

# Inclusive Policies Advance Dramatically in the States

Immigrants' Access to Driver's Licenses, Higher Education, Workers' Rights, and Community Policing

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THE NATIONAL IMMIGRATION LAW CENTER is a nonpartisan organization dedicated to defending and advancing the rights of low-income immigrants and their families. We conduct policy analysis, advocacy, and impact litigation, as well as provide training, publications, and technical assistance for a broad range of groups throughout the United States.

Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and low-income immigrants' rights. NILC's extensive knowledge of the complex interplay between immigrants' immigration status and their rights under U.S. employment and labor laws, as well as their rights to education and safety-net services, is an important resource for immigrants' rights coalitions, and faith and community-based organizations, as well as policymakers, legal aid attorneys, workers' and public benefits rights advocates, education rights advocates, labor unions, government agencies, and the media.

#### PHOTO CREDITS

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**A**s Congress debated federal immigration reform this year, states led the way by adopting policies designed to integrate immigrants more fully into their communities. In the wake of the 2012 elections, with Latino and Asian voters participating in record numbers,<sup>1</sup> the 2013 state legislative sessions witnessed a significant increase in pro-immigrant activity. Issues that had been dormant or had moved in a restrictive direction for years, such as expanding access to driver's licenses, gained considerable traction, along with measures improving access to education and workers' rights for immigrants.

States also began to reexamine the costs and consequences of anti-immigrant policies for their citizen and immigrant residents. Rather than promoting a larger role for states in immigration enforcement, proposals in several states sought to build trust between law enforcement and immigrant communities. Indeed, this year restrictive legislation was markedly absent; only one such measure—barring specific documents from being used to establish identity—became law. By contrast, eight states and the Commonwealth of Puerto Rico enacted laws providing access to driver's licenses regardless of immigration status, five states adopted laws or policies expanding access to higher education for immigrant students, and two states enacted a domestic workers' bill of rights.

Most recently, California governor Jerry Brown signed a broad array of pro-immigrant measures that expand access to driver's licenses, protect the rights of immigrant workers, improve access to education, make law licenses available to eligible applicants regardless of their immigration status, and promote trust between immigrants and local law enforcement. In his signing statement, Governor Brown challenged federal inaction on immigration reform, saying, "While Washington waffles on immigration, California's forging ahead. I'm not waiting."<sup>2</sup>

This report summarizes the activity on immigrant issues that took place during the states' 2013 legislative sessions, as well as efforts to improve access to services for immigrant youth.

## **DRIVER'S LICENSES**

The 2012 election results paved the way for new campaigns to provide access to driver's licenses regardless of immigration status, a longtime priority for immigrant communities. The resurgence of this issue was dramatic: Bills intended to expand access to driver's licenses or permits for immigrants were introduced in at least 19 states, as well as in the District of Columbia and Puerto Rico.

### **Affirmative Campaigns**

The successful grassroots campaigns highlighted the commonsense rationales that had been drowned out by anti-immigrant rhetoric in previous years, including the highway safety and the law enforcement advantages of being able to identify drivers. These arguments were backed by research on the numbers of unlicensed and

uninsured people involved in fatal crashes,<sup>3</sup> the economic and social costs of unlicensed and uninsured drivers,<sup>4</sup> the economic and social benefits of licensed and insured drivers,<sup>5</sup> as well as the negative fiscal impact of involving police, who enforce driver's license laws, in immigration enforcement.<sup>6</sup> The affirmative campaigns, led by immigrants' rights groups, drew diverse support from law enforcement, local officials, and business and faith-based organizations<sup>7</sup> and garnered bipartisan support in some states.<sup>8</sup>

For example, a grassroots group, Driver's Licenses for All/*Licencias Para Todos*, developed from a 2012 campaign to gather signatures for a ballot initiative that would provide access to a **Colorado** driver's license for individuals who could not prove lawful presence. After the initiative efforts fell short of the required number of signatures, the group persuaded a state senator to sponsor a bill in 2013. The group's members met regularly with the senator's staff, gathered support from a wide range of businesses, faith groups, community leaders and others, and educated immigrant communities about the campaign.

As one of the organizers noted, "Collecting endorsement letters, meeting with the senator once a week, having our weekly meetings, driving around to other meetings, volunteering with other organizations, collecting funds, while educating the community was a tough challenge because most of us had families, jobs, school and other obligations."<sup>9</sup> Incredibly, this group of volunteer-advocates managed to move the bill from proposal to law, a law that Governor John Hickenlooper signed on June 5.

## REAL ID

The movement in earlier years to restrict immigrants' access to driver's licenses was fueled in part by the notion that denying licenses to undocumented immigrants would help prevent future acts of terrorism. But national security experts have argued consistently that, in fact, licensing all drivers serves national security interests and that databases containing information about everyone who drives can be an important law enforcement tool.<sup>10</sup> This year, the flawed argument that expanding access to driver's licenses would encourage terrorism appeared to have little traction.

The enactment in 2005 of the federal REAL ID Act prompted some states to impose restrictions and document requirements that prevent certain immigrants from obtaining a license. REAL ID, which passed as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, provided that, beginning in May 2008, driver's licenses could not be accepted by federal agencies for any "official" purpose unless they met the act's documentation-related requirements. But the act allows states to *also* issue driver's licenses that do not meet the acceptable-for-official-federal-purposes criteria.

To date, only 19 states have been found to be in full compliance with REAL ID, while over half of the states have passed laws or resolutions opposing it.<sup>11</sup> Furthermore, the U.S. Department of Homeland Security and the media have exaggerated the inviolability of compliance dates, which have been postponed multiple times.



### New Laws Expand Immigrants' Access

When the 2013 state legislative sessions began, **New Mexico, Utah, and Washington** were issuing driver's licenses or driving privilege cards to immigrants regardless of their immigration status. This year, *eight* additional states—**California, Colorado, Connecticut, Illinois, Maryland, Oregon, Nevada, and Vermont**—as well as the Commonwealth of **Puerto Rico** have enacted laws expanding immigrants' access to driver's licenses. Illinois was the first to pass such a measure, during a short special session at the end of 2012.

The **Illinois** law, which Governor Pat Quinn signed in January, will allow residents who cannot show proof of authorized presence in the U.S. to qualify for the temporary visitor's licenses that are issued to lawfully present people who lack a Social Security

number. Several states followed suit, enacting their own laws broadening access to driver's licenses. The requirements, features, purposes, and effective dates of these laws vary from state to state, but all offer an opportunity for eligible drivers to obtain a license, permit, or card, regardless of their



immigration status. On October 3, 2013, **California's** Governor Jerry Brown signed a bill providing access to driver's licenses regardless of immigration status. In an email message sent to reporters, he wrote, "This bill will enable millions of people to get to work safely and legally. Hopefully, it will send a message to Washington that immigration reform is long past due."<sup>12</sup>

Although **New Mexico** and **Washington** issue the same type of license document to all drivers, the laws enacted by other states this year require that the licenses issued to the newly eligible group look different or include a notice that does not appear on the licenses issued to some or all other drivers. Qualifications for the "standard" vs. "specially marked" license vary from state to state. (Under a driver's license bill currently pending in the **District of Columbia**, the same type of license document would be issued to all licensed drivers.)

In some states that are attempting to meet the criteria set forth in the REAL ID Act, the differences between the two license documents were minimized in order to protect holders of non-REAL ID licenses against potential discrimination and to

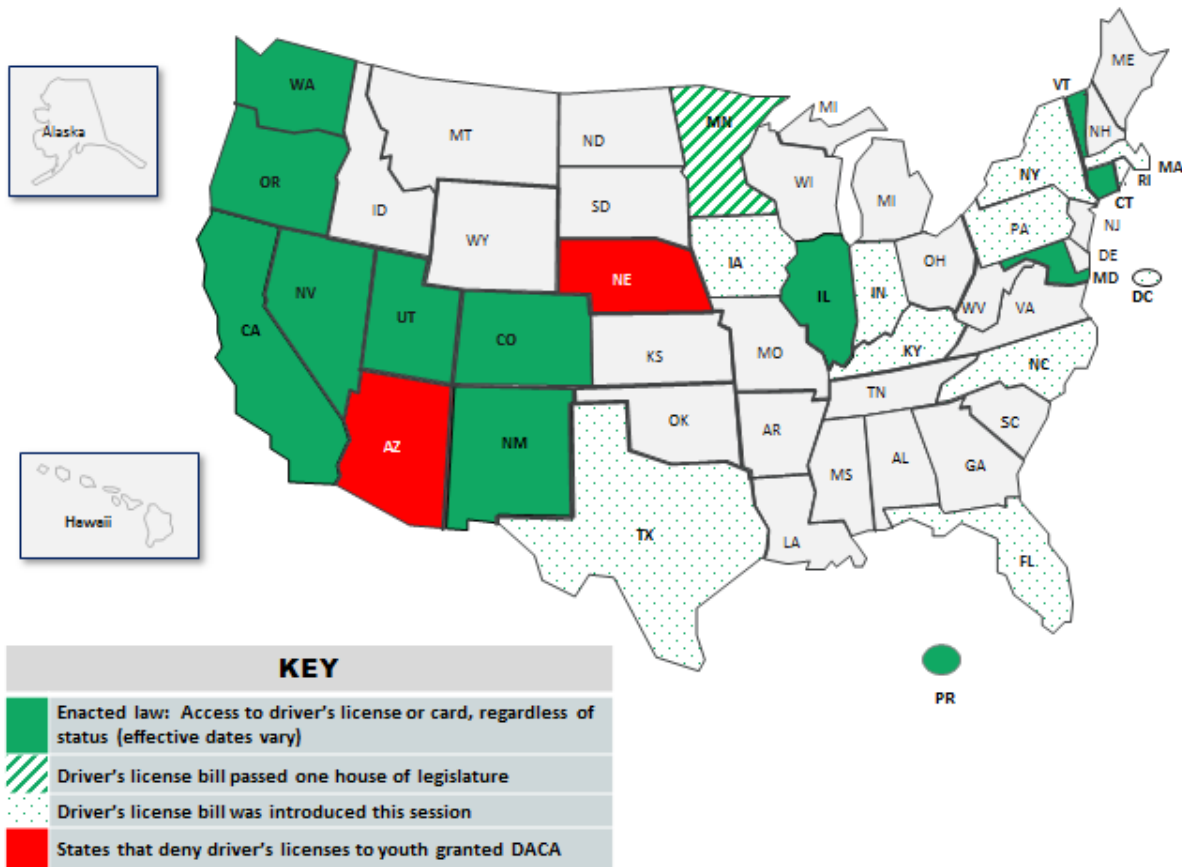
limit restrictions on the use of such licenses. A license marked as not recognizable for official federal purposes, for example, would still be useful as identification for other purposes. Some of the laws include antidiscrimination or privacy language, which aims to protect against selective enforcement and to ensure that the information provided to the state’s department of motor vehicles is used only for the limited purposes intended.

**Continuing Campaigns**

As of this writing, one driver’s license measure remains pending: a proposal to issue the same license document to all residents of the **District of Columbia** passed the DC Council unanimously on its first reading; a second vote is expected this fall. Proposals in several other states, including **Minnesota, Kentucky,** and **Iowa,** moved forward this year and will likely be revisited next session.

By contrast, repeated attempts by Governor Susana Martinez to repeal **New Mexico’s** driver’s license policy proved unsuccessful. The **North Carolina** legislature debated a bill that would have combined various immigration

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enforcement measures with a driver's privilege card that would have been made available to certain immigrants. After much controversy, the legislature adopted a plan to study the potential effects of each provision, with the study report due to a legislative committee in the spring of 2014. But Governor Pat McCrory vetoed the measure, objecting to its expansion of exceptions to the state's employment eligibility verification laws.<sup>13</sup> Subsequently, the legislature voted to override the veto, citing concerns that North Carolina's employment eligibility verification law is duplicative and endangers the state's agricultural industry.<sup>14</sup>

THESE REMARKABLE VICTORIES on an issue once considered politically toxic reflect a profound shift in the states' conversations about immigrants, recognition of immigrants' contributions and political power, and an endorsement of what is ultimately a public safety policy—to ensure that all drivers on the roads are trained, tested, insured, and accountable for their driving records.

### Driver's Licenses for Youth Granted Relief under DACA

During the same period, states examined whether immigrant youth granted relief under the Deferred Action for Childhood Arrivals (DACA) policy would be eligible for driver's licenses under their existing rules. Since the U.S. Department of Homeland Security has confirmed that youth granted DACA are lawfully present in the U.S., and since, under the REAL ID Act, a person granted deferred action is eligible to be issued a driver's license that federal agencies accept for "official" purposes, even states with more restrictive policies recognized this group as being eligible.<sup>15</sup>

Only two states—**Arizona** and **Nebraska**—ultimately denied driver's licenses to youth granted DACA.<sup>16</sup> Litigation challenging the policies in these two states is ongoing. **North Carolina**, after first issuing regular licenses to people granted DACA and then placing the policy on hold, opted finally to issue them licenses marked "LEGAL PRESENCE NO LAWFUL STATUS."

### Issues to Monitor

Driver's licenses play a key role in local law enforcement's entanglement in immigration enforcement because, for example, a police officer's discovery that a driver doesn't have a license can result in the driver being referred to immigration authorities for detention and deportation. Possessing an officially issued license interrupts that process by providing the driver protection from an arrest that is based solely on driving without a license.

However, it remains unclear whether issuing specially marked licenses to certain immigrants will increase the likelihood that people with such licenses will be targeted for selective enforcement or discrimination. Even in the states that included antidiscrimination provisions in their new laws, the concrete effects of issuing specially marked licenses to certain immigrants will need to be monitored to determine whether it leads to profiling, selective enforcement of traffic or other laws, discrimination, or disparate treatment—and whether people with these licenses are channeled into the immigration detention and deportation system.

Other requirements in the new laws, such as each state’s list of documents needed to establish identity, residency, or age, also need to be monitored to ensure that they do not pose unnecessary barriers for otherwise eligible drivers. And these laws should be implemented in ways that ensure that all eligible drivers can be trained, tested, insured, and held accountable. Finally, the laws’ implementation should be designed to make all drivers feel more comfortable interacting with local law enforcement, enabling them to drive their children and family members safely to school, doctor’s appointments, etc., and thereby enhancing the safety of all residents.

## ACCESS TO HIGHER EDUCATION

Campaigns to improve immigrant students’ access to higher education gained more ground this year, securing bipartisan support and Republican sponsorship in some states. “Tuition equity” bills, which provide access to in-state tuition rates for students, regardless of their immigration status, who attend a state’s high schools for a number of years were introduced in at least sixteen states. Several states also considered proposals to expand immigrant students’ access to scholarships or financial aid. At least five states adopted tuition equity laws or policies this year, and one expanded access to scholarships, while efforts to repeal existing tuition equity laws uniformly failed.<sup>17</sup> Students granted relief under the DACA policy also made progress in securing access to higher education this year.

### Tuition Equity

Years of advocacy culminated in **Colorado** and **Oregon** enacting laws that provide access to in-state tuition to students who meet certain criteria, regardless of their immigration status. **Minnesota** and **Hawaii** also adopted tuition equity laws or policies, while **Indiana** grandfathered, for tuition equity purposes, the students who had been enrolled in its universities when a restrictive law passed in 2011.

**Colorado’s** Advancing Students for a Stronger Economy Tomorrow (ASSET) bill passed the state’s Senate and House by votes of 23-12 and 40-21, respectively.<sup>18</sup>

Three Republicans in each house voted in favor of the measure, which encountered very little opposition this year, after almost a decade of advocacy on this issue. The bill allows students who attend high school in Colorado for three years and who meet other requirements to pay in-state tuition rates. The legislative fiscal note for the measure projects that it will increase state revenue from tuition by about \$2 million in 2013–14



and \$3 million in 2014–15.<sup>19</sup> It assumes that up to 500 students will be covered in the first year and that up to 250 additional students will take advantage of the new classification in the following years. Governor John Hickenlooper signed the bill into law on April 29, 2013.

**Oregon's** tuition equity bill passed the House by a vote of 38-18—which included five votes in favor by Republicans—and passed the Senate 19-10. Oregon's Legislative Fiscal Office estimated that the proposal would increase the state's revenue by \$335,000 in the next two years and by an additional \$1.6 million between 2015 and 2017.<sup>20</sup> Governor John Kitzhaber signed the bill, which was cosponsored by three Republicans and supported by business leaders,<sup>21</sup> on April 2, 2013.

**Indiana**, where a 2011 law had restricted access to in-state tuition for undocumented students, restored the in-state rates for students who were enrolled in Indiana colleges or universities on the date the restrictive law passed. Efforts to restore access for new applicants were unsuccessful this year.

State colleges and universities, which often are authorized to set their own tuition policies, similarly took steps to expand access to higher education for immigrant students. In February 2013, the **University of Hawaii's** Board of Regents voted *unanimously* to extend in-state tuition rates to students who meet certain criteria, regardless of their immigration status.<sup>22</sup> And on July 18, 2013, the **University of Michigan's** Board of Regents approved a policy granting access to in-state tuition to students who attend at least two years of middle school and three years of high school in the state and begin their education at the university within 28 months of graduating from high school, regardless of their immigration status.<sup>23</sup> The new policy, which also extends to members of the military wherever they may reside, will go into effect in January 2014.

**Minnesota**, which had offered a “flat” tuition rate in many of its public colleges, enacted a more sweeping tuition equity policy, which also provides eligible students access to institutional aid regardless of their immigration status. In May 2013, the governor signed an omnibus higher education bill that includes a tuition equity provision and that allows universities to use private donations to provide scholarships to students who are eligible for the in-state rate.

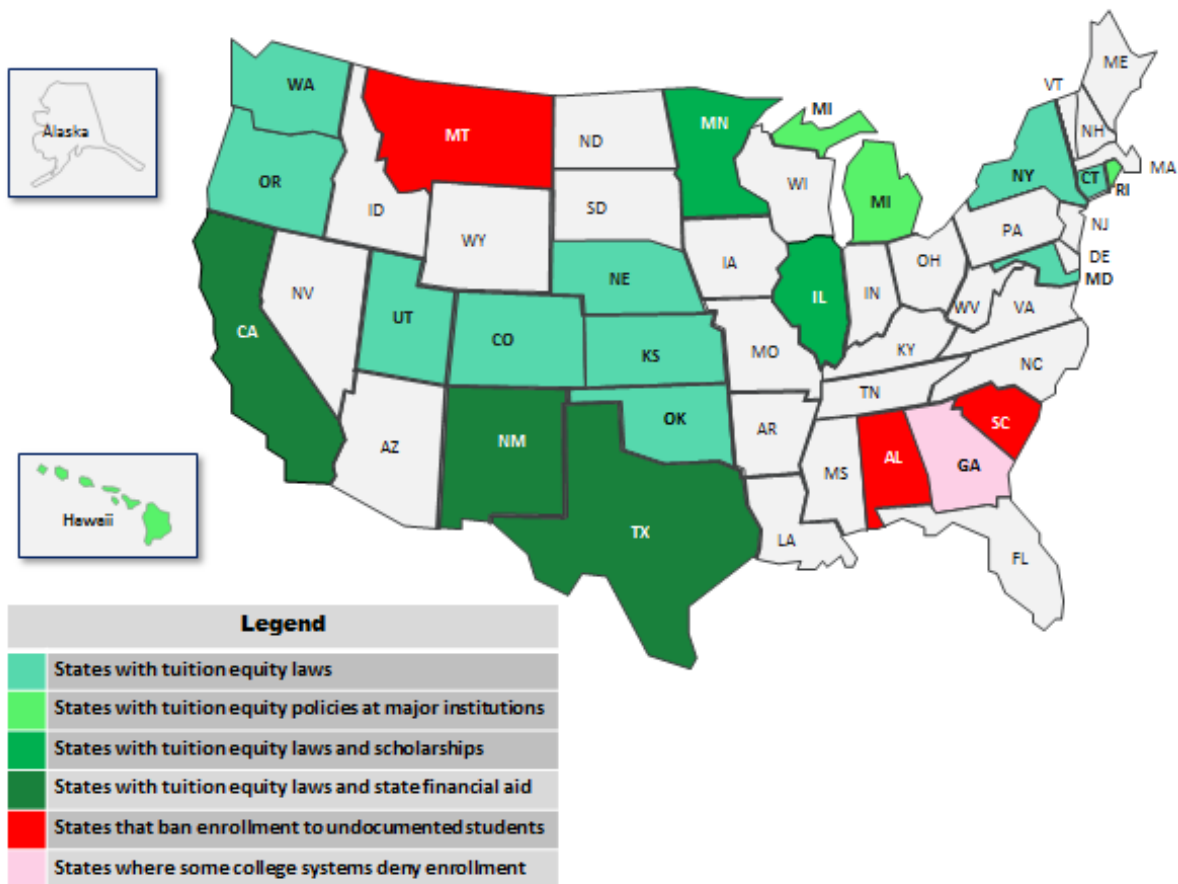
Tuition equity measures built momentum in other states as well, laying the groundwork for future successes. Although a set of these proposals failed narrowly in **Virginia**, the principal bill, which was sponsored by a Republican, garnered support from businesses.<sup>24</sup> Advocates and students will revisit this issue next session.

**Arkansas** Senator Joyce Elliott's tuition equity bill was trumpeted by students, educators and their allies. University of Arkansas professor William Schwab, author of *Right to Dream: Immigration Reform and America's Future* (Univ. of Arkansas Press, Mar. 1, 2013), spoke in support of the proposal.<sup>25</sup> In a departure from his previous statements, Governor Mike Beebe indicated that he is not opposed to this policy.<sup>26</sup> Lloyd Smucker, a Republican state senator in **Pennsylvania**, introduced the Pennsylvania DREAM Act, a tuition equity bill that attracted a dozen bipartisan cosponsors. Smucker asserted that his proposal would benefit the state financially. Aside from the potential economic benefit, he explained, he was motivated primarily by the stories of students who would benefit from such a measure.<sup>27</sup> In **New Jersey**,

where tuition equity measures have been debated for years, students' hopes glimmered when the Assembly Budget Committee approved a bill.<sup>28</sup> However, the measure was set aside before it moved to a full Assembly vote.<sup>29</sup> The authors vowed to take it up again in the fall.

As a result of this year's and past victories, at least 18 states now have tuition equity laws or policies. **California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Mexico, New York, Oklahoma, Oregon, Texas, Utah,** and **Washington** have enacted tuition equity laws. **Rhode Island's** Board of Governors for Higher Education adopted a policy permitting eligible students to pay in-state tuition rates, regardless of their status. And, as noted above, the regents of the University of **Hawaii** and the University of **Michigan** approved in-state tuition rates for students who meet certain criteria, regardless of status. In total, over 60 percent of the nation's foreign-born residents now live in states with tuition equity laws or policies.<sup>30</sup>

### Current State Laws & Policies on Access to Higher Education for Immigrants | July 2013



## State Financial Aid and Scholarships

Since undocumented and certain lawfully present immigrants are ineligible for federal financial aid, college remains unaffordable for many, even at in-state tuition rates. Legislators in several states considered measures that expand access to scholarships and institutional or state financial aid for students who meet certain criteria, regardless of their immigration status. So far, only the **Minnesota** law described above has been enacted. Connecticut, New York, and Washington also debated proposals on state financial aid.

The **Washington** State Legislature's House of Representatives, by a bipartisan 77-20 vote, passed a bill that provides "state needs grants" to students granted relief under the DACA policy, if they meet certain other criteria. Advocacy for this measure was impressive, with an editorial board expressing support,<sup>31</sup> a hearing with over 110 people appearing in favor, and little sign of opposition.<sup>32</sup> The bill did not make it through the state Senate but has been reintroduced, in its current status, in subsequent special sessions.

On May 21, **New York's** Assembly passed a measure by a vote of 90-48 that would establish a "DREAM fund" commission to create private scholarships for children of immigrants and to provide access to college savings accounts, state financial aid, and opportunity programs for students who meet certain criteria, regardless of their immigration status. A broad coalition of students, educators, and advocates pressured the governor to demonstrate leadership on this issue. In an opinion article, David Dyssegaard Kallick of New York's Fiscal Policy Institute (FPI) and NILC's Tanya Broder noted that the typical graduate of a two-year college earns \$10,000 more than a high school graduate and pays \$1,000 a year more in state and local taxes, with even greater returns for four-year degrees.<sup>33</sup> FPI's findings are detailed in its report *The New York State DREAM Legislation: A Strong Return on Investment*.<sup>34</sup> However, the DREAM fund commission bill did not move forward in the New York Senate this year.

A state financial aid proposal also was introduced in **Connecticut** this year. Advocates, who had secured a tuition equity law in 2011, are exploring a range of strategies to make college more affordable for students regardless of their status.

This leaves a handful of states—all of them with a relatively large number of immigrant students—that provide immigrants access to state financial aid or scholarships regardless of their immigration status. **New Mexico, Texas, and California** provide access to state financial aid to students who meet certain criteria, regardless of immigration status. **Illinois** established a DREAM fund to raise money for private scholarships for children of immigrants. **Minnesota** will allow public universities to offer private institutional scholarships to students who pay in-state rates, regardless of their immigration status.

More resources on these policies and on campaigns to improve access to education for immigrant students can be found in NILC's toolkit on access to post-secondary education, available at [www.nilc.org/eduaccess toolkit.html](http://www.nilc.org/eduaccess toolkit.html).<sup>35</sup>



## Access to Education for Students Granted DACA

Advocacy this year also aimed to ensure that, where possible, students granted relief under the federal government’s DACA policy have access to in-state tuition. Students granted DACA are lawfully present in the U.S. and are able to obtain work-authorization documents and Social Security numbers. They are not precluded by federal law from establishing domicile in the U.S. However, their eligibility for in-state tuition, and, in a few states, to enroll in college depends on a particular state’s or institution’s laws and policies. In the 18 or more states with tuition equity policies, students granted DACA should have access to in-state tuition rates if they are otherwise eligible. In some states, they may need to wait until they have had the status for a year before they become eligible for in-state rates. In other states, document requirements, residency rules, or other policies may create barriers for these students.

Students granted DACA are able to enroll in public colleges in **South Carolina** and **Alabama**, states that ban undocumented students from access to a public college education. DACA grantees may also qualify for in-state tuition in Alabama if they are otherwise eligible. Advocates in **Georgia** have urged the university system’s Board of Regents to admit DACA grantees to the five most selective institutions in its system,<sup>36</sup> which currently prohibits undocumented students from enrolling.

A few states that do not have tuition equity policies, such as **Massachusetts**, publicly announced that DACA grantees with work authorization documents would be eligible for in-state tuition.<sup>37</sup> Some institutions, such as **Florida International University**<sup>38</sup> and certain colleges in **Arizona**, similarly announced that DACA grantees meet their existing criteria for in-state tuition rates. The Arizona Office of Attorney General filed a lawsuit challenging a Maricopa County Community College District policy, based on an anti-immigrant initiative that had passed in Arizona several years ago.<sup>39</sup> Most recently, the **Ohio** Board of Regents confirmed that students granted DACA would be eligible for in-state rates at Ohio’s public colleges and universities.<sup>40</sup> Advocacy on this issue continues at the state and local levels, as the national debate on providing a pathway to citizenship for these and other immigrants proceeds.

## WORKERS’ RIGHTS

### Expansion of Workplace Rights for Domestic Workers

The national movement to extend basic workplace legal protections to domestic workers continued to grow during the 2013 legislative session. Domestic workers’ bills of rights were enacted in **Hawaii** (SB 535) and **California** (AB 241)—the second and third state laws, respectively, enacted in the U.S. that expand workplace protections for domestic workers.<sup>41</sup> The enactment of these two laws illustrates the growing power of domestic workers and their allies, who have been organizing for years to challenge the historical exclusion of domestic workers from the protections afforded by many federal and state labor laws, including the federal Fair Labor Standards Act and many state wage-and-hour laws.<sup>42</sup> This exclusion has left domestic

workers—nearly half of whom are foreign-born—especially vulnerable to wage theft and workplace exploitation.<sup>43</sup>

In 2013, legislation was introduced not only in Hawaii and California, but also in **Illinois**,<sup>44</sup> **Massachusetts**,<sup>45</sup> and **Oregon**,<sup>46</sup> that would begin to redress this exclusion by amending state laws to extend certain workplace protections to domestic workers. The Hawaii bill, which Governor Neil Abercrombie signed into law on July 1, 2013, was sponsored by Rep. Roy Takumi (D-Pearl City), who views it as part of the national movement for domestic workers' rights and, potentially, as a building-block toward reform of federal labor laws, such as the National Labor Relations Act, to extend basic protections to domestic workers.<sup>47</sup>

Hawaii's new domestic workers' rights law builds on the precedent set by the 2010 enactment of **New York's** Domestic Workers' Bill of Rights, the first successful state legislative effort to provide labor protections to domestic workers, including minimum wage, overtime, a mandatory day of rest, earned paid days off, and protection against workplace harassment.<sup>48</sup>

**Hawaii's** Domestic Workers' Bill of Rights extends several key workplace protections to domestic workers. Hawaii's antidiscrimination statute that prohibits discrimination against workers in compensation or in terms, conditions, or privileges of employment because of the worker's race, sex, sexual orientation, age, religion, color, ancestry, disability, or marital status now also covers domestic workers.<sup>49</sup> The new law also amends the state's wage-and-hour law,<sup>50</sup> which previously excluded from coverage any domestic work done within private homes, to extend minimum-wage and overtime protections to domestic workers who are not employed on a casual basis. The law explicitly clarifies that domestic work, whether performed for one or more family or household employer(s), is not considered to be "on a casual basis" if the domestic worker's employment for all employers exceeds 20 hours per week in the aggregate.<sup>51</sup>

**California's** Domestic Worker Bill of Rights amends the state's wage-and-hour law to require overtime pay for certain domestic workers, including child care providers and caregivers, who historically were exempted from the state's overtime

requirements. The new law requires that domestic workers who are personal attendants must be paid at the overtime rate of one-and-one-half times the worker's regular rate of pay for all hours worked beyond 9 in a workday and beyond 45 hours



in a workweek. The law defines “personal attendant” to mean any person employed in a household who primarily provides care for a child, an elderly person, or a person with disabilities.

While domestic workers and their allies notched victories when Hawaii’s and California’s domestic workers’ bills of rights were enacted, **Oregon’s** domestic workers bill, HB 2672, was defeated in the state senate after having passed the state house;<sup>52</sup> and a similar bill in **Illinois**, SB 1708, died in that state’s senate. A bill that would extend legal protections for domestic workers is still pending in **Massachusetts**. Despite the defeat of domestic workers’ rights bills in Oregon and Illinois, the progress in those states and in Massachusetts, combined with the passage of Hawaii’s and California’s domestic workers’ bills of rights, show that the domestic workers’ rights movement is gaining momentum.<sup>53</sup>

### Protecting Immigrant Workers from Retaliation

In addition to enacting a domestic workers’ bill of rights, **California** enacted three new laws—SB 666, AB 263, and AB 524—that strengthen legal prohibitions on retaliation against workers based on their immigration status.<sup>54</sup> This package of bills reflects the state’s interest in ensuring that immigrant workers can exercise their workplace rights free from retaliatory threats by employers to report the workers to immigration officials or to other law enforcement agencies.

Senate Bill 666 amends state law in numerous ways to strengthen legal protections for workers whose employers retaliate against them based on their immigration status. The bill makes it an unlawful violation for an employer to report or threaten to report a worker’s immigration status, or that of a family member, to a federal, state, or local agency because the worker exercises a workplace right. If California’s labor commissioner or a court determines that an employer has committed such a violation, the employer’s business license may be suspended or revoked and, if the employer is licensed through an agency within the Department of Consumer Affairs, the employer may be disciplined by that licensing agency. In addition, the bill provides for the suspension or disbarment of an attorney for reporting or threatening to report the immigration status of a party or a witness in a civil or administrative action to a federal, state, or local agency because the party or witness exercised a workplace right.

Assembly Bill 263 also amends state law to bolster legal prohibitions on employer retaliation, including prohibiting immigration-related threats. The bill makes it unlawful for an employer to engage in an unfair immigration-related practice with the intent of retaliating against a worker for exercising his or her workplace rights. The bill defines unfair immigration-related practices to include using the federal E-Verify employment eligibility verification system in ways not authorized by federal law, filing or threatening to file a false police report, and contacting or threatening to contact immigration authorities, when such practices are undertaken by an employer for a retaliatory purpose. The bill also prohibits employers from retaliating or taking any adverse action against a worker for updating his or her personal information with his/her employer, unless the changes are directly related to the skills, qualifications, or knowledge required for the job.

Assembly Bill 524 expands the legal definition of the crime of extortion to encompass certain situations involving immigration-based threats. Current law defines extortion as the obtaining of property (including money) from another person by inducing that person's consent through a wrongful use of fear.<sup>55</sup> AB 524 provides that a threat to report the immigration status or suspected immigration status of the threatened individual, or of members of his or her family, may induce fear sufficient to constitute extortion. While AB 524 reaches more broadly than situations involving workplace-based extortion, the law may cover cases in which an employer relies on immigration-based threats to extort wages from a worker.

Together, SB 666, AB 263, and AB 524 clarify and strengthen existing law that prohibits immigration-based retaliation against workers who are asserting their workplace rights. This is a victory not only for immigrant workers, but for all workers, since an employer's ability to use immigration status as a means of retaliation depresses the working conditions of all workers.

## REBUILDING TRUST AND REVISITING ANTI-IMMIGRANT POLICIES

Recognizing that the increasing entanglement of state and local criminal justice systems with the federal immigration enforcement system adversely affects public safety and community trust, several states sought to rebuild trust by limiting their role in immigration enforcement. Federal deportation programs such as Secure Communities have undermined community policing policies by requiring state and local jurisdictions to report certain information to federal immigration authorities, stoking fear within immigrant communities that any contact with the local police could lead to deportation.<sup>56</sup> In 2013, legislation was introduced in **California, Colorado, Connecticut, Florida, Massachusetts, and Washington** that sought to limit each state's involvement in immigration enforcement. These measures aim to enhance public safety by rebuilding the relationship between immigrant communities and local police, in order to encourage all residents to participate in reporting and preventing crime.

### Pre-2013 Measures

Prior to the 2013 legislative cycle, a number of municipalities already had adopted policies aimed at limiting police collaboration with federal immigration officials. In **Cook County, Illinois**, the county board had passed a policy limiting the county's compliance with immigration-hold requests.<sup>57</sup> Similar policies also had been adopted in **Taos, New Mexico; San Francisco and Santa Clara, California; and Washington, DC.**

These policies help ensure that local resources are focused on local public safety priorities, and they help ease the burden that federal immigration enforcement programs have saddled local governments with.

### New State-level Efforts and Measures

In **Connecticut**, advocates built on an existing policy that already applied to state-level agencies: They urged lawmakers to limit compliance with federal immigration-hold requests by expanding the policy's reach to municipal police and judicial marshals. The Connecticut TRUST Act (HB 6659) passed unanimously, and Governor Dannel Malloy signed it into law on July 19, 2013. The new law limits the circumstances under which law enforcement agencies may detain a person pursuant to a U.S. Immigration and Customs Enforcement (ICE) hold request to situations where the person has been convicted of a felony, is a "known gang member," is an alleged terrorist threat, or is subject to a final order of removal.<sup>58</sup>

Similar state-level efforts were initiated in **Washington, Florida, Massachusetts, and Washington, DC**. On October 5, as advocates across the country rallied in support of immigration reform, **California's** Governor Jerry Brown signed the TRUST Act (AB 4), which limits the authority of California law enforcement agencies to keep people in custody on an "immigration hold" request issued by U.S. Immigration and Customs Enforcement (ICE). The TRUST Act is intended to ensure that people who come into contact with law enforcement because of minor, nonviolent offenses are not turned over to ICE for possible deportation.

Advocates in **Colorado** also moved a version of the TRUST Act, which repealed Colorado's 2006 "show me your papers law" (SB 90). SB 90, a precursor to Arizona and Alabama's anti-immigrant laws, required the police to report people suspected of being undocumented to federal immigration authorities. Advocates in Colorado developed a hotline to document abuses occurring as result of the law and mobilized the community to make Colorado the first state to eliminate such a law. A diverse, bipartisan coalition supported by all of the state's major law enforcement associations saw Colorado's TRUST Act signed into law on April 26, 2013.

### New Local Efforts

In addition to the state-level advocacy described above, this year witnessed several municipal campaigns to pass policies modeled on the TRUST Act. **New York City and San Francisco** revisited their existing immigration-hold policies, strengthening them by further limiting the cases in which an ICE hold request would be honored and expanding the number of city agencies that are required to follow the policy. The new San Francisco policy bars enforcement of immigration-hold requests in all cases. **Multnomah County, Oregon**, and the **Newark, New Jersey**, Police Department also adopted new policies, while **King County, Washington** and **Miami-Dade, Florida**, considered similar policies. In **New Orleans, Louisiana**, advocates won an exciting victory after more than a year of organizing and litigation with respect to the Orleans Parish sheriff's policy of unlawfully detaining suspected undocumented immigrants for indefinite periods on nothing more than an immigration-hold request.<sup>59</sup> There, as part of a settlement agreement, the sheriff agreed to stop honoring immigration-hold requests in all but very limited circumstances, making New Orleans the first city in the Deep South where such a policy has been secured.



The surge during 2013 in the number of states considering proposals to limit their role in immigration enforcement reflects a growing recognition that such measures are sound public policy and that they enhance public safety. This movement is particularly remarkable when viewed against the backdrop of prior legislative sessions, when a number of states enacted or considered anti-immigrant laws modeled on Arizona's SB 1070.<sup>60</sup> During the 2013 legislative cycle there were only a few exceptions to the general pro-immigrant trend.



### Georgia: Lessons Not Yet Learned

Since 2006, **Georgia** has enacted a series of anti-immigrant laws that, among other things, require people seeking certain services to provide proof of U.S. citizenship or lawful presence in the U.S. This year, however, Georgia residents began to realize that measures designed to make life harder for immigrants also have a major side effect: Often they harm U.S. citizens who have difficulty producing the newly required documents or who experience delays created when state and local bureaucracies administer the laws. A 2013 bill that was intended to remedy some of these problems was hijacked by legislators who hoped to make life even more difficult for the state's immigrant residents.

**Unintended consequences.** HB 87, Georgia's 2011 law modeled on Arizona's SB 1070, contains a provision that criminalizes the act of accepting foreign-issued identity documents for official purposes.<sup>61</sup> The provision mandates, with certain exceptions, that where a state agency or political subdivision requires that identification be presented for "any official purpose," it may accept only "secure and verifiable" identity documents (SVIDs). HB 87 expressly excludes identification documents issued by foreign countries' consulates—such as the *matrícula consular* issued by Mexican consulates—from being considered SVIDs.<sup>62</sup> HB 87 also imposes a criminal penalty on any state or local official who knowingly accepts non-SVIDs for any official purpose for which identification documents are required.<sup>63</sup>

The SVID provision has caused problems for Georgians from all walks of life, including public employees and owners of businesses of all types. For example, professionals such as doctors, nurses, psychologists, and lawyers have had to deal with long delays in renewing their professional licenses, which in turn have cost some their businesses and livelihood.<sup>64</sup> Both opponents and supporters of this law agree that these major flaws need to be fixed quickly. Unfortunately, however, when the legislature revisited the law this year, instead of ameliorating the problems it expanded the SVID provision by enacting Senate Bill 160 (SB 160).

***Discriminatory impact and constitutional issues.*** Georgia law’s restrictive rules with respect to which ID documents are acceptable for official purposes are certain to generate discriminatory ripple effects. SB 160 maintains the mandate that only SVIDs may be accepted for official purposes that require identification; furthermore, it prohibits the acceptance of a valid foreign passport as identification unless the passport-holder also provides “proof of lawful presence in the United States.”<sup>65</sup> In combination, the express prohibition on accepting ID documents issued by consulates and the restrictive provision with respect to foreign passports means that many noncitizens in Georgia will not be able to present an SVID for official purposes. As a result, they will not be able to secure basic necessities for themselves or family members who are U.S. citizens.

The severe restrictions also raise serious constitutional questions—for example, if they cause state or local agencies to deny marriage licenses, refuse to issue birth certificates, or limit access to the courts for people who lack the requisite documents. Fortunately, the state attorney general clarified that any documentation submitted to local schools that establishes a student’s age and physical residency is sufficient, and that no other identification requirements should be imposed for school enrollment.<sup>66</sup>

Fortunately, Georgia’s restrictive law diverges from the current national trend, but it serves as a reminder that anti-immigrant activism persists in certain areas of the country,<sup>67</sup> though its power to produce concrete political results has diminished. Advocates are working to address the constitutional concerns SB 160 raises as well as its potentially discriminatory impact.

## CONCLUSION

As Congress continues to deliberate over federal immigration reform, state and local governments are moving forward with policies that integrate immigrants into communities and enhance their ability to contribute to the nation’s economic and social health. This year’s pro-immigrant legislative and administrative victories reflect a shift in attitude across much of the country. Stepped-up civic participation by immigrant communities contributed to the political changes that made these policies possible. In places where earlier waves of anti-immigrant activism produced restrictive policies, residents increasingly find that the policies are unworkable legally, practically, and politically, which is motivating them to explore more inclusive alternatives. Those who wish to block this progress will be left behind as the country’s demographics continue to evolve, along with the growing understanding that the nation’s success depends on all of its residents and that investing in immigrant communities will benefit all of us.

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<sup>52</sup> Sheila Bapat, “Oregon Domestic Workers’ Bill Fails, Highlighting Importance of Workers’ Voices,” *RH Reality Check*, July 8, 2013, <http://rhrealitycheck.org/article/2013/07/08/oregon-domestic-workers-bill-fails-highlighting-importance-of-workers-voices/>.

<sup>53</sup> Indeed, an Ohio state senator, Charleta Tavares (D-Columbus), recently announced her interest in sponsoring legislation to expand domestic workers’ rights. See “Tavares Sponsors Legislation to Protect Domestic Workers,” a press release from Sen. Tavares’s office, April 15, 2013, [www.ohiosenate.gov/tavares/press/tavares-sponsors-legislation-to-protect-domestic-workers](http://www.ohiosenate.gov/tavares/press/tavares-sponsors-legislation-to-protect-domestic-workers).

<sup>54</sup> The full text of SB 666 can be found at [www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0651-0700/sb\\_666\\_bill\\_20131005\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0651-0700/sb_666_bill_20131005_chaptered.pdf). The full text of AB 263 can be found at [www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0251-0300/ab\\_263\\_bill\\_20130916\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0251-0300/ab_263_bill_20130916_enrolled.pdf). The full text of AB 524 can be found at [www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_0501-0550/ab\\_524\\_bill\\_20131005\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0501-0550/ab_524_bill_20131005_chaptered.pdf).

<sup>55</sup> See California Penal Code § 518 *et seq.* Existing criminal penalties for extortion start at one year imprisonment and a fine of up to \$10,000. See California Penal Code § 524.

<sup>56</sup> See Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (Dept. of Urban Planning and Policy, Univ. of Illinois at Chicago, May 2013), [www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/INSECURE_COMMUNITIES_REPORT_FINAL.PDF).

<sup>57</sup> Immigration-hold requests, also called immigration detainers, are requests sent by U.S. Immigration and Customs Enforcement (ICE) to state and local jails and prisons to maintain custody of a person for an additional 48 hours after the conclusion of the state or local charges (for example, when the person’s charges are dismissed, the sentence has been served, or the person posts bail). These hold requests are issued pursuant to federal regulation 8 C.F.R. § 287.7, and a number of ongoing lawsuits challenge their legal validity. ICE hold requests are the linchpin allowing programs such as Secure Communities to funnel people who are in the criminal justice

system into the deportation system, and therefore they have provided a critical opportunity for state and local advocacy.

<sup>58</sup> The law also permits compliance with the hold request in cases in which the person “presents an unacceptable risk to public safety, as determined by the law enforcement officer,” without defining that standard. 2013 Conn. Pub. Act 13-155.

<sup>59</sup> In early 2011, two immigrant workers sued the sheriff for harms resulting from their unconstitutional detention on immigration-hold requests in the sheriff’s prison for more than 160 and 90 days, respectively. NILC, joined by the New Orleans Workers’ Center for Racial Justice and the law firm Orrick, represented the workers. See *Cacho v. Gusman* (2:11-CV-225, E.D. Louisiana).

<sup>60</sup> See, e.g., *State Immigration-Related Legislation: Last Year’s Key Battles Set the Stage for 2012* (NILC, Jan. 2012), [www.nilc.org/states-wrapup-2011.html](http://www.nilc.org/states-wrapup-2011.html).

<sup>61</sup> Azadeh Shahshahani, “Don’t Amend Bill That Fixes Flaw in Georgia Immigration Law” (letter to the editor), *Daily Report*, Mar. 3, 2013, [www.dailyreportonline.com/PubArticleDRO.jsp?id=1202593636095&Dont\\_amend\\_bill\\_that\\_fixes\\_flaw\\_in\\_Ga\\_immigration\\_law&slreturn=20130712112604](http://www.dailyreportonline.com/PubArticleDRO.jsp?id=1202593636095&Dont_amend_bill_that_fixes_flaw_in_Ga_immigration_law&slreturn=20130712112604).

<sup>62</sup> Ga. Code § 50-36-2(b)(3)(B).

<sup>63</sup> Ga. Code § 50-36-2(e).

<sup>64</sup> See, e.g., Jim Burrell, “Georgia Immigration Law Trips up Doctors and Nurses,” NPR, Nov. 12, 2012, [www.npr.org/blogs/health/2012/11/12/164950641/georgia-immigration-law-trips-up-doctors-and-nurses](http://www.npr.org/blogs/health/2012/11/12/164950641/georgia-immigration-law-trips-up-doctors-and-nurses) (state officials estimated that 600 nurses and 1300 doctors and medical practitioners lost their ability to work due to this law’s requirements).

<sup>65</sup> SB 160 § 7(b)(3)(B), *codified at* Ga. Code § 50-36-2(b)(3)(B).

<sup>66</sup> Letter from Russell D. Willard, Senior Assistant Attorney General, Georgia Department of Law, to Karen Tumlin, National Immigration Law Center (July 10, 2013).

<sup>67</sup> See Julia Preston, “National Push by a Local Immigration Activist: No G.O.P. Retreat,” *New York Times*, Aug. 6, 2013, [www.nytimes.com/2013/08/07/us/national-push-by-a-local-immigration-activist-no-gop-retreat.html](http://www.nytimes.com/2013/08/07/us/national-push-by-a-local-immigration-activist-no-gop-retreat.html).