JAMES, THE PRINCIPLES OF PSYCHOLOGY 309 (Dover 1950) (1890)).

157. *Id.*

been defined as the “degree to which the individual’s relationships to particular others depends on his or her being a given kind of person.”¹⁵⁸ Commitment has dual components—one quantitative and one qualitative.¹⁵⁹ The *quantitative* component relates to the number of social relationships based on any one role, and suggests that a role’s salience increases with the number of relationships predicated on that role.¹⁶⁰ The *qualitative* component relates to the depth and perceived importance of a relationship, and posits that greater depth and importance will result in higher salience for the role on which that relationship depends.¹⁶¹ Furthermore, a high level of commitment will result in a greater personal need to achieve positive role performance because, as noted above, the more salient a role becomes, the more distress and lack of self-worth one will experience if his or her role performance does not meet expectations.¹⁶²

Figure C.1. Commitment: High *Qualitative*, Low *Quantitative*¹⁶³



158. Sheldon Stryker & Anne Statham, *Symbolic Interaction and Role Theory*, in 1 THE HANDBOOK OF SOCIAL PSYCHOLOGY 311, 345 (Gardner Lindzey & Elliot Aronson eds., 3d ed. 1985).

159. Stets & Burke, *supra* note 143, at 230.

160. *Id.* This quantitative component is also known as “interactional commitment.” Hogg et al., *supra* note 136, at 258.

161. Stets & Burke, *supra* note 143, at 230. This qualitative component is also known as “affective commitment.” Hogg et al., *supra* note 136, at 258.

162. Hogg et al., *supra* note 136, at 258.

163. Figure C.1 was created by the Author using concepts formulated by Hogg et al., *supra* note 136, at 258.

Figure C.2. Commitment: Low *Qualitative*, High *Quantitative*¹⁶⁴

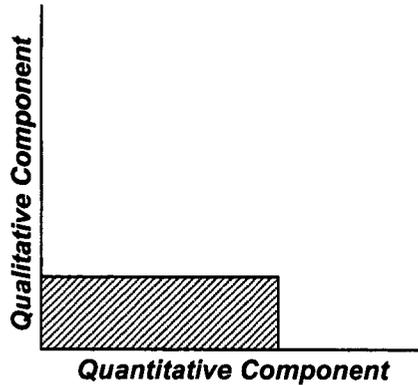
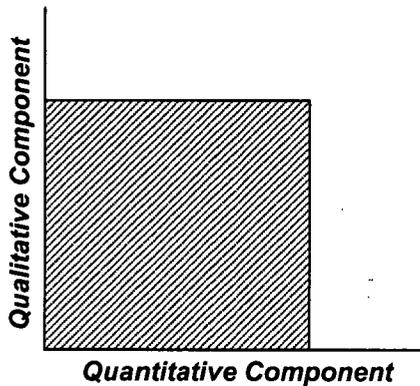


Figure C.3. Commitment: High *Qualitative*, High *Quantitative*¹⁶⁵



In Figures C.1–3, the *y*-axis represents the *qualitative* component and the *x*-axis represents the *quantitative* component. The intersection of points plotted on each axis results in the shaded area, which represents the total degree of commitment. By examining the figures, it becomes apparent that the greatest degree of commitment—and the highest salience—will attach to a role that generates a large number of deeply important personal relationships.¹⁶⁶ This connection between commitment and salience is important because it illustrates how *external* social interaction affects one's *internal* self-concept.¹⁶⁷

164. Figure C.2 was created by the Author using concepts formulated by Hogg et al., *supra* note 136, at 258.

165. Figure C.3 was created by the Author using concepts formulated by Hogg et al., *supra* note 136, at 258.

166. See Hogg et al., *supra* note 136, at 258 (noting that greater interactional and affective commitment lead to higher identity salience).

167. *Id.*

B. Social Identity Theory

Identity theory and social identity theory differ in the way they describe the construction of one's self-concept or identity. Identity theory describes the construction of individual self-concept as a compilation of various role-identities,¹⁶⁸ social identity theory postulates that self-concept is a result of one's membership within various social categories.¹⁶⁹ Social identity theorists suggest that individuals gain personal identity by transposing upon their own self-concept the defining characteristics of the social categories to which they belong.¹⁷⁰ One may belong to a variety of social categories, with category memberships organized hierarchically by their level of importance to an individual's self-concept.¹⁷¹ Category membership is "represented in the individual member's mind as a social identity," which, like role identity in identity theory, "prescribes . . . what one should think and feel, and how one should behave."¹⁷²

Two important concepts underlying social identity theory are "self-categorization" and "self-enhancement."¹⁷³ According to social identity theorists, people categorize themselves with others whom they perceive as having an identity similar to their own.¹⁷⁴ This group of self and others perceived as similar to self becomes the "in-group," which is defined both *internally*, by examining the similarities among in-group members, and *externally*, by contrasting the in-group attributes with those of the "out-group."¹⁷⁵ Self-categorization describes one's tendency to accentuate "the perceived similarities between the self and other in-group members, and . . . the perceived differences between the self and out-group members."¹⁷⁶ The self-categorization process is complemented by self-enhancement, which describes one's tendency to selectively apply the accentuation effect to attributes that reflect positively on the in-group and negatively on the out-group.¹⁷⁷

By focusing on the similarities among in-group members and the differences between the in-group and the out-group, people become "depersonalized" and society perceives them less as individuals and more as stereotypical

168. *Id.* at 256.

169. *Id.* at 259. Examples of social categories include "nationality, political affiliation, [and] sports team[s]." *Id.*

170. Hogg et al., *supra* note 136, at 259.

171. *Id.*

172. *Id.* at 259–60.

173. *Id.* at 260; Stets & Burke, *supra* note 143, at 225.

174. Stets & Burke, *supra* note 143, at 225.

175. Hogg et al., *supra* note 136, at 260.

176. Stets & Burke, *supra* note 143, at 225.

177. Hogg et al., *supra* note 136, at 260. For example, an in-group of sprinters may decide to compare themselves to an out-group of marathoners in terms of speed and muscularity, because sprinters tend to be faster and more muscular than marathoners. By contrast, an in-group of marathoners may compare themselves to an out-group of sprinters in terms of stamina, because marathoners tend to have greater stamina than sprinters. *See id.* (noting that in-group members can achieve self-enhancement by adopting favorable stereotypes).

embodiments of group attributes.¹⁷⁸ The tendency toward conformity creates “uniformity of perception and action among group members”; members tend to favorably perceive the in-group, developing strong attachments to the group as a whole regardless of whether they have any close relationships with individual group members.¹⁷⁹ This conformity mechanism also drives individuals to behave similarly to other members of their in-group.¹⁸⁰

To aid this depersonalization process, constructed “prototypes” serve as benchmarks by which to judge both self-performance and the performance of others in terms of congruence with in-group norms, behaviors, and attitudes.¹⁸¹ Because “[a] prototype is a subjective representation of the defining attributes . . . of a social category,” the degree to which an individual group member is perceived to be similar to the prototype—a member’s “prototypicality”—determines how well that individual is functioning as a member of the social group.¹⁸² The prototype is also influenced by the most contemporaneously prominent out-group.¹⁸³ Due to the principle of “metacontrast,” in-groups purposefully create prototypes not only to “minimize intracategory differences” but also to “maximize intercategory differences.”¹⁸⁴

The concept of salience is also relevant in social identity theory.¹⁸⁵ An individual typically organizes one’s identities hierarchically based on their levels of generality (or “inclusiveness”) and uses them to compare one’s self, as a member of the in-group at the specified level of generality, to members of the out-group.¹⁸⁶ The level of generality chosen for purposes of in-group to out-group comparison will fluctuate depending on the contextual relevance of a particular set of characteristics.¹⁸⁷ The three basic levels in this hierarchy are the superordinate level (high generality), the intermediate level (intermediate generality), and the subordinate level (low generality).¹⁸⁸

178. *Id.* at 261.

179. Stets & Burke, *supra* note 143, at 226.

180. *Id.*

181. Hogg et al., *supra* note 136, at 261.

182. *Id.* Prototypes are frequently based on either an *actual* group member who is perceived to be a particularly representative exemplar for the group as a whole, or a “fictional member who embodies the most common or most frequent attributes shared among group members.” Leonie Huddy, *From Social to Political Identity: A Critical Examination of Social Identity Theory*, 22 *POL. PSYCHOL.* 127, 133–34 (2001).

183. Hogg et al., *supra* note 136, at 261.

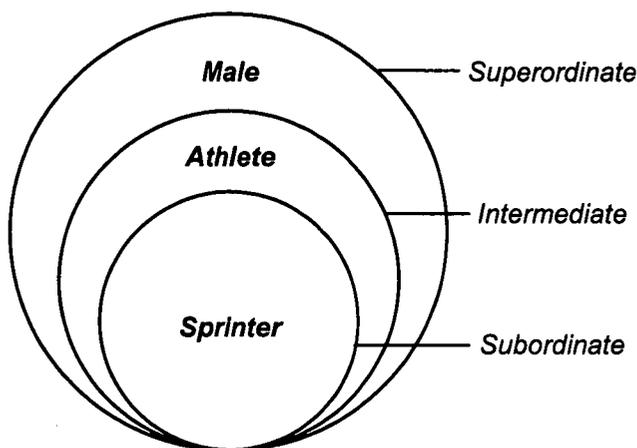
184. *Id.*

185. See Stets & Burke, *supra* note 143, at 229–31 (discussing salience as it applies to social identity theory).

186. *Id.* at 231.

187. *Id.*

188. *Id.*

Figure D. Group Identity Hierarchy¹⁸⁹

For example, at the subordinate level, the individual represented in Figure D will perceive himself as a sprinter, and will compare himself to other members of his own track team. At the intermediate level, however, he will think of himself as an athlete on a track team in a more general sense, and will compare himself to other athletes who compete in nontrack sports. Finally, at the superordinate level, he will focus the characteristics that make him a male, in order to contrast himself with nonmales. For social identity theorists, salience is defined as “the situational activation of an identity at a particular level.”¹⁹⁰ Individuals often adopt the most readily available identity that makes the most sense (i.e., “best explains or fits the similarities and differences among people”) in a given social situation.¹⁹¹

The identity and social identity theory concepts discussed above provide valuable insight into the development and expression of individual self-concept. Through an understanding of such principles, it becomes possible to reconceptualize the current immigrant identification controversy as one that will ultimately determine whether undocumented immigrants continue to be excluded from societal participation, or whether they will instead be accepted into the American social collective and encouraged to adopt an Americanized self-concept along with the values and ideals that accompany it. As the following

189. Figure D was created by the Author using concepts formulated by Stets & Burke, *supra* note 143, at 231.

190. Stets & Burke, *supra* note 143, at 231.

191. Hogg et al., *supra* note 136, at 261. It should be noted, however, that salience can also be driven by one's interest in achieving a positive self-conception. *Id.* at 262. An example given by Hogg, Terry, and White describes a nontraditional man attending a feminist meeting. *Id.* Although the identity of “male” is readily accessible to him and seems to adequately describe the similarities and differences between him and the women at the meeting, he may nevertheless suppress this identity in favor of others that he thinks will be more positively received. *Id.*

Part illustrates, viewing the controversy from this vantage point can provide clarity in an otherwise emotionally and ideologically clouded debate.

V. AMERICANIZING THE NONCITIZEN SELF-CONCEPT

A. *Why an Americanized Noncitizen Self-Concept?*

Access to personal identification is a prerequisite to full, or even partial, participation within American society.¹⁹² Denying undocumented immigrants access to identification relegates them to a shadowy subsociety where they are forced to exist outside the scope of legal protection. These individuals are more likely to be exploited or robbed, and they experience fewer opportunities to establish meaningful relationships with other members of American society.¹⁹³ As a result of this integration blockade, undocumented immigrants face exclusionary us/them binary classifications that reinforce the perception that they are “outside the sphere of membership and belonging in our society.”¹⁹⁴ Such policies have a suppressive effect on undocumented immigrants’ adoption of an Americanized self-concept. One’s self-concept is directly affected by the number of substantive relationships that one maintains because of a particular role, and by the extent to which one identifies with other members of a collective in-group.¹⁹⁵ Therefore, limiting undocumented immigrants’ opportunities to establish meaningful relationships and achieve group inclusion within American society obstructs the adoption of American behaviors and attitudes into their individual self-concepts. Although, arguably, one cannot adopt a *truly* American self-concept without first attaining citizenship, this does not prevent the adoption of a self-concept that includes the less legally-ordained role, “member of American society.”

It seems appropriate at this time to address an obvious objection to this sort of inclusionist argument; namely, that undocumented immigrants are by definition noncitizens, which in turn makes them non-Americans, and obviates any concern for their inclusion within American society at all—let alone concern for whether or not they adopt an Americanized self-concept.¹⁹⁶ First, it is important to acknowledge that current federal immigration law contains a variety of provisions that permit undocumented immigrants to remain within the

192. See *supra* notes 21–23 and accompanying text for examples of common services that require proof of identification.

193. See *supra* notes 32–40 and accompanying text for a discussion of various hardships faced by undocumented immigrants due to their lack of personal identification.

194. López, *supra* note 49, at 112.

195. See *supra* Part IV for an examination of identity theory, social identity theory, and the construction of self-concept.

196. One prominent commentator has gone as far as to suggest that the influx of Mexican immigrants across America’s southern boarder is synonymous with the barbarian invasions that precipitated the collapse of the Roman Empire. BUCHANAN, *supra* note 2, at 1–6.

United States for months, years, or even indefinitely.¹⁹⁷ Furthermore, aside from the reactionary urges of a few hard-line nativists,¹⁹⁸ it is widely accepted that mass deportation is not a viable option.¹⁹⁹ Once those facts are acknowledged, it seems almost unnecessary to state the conclusion that society as a whole will be better served by a population of noncitizens who, through acceptance, inclusion, and integration, are cooperative with and productive within society, as opposed to a population that, due to exclusion and isolation, harbors animosity and resentment toward the rest of society.²⁰⁰

B. *Constructing an Americanized Self-Concept*

1. Role Assignment and In-Group Membership

In order for undocumented immigrants to adopt an Americanized self-concept, they must feel compelled to categorize themselves within the role of “member of American society,”²⁰¹ and must consider themselves as fitting within the in-group of American society.²⁰² Access to personal identification is an important component of this process. Before undocumented immigrants can perceive themselves as members of the American society in-group, they first must recognize similarities between themselves and the other members of the group.²⁰³ Inclusionary legal policies that allow access to personal identification

197. See *supra* notes 28–29 and accompanying text for examples of conditions under which federal immigration law permits undocumented immigrants to remain.

198. See, e.g., Jerome R. Corsi, ‘Pathway to Citizenship’ Is Bad Approach, HUMAN EVENTS, Apr. 27, 2006, <http://www.humanevents.com/article.php?id=14340> (likening mass deportation of undocumented immigrants to America’s struggle to maintain Union during Civil War and George Washington’s enduring harsh winter of 1778 during Revolutionary War).

199. Even President George W. Bush conceded this point. During a speech on immigration reform in April 2006, President Bush stated that “[m]assive deportation of the people here is unrealistic. It’s just not going to work. You can hear people out there hollering it’s going to work. It’s not going to work.” Press Release, White House, Office of the Press Secretary, President Discusses Comprehensive Immigration Reform (Apr. 24, 2006), available at <http://www.whitehouse.gov/news/releases/2006/04/20060424-2.html>.

200. If any doubt remains regarding the propriety of favoring inclusionist policies, one only has to observe the current manifestations of cultural resentment engendered by the exclusionary policies and attitudes toward European Muslims. See Jaya Ramji-Nogales, *A Global Approach to Secret Evidence: How Human Rights Law Can Reform Our Immigration System*, 39 COLUM. HUM. RTS. L. REV. 287, 315 (2008) (discussing how exclusion of immigrant populations can lead to increased terrorism). For further discussion of the reasons for promoting integration of noncitizen immigrants, see Marilyn Hoskin, *Integration or Nonintegration of Foreign Workers: Four Theories*, 5 POL. PSYCHOL. 661, 662–63 (1984).

201. See *supra* notes 143–47 and accompanying text for a discussion of this process as described through the identity theory concept of self-categorization.

202. The assignment of one’s self to an existing social group is described through social identity theory. See *supra* Part IV.B for a discussion of social identity theory and a description of the assignment of one’s self to an existing social group.

203. See *supra* Part IV.B for a description of how social identity theory’s understanding of self-categorization requires that people recognize similarities between themselves and other group members before perceiving themselves as members of an in-group.

will increase undocumented immigrants' ability to participate in American society,²⁰⁴ thereby increasing the perceived similarity between undocumented immigrants and the rest of society. This phenomenon is revealed in the interviews of those immigrants who participated in New Haven's Elm City Resident Card program.²⁰⁵ These immigrants reported feeling a heightened sense of acceptance within the community because, by receiving a simple photo ID card, they were granted access to previously unavailable services and they gained legitimacy in the eyes of law enforcement.²⁰⁶

In contrast, by denying personal identification to undocumented immigrants, exclusionary legal policies construct a barrier that prevents them from experiencing complete identity congruence with other members of American society. Without ID, undocumented immigrants are never able to completely involve themselves in American society, and, by highlighting their status as "noncitizen," such policies effectively place undocumented immigrants in a permanent out-group.²⁰⁷ Cultivating a large body of socially retracted individuals can have problematic ramifications not only for the excluded group but also for society as a whole.²⁰⁸

2. Salience of "Member of American Society" Role/Group

Even without access to personal identification, undocumented immigrants may still adopt some form of an Americanized role or feel that they are part of some highly generalized American social category.²⁰⁹ However, for the Americanized role to be salient (i.e., activated in a wide range of social situations), it must have a high level of self-relevance (i.e., exist near the top of their identity hierarchy).²¹⁰ Access to personal identification is vital for

204. See *supra* Part II.A for examples of activities and benefits requiring personal identification as a prerequisite to participation and access.

205. See *supra* Part II.B.2 for a discussion of the Elm City Resident Card program.

206. See Holtz, *supra* note 75 (relaying experiences of immigrant participants in Elm City Resident Card program).

207. Even semi-inclusionary policies that permit a noncitizen *version* of personal identification may still prevent undocumented immigrants from attaining full in-group membership because, by including indicators of citizenship, these IDs impose a "badge" of inferiority on the noncitizen cardholder that further ingrains an us/them binary classification scheme. See 75 PA. CONS. STAT. § 1510(i) (2004) (allowing indication of noncitizen status on driver's licenses); López, *supra* note 49, at 112 (comparing noncitizen license to "scarlet letter").

208. In the United States, the effectiveness of criminal investigation has suffered due to undocumented immigrants' hesitation to interact with police. Heredia, *supra* note 19. France recently experienced a more drastic manifestation of out-group backlash when a portion of their young, and largely unintegrated, immigrant population rioted through the streets, causing widespread damage and chaos. Smith, *supra* note 20.

209. By simply living in the United States, undocumented immigrants are likely to perceive a difference between themselves and their friends and family who remained in their home country. This differentiation will likely cause at least some form of in-group or out-group characterization between the emigrant and the nonemigrant friend or family member. See Huddy, *supra* note 182, at 132-33 (discussing how minimal differences are enough to cause in-group/out-group classification).

210. See *supra* Part IV.A for a discussion of salience in identity theory.

increasing the salience of a “member of American society” role because, for this role to achieve increased salience, undocumented immigrants must experience high levels of both qualitative and quantitative commitment—they must have a large number of meaningful relationships with other members of American society.²¹¹ Through a more complete participation within American society (for which personal identification has become a prerequisite), undocumented immigrants are necessarily going to experience an expansion of opportunity to cultivate meaningful relationships with other members of American society, be they American citizens or other noncitizens. The number of additional relationship opportunities will positively influence *quantitative* commitment and a heightened sense of legitimacy will likely reduce many barriers to furthering the depth of those relationships (*qualitative* commitment). Additionally, from a social identity perspective, possession of personal identification will increase the accessibility of a “member of American society” group identity, thereby increasing the number of situations in which undocumented immigrants can “try on” the identity components gained through this Americanized group membership.²¹²

3. Behavioral and Attitudinal Effects of Americanized Self-Concept

Arguably one of the most important components of identity and social identity theory is the ability to describe and predict how adopting a role (identity theory) or becoming a member of a social group (social identity theory) will influence individual behavior and attitude.²¹³ Application of these concepts reveals the extent to which adoption of an Americanized self-concept, facilitated by increased access to personal identification, will affect the behaviors and attitudes of undocumented immigrants.

From an identity theory perspective, the adoption of a salient “member of American society” role will cause undocumented immigrants to refocus their internal self-evaluation to determine whether they are living up to the normative expectations assigned to this Americanized role.²¹⁴ Although the extent to which any individual undocumented immigrant complies with American societal norms will depend on what they perceive those norms to be,²¹⁵ it is safe to assume that

211. See *supra* Fig. C.3 and related text for an explanation of how high qualitative and quantitative commitment directly correlates with a high level of salience.

212. See Hogg et al., *supra* note 136, at 261 (discussing how people “try on” social categorizations to determine if they make sense in any given social situation). See *supra* Part IV.B for a discussion of salience in social identity theory.

213. Hogg, Terry, and White conclude that an important similarity between the two theories is that, in both theories, “[e]mphasis is placed on explicating the processes responsible for internalizing identities and for making different identities the salient bases for self-conception and conduct in particular contexts.” Hogg et al., *supra* note 136, at 266.

214. See *supra* notes 143–47 and accompanying text for a discussion of the self-evaluative component of identity theory.

215. See Huddy, *supra* note 182, at 129–30 (discussing variations in subjective interpretation of “American identity,” and noting that “it is the meaning of American identity, not its existence, that determines its political consequences”).

they would include a sense of community responsibility, a dedication to individual rights, and a respect for the law.²¹⁶ By assessing role performance in terms of how well their behavior and attitudes are in congruence with these role expectations, identity theory tells us that undocumented immigrants will modify their individual behavior and attitudinal characteristics to more closely align with those held by the rest of American society.²¹⁷ Furthermore, role performance has a synergetic effect on salience—the more successful an undocumented immigrant perceives himself to be in his performance of the “member of American society” role, the more salient this role will become.²¹⁸

Additionally, social identity theory teaches us that undocumented immigrants who perceive themselves as falling within the “members of American society” in-group will, through the process of depersonalization, adopt more favorable views of, and stronger attachments to, other members of the in-group (other members of American society), while simultaneously distancing themselves from the relevant out-group (those who, by adopting norms and values different than, or in opposition to, those held by American society, can be categorized as “nonmembers of American society”).²¹⁹ Furthermore, by adopting a prototype that embodies the normative behaviors and attitudes associated with American society, and by evaluating their own self-worth based on a perceived level of prototypicality, undocumented immigrants will aspire to achieve conformity with the American societal in-group through adoption of more traditional American behaviors and attitudes.²²⁰

216. These attitudinal attributes logically extend from the conclusions reached by a number of researchers who have identified liberalism (valuing civil rights, rule of law, success through hard work, and noninterventionist government) and civic republicanism (valuing community responsibility and political involvement) as defining and enduring components of the “American Identity.” See, e.g., Deborah J. Schildkraut, *American Identity and Attitudes Toward Official-English Policies*, 24 POL. PSYCHOL. 469, 472–74 (2003) (discussing liberalism and civic republicanism components of American identity); see also SHELDON HACKNEY, *ONE AMERICA INDIVISIBLE: A NATIONAL CONVERSATION ON AMERICAN PLURALISM AND IDENTITY* 41–44 (1997) (explaining concepts of liberalism and civic republicanism and problems associated with each). But see ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 1–12 (1997) (challenging widely accepted importance of liberalism and civic republicanism).

217. See *supra* Part IV.A for a discussion of an individual’s tendency to modify her attitudes and behavior to regain role-congruence and increase self-esteem. It is important to recognize that performance assessment is not solely an internal process. See Jon W. Hoelter, *The Effects of Role Evaluation and Commitment on Identity Salience*, 46 SOC. PSYCHOL. Q. 140, 141 (1983) (noting that although internal comparison between self and others forms one basis for assessing role-performance, this process is also greatly influenced by “reflected appraisals”—process by which one looks *externally* to determine how others view his or her role-performance). In the context of undocumented immigrants, this becomes important because it means that American society has the ability, through external performance evaluation, to influence the behaviors and attitudes of undocumented immigrants and lead them toward acceptance of American societal norms.

218. See Hoelter, *supra* note 217, at 141 (explaining generally that perception of success determines salience of role).

219. See *supra* Part IV.B for a discussion of depersonalization and in-group or out-group characterizations.

220. See *supra* Part IV.B for an explanation of how depersonalization and construction of prototypes motivates in-group conformity.

A study conducted by New York University researchers Jason Sunshine and Tom Tyler provides a particularly relevant example of how a sense of societal in-group status produces universally beneficial attitudes and behavior.²²¹ While conducting research to determine what motivates individuals to support law enforcement officials, Sunshine and Tyler found that such cooperation is directly related to the extent that individuals perceive a “moral solidarity” between themselves and the authority figures.²²² One of the major components of this moral solidarity is the extent to which individuals perceive themselves to be in the same in-group as the law enforcement officials and the extent to which the officials are perceived to be prototypically representative of in-group norms.²²³ Specifically, the more people view law enforcement officials as prototypical, the more likely people are to comply with the law and to cooperate and empower law enforcement officials.²²⁴

Sunshine and Tyler’s study demonstrates how one’s *internal*, individual self-concept has significant *external* ramifications upon society, and provides significant support for one of the most oft-cited justifications for adopting inclusionary immigration policies: an increased level of cooperation with law enforcement.²²⁵

It is equally important to recognize that a failure to bring undocumented immigrants within the American societal in-group will cause those immigrants to instead perceive American society as the out-group. By pushing undocumented immigrants toward a “nonmember of American society” in-group, in opposition to the American society out-group, exclusionary policies promote increased in-group solidarity while simultaneously fermenting “[out-group] antipathy.”²²⁶ This form of ethnically concentrated in-group solidarity has been found to increase the perceived threats posed by out-groups, and to “promote[] intolerance.”²²⁷

As the foregoing discussion illustrates, encouraging the Americanization of noncitizens’ self-concepts will benefit not only the immigrants themselves, but also American society as a whole. For some, such inclusionist propositions may have an intrinsically moral appeal. However, even if one does not directly empathize with undocumented immigrants’ current plight, the mutually

221. Jason Sunshine & Tom Tyler, *Moral Solidarity, Identification with the Community, and the Importance of Procedural Justice: The Police as Prototypical Representatives of a Group’s Moral Values*, 66 SOC. PSYCHOL. Q. 153, 162–63 (2003).

222. *Id.* at 158–59.

223. *Id.*

224. *Id.*

225. See, for example, *supra* note 41 and accompanying text for a discussion of the adoption of sanctuary laws by local municipalities to increase immigrant cooperation with law enforcement. See *supra* note 69 and accompanying text for a discussion of how New Haven aimed to increase immigrant cooperation with law enforcement by enacting the Elm City Resident Card program.

226. See Huddy, *supra* note 182, at 130 (discussing studies showing that ethnic in-group solidarity leads to “outgroup antipathy”).

227. *Id.*

beneficial outcome suggested by the foregoing proposition should, at the very least, induce support by way of stony pragmatism.

V. CONCLUSION: WHAT IDENTITY THEORY MEANS FOR LAW AND POLICY MAKERS

By explaining how inclusion of undocumented immigrants has beneficial ramifications for American society as a whole, identity and social identity theories provide a valuable perspective from which to examine both current and future immigration law policies. These theories are particularly instructive to those crafting statutes and legal policies that regulate access to personal identification because, as discussed above,²²⁸ such identification is an essential prerequisite to inclusion and integration within American society.

The recent experiments with providing undocumented immigrants greater access to identification have shown some promise. Municipal initiatives like New Haven's Elm City Resident Card program are an important step toward achieving a more complete inclusion of undocumented immigrants. At the local level, such programs provide access to important services and engender a greater sense of community acceptance.²²⁹ Furthermore, the successful implementation of local programs can provide significant justifications for adopting large-scale policies such as granting access to state driver's licenses.²³⁰

It would be naïve at best to think the current American population, as a whole, is universally supportive of inclusionist immigration policies—especially when those policies concern relaxing access restrictions on personal identification.²³¹ However, while the topic is capable of unearthing deeply rooted emotions and fears of crime²³² or terrorism,²³³ it is imperative that the legal policies governing noncitizens' access to ID are grounded on reason and rationality. As America continues to struggle with the specter of illegal

228. See *supra* notes 21–23 and accompanying text for examples of essential services accessible only to those who possess personal identification.

229. See *supra* note 76 and accompanying text for a discussion of how immigrants in New Haven expressed a greater feeling of acceptance after obtaining their municipal ID cards.

230. At the very least, success in local ID programs will lead, and has already led, to other cities adopting such programs. See Bernstein, *supra* note 77 (discussing New York City's consideration of municipal ID program similar to New Haven's); Buchanan, *supra* note 77 (noting that San Francisco is also considering municipal ID program).

231. Hakim, *supra* note 48. As noted above, New York Governor Eliot Spitzer recently learned this lesson the hard way when his plan to provide driver's licenses to undocumented immigrants received so much political backlash that he was forced to drop the plan altogether. *Id.* The rejection of Governor Spitzer's plan was so intense that Hillary Clinton's tentative endorsement of the policy nearly brought her 2007 Democratic primary campaign to a screeching halt. See Marc Santora, *Immigration: From Talking Point to Sore Point*, N.Y. TIMES, Nov. 1, 2007 at A1 (discussing widespread criticism of Hillary Clinton following comment made during presidential debate that suggested she supported Governor Spitzer's driver's license plan).

232. See BUCHANAN, *supra* note 2, at 22 (linking "growing crime menace" to open border policy).

233. See Mounts, *supra* note 56, at 252–57 (discussing terrorism as justification for restricting access to personal identification).

immigration, there will be myriad opportunities for altering, adapting, and improving the current web of federal, state, and local laws that make up our nation's de facto immigration system. During this legal and political evolution, identity and social identity theory can act as a guiding light for policymakers seeking to arrive at the optimal balance between the conflicting interests surrounding the illegal immigration debate.

Although the disparity between opposing viewpoints on undocumented immigrants can be striking,²³⁴ both sides of the debate should agree that America's societal interests will be best served by an immigrant population that has, through the adoption of a salient Americanized self-concept, begun to internalize American norms and values, and that, through self-evaluation of role performance and prototypicality, is striving to collaboratively attain the collective aspirations of America. Identity and social identity theories suggest our noncitizen population is capable of reaching that level of integration; providing greater access to personal identification is an important step toward seeing that capability actualized.

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234. See *supra* Part I for contrasting narratives that vividly illustrate this divide.

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