

19-3769

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

MICHAEL P. KEARNS, in his individual capacity and official capacity
as Clerk of the County of Erie, New York,
Plaintiff-Appellant,

– v. –

ANDREW M. CUOMO, in his official capacity as Governor of the State
of New York, LETITIA JAMES, in her official capacity as Attorney
General of the State of New York, MARK J.F. SCHROEDER, in his
official capacity as Commissioner of the New York State Department of
Motor Vehicles,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

**BRIEF OF THE STATES OF CONNECTICUT, CALIFORNIA,
COLORADO, DELAWARE, THE DISTRICT OF COLUMBIA,
HAWAII, ILLINOIS, MARYLAND, NEVADA, NEW JERSEY, NEW
MEXICO, OREGON, VERMONT, AND WASHINGTON AS AMICI
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IDENTITY AND INTEREST OF *AMICI* STATES

Amici are the States of Connecticut, California, Colorado, Delaware, the District of Columbia, Hawaii, Illinois, Maryland, Nevada, New Jersey, New Mexico, Oregon, Vermont, and Washington (the “Amici States”).

The Amici States are among the 17 states and territories – comprehending more than 37% of the United States population – that issue personal driving credentials without regard to proof of immigration status.¹

The Amici States’ time-tested practice is the historical rule, not the exception. All 50 sovereign states and the District of Columbia issue personal driving credentials, many pursuant to laws that are more than a century old.² But until 1993, no state enacted a law that explicitly

¹ This brief is concerned exclusively with personal driving credentials, which are the subject of New York’s Green Light Law, as opposed to commercial driver’s licenses. The brief refers generically to driving “credentials” rather than “licenses,” since states use a range of terms to describe personal driving privileges granted without regard to proof of immigration status. *Compare* Utah Department of Public Safety, *Driving Privilege Card*, <https://tinyurl.com/rf6f4gr> (last visited Jan. 30, 2020) *with* Nevada Department of Motor Vehicles, *Driver Authorization Cards*, <https://dmvnev.com/dac.htm> (last visited Jan. 30, 2020).

² *See* United States Department of Transportation, Federal Highway Administration, *Year of First State Driver License Law and First Driver*

conditioned driving privileges on proof of lawful immigration status.³

Throughout that history, the federal government has never presumed to preempt the power of the sovereign states to issue personal driving credentials based on whatever criteria the states deem relevant. And, as far as the Amici States are aware, the federal government has never prosecuted, nor threatened to prosecute, a state or local official for issuing driving credentials without regard to an applicant's immigration status.

The Plaintiff in this case imagines that threat and claims federal preemption of New York's "Green Light Law," Chapter 37, 2019 N.Y. Laws. But New York is well within its sovereign authority. Issuing personal driving credentials regardless of proof of immigration status has always been the prerogative of the sovereign states – a valid and time-tested exercise of the core police power to promote public health and welfare by regulating road safety.

Like New York's, the Amici States' laws regulating issuance of

Examination (Apr. 1997), <https://tinyurl.com/w594d87> (listing years in which states first enacted driver's license laws). Amici were among the first jurisdictions in the country with driver's license laws. *Id.*

³ Ingrid Schroeder, *et. al.*, *Deciding Who Drives: State Choices Surrounding Unauthorized Immigrants and Driver's Licenses* at 4, The Pew Charitable Trusts (Aug. 2015), <https://tinyurl.com/y6pp736h>.

personal driving credentials irrespective of immigration status do not purport to have any effect on any federal right or privilege.⁴ Like New York's, the Amici States' laws do not interfere with federal immigration enforcement. Instead, they make the Amici States and their residents safer, healthier, and better off by reducing hit-and-run behavior and other driving infractions; reducing accidents; and reducing insurance costs.

The Amici States seek to protect their sovereignty in an area that – since the beginning of automobile use in this country – has been reserved to local and state government. Plaintiff's unfounded claims, if validated by this Court, would injure the Amici States by opening the door to unprecedented federal interference with their traditional prerogatives.

The complaint's attempt to presume such federal intrusion into state sovereignty is not merely a dignitary harm: It will have far-

⁴ Amici States' laws on point are not identical. Each state has tailored its system to its own needs. *Compare* D.C. Code § 50-1401.05 (providing for a "limited purpose driver's license" that is valid for eight years) *with* Nev. Rev. Stat. § 483.291 (providing for a "driver authorization card" that expires after four years). But each state issues personal driving credentials without regard to immigration status, and each state exercised its police powers to improve residents' health and safety.

reaching and negative consequences for the safety and health of the Amici States' residents. States that credential drivers based on relevant factors like skill and possession of insurance, rather than the irrelevant criterion of immigration status, have experienced decreases in accidents and hit-and-run driving; falling automobile insurance rates; and enhanced law enforcement efficiency.

The Amici States have exercised their sovereign police powers to make carefully considered and evidence-based policy decisions that measurably enhance the safety of their roadways. They have a deep-seated interest in vindicating their prerogative to enact and maintain their successful policies, and so they respectfully submit this brief in support of the State of New York.

SUMMARY OF ARGUMENT

Regulating the roads is an integral part of what states do. Almost since the advent of the automobile, the sovereign states have issued personal driving credentials without regard to proof of immigration status. There is no federal preemption of this time-tested exercise of states' core police power to promote health and safety – or, at very least, preemption cannot be presumed in the absence of an explicit Congressional mandate. And the states have a substantial interest in continuing the practice, which has brought measurable improvements in public health and safety.

ARGUMENT

I. ISSUING PERSONAL DRIVING CREDENTIALS WITHOUT REGARD TO IMMIGRATION STATUS IS A VALID EXERCISE OF STATES' POLICE POWER TO PROMOTE RESIDENTS' SAFETY AND HEALTH.

A. States Have Wide Latitude to Regulate the Issuance of Personal Driving Credentials.

In our system of federalism, the plenary police power belongs to the states, not to the federal government. *United States v. Lopez*, 514 U.S. 549, 566 (1995) (the “Constitution . . . withhold[s] from Congress a plenary police power”). Article I, § 8 of the Constitution limits Congress’ power to legislate, and the Tenth Amendment protects each state’s retained sovereignty and plenary power to act in its own “sphere of authority.” *Printz v. United States*, 521 U.S. 898, 928 (1997) (“It is an essential attribute of the States’ retained sovereignty that they remain independent and autonomous within their proper sphere of authority.”) Among the most important powers that lie “properly within the scope of state superintendence” is the power to provide for the “health and safety” of state residents. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 134 (1963). *See also Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“[T]he structure and limitations of federalism... allow

the States great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.”); *United States v. Morrison*, 529 U.S. 598, 618 (2000) (states are primarily responsible for protecting public safety); *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 715 (1985) (noting “the presumption that state or local regulation of matters related to health and safety is not invalidated under the Supremacy Clause”).

Because of the deference afforded to each state’s traditional police power, courts are least likely to find federal preemption of state action when a state exercises an “historic” police power. Preemption analysis “start[s] with the assumption that the historic police powers of the States [are] not to be superseded ... unless that [is] the clear and manifest purpose of Congress.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *see also Pacific Gas & Electric Co. v. Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 206 (1983); *Arizona v. United States*, 567 U.S. 387 (2012). When it comes to traditional areas of state superintendence, courts presume federal deference to state prerogatives unless Congress speaks clearly and explicitly. *See, e.g., Gonzales*, 546 U.S. at 274 (Congress must articulate more than “an

obscure grant of authority to regulate areas traditionally supervised by the States' police power.”).

Federal courts have consistently held that issuing personal driving credentials is among the core police powers that have been traditionally reserved as areas of state “superintendence” and authority, where historically the federal government’s power to intrude is at its nadir. In the absence of an explicit Congressional command rooted in an enumerated Constitutional power, courts have rejected claims that federal laws preempt states’ issuance of personal driving credentials. *See, e.g., United States v. Snyder*, 852 F.2d 471, 475 (9th Cir. 1988) (“Drivers’ licenses are issued pursuant to the states’ police powers, and the federal government has no constitutional authority to interfere with a state’s exercise of its police power”); *United States v. Thurman*, 316 F. App’x 599, 602 (9th Cir. 2009) (describing issuance of licenses as a “core state police power,” into which the federal government may not intrude without a “valid, specific grant of authority from Congress”); *Jorgensen v. Larsen*, No. 90-4048, 1991 WL 55457, at *4 (10th Cir. 1991) (unpublished); *Cnty. Refugee & Immigration Serv. v. Petit*, 393 F. Supp. 3d 728 (S.D. Ohio 2019) (noting

that issuance and regulation of licenses is well within the traditional police powers of the state).

B. The States Have a Long Tradition of Credentialing Drivers Without Regard to Proof of Immigration Status and Without Federal Claim of Preemption or Threat of Prosecution.

In 1903, Massachusetts and Missouri passed the nation's first laws regulating the issuance of personal driving credentials. Not long afterward, in 1910, Maryland enacted the first legislation requiring residents to pass examinations before receiving driving credentials. By 1959, all 50 states and the District of Columbia required residents to obtain state-issued driving credentials and to pass an examination before taking the wheel.⁵

Over the course of ninety years of state-controlled examination and licensure regimes, no state conditioned the issuance of licenses on the logically unrelated criterion of an applicant's federal immigration status. That comparatively recent innovation did not come into contemplation until 1993, when California – for a time – began conditioning the receipt of a driver's license on lawful immigration

⁵ United States Department of Transportation, *supra* note 2.

status.⁶ California has since abandoned that experiment, and its temporary choice to link immigration status and driving privileges was just that – not a response to a federal mandate.⁷

While some other states followed California’s temporary departure from the historical rule, as recently as 2002 half of all states did not require applicants to prove lawful immigration status before obtaining permission to drive.⁸ The REAL ID Act of 2005⁹ created minimum federal standards for a new category of state driver’s licenses and identification cards. But both the statute and its implementing regulations recognized the prerogative of states to continue granting personal driving privileges regardless of immigration status.

Certain undocumented immigrants – among other categories of

⁶ Ingrid Schroeder, *et. al.*, *Deciding Who Drives: State Choices Surrounding Unauthorized Immigrants and Driver’s Licenses* at 4, The Pew Charitable Trusts (Aug. 2015), <https://tinyurl.com/y6pp736h>.

⁷ See Cal. Veh. Code. § 12801.9 (2013); Kevin R. Johnson, *Los Olvidados: Images of the Immigrant, Political Power of Noncitizens, and Immigration Law and Enforcement*, 1993 B.Y.U. L. Rev. 1139, 1169 n. 111.

⁸ American Association of Motor Vehicle Administrators, *Driver Licensing for Undocumented Immigrants in 2013: How States are Reacting and the Effects on the Motor Vehicle Community* (Aug. 27, 2013), <https://tinyurl.com/yxxtv3nhz>.

⁹ Pub. L. No 109-13, 119 Stat. 231 (2005) (codified at 49 U.S.C. § 30301 n.).

immigrants – are barred from obtaining REAL ID-compliant identification. Under the REAL ID Act, “a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State to any person unless the State is meeting the requirements of [the Act.]”¹⁰ But the Act explicitly allows states to continue to issue, alongside REAL ID-compliant forms of identification, another category of non-compliant licenses or other credentials. Neither the REAL ID Act nor any other federal law or regulation limits this class of noncompliant credentials to applicants who can prove lawful federal immigration status – so long as a noncompliant credential is not used for federal purposes, and so long as the credential

(A) clearly states on its face that it may not be accepted by any Federal agency for Federal identification or any other official purpose; and (B) uses a unique design or color indicator to alert Federal agency and other law enforcement personnel that it may not be accepted for any such purpose.¹¹

The REAL ID Act’s implementing regulation similarly recognizes that states remain empowered to issue “driver’s licenses and identification cards that are not acceptable by Federal agencies for official purposes,” provided that the credentials are appropriately marked to mitigate the

¹⁰ *Id.* at § 202(a)(1).

¹¹ *Id.* at § 202 (d)(11).

possibility of confusion or fraud.¹²

So even at the high-water mark of the federal government's involvement with the issuance of identifying credentials and driver's licenses, it remained crystal clear that states are free to set the terms under which they will extend state driving privileges. States that opt to condition driving privileges on federal immigration status are implementing their own policy choices, not bending to a nonexistent federal mandate.¹³

Nor was there ever a time when states uniformly conditioned driving privileges on federal immigration status. In 1993, the same year that California began its temporary experiment by linking law immigration status to the receipt of driving credentials, Washington

¹² 6 C.F.R. § 37.71 (2008).

¹³ 8 U.S.C. § 1324(a)(1)(A)(iii), which criminalizes harboring undocumented immigrants, does not speak – explicitly or otherwise – to the issuance of driving credentials. In 1986, when the current formulation of the harboring provision was enacted, Pub. L. No. 99-603, 100 Stat. 3381 (1986), no state barred undocumented immigrants from obtaining driving credentials. In the subsequent years, some states begin to explicitly allow issuance of credentials regardless of immigration status. Other states went in the other direction, *see infra* pp. 12-13, and the policy issue was very much alive. But when Congress acted to regulate some types of identification documents accepted for federal purposes through the Real ID Act, it did not amend the harboring provision or otherwise manifest any intent to preempt the states' power to control their own credentialing processes.

State enacted legislation explicitly allowing the issuance of driving credentials without proof of legal immigration status.¹⁴ As the REAL ID Act was being debated and passed in Congress, New Mexico and Utah – in 2003 and 2005, respectively – passed legislation providing for issuance of driving credentials to residents who cannot prove legal immigration status.¹⁵ By early 2019, when the New York State Legislature was considering the Green Light Law, 14 other states and territories had already decided, in the exercise of their police power, to protect the health and safety of their residents by granting driving credentials regardless of proof of immigration status: California (2013), Colorado (2014), Connecticut (2015), Delaware (2015), the District of Columbia (2013), Hawaii (2015), Illinois (2013), Maryland (2013), New Mexico (2003), Nevada (2013), Puerto Rico (2013), Utah (2005), Vermont (2013), and Washington (1993).¹⁶

When New York passed its Green Light Law in 2019, it became the 15th such state or territory. Oregon became the 16th on August 9,

¹⁴ 1993 Wash. Laws Ch. 452, § 3.

¹⁵ 2005 Utah Laws Ch. 20, § 2; 2003 N.M. Laws Ch. 31, § 1.

¹⁶ National Immigration Law Center, *State Laws Providing Access to Driver's Licenses or Cards, Regardless of Immigration Status* (Aug. 2019), <https://tinyurl.com/thl3pno>.

2019.¹⁷ New Jersey became the 17th on December 19, 2019.¹⁸ Together, these 17 jurisdictions are home to more than 123 million people. Over 37% of the U.S. population can now benefit from sharing the road with drivers who are qualified to drive based on their demonstrated skill, knowledge, and accountability – not based on their immigration status. Those 123 million residents, and those jurisdictions, depend on laws like New York’s, which are proper exercises of state authority to regulate the motorists on their roads.

Moreover, the federal government has not interfered with state authority by asserting preemption or threatening prosecution in this context. Over the decades and across Amici states, thousands of state officials have issued driving credentials to hundreds of thousands of drivers who lack proof of immigration status. However, to the Amici States’ knowledge, not once has any of those state officers been threatened with federal prosecution or otherwise accused of committing a federal crime.

II. ISSUING PERSONAL DRIVING CREDENTIALS WITHOUT REGARD TO PROOF OF IMMIGRATION STATUS ENHANCES THE HEALTH, SAFETY, AND WELLBEING OF

¹⁷ 2019 Oregon Laws Ch. 701.

¹⁸ 2019 N.J. Laws Ch. 271.

AMICI STATES' RESIDENTS.

Like New York, the Amici States are constitutionally entitled to issue driving privileges without regard to proof of legal immigration status. They have a strong interest in protecting that prerogative, because their laws – like New York's law – make them healthier and safer.

To protect the public, drivers must know the rules of the road and be able to comply. That is why all states and the District of Columbia require drivers to pass an examination.¹⁹ To ensure that drivers bear the costs of their own actions, they must be insured. That is why 49 states, and the District of Columbia, require drivers to have liability insurance.²⁰ And to ensure accountability, drivers must carry accurate identification. That is why every state, and the District of Columbia, requires that drivers have licenses or other credentials with their name,

¹⁹ United States Department of Transportation, *supra* note 2.

²⁰ Insurance Information Institute, *Compulsory Auto/Uninsured Motorists* (Aug. 2015), <https://tinyurl.com/rvwzo64>. New Hampshire does not require liability insurance, but does require drivers to demonstrate that they have resources to pay in the event of an at-fault accident. *Id.*

photograph, and other identifying information.²¹

These are relevant and important qualifications for drivers. But proof of legal immigration status is neither necessary nor sufficient to promote safety, fairness, and accountability. It is, in fact, irrelevant to those legitimate state aims. Instead, data reveal that states and their residents are safer, healthier, and better-off when they grant driving privileges to residents – regardless of their immigration status – who can prove their identity, pass a test, and purchase insurance.

A. Training and Credentialing Drivers Without Regard to Proof of Immigration Status Reduces Accidents.

In every state and in the District of Columbia, would-be drivers must pass state-sanctioned knowledge and road tests before obtaining driving credentials. Those credentialed drivers are safer drivers. As against drivers who never obtain official credentials, they are better informed about the rules of the road and better able to comply. In fact, unlicensed or un-credentialed drivers – who may have never learned the rules of the road – are even less safe behind the wheel than drivers whose licenses have been revoked or suspended for proof of violating traffic laws. Analyzing 23 years of data, a researcher at the California

²¹ United States Department of Transportation, *supra* note 2.

Department of Motor Vehicles concluded that “unlicensed drivers tend to be more hazardous than S/R [suspended/revoked] drivers.”²²

This data reinforces a highly suggestive correlation between issuing driver credentials regardless of immigration status and reductions in traffic fatalities. As noted *supra*, three states – Washington (1993), New Mexico (2003), and Utah (2005) – led the nation in passing legislation to credential drivers regardless of immigration status. In the twenty years after Washington passed its law, these three states each experienced a drop of more than 30% in traffic fatalities, as against a national average decline of 20%. Put differently: By requiring that drivers learn how to drive, regardless of their immigration status, each state cut traffic deaths by at least 50% more than the national average.²³

B. Training and Credentialing Drivers Without Regard to Proof of Immigration Status Reduces Hit-and-Run Driving, with Positive Impacts on Safety, Accountability, and Fair Cost Allocation.

²² Sukhvir S. Brar, *Estimation of Fatal Crash Rates for Suspended/Revoked and Unlicensed Drivers in California* at vi, California Department of Motor Vehicles (Sept. 2012), <https://tinyurl.com/y652fscl>.

²³ Laura Goren and Michael Cassidy, *Hands on the Wheel*, The Commonwealth Institute (Jan. 17, 2018), <https://tinyurl.com/r4lmwt7>.

For the Amici States, reducing hit-and-runs is an important way of using the police power to protect the health, safety, and wellbeing of residents. Researchers have observed that “[h]it and run behaviors often delay emergency assistance, increase insurance premiums, and leave victims with significant out of pocket expenses.”²⁴ In addition, “serious injuries and fatalities become more likely when a driver leaves the scene of an accident without helping victims or reporting the incident to the authorities.”²⁵ Each of the Amici States has criminalized hit-and-run behavior,²⁶ because disincentivizing drivers from leaving the scene of a car accident without providing identification or rendering assistance furthers states’ important objectives of ensuring that injured residents receive prompt aid; promoting accountability for bad driving; and allocating costs fairly among drivers, which in turn holds insurance

²⁴ Hans Lueders *et. al.*, *Providing Driver’s Licenses to Unauthorized Immigrants in California Improves Traffic Safety* at 1, Proceedings of the National Academy of Sciences (Apr. 2017), <https://doi.org/10.1073/pnas.1618991114>.

²⁵ *Id.*

²⁶ *See, e.g.*, Conn. Gen. Stat. § 14-224 (defining the crime of “evasion of responsibility in operation of motor vehicles,” with penalties ranging up to 20 years in prison for accidents resulting in death); D.C. Code § 50-2201.05 (“Fleeing from scene of accident”).

costs in check. When drivers remain at the scene of an accident to engage with law enforcement, police officers can document and respond to driving offenses more effectively and efficiently.

At the same time, untrained and unlicensed drivers are disproportionately responsible for hit-and-run behavior. A study by the American Automobile Association's Foundation for Traffic Safety found that "unlicensed drivers were 9.5 times as likely as validly licensed drivers to have left the scene" of an accident.²⁷

Connecticut's experience shows that states can reduce hit-and-run accidents by allocating driving privileges without regard to immigration status. Connecticut's Public Act No. 13-89 became effective on January 1, 2015. The Act authorized the state to grant drive-only licenses – marked clearly as such, and unusable for federal purposes – without regard to applicants' immigration status.²⁸ By August 10, 2019, the state had issued 54,045 drive-only licenses.²⁹ During the intervening

²⁷ American Automobile Association Foundation for Traffic Safety, *Unlicensed to Kill* at 6 (Nov. 2011), <https://tinyurl.com/w8grrq6>.

²⁸ Connecticut Department of Motor Vehicles, *Drive Only License Overview* (May 6, 2019), <https://tinyurl.com/wotvt5o>.

²⁹ Data provided by the Connecticut Department of Motor Vehicles; on file with counsel.

years, hit-and-run accidents statewide fell by 9%. Analysis by the University of Connecticut’s Transportation Security Research Center showed that hit-and-runs fell most steeply in the towns and cities that issued drive-only licenses at the highest rates:

Across 10 Connecticut cities with the highest concentration of drive-only licenses issued to undocumented immigrants, there were 1,200 fewer hit-and-run crashes since 2016 That’s a 15 percent decrease over three years. The state didn’t compile hit-and-run crash data before 2015. By comparison, in 10 Connecticut communities with the lowest rates of drive-only licenses, hit-and-run crashes edged up about 5 percent in the same time period. “The numbers are coming to bear that it is making the roads safer, and any decrease is a very good thing,” said Charles Grasso, a former police sergeant and a car-crash expert at the University of Connecticut’s Transportation Safety Research Center.³⁰

The Connecticut data is amplified by California’s experience, illustrated by a study published in the Proceedings of the National Academy of Sciences. As in Connecticut, California’s law granting driving credentials without regard to proof of immigration status passed in 2013 and took effect in 2015. California’s statewide accident data for 2015 reported that the new law resulted in “an annual decline in hit and run accidents by about 4,000” – or a decline of 7-10% against 2014

³⁰ Christopher Burrell, *Licenses for Undocumented Immigrants Seem to Show Benefits in Connecticut*, New England Center for Investigative Reporting (Apr. 17, 2019), <https://tinyurl.com/y2rwu8ht>.

numbers. The researchers also found that the law resulted in the transfer of \$17 million in hit-and-run costs to at-fault drivers that would otherwise have been borne by accident victims.³¹

C. Training and Credentialing Drivers Without Regard to Proof of Immigration Status Reduces Driving Infractions and Increases Law Enforcement Efficiency.

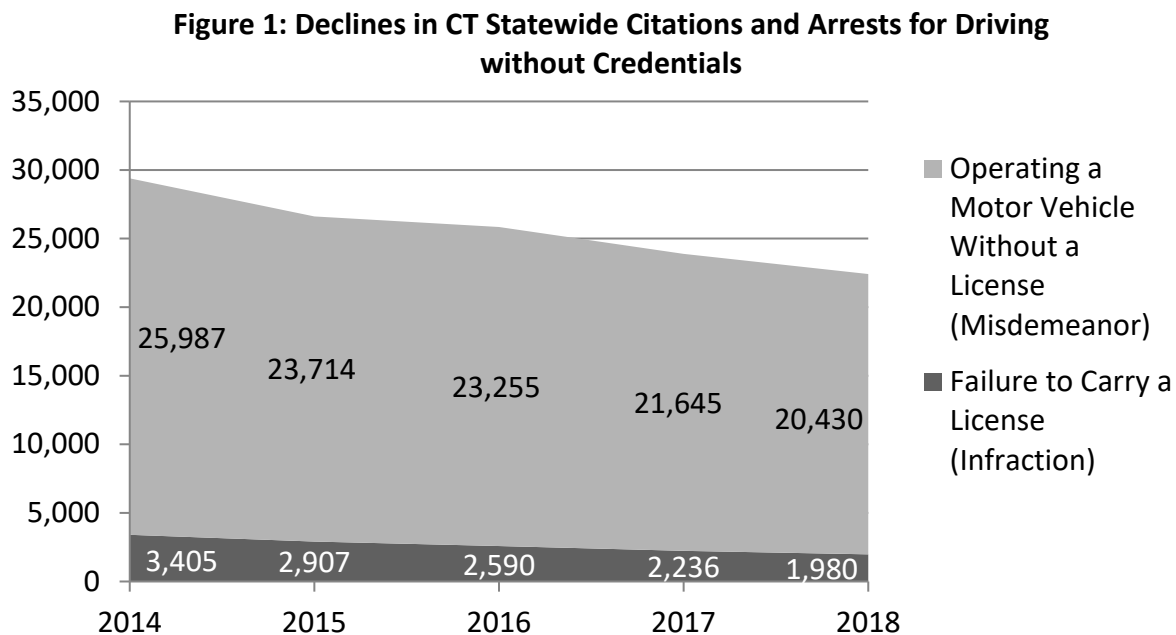
States have a strong interest in ensuring that state and local law enforcement officers are working efficiently – deterring and responding to crime and assisting residents, not filling out unnecessary paperwork or performing other burdensome administrative tasks. When more drivers are properly credentialed, law enforcement officers can dedicate less time to issuing citations for uncredentialed driving and tracking down drivers’ real identities. As one Connecticut law enforcement officer put it, describing the difference between policing before and after passage of Connecticut’s law: “There’d be times we pulled somebody over and they don’t have any ID and it takes an officer off the road for one, two, three hours. It typically ruins someone’s day going to jail, getting fingerprinted, getting photographed, waiting for fingerprints to come back. So, having these drive-only licenses can be very beneficial to

³¹ Lueders, *supra* note 25.

both the police and the community.”³²

Here, Connecticut’s experience is again instructive.

Implementation of Connecticut’s drive-only license law beginning in 2015 has been accompanied by a statewide decrease of 23.7% in arrests and citations for driving without a license, as Figure 1 shows:³³



In real numbers, that drop of nearly a quarter in arrests and citations meant that law enforcement officers saved time issuing citations and making arrests in almost 7,000 instances, with corresponding increases in their availability to respond to emergencies

³² Burrell, *supra* note 31.

³³ Data provided by the Connecticut Judicial Branch; on file with counsel.

and stop crime.

D. Training and Credentialing Drivers Without Regard to Proof of Immigration Status Increases Insurance Coverage Rates.

Finally, 49 states and the District of Columbia have enacted legislation requiring all resident drivers to be insured. These states have a strong interest in drivers obtaining car insurance. Uninsured drivers are less safe, on average; their presence on the road increases insurance rates for everyone; and, when drivers without insurance are involved in accidents, costs can be unfairly allocated to others who are not at fault.³⁴

Granting driving credentials without regard to immigration status is an effective way to increase the percentage of insured drivers.

California's experience once again provides a compelling data-point. The state's legislation allowing residents to obtain licenses without proof of immigration status (Assembly Bill 60 or "AB 60"), took effect in 2015.

The following year, the number of insured drivers jumped: "In 2015, the first year since the passage of AB 60," the California Department of

³⁴ See Insurance Journal, *In 5 States, 20% or More of Drivers Have No Insurance; Countrywide Average Increases* (Mar. 15, 2018), <https://tinyurl.com/voqwroa>.

Insurance announced, “the number of insured vehicles increased by 200,000 more vehicles than would have been expected. In the previous three years, the percentage of insured vehicles increased at the same rate as the number of registered vehicles”³⁵

California’s experience supports observational data from other states. According to New Mexico’s Motor Vehicle Division, the 2003 passage of HB 173, the state’s law authorizing issuance of driving credentials to undocumented residents, was accompanied by a sharp decline in rates of uninsured drivers “from 33 percent in December 2002 to less than 10 percent in December 2008.”³⁶ Utah also saw a steep decline in rates of uninsured drivers, from 28% to 8%, in the years following its 2005 law allowing the state to issue driving credentials without proof of immigration status.³⁷

Predictably, insurance rates for all drivers tend to fall when more

³⁵ California Department of Insurance, *AB 60 Driver Licenses Believed to Cause 2015 Bump in Insured Vehicles* (Nov. 17, 2016), <https://tinyurl.com/uln3ltf>.

³⁶ Steven J. Escobar, *Allowing Undocumented Immigrants to Obtain Driver’s Licenses in New Mexico: Revising, Not Abandoning, the System*, 43 Wash. U. J. L. & Pol’y 285, 288 (2014).

³⁷ Colorado Fiscal Institute, *The Impact of Allowing All Immigrants Access to Driver’s Licenses* (Feb. 2017), <https://tinyurl.com/y5vjag35>.

drivers are insured. States want to drive down those insurance rates for the good of consumers. Research shows that states that grant driving privileges to road-tested and insured residents without proof of immigration status benefit from lowered insurance premiums.³⁸

CONCLUSION

New York's power to issue driving credentials without proof of immigration status is deeply entrenched in our federalism. New York – like each of the Amici States – has done the right thing to enhance road safety and public health for all its residents. Its law should be upheld, and the appeal should be dismissed.

Respectfully submitted,

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³⁸ Mauricio Cáceres and Kenneth P. Jameson, *The Effects on Insurance Costs of Restricting Undocumented Immigrants' Access to Driver Licenses*, 81 Southern Economic Journal, No. 4 (Apr. 2015), <https://tinyurl.com/s6k3uf8>.

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I hereby certify that this brief complies with the type-volume limitations of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure in that it contains 3,909 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32 (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

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Dated: February 19, 2020

CERTIFICATION OF SERVICE

I hereby certify that on this 19th day of February, 2020, I caused the foregoing brief to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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