

State and Local Initiatives Targeting the Undocumented

With increasing frequency, localities across the country have introduced or enacted ordinances that target undocumented immigrants. State legislatures have also proposed or enacted harmful legislation. Many of these measures are far reaching, and penalize not only the undocumented, but their families, business owners, and others who interact with the undocumented. Immigrant restrictionists will most likely continue to focus their efforts on crafting and promoting these measures in the months and years to come. As the immigration debate continues, such proposals and policies will contribute to an increasingly hostile environment and may ultimately place immigrants in categories that will make them ineligible for legalization. The information below is intended to assist communities in their efforts to combat local anti-immigrant proposals.

There are several commonalities among the types of ordinances and legislation being proposed or passed. Many raise significant legal issues and are already being challenged in courts. Some of the recurring themes and elements are described below.

- **Employers/workers:** Several ordinances penalize businesses or city contractors that recruit or employ undocumented workers. This type of ordinance commonly requires businesses that apply for business permits or contractors who have city contracts to sign affidavits affirming that they do not knowingly utilize the services of or hire unlawful workers. Failure to comply with these requirements can result in the suspension of business permits, revocation of city contracts, or fines. Some measures make it a crime to employ the undocumented.
- **Day Laborers:** Several ordinances prohibit funding or aiding in the establishment of a day laborer center that does not verify legal work status. Employers that engage in such activities can be denied a business permit, a renewal permit, or city contracts or grants for up to five years.
- **Landlord/Tenant:** Some ordinances require landlords to verify the immigration status of potential residents and prohibit the use or rental of property to undocumented immigrants. The ordinances treat rental to the undocumented as a form of “harboring.” Harboring is typically defined in such ordinances to include letting, leasing, or renting a dwelling unit to an undocumented individual, knowing or in “reckless disregard” of the fact that the individual violated U.S. immigration laws. These measures impose harsh penalties for harboring, including fines and/or suspension of the rental license, during which period the owner cannot collect rent from any tenants in the building. Some measures require rental occupants to demonstrate their legal status in order to obtain “occupancy permits.”
- **Drivers’ Licenses and Identification Issues:** Many states have proposed legislation that would implement the driver’s license provisions of the REAL ID Act. Such provisions limit the issuance of driver’s licenses to certain non-citizens, including

lawful permanent or conditional residents, applicants for lawful permanent residence, asylees, refugees, valid nonimmigrant visa holders, asylum applicants, applicants for temporary protected status (TPS), individuals granted TPS, or persons granted deferred action status. In addition, the REAL ID Act requires that certain lawfully present immigrants must be issued drivers' licenses that expire when their period of authorized stay in the United States expires. Some states have already begun to implement these restrictive provisions. Although the REAL ID Act requires that states implement these provisions by May 2008, the Department of Homeland Security (DHS) has yet to promulgate final regulations regarding the Act. State legislation may ultimately need to be revised in order to be consistent with the final regulations.

- **False Documentation:** Other identity and driver's license legislation would increase penalties for the use of fraudulent documents for legal status, employment or identification purposes; prohibit the issuance of licenses to persons not lawfully residing within the state; fund investigators of fraudulent documents; and make it a felony to drive without proof of legal U.S. residency. Proposed legislation would also set harsh penalties for the use of forged documents. Examples include legislation that would prohibit courts from granting bail to persons charged with forged documentation and legislation that would prohibit district attorneys from plea-bargaining with such individuals.
- **Local Law Enforcement of Federal Immigration Law:** Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) authorized DHS to enter into agreements with state and local law enforcement agencies, permitting designated state/local officers to perform federal immigration law enforcement functions, pursuant to a Memorandum of Agreement, provided that the local officers receive training and supervision from Immigration and Customs Enforcement (ICE). Currently, the states of Florida, Alabama, and Massachusetts, as well as certain counties in South Carolina and California have entered into such agreements with DHS.

Some states have proposed legislation that directs certain state officials such as the Commissioner of the Department of Public Safety or the State Attorney General to enter into such agreements with DHS. Other measures would require that the sheriff or other officer in charge of a correctional facility verify the immigration status of certain inmates and inform DHS of individuals who are in their custody without lawful status.

- **Criminalization of Unlawful Presence:** Several states/localities are considering measures that would criminalize unlawful presence. Such policies could negatively impact individuals who would otherwise be eligible for a legalization program.

- **Education:** Measures related to education include requirements that state educational institutions verify the legal status of every student and prohibit admission of undocumented immigrants. Other proposals would require public schools to obtain proof of citizenship or immigration status.
- **Charitable Service Providers:** Legislation has also been proposed that would deny state and local funding to charities that provide services to undocumented immigrants.
- **Public Benefits:** Legislation has been introduced to restrict health insurance coverage to U.S. citizens and certain categories of lawful immigrants, and to eliminate all but emergency services for undocumented immigrants.
- **English Only:** Several ordinances declaring English the official language of a locality have passed.

Positive Developments

- Several localities have passed ordinances that prohibit state and local law enforcement agencies from enforcing federal immigration laws. Local police departments have issued statements reaffirming their policies against making inquiries into immigration status for the purposes of determining whether an individual has violated civil immigration laws and of enforcing such laws.
- Several localities have passed ordinances that seek to integrate immigrants into the community. Such ordinances include declarations that all people will be treated equally regardless of immigration status as well as designations of cities as sanctuaries for immigrants.
- Other local ordinances urge state legislatures to support comprehensive immigration reform, affirm commitments to protect immigrants from vigilante violence, and prevent the use of city funds to gather or disseminate information regarding the immigration status of individuals in the City (unless required by statute, regulation or court decision).
- Some pro-immigrant ordinances provide services to help immigrants naturalize; support English as a Second Language programs; and develop strategies to improve educational opportunities for new immigrants.

Last updated September 2007