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## Establishing a Conditional Driver Permit in Texas

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## ESTABLISHING A CONDITIONAL DRIVER PERMIT IN TEXAS

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\* This law review article began as a team project of the Community Development Clinic at Texas A&M University School of Law. Students Maddie Byers, Olivia Countryman, Taylor Garner, and Crystal Hernandez comprised the team who conducted most of the research and wrote a first draft of a white paper that was used to support H.R. 1058 (Rep. Ramon Romero) and SB 608 (Senator Carol Alvarado) in the 2021 Texas Legislative Session. Texas A&M University Professor Ernesto Amaral and his research assistant Peggy Carris conducted the economic analysis dealing with undocumented immigrants. Professor Luz E. Herrera and Attorney Lisa Mares worked with the students to edit and revise the work. The present article represents an adaptation from that white paper that Prof. Herrera, Taylor Garner and Crystal Hernandez worked on.

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### INTRODUCTION

Driving is an essential aspect of nearly every Texan’s routine. To get a driver’s license, Texans must present several documents that many residents cannot access.<sup>1</sup> Many Texans lack the strictly required documentation because obtaining those documents creates an undue burden, due to several reasons including the cost of acquiring copies from official government offices and the expense of retaining legal professionals to obtain court orders to replace documents.<sup>2</sup> Strict documentation requirements, however, do not prevent unlicensed Texans from driving.<sup>3</sup> Instead, unlicensed drivers illegally drive without training, testing, licensing, insurance, or vehicle registration.<sup>4</sup>

The Texas Department of Insurance estimates there are over 2.2 million uninsured vehicles registered in Texas.<sup>5</sup> Excluding drivers from obtaining a state-issued driver permit and not providing an alternative

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1. See, e.g., DAVID DYSSEGAARD KALLICK & CYIERRA ROLDAN, FISCAL POL’Y INST., EXPANDING ACCESS TO DRIVER’S LICENSES 1–5 (2017), <https://fiscalpolicy.org/wp-content/uploads/2017/01/FINAL-Driver-licenses-report-2017.pdf> [<https://perma.cc/6YZH-BS85>] (providing an example of immigrants who are unable to obtain the necessary documentation).

2. See TEX. TRANSP. CODE ANN. § 521.142 (specifying what is required to obtain a driver’s license).

3. See *One Million Texans Driving Without Licenses, Because of Surcharges Owed to the State*, KLTV (July 1, 2014, 11:40 PM), <https://www.kltv.com/story/25920713/surcharges/> [<https://perma.cc/V3FF-HTCG>].

4. See *id.*

5. See TEX. DEP’T OF INSURANCE, TEXASSURE VEHICLE INSURANCE VERIFICATION 3 (2020), <https://web.archive.org/web/20201206234603/http://texassure.com/documents/umcounty20200831.pdf> [<https://perma.cc/84QZ-FQBP>] (indicating the total unmatched registrations v. registered vehicles in Texas by county).

option to drive legally decreases public safety, undermines policy-making decisions, limits state revenue from license and registration fees, and creates significant hardships throughout vulnerable communities.<sup>6</sup> Texas lawmakers can address these issues by creating a conditional driver permit option that benefits all Texans.<sup>7</sup>

Under the Reservations Clause of the U.S. Constitution, every state has the power to establish eligibility requirements for a driver's license.<sup>8</sup> Federal law does not undermine this power through the REAL ID Act.<sup>9</sup> Texas license requirements include a driving test, proof of insurance, and a social security number or proof of lawful presence in the United States.<sup>10</sup>

Texas lawmakers should pass legislation that creates a conditional driver permit option to increase public safety and state revenue.<sup>11</sup> The proposed legislation should:

- (1) expand acceptable identification documents to include passports, consular documents from foreign nations, and other reliable forms of identification currently not allowed as proof of identity for a standard driver's license;
- (2) remove unnecessary application requirements that currently prevents everyday Texans from receiving a license;
- (3) expand proof of residency documentation to include residency in temporary housing locations;
- (4) require proof of completion of driver education and

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6. See KALLICK & ROLDAN, *supra* note 1, at 1–5 (supporting the idea that allowing more access to driver licenses will only better society).

7. See generally Texas A&M School of Law, *TAMU Clinic Students Draft Report that Drives State Legislation*, TAMU LAW NEWS (Apr. 8, 2021), <https://tamulawnews.com/students/tamu-law-clinic-students-draft-report-that-drives-state-legislation/> [<https://perma.cc/2ADC-3WUY>] (advocating for conditional driver licenses).

8. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

9. See REAL ID Act of 2005, H.R. 418, 109th Cong. § 202 (2005) (“To establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States”).

10. See *How to Apply for a Texas Driver License*, TEX. DEP'T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/how-apply-texas-driver-license> [<https://perma.cc/3GLW-JQJU>] (detailing the driver license requirements in Texas, including documents that verify identity, Social Security Number, U.S. citizenship or lawful presence, and state residency).

11. E.g., *TAMU Clinic Students Draft Report that Drives State Legislation*, *supra* note 7 (advocating for conditional driver licenses with the support of students, faculty, and practicing attorneys).

safety course as would be required to receive a standard driver's license; (5) require proof of financial responsibility post-permit issuance; and (6) charge a minimal fee that is sufficient to cover the state's expenses to produce it.<sup>12</sup>

The article presents supporting data to expand access to state-issued driver permits for Texans who cannot provide the required documents to obtain a driver's license. Part I examines the unlicensed and uninsured population in Texas that these efforts attempt to address. Part II discusses state jurisdiction to issue driver licenses and permits. It discusses existing Texas statutes that authorize the issuance of driver's licenses and permits. The section also offers examples of other state statutes that have expanded their right to regulate driving privileges beyond Real ID Act requirements. Part III presents a partial economic analysis illustrating potential economic benefits from passing conditional driver permit legislation in Texas.

#### I. PART ONE: RESPONDING TO THE NEEDS OF THE STATE'S POPULATION

Broadening eligibility to legally drive in Texas affirms the democratic principle of freedom of movement.<sup>13</sup> Texas' current license system hinders many Texans from legal, educated driving because they lack the required documentation under the existing license programs.<sup>14</sup> Expanding the current license program to include conditional driver permits will benefit all Texans.<sup>15</sup> This section discusses why a

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12. *Id.*

13. *See generally* Kent v. Dulles, 357 U.S. 116, 125–26 (1958) (describing the “right to travel” as a liberty protected by the due process clause of the Fifth Amendment. The Court continues by stating the right to travel emerged as early as the Magna Carta and the “freedom of movement” is deeply engrained in our history as basic in our scheme of values.).

14. *See generally* TEX. TRANSP. CODE ANN. § 521.142 (requiring a license application to include information such as the applicant's full name, place of birth, and date of birth, which must be verified by the department. If the applicant is not a U.S. citizen, the code further requires they provide documentation showing they are authorized to be in the United States.); *How to Apply for a Texas Driver License*, *supra* note 10 (explaining the Texas Driver License application process, including application and documentation that is required prior to approval).

15. *See generally* Monique Ching, *Sharing the Road: Licensing all Drivers, Regardless of Immigration Status, Boosts Safety and the Economy*, MASS. BUDGET & POL'Y CTR. 4–5 (Sept. 3, 2019),

[https://web.archive.org/web/20200929073449/https://www.massbudget.org/reports/pdf/DriversLic2019\\_FINAL.pdf](https://web.archive.org/web/20200929073449/https://www.massbudget.org/reports/pdf/DriversLic2019_FINAL.pdf) [<https://perma.cc/MAR2-RP4K>] (expounding on how the expansion of licensing to all drivers, regardless of immigration status, boosts safety, state revenue, and the economy. Roads would be safer if all drivers were tested and insured; state revenue would increase

conditional driver permit would increase public safety for all Texans. It also provides examples of how natural disaster victims, individuals experiencing homelessness, family violence victims, and unauthorized immigrants would benefit most.

*A. Who Benefits from Conditional Driver Permits?*

Driving, particularly in a large state like Texas, is essential for commuting to work, caring for family members, accessing healthcare, and pursuing educational opportunities.<sup>16</sup> Texas requires drivers to undertake driver safety training and purchase insurance for each vehicle they own to maximize public safety.<sup>17</sup> However, not all Texans who currently drive have a driver's license.<sup>18</sup> There are a number of individuals on the road not legally authorized to drive who do not carry the required insurance that protects third parties in the event of a driving accident.<sup>19</sup> Those who drive without a license include those who have never had a license and those who had a suspended valid license due to traffic violations or unpaid surcharges related to traffic violations.<sup>20</sup> In

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with the new driver's application and registration fees; and the economy would be boosted by the purchase of new vehicles and access to safe transportation to and from work.).

16. See Texas Fair Defense Project & Texas Appleseed, *Driven by Debt: How Driver's License Suspensions for Unpaid Fines and Fees Hurt Texas Families*, TEX. APPLESEED, <https://web.archive.org/web/20191223033255/http://stories.texasappleseed.org/driven-by-debt> [<https://perma.cc/4G2R-R5ZC>] ("Most Texans lack reasonable access to public transportation, and for them, driving is the only way that they can get to work, take their children to school and childcare, and accomplish other necessary daily tasks like grocery shopping and medical appointments.").

17. See *How to Apply for a Texas Driver License*, *supra* note 10 (requiring proof of insurance for each vehicle owned by the applicant, or a signed statement that states the applicant does not own a vehicle, and a six-hour driver education course).

18. See generally *One Million Texans Driving Without Licenses, Because of Surcharges Owed to the State*, *supra* note 3 (stating "more than a million people in Texas are driving without a license.").

19. See *id.* (estimating more than a million people in Texas are driving without licenses); see also *Facts + Statistics: Uninsured Motorists*, INS. INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-uninsured-motorists> [<https://perma.cc/YM7G-8EEF>] (estimating 8.3 percent of drivers in Texas are uninsured in 2019).

20. See Texas Fair Defense Project & Texas Appleseed, *supra* note 16 ("If somebody is caught driving without a valid license or without insurance, or if they receive three or more traffic citations within three years, that person will also face hefty surcharges under the DRP. When people fail to pay surcharges, their licenses are automatically suspended. Continuing to drive on a suspended license risks not only more citations, but more hefty surcharges under the DRP. In

either situation, the unlicensed driver may drive for years—often while lacking auto insurance.<sup>21</sup>

Whether a driver has a valid license does not override the necessity of traveling to work, grocery store, school, or doctor's appointments.<sup>22</sup> In 2017 alone, 6,000 drivers in Texas were jailed for driving with a suspended license.<sup>23</sup> Although the Texas Legislature repealed the surcharge program in 2019, removing some of the fines and fees that made license reinstatement next-to-impossible for low-income Texans, various barriers remain for those who lack required documents.<sup>24</sup>

### B. Public Safety

Expanding access to licenses through a conditional driver permit would increase public safety by ensuring drivers know the rules of the road.<sup>25</sup> Drivers accessing these conditional permits could make routine traffic stops more efficient because law enforcement could “more easily identify someone and check [their] driving history.”<sup>26</sup> New drivers and those with prolonged ineligibility would be required to pass the driving test, and many may do so with the help of a driver education course.<sup>27</sup>

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addition, a conviction for any traffic citation received during a suspension period will trigger another Departmental Suspension for one to two years.”).

21. See generally *One Million Texans Driving Without Licenses, Because of Surcharges Owed to the State*, *supra* note 3 (providing an example of a driver who continued to drive without a license for five years due to surcharges).

22. See Cameron Langford, *Texas Bill Would Lower Penalty for Unlicensed Drivers*, COURTHOUSE NEWS SERV. (Apr. 10, 2019), <https://www.courthousenews.com/texas-bill-would-lower-penalty-for-unlicensed-drivers/> [<https://perma.cc/27RD-BN6X>] (“Poor people get a traffic ticket they cannot pay, fines and surcharges are tacked on and their licenses are suspended. But they still have to go to work, to the grocery store and to doctor's appointments and public transportation is not always an option.”).

23. See *id.* (“Driving with a suspended license is undoubtedly a petty crime, but more than 6,000 Texans were jailed for it in 2017.”).

24. See Tex. H.B. 2048, 86th Leg., R.S. (2019) (relating to the repeal of the driver responsibility program and the amount and allocation of state traffic fine funds, eliminating program surcharges, and authorizing and increasing criminal fines).

25. See generally *How to Apply for a Texas Driver License*, *supra* note 10 (reiterating an applicant is required to provide evidence of completion of a driver education course. If access to obtaining a license was expanded, unlicensed drivers would be required to take a driver education course before obtaining a license, thus, making the roads safer.).

26. Ching, *supra* note 15, at 5–6

27. See generally *How to Apply for a Texas Driver License*, *supra* note 10 (requiring applicants to provide evidence of completion of a six-hour driver education course to obtain a license).

Like new driver license applicants under the age of 24, conditional driver permit applicants will also be required to show completion of a driver safety training course.<sup>28</sup> In addition to the written and driving safety tests, applicants must take a vision test.<sup>29</sup>

To receive a license, an applicant for a conditional driver permit should be allowed to present proof of insurance after passing all requirements; otherwise, the cost of insurance can be prohibitive.<sup>30</sup> Increasing the number of legal drivers will increase the number of insured drivers.<sup>31</sup> For instance, Utah experienced a severe reduction “in its number of traffic deaths over an eight-year period after passing comparable legislation.”<sup>32</sup> New Mexico and Utah similarly experienced a significant increase in the “number of insured drivers after providing greater access to driver’s licenses.”<sup>33</sup> Motor safety changes in these two states demonstrated a correlation between driver’s licenses issuance to undocumented immigrants and reduced traffic fatalities.<sup>34</sup>

Finally, proposed legislation to establish a conditional driver permit helps strengthen relationships and cooperation with law enforcement.<sup>35</sup> For instance, not penalizing unauthorized ineligible Texas drivers helps build trust between the police and the community.<sup>36</sup> Unlicensed drivers drive fearfully on the road because they worry that police may stop and

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28. See TEX. DEP’T PUB. OF SAFETY, GUIDE FOR FIRST TIME DL/ID APPLICANTS, <https://www.dps.texas.gov/Internetforms/Forms/DL-100E.pdf> [https://perma.cc/3P6G-U56L] (needing proof of a person’s Driver Education Certificate and Verification of Enrollment).

29. See *id.* (requiring vision tests for driver’s license applicants only).

30. See generally Texas Fair Defense Project & Texas Appleseed, *supra* note 16 (discussing that it “costs on average \$1300 annually (depending on your county of residence) to insure a vehicle in Texas, and it is even more expensive to get insurance if you do not have a driver’s license.”).

31. See generally *How to Apply for a Texas Driver License*, *supra* note 10 (requiring proof of insurance on each vehicle owned before obtaining a driver license).

32. Vallerye Mosquera, *Driving While Undocumented: Chapter 524 Allows Undocumented Immigrants to Apply for Driver’s Licenses in California*, 45 MCGEORGE L. REV. 617, 623 (2014).

33. *Id.*

34. See *id.* (“The divergent changes in motor safety in [New Mexico and Utah] reveals the uncertainty of traffic safety claims; furthermore, these gradual changes merely demonstrate correlation (as opposed to causation) between issuing driver’s licenses to undocumented immigrants and traffic deaths.”).

35. See Ching, *supra* note 15, at 5.

36. See *id.* (discussing the benefits of building trust between unauthorized immigrant drivers and law enforcement by expanding eligibility to obtain a driver license).

penalize them.<sup>37</sup> A sizable population is also concerned that law enforcement may ask for proof of their immigration status.<sup>38</sup> If people fear the police, they might be less likely to report “when they have been robbed, abused, or fallen victim to other crimes.”<sup>39</sup> This fear makes it more challenging for police to keep their communities safe.<sup>40</sup>

### C. Specific Texan Population

While all Texans benefit from more options to drive legally, some Texans would directly benefit from a conditional driver permit not restricted to individuals fifteen to eighteen years old.<sup>41</sup> Texans impacted by natural disasters, homeless individuals, or immigrants who do not have all their documentation should have the ability to drive because it would increase public safety and benefit the economy.<sup>42</sup>

#### 1. Victims of Natural Disaster

Texas’ unique geography makes it vulnerable to a large array of natural disasters that have historically displaced individuals.<sup>43</sup> At least one major

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37. See, e.g., *id.* at 6 (highlighting the experience of undocumented immigrant drivers that are unlicensed. Fearful of being penalized, unlicensed drivers are more likely to leave the scenes of car accidents due to fear of police contact and interaction.).

38. See, e.g., *id.* at 5–6 (discussing Salem, Massachusetts’s policy of not asking a driver’s immigration status as not to stroke fear amongst members of the community).

39. See *id.* at 6 (discussing the importance of relationships between undocumented immigrants and police officers for effective protection. Quoting Salem, Massachusetts’s Police Chief Mary Butler’s discussion of immigrants and how fear of police officers effects reporting of crime.).

40. See *id.* (asserting that policing communities and protecting citizens is more difficult if groups of residents fear the police because they will be less likely to report crimes).

41. See, e.g., KALLICK & ROLDAN, *supra* note 1, at 1–5 (outlining the potential benefits for New York State if residents were allowed to apply for driver’s licenses without regard to immigration status. Some of these benefits included increased car sales within the state, increased government revenue from application and renewal fees, better job matches, improved public safety with required driving courses, and more.).

42. See, e.g., *id.* (discussing the benefits that would potentially arise from allowing immigrants to obtain a driver license regardless of their immigration status. The benefits to public safety and the economy could be assumed if the expansion was even broader to include homeless individuals and those impacted by natural disasters without other documentation.).

43. See generally Perla Trevizo, *Texas on Path of Half of the \$1 Billion Disasters in 2019*, HOUS. CHRON. (Jan. 16, 2020), <https://www.houstonchronicle.com/news/houstontexas/houston/article/Texas-on-path-of-half-of-the-1-billion-disasters-14981812.php#:~:text=The%20Lone%20Star%20State%20claimed,winter%20storm%20and%20>

disaster event impacts Texas per year.<sup>44</sup> In fact, the state of Texas has the most variety and highest frequency of natural disasters in the United States.<sup>45</sup> Texas' land area spans 261,232 square miles,<sup>46</sup> yet public transportation remains undeveloped and unused.<sup>47</sup> A lack of public transportation indicates that individuals rely on private transport, including unlicensed drivers.<sup>48</sup>

Natural disasters disproportionately impact low-income residents.<sup>49</sup> Specifically, low-income residents tend to lack the means to navigate the

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severe%20storm [https://perma.cc/398H-NHY9] (stating Texas “is the only state to witness a disaster from each category the agency tracks—drought, tropical cyclone, flooding, wildfire, freeze, winter storm and severe storm.”); *Disaster Declarations for States and Counties*, FEMA, https://www.fema.gov/data-visualization/disaster-declarations-states-and-counties [https://perma.cc/4NRF-4QE7] (last updated Feb. 25, 2021) (providing an interactive tool that allows readers to compare historic federal disaster declarations by state. According to the website, Texas has declared 365 disasters since 1953 for reasons including, but not limited to, drought, flooding, fire, severe ice storms, hurricanes, and tornados.).

44. See *Disaster Declarations for States and Counties*, *supra* note 43 (producing a chart for the state of Texas that tracks the disasters declared in Texas from 1953 to present. The chart contains the year the disaster was declared, the declaration title and reason, and the declaration number.).

45. See Kat Eschner, *The Most Dangerous Places to Live in America that Are Prone to Natural Disasters*, CNBC (July 10, 2019, 8:00 AM), https://www.cnn.com/2019/07/10/billion-dollar-natural-disasters-rising-these-states-better-prepare.html#:~:text=Texas%20has%20the%20highest%20frequency,a%20conservative%20one%2C%20Smith%20says [https://perma.cc/VX2T-79MM] (comparing frequency and type of natural disasters by state. Reporting Texas “stands head and shoulders above the rest [of the states]” with the “highest frequency of extreme weather events” including those types of events that most typically occur in other geographical areas.).

46. Robert Plocheck, *Texas Facts*, TEX. ALMANAC, https://www.texasalmanac.com/articles/texas-facts [https://perma.cc/66UH-SEM].

47. See generally *Highest Public Transit Usage Cities in Texas*, HOMEAREA, https://www.homearea.com/rankings/place-in-tx/percent\_using\_public\_transportation/#:~:text=Instead%2C%20we%20let%20the%20people,%25%20and%20has%20fallen%205.6%25 [https://perma.cc/F5WA-RVSB] (showcasing an extremely low percentage of the Texas population in cities using public transportation. Of the fourteen cities observed, six cities had less than one percent of its population utilizing public transportation. Dallas had the highest percentage at four percent of the population.).

48. See generally CHRIS SIMEK & TINA GEISELBRECHT, TEX. A&M TRANSP. INST., 2016 TEXAS TRANSPORTATION POLL: FINAL REPORT 8 (2016) (concluding at least ninety-three percent of Texas residents relied on a personal auto as their primary means of transportation in 2016. The report also cites to a drop in Texans using bicycles or public transit for non-recreational trips between 2014 and 2016.).

49. See Dana Amihere & Misha Euceph, *When the Big One Strikes, People of Color Will be Hit the Hardest*, LAIST (June 14, 2021, 7:00 AM), https://laist.com/projects/2020/the-big-one/tbo-wealth-gap.html [https://perma.cc/44QS-U548] (finding natural disasters have the potential to

cumbersome disaster relief aid system<sup>50</sup> and frequently live in neighborhoods most likely to be harmed by natural disasters.<sup>51</sup> For example, Hurricane Harvey's environmental harms afflicted low-to-middle-income neighborhoods more so than high-income neighborhoods.<sup>52</sup> The disparity is due to the fact that low-to-middle-income residents are more likely to live in flood-prone neighborhoods and away from enhanced green spaces.<sup>53</sup> Further, low-income residents are often systemically segregated into less protected locations with older infrastructure and less tax dollars going towards disaster mitigation.<sup>54</sup>

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widen wealth gaps between different racial and ethnic groups. The study found that white American victims of natural disasters tend to “accumulate significantly more wealth [after the disaster] than any other group.” Factors such as having advanced education, assets like a home, and a comfortable amount of money saved before a disaster, give people a leg up in their recovery. White Americans have higher rates in every category and are able to utilize these advantages, like homeowners' insurance, to recoup their losses).

50. See SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *GREATER IMPACT: HOW DISASTERS AFFECT PEOPLE OF LOW SOCIOECONOMIC STATUS* 9–10 (2017), [https://www.samhsa.gov/sites/default/files/dtac/srb-low-ses\\_2.pdf](https://www.samhsa.gov/sites/default/files/dtac/srb-low-ses_2.pdf) [https://perma.cc/XSU4-YGUZ] (reporting that people of low socioeconomic status experience difficulty obtaining and receiving aid post-disaster. Beyond the barrier of unfamiliarity with the system, people of low socioeconomic status face issues pertaining to and from disaster assistance offices, childcare, and work schedules.); see also Rosemarie Fike & Stefanie Haeffele, *Getting Federal Disaster Assistance Too Difficult | Opinion*, S. FLA. SUN SENTINEL (Nov. 27, 2017, 1:15 PM), <https://www.sun-sentinel.com/opinion/fl-op-getting-federal-disaster-aid-difficult-20171121-story.html> [https://perma.cc/76YB-EVMM] (opining the process of receiving post-disaster aid is “complex and daunting” and is “particularly harmful to some of our most vulnerable populations.”).

51. See Brie Sherwin, *After the Storm: The Importance of Acknowledging Environmental Justice in Sustainable Development and Disaster Preparedness*, 29 DUKE ENV'T L. & POL'Y F. 273, 296 (2019) (explaining, “[b]oth socioeconomic status and race are interconnected with environmental and flood-related risks, which can create a disproportionate health impact on vulnerable populations.” Further explaining that a low socioeconomic status is a key indicator of whether a person has the ability to move during times of natural disaster.).

52. See, e.g., *id.* at 275–76 (providing examples of factors, such as lack of available resources to low-income individuals and zoning issues, which have attributed to the disparity in recovery between low-income and higher-income neighborhoods).

53. See *id.* at 286, 296 (arguing current disaster preparedness and recovery protocols result in disproportionate health and safety impacts on vulnerable population, creating a need for environmental justice. An example of this disproportionate impact can be seen when cities, such as Houston, rebuild the neighborhoods in the same flood-prone area without new measures to curb and direct future waterflow.).

54. See Junia Howell & James R. Elliott, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, 66 SOC. PROBS. 448 (2018) (finding, “as local hazard damages increase, so does wealth inequality, especially along lines of race, education, and homeownership.” This is the result of a system based on restoration of private property using “broadly collected tax and insurance dollars to do so.”); see also John Fialka, *When*

During a natural disaster, the loss of identification documents is particularly burdensome for low-income residents who encounter more obstacles while trying to obtain the necessary documents and inevitably make them more susceptible to driving without a license.<sup>55</sup> Obtaining the documentation necessary often requires lengthy and costly court processes.<sup>56</sup> Therefore, it is more difficult for these communities to safely evacuate, obtain relief aid, and return to work after a disaster.<sup>57</sup>

Black, Indigenous, and people of color (BIPOC) are other predominantly affected communities.<sup>58</sup> Studies show BIPOC and low-income communities are more likely to suffer from energy poverty or inefficient utility infrastructure in their homes.<sup>59</sup> In February of 2021, Winter Storm Uri caused a cascade of failing systems in Texas where communities did not prepare existing infrastructure for such cold.<sup>60</sup>

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*Storms Hit Cities, Poor Areas Suffer Most*, SCI. AM. (Apr. 1, 2019), <https://www.scientificamerican.com/article/when-storms-hit-cities-poor-areas-suffer-most/> [<https://perma.cc/K9YN-DZKF>] (discussing political and financial challenges faced by the nation's poorest communities).

55. See generally SARA SIMON TOMPKINS, NAT'L L. CTR. ON HOMELESSNESS & POVERTY, PHOTO IDENTIFICATION BARRIERS FACED BY HOMELESS PERSONS: THE IMPACT OF SEPTEMBER 11 (2004) <https://homelesslaw.org/wp-content/uploads/2019/03/Photo-ID-Barriers-Faced-by-Homeless-Persons-2004.pdf> [<https://perma.cc/HRD3-5TCT>] (using the challenges faced by homeless persons without identifying documents to illustrate the necessity for photo identification in daily American life).

56. See generally OPEN SOC'Y FOUND. & NAMATI, A COMMUNITY-BASED PRACTITIONER'S GUIDE: DOCUMENTING CITIZENSHIP & OTHER FORMS OF LEGAL IDENTITY 39 (2018), <https://www.justiceinitiative.org/uploads/286c1989-73db-4a17-b5a8-79706ccce5e4/a-community-based-practitioners-guide-documenting-citizenship-and-other-forms-of-legal-identity-20180627.pdf> [<https://perma.cc/WDQ5-SVA5>] (explaining the processes involved for obtaining various governmental documents).

57. See SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 4–5 (outlining the impact of natural disasters coupled with ineffective disaster preparedness plans on low-socioeconomic communities.); see generally SARA SIMON TOMPKINS, *supra* note 55, at 11 (illustrating the negative domino effect that impacts people without recognized identification).

58. See generally Carolyn E. Ramírez, *Without Environmental Justice, the Renewable Energy Transition Will Leave Low-Income and BIPOC Communities Behind*, 18.3 J. SCI. POL'Y & GOVERNANCE, (2021) (comparing the struggles low-income communities share with BIPOC communities regarding price gouging during and after natural disasters).

59. See *id.* (arguing low-income and BIPOC communities have historically dealt with less reliable utility grids that will be further exacerbated after Winter Storm Uri).

60. See JAMES DOSS-GOLLIN ET AL., HOW UNPRECEDENTED WAS THE FEBRUARY 2021 TEXAS COLD SNAP?, 1 (2021), <https://iopscience.iop.org/article/10.1088/1748-9326/ac0278/pdf> [<https://perma.cc/DHY3-PUW6>] (describing the multitude of utility failures, such as power generation failure and water system failure, that may reoccur if Texas does not upgrade its utility infrastructure).

Winter Storm Uri left “damage from the broken water mains, flooded apartments and homes, and lack of electricity left Texas in a state of recovery as if a hurricane had just rolled through.”<sup>61</sup> The failure of interconnected energy systems, in particular, affected electricity supply just as the need for heating increased and left millions of Texans without heat or electricity for several days.<sup>62</sup> These failures brought the Texas electricity grid near the brink of collapse, caused over one-hundred casualties, and primarily impacted already vulnerable populations.<sup>63</sup>

Additionally, “extreme weather, such as storms, cold weather, ice storms, hurricanes, tropical storms, tornadoes, and extreme heat and wildfires, is expected to increase in frequency, intensity, and duration.”<sup>64</sup> More specifically, people expect this problem to persist, as Texas is not prepared to handle future extreme weather differently.<sup>65</sup> The Texas electric grid is not connected to neighboring grids, which inhibits its ability to import outside energy when needed, and operators have failed to take action to strengthen the grid.<sup>66</sup> Furthermore, “the average age of electricity infrastructure in the U.S. is over 30 years old and is nearing the end of their 40-year life expectancy.”<sup>67</sup>

One of the ways a conditional driver’s permit could assist Texans affected by natural disasters is by facilitating evacuations.<sup>68</sup> Those without a driver’s license must either drive illegally, attempt to evacuate

61. Ramírez, *supra* note 58.

62. See DOSS-GOLLIN ET AL., *supra* note 60, at 1 (describing the failure of the systems, which restricted supply as demand increased).

63. See *id.* (asserting that, because similar weather patterns can be seen in Texas history, the needs of vulnerable populations must be acknowledged and addressed through infrastructure improvements).

64. See Hasna Nazir, *Lessons Learned from the February 2021 Texas Power Outage*, CAN. ENERGY RSCH. INST. (2021), [https://ceri.ca/assets/files/Electricity%20Commodity%20Update\\_April%202021.pdf](https://ceri.ca/assets/files/Electricity%20Commodity%20Update_April%202021.pdf) [<https://perma.cc/AL89-KE2Y>] (acknowledging the increase and intensity in extreme weather storms).

65. See *generally id.* (discussing how Texas does not have the infrastructure to handle extreme weather).

66. See *id.* (recognizing how Texas is not a part of other electrical grids, which prevents the State from acquiring energy when needed).

67. See *id.* (emphasizing how our electrical infrastructure possesses little to no economic life due to its age).

68. See *generally* SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 (recommending an increase in conditional driver’s licenses to provide an additional source of transportation to aid in disaster response).

through the assistance of third parties that may not have the capacity, or via public transportation that may not offer necessary evacuation routes.<sup>69</sup>

In one study involving Hurricane Katrina, researchers found that Black people and individuals without a high school diploma were less likely to evacuate due to a lack of transportation options.<sup>70</sup> Residents' inability to evacuate creates public safety concerns that can result in the loss of life.<sup>71</sup>

A lack of transportation can also contribute to economic hardship during the recovery phase.<sup>72</sup> Without access to transportation, many Texans face food insecurity and the inability to access employment.<sup>73</sup> Residents cannot utilize local services following natural disasters since many stores and businesses may be temporarily shut down.<sup>74</sup> Lower-income neighborhoods are particularly affected.<sup>75</sup> Texans must also travel to meet their basic needs and seek employment.<sup>76</sup> Not having a legal and convenient means to travel to and from these places can cause children to fall behind in school, hinder access to first aid, and increase

69. See generally *id.* at 10 (describing the various ways individuals seek transportation to acquire resources during a disaster).

70. See *id.* (identifying a nexus between lack of education and transportation options during disasters).

71. See generally Srikanto H. Paul et al., *Fatalities Caused by Hydrometeorological Disasters in Texas*, 8 *GEOSCIENCES (SPECIAL ISSUE)* 1 (2018) (recognizing that Texas ranks first in fatalities due to natural disasters).

72. See *SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN.*, *supra* note 50, at 9 (expanding on the economic consequences that result from the lack of transportation routes during reconstruction periods).

73. See *id.* at 10 (citing Marritz, 2012, as cited in Subaiya et al., 2014).

74. See *id.* at 3 (illustrating the adverse effects that disasters have on local communities).

75. See *OFF. OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., DISPLACEMENT OF LOWER-INCOME FAMILIES IN URBAN AREAS REPORT 8* (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/displacementreport.pdf> [<https://perma.cc/6T6Y-AZV3>] (“A number of studies have demonstrated that low-income and minority neighborhoods have fewer and smaller retail stores, such as supermarkets, banks, and drug stores, than higher-income neighborhoods.”).

76. See generally *Individuals and Households Program*, FEMA <https://www.fema.gov/assistance/individual/program> [<https://perma.cc/FZ3T-TSTV>] (last updated Oct. 4, 2021) (identifying the various steps that need to be undertaken to qualify and receive federal aid).

the financial burden on victims and their families.<sup>77</sup> In turn, this can slow a community's post-disaster recovery.<sup>78</sup>

A conditional driver permit would facilitate evacuation and disaster recovery by providing a legal and convenient means of transportation.<sup>79</sup> More specifically, a conditional driver permit could increase public safety by increasing the number of evacuations.<sup>80</sup> An increase in evacuation rates could potentially save more lives.<sup>81</sup> In Texas, there have been approximately 1.7 million fatalities resulting from natural disasters between 1980 and 2016.<sup>82</sup> This is especially true in the case of floods or hurricanes when "[t]he decision to evacuate . . . can be the difference between life and death."<sup>83</sup>

Public transportation is not a reliable evacuation solution for lowering deaths in Texas.<sup>84</sup> Because public transportation evacuations have limited routes to select emergency shelters,<sup>85</sup> public transportation evacuation efforts not only limit the number of destinations, but these efforts also limit an individual's ability to choose their destination.<sup>86</sup>

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77. See Chris Huber, *2017 Hurricane Harvey: Facts, FAQs, and How to Help*, WORLD VISION (Sept. 7, 2018), <https://www.worldvision.org/disaster-relief-news-stories/2017-hurricane-harvey-facts> [<https://perma.cc/434F-Y9ZM>] (recognizing that access to services during a natural disaster also increases public safety. For example, nearly 35 deaths during Hurricane Harvey were caused in part by "isolation from necessary medical services").

78. See *id.* (reporting how families and communities are struggling to get back on their feet after a disaster).

79. See generally SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 (recommending a source of transportation that would aid in disaster evacuation and relief).

80. See generally *id.* (suggesting that an increase in conditional driver permits would increase public safety).

81. See generally Paul et al., *supra* note 71, at 1 (advancing the view that an increase in evacuation routes would decrease the number of fatalities in disasters).

82. See *id.* (reporting the number of fatalities that have resulted from natural disasters in the past three decades).

83. See *id.* (acknowledging how critical the process of evacuation is during natural disasters).

84. See Michael A. Schwartz & Todd A. Litman, *Evacuation Station: The Use of Public Transportation in Emergency Planning*, ITE J. ON WEB 69 (2008) (illustrating the shortcomings that public transportation poses during natural disasters).

85. See, e.g., *Transportation During Evacuations*, LEE CNTY. SW. FLA., <https://www.leegov.com/publicsafety/emergencymanagement/plan/evactransportation> [<https://perma.cc/Q5ZM-C53J>] (identifying the limited number of public transportation routes to emergency shelters).

86. See, e.g., *id.* (noting the shortcomings of using public transportation as a viable means of evacuation during natural disasters).

Limited space on public transit also means potential victims can only pack a limited number of personal belongings.<sup>87</sup> Giving Texans the freedom to choose and travel to their own destination could potentially free up limited resources at public shelters and would ensure to meet every Texans' needs.<sup>88</sup> Thus, a conditional driver permit would increase public safety by increasing the number of residents who can evacuate, giving residents more time to prepare before an evacuation, and allowing Texas families the time and location in which they prefer to seek shelter.<sup>89</sup>

A Texan's acceptance of aid is inhibited by a lack of transportation, making it difficult to maximize their path to recovery through the resources offered by a Federal Emergency Management Agency ("FEMA") Disaster Recovery Center ("DRC").<sup>90</sup> Although access to FEMA aid is available by phone, FEMA recommends the DRCs as a "one-stop-shop" for victims to get information, clarification, guidance, and answers to questions about their case.<sup>91</sup> This means going to a DRC in person and working with FEMA staff who can help disaster victims apply for and accept aid, which is an essential step in the FEMA recovery process.<sup>92</sup> Similarly, Texans may feel compelled to turn down aid opportunities because they are unable to move around as easily.<sup>93</sup> For

87. *See id.* (identifying another pitfall of using public transit as a viable means of evacuation).

88. *See, e.g., id.* (arguing that individuals should choose their desired route of evacuation as it promotes freedom of choice and saves limited resources).

89. *See generally* SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 14 (recognizing the various benefits that would arise from an increase in conditional driver permits).

90. *See generally Individuals and Households Program, supra* note 76 (acknowledging how federal resources may not be utilized due to a lack of available transportation during natural disasters).

91. *See* HURRICANE IKE LEGAL TASK FORCE, RESOURCE MATERIALS FOR RESPONDING TO LEGAL QUESTIONS FROM THOSE AFFECTED BY HURRICANE IKE 11 (2008) <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/DisasterReliefResources/HurricaneIkeDisasterLegalResourcesManual.pdf> [<https://perma.cc/W499-C938>] (detailing that a Disaster Recovery Area Center is a readily accessible facility or mobile office where victims may go for information about FEMA, other disaster assistance programs, or questions about their case).

92. *Cf. id.* (listing DRC's services, including checking the status of FEMA applications and providing resolutions to problems or alternative relief agencies).

93. *Cf.* FEMA, U.S. DEP'T OF HOMELAND SEC., FACT SHEET 1 (2019), [https://www.fema.gov/sites/default/files/2020-07/fema\\_individuals-households-program\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_individuals-households-program_fact-sheet.pdf) [<https://perma.cc/G2MV-236H>] (referencing FEMA's rental assistance and lodging expense reimbursement programs).

example, one form of aid FEMA provides is expense reimbursements.<sup>94</sup> FEMA will reimburse victims for hotels, motels, or other short-term lodgings while an applicant is displaced,<sup>95</sup> but only select hotels are available as evacuee lodging.<sup>96</sup> Because of the limited evacuee lodging, victims could be unable to find a rental house or apartment within a reasonable commuting distance of their damaged home and their job.<sup>97</sup> Availability of temporary housing or shelter is especially problematic in rural areas because they have fewer shelter options.<sup>98</sup> Because housing in rural areas is limited, the need for temporary housing can extend for months.<sup>99</sup> If accepting temporary housing aid means months of being unable to effectively and conveniently commute to work and school, victims may not receive that aid.<sup>100</sup> Even if a victim does accept temporary housing located far away from where they need to go every day, without a driver's license, they risk losing their job and not being able to transport their children to school.<sup>101</sup>

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94. *See id.* at 3 (listing all of the types of reimbursement funds FEMA offers for housing assistance, medical relief, transportation assistance, or other needs).

95. *See id.* at 1 (stating FEMA provides funds paid directly to eligible individuals, including rental assistance, lodging expense reimbursement, and home repair assistance).

96. *See generally FEMA Evacuee Lodging Provider List*, FEMA, <https://www.femaevachotels.com/> [<https://perma.cc/R4EE-572S>] (“FEMA will pay the cost to stay in *certain* lodging providers for a limited period.”).

97. HURRICANE IKE LEGAL TASK FORCE, *supra* note 91 (answering frequently asked questions and stating if applicants cannot find a rental house or apartment within a reasonable commuting distance from their home or work, they should contact FEMA or visit a nearby DRC to apply for a travel trailer or mobile home).

98. *See* FEMA, NATIONAL DISASTER HOUSING STRATEGY 31 (2009), <https://www.fema.gov/pdf/emergency/disasterhousing/NDHS-core.pdf> [<https://perma.cc/N9ZW-5VKN>] (noting that due to the large-scale infrastructure damage some catastrophic disasters cause, survivors may need to be sheltered in host cities in nearby states or across the country).

99. *See* FEMA, PLANNING CONSIDERATIONS: DISASTER HOUSING 9 (2020), [https://www.fema.gov/media-library-data/1590780128292-1b9354f643dce4e083929be2f2151177/Planning\\_Considerations\\_Disaster\\_Housing\\_May\\_2020.pdf](https://www.fema.gov/media-library-data/1590780128292-1b9354f643dce4e083929be2f2151177/Planning_Considerations_Disaster_Housing_May_2020.pdf) [<https://perma.cc/84X2-QNR5>] (adding that if the damage to a community's infrastructure is significant or the location is rural, more levels of government become involved as the complexity of solutions increases).

100. *Cf. id.* (listing the temporary housing options: homes of family members or friends, hotels, commercial spaces, federal rental properties, vacant apartment buildings, or mobile homes).

101. *See generally Replacing Lost or Missing Documents*, FEMA (Oct. 7, 2020), <https://www.fema.gov/fact-sheet/4562/replacing-lost-or-missing-documents> [<https://perma.cc/R9NV-9HCG>] (acknowledging that replacing official documents destroyed in disasters is invaluable in rebuilding lives but can be difficult and time-consuming).

Once Texans return home, lacking transportation can contribute to economic hardship during the community recovery phase.<sup>102</sup> Not having a legal and convenient way to get around town can be a major barrier to disaster recovery.<sup>103</sup> Without access to transportation, many Texans worry about getting food and getting to work.<sup>104</sup> When it comes to accessing local services after a disaster, residents are often faced with fewer local options since many stores and businesses temporarily shut down in the aftermath.<sup>105</sup> This is especially true in lower income neighborhoods where there is a lower density of local businesses and services.<sup>106</sup> But the needs do not stop with food and jobs.<sup>107</sup> Texans recovering from a natural disaster need to travel to their children's daycares and schools, banks, pharmacies, medical providers, or government offices to process their temporary aid.<sup>108</sup> Not having a legal and convenient way to travel to and from these places could cause children to fall behind in school, hinder access to first aid care, and

102. *E.g.* U.S DEP'T OF TRANSP., TRANSPORTATION'S CONTRIBUTION TO THE ECONOMY 26 (2017), <https://www.bts.gov/sites/bts.dot.gov/files/docs/browse-statistical-products-and-data/transportation-economic-trends/215926/transportation-economic-trends-2017-chapter-2.pdf> [<https://perma.cc/8MZL-WCKK>] (demonstrating that sufficient access to transportation improves economic outcomes on an individual and societal level).

103. *See* SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 9 (referencing research that has highlighted barriers low income-individuals face when receiving housing or relief aid, including barriers in accessing transportation, child care, and work schedules).

104. *See id.* at 10 (citing Marritz, 2012, as cited in Subaiya et al., 2014).

105. *See, e.g.*, Elizabeth Jordan & Amy Javernick-Will, *Indicators of Community Recovery: Content Analysis and Delphi Approach*, 14 NAT. HAZARDS REV. 21, 26 (2013) (emphasizing that infrastructure recovery—such as rebuilding schools, water systems, and electricity—is an important first step in recovery before local businesses and private citizens feel it is safe to return).

106. *See* OFF. OF POL'Y DEV. AND RSCH., U.S. DEP'T OF HOUS. & URB. DEV., *supra* note 75, at 8 (“A number of studies have demonstrated that low-income and minority neighborhoods have fewer and smaller retail stores, such as supermarkets, banks, and drug stores, than higher-income neighborhoods.”).

107. *Id.*

108. *Cf. Replacing Personal Documents After a Natural Disaster*, TEX. A&M AGRILIFE EXTENSION (Sept. 27, 2019), <https://texashelp.tamu.edu/wp-content/uploads/2019/10/replacing-personal-documents-after-a-fire-or-disaster.pdf> (emphasizing the importance of replacing and retaining identification after a natural disaster and listing the numerous organizations charged with document replacements).

increase the financial burden on victims and their families.<sup>109</sup> In turn, this can slow a community's post-disaster recovery.<sup>110</sup>

In the context of natural disasters, not having a driver license can impact residents' ability to evacuate and create barriers to recovery.<sup>111</sup> Not having a convenient and legal means of transportation hinders Texans' ability to plan, evacuate, and recover.<sup>112</sup> Providing a conditional driver permit option to victims of natural disaster would improve pre- and post-disaster outcomes.<sup>113</sup> Conditional driver's permits would increase evacuation planning and provide a means to get around when navigating the aftermath of a natural disaster.<sup>114</sup> The easier people can get aid, the sooner they can get back into their homes, back to work, and back to living in society.<sup>115</sup> Texas should commit to increasing the safety and

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109. See Huber, *supra* note 77 (affirming that access to services during a natural disaster also increases public safety. For example, thirty-five additional deaths during Hurricane Harvey were caused in part by isolation from necessary medical services).

110. See Jordan & Javernick-Will, *supra* note 105, at 26 (concluding that successful community recovery is dependent on social, environmental, economic, and infrastructure recovery).

111. See SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 3 (recognizing that vulnerable groups—especially those without identification—may have greater risk of negative experiences during and after a natural disaster, including lower likelihood of receiving warnings of disasters, less resources to evacuate, and lower availability of post-disaster aid).

112. See *id.* at 14 (affirming the need for easier access to personal identification to ensure access to transportation for people of low socioeconomic status as part of disaster planning and preparedness).

113. See, e.g., *Occupational Driver License*, TEX. DEP'T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/occupational-driver-license> [<https://perma.cc/4EYN-TL9J>] (defining an occupational driver license—also called an essential need license—as a special type of conditional license issued when an individual's driver license is suspended, revoked, or denied for certain offenses. Further detailing the requirements for obtaining an essential need license which includes submitting several types of personal documents, demonstrating that obtaining a conditional license is not currently easily accessible to victims of natural disasters who have lost the requisite paperwork).

114. Cf. FEMA, *supra* note 99, at 16 (understanding the difficulty with travel during disasters and the responsibility on healthcare facilities to provide information such as evacuation routes, accessible transportations for evacuation, shelters, and temporary housing locations. Adding conditional driver's permits will help the healthcare facilities accomplish their evacuation planning with more ease).

115. See *id.* (emphasizing the importance of planning teams developing a projected timeline of "action items" for relief aid to help survivors move out of shelters and return to some level of normalcy).

well-being of its residents in the event of a disaster.<sup>116</sup> Thus, taking steps to ensure transportation access for victims of natural disasters is a prudent policy.<sup>117</sup>

## 2. Texas Experiencing Homelessness

Texas has an estimated 27,229 individuals experiencing homelessness on any given day.<sup>118</sup> Homelessness is often accompanied by loss of documents, preventing access to a driver's license.<sup>119</sup> Most unhoused individuals do not possess the documentation required to obtain a traditional license.<sup>120</sup> The conditional driver permit will allow Texans who are homeless and do not already have a driver's license, to drive without criminalizing their activity.<sup>121</sup> Additionally, the permit can serve as a form of identification that will allow homeless Texans to gain access to housing, employment, and other means of self-sustainability.<sup>122</sup>

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116. See generally Kelli Weldon, *Texas HHS Urges Long-Term Care Facilities to Update Hurricane Preparedness Plans*, TEX. HEALTH AND HUMAN SERV. (May 27, 2021), <https://www.hhs.texas.gov/news/2021/05/texas-hhs-urges-long-term-care-facilities-update-hurricane-preparedness-plans> [https://perma.cc/CUF4-K83Q] (urging that a complete emergency preparedness and response plan includes up-to-date information about evacuation locations, transportation plans, responsibilities of relief workers, continuation of care for residents, and communication procedures).

117. See SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *supra* note 50, at 3 (“Therefore, a prudent policy priority might be to take steps to ensure access to transportation for people of low [socioeconomic status] as part of disaster planning and preparedness.”).

118. *Texas Homelessness Statistics*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/homelessness-statistics/tx/> [https://perma.cc/584E-B2JR] (breaking down Texas's homelessness statistics by families experiencing homelessness, veterans, and young adults).

119. See, e.g., SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., *HELPING INDIVIDUALS EXPERIENCING HOMELESSNESS OBTAIN IDENTIFICATION Documents 1* (2022), [https://hhrctraining.org/system/files/paragraphs/download-file/file/2022-02/February\\_2022\\_Webinar\\_Objectives\\_Bios.pdf](https://hhrctraining.org/system/files/paragraphs/download-file/file/2022-02/February_2022_Webinar_Objectives_Bios.pdf) [https://perma.cc/YMK9-LJVE] (identifying that loss of identifying documents creates a serious impediment to regaining self-sufficiency).

120. See Teresa Wiltz, *Without ID, Homeless Trapped in Vicious Cycle*, PEW (May 15, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/15/without-id-homeless-trapped-in-vicious-cycle> [https://perma.cc/BT56-WE7M] (giving up trying to get an ID because of the documentary requirements).

121. See TEX. TRANSP. CODE ANN. §521.457 (making unlicensed driving an offense, whether the driver is homeless or otherwise).

122. See Gregory Zlotnick, *Picking the Lock: A Proposal for a Standard Fee Waiver in Texas for Identification Documents*, 22 SCHOLAR: ST. MARY'S L. REV. & SOC. JUST. 345, 367 (2020) (supporting expanded access for homeless, low income, and elderly individuals to administrative documents and reduced fees required for securing an ID).

Individuals experiencing homelessness often lose their licenses and other forms of personal identification.<sup>123</sup> Many of these Texans experience regular theft of their personal possessions, in shelters or on the street, or they simply lose personal documents.<sup>124</sup> Homeless individuals include anyone residing in an unsheltered location such as cars, streets, parks, and sheltered locations, including emergency and transitioning shelters, hotels, motels, and “doubling up” with family or friends.<sup>125</sup> In 2019, the population of homeless Texans grew to an estimated 25,848 from 23,122 in 2016.<sup>126</sup> Of those, 1,355 were unaccompanied young adults (aged 18-24), and 3,511 were individuals experiencing chronic homelessness.<sup>127</sup> There is also a significant overlap between homeless Texans and formerly incarcerated persons.<sup>128</sup>

Many formerly incarcerated persons “couch surf,” live with family or friends, or in a car.<sup>129</sup> Rising housing costs and loss of income also lead to more evictions.<sup>130</sup> Since the start of the COVID-19 Pandemic, over

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123. See Wiltz, *supra* note 120 (mentioning lost documentation as a source of difficulty in obtaining ID).

124. See *Why Some Homeless Choose the Streets Over Shelters*, NPR (Dec. 6, 2012, 1:00 PM), <https://www.npr.org/2012/12/06/166666265/why-some-homeless-choose-the-streets-over-shelters> [<https://perma.cc/Z5S7-QM3P>] (recognizing how the homeless struggle with theft of their personal belongings); see also Wiltz, *supra* note 120 (pointing to how most homeless individuals struggle with theft of their personal belongings).

125. See *Texas Homelessness Statistics*, U.S. COUNCIL INTERAGENCY COUNCIL ON HOMELESSNESS, <https://web.archive.org/web/20201119142430/https://www.usich.gov/homelessness-statistics/tx> [<https://perma.cc/6W97-YT7Q>] (reporting from the 2017-2018 school year “56,174 students were unsheltered, 19,797 were in shelters, 19,942 were in hotels/motels, and 135,392 were doubled up).

126. Megan Menchaca, *Everything You Need to Know About Homelessness in Texas*, TEX. TRIB. (Dec. 23, 2019, 12:00 AM), <https://www.texastribune.org/2019/12/23/homeless-texas-explain-austin-greg-abbott/> [<https://perma.cc/CX8N-6MYK>] (mentioning the increase of homelessness in Texas in recent years, specifically in San Antonio and Austin).

127. *Texas Homelessness Statistics*, *supra* note 125.

128. Interview with Brettney Moore, Att’y, Legal Aid of Nw. Tex., in Fort Worth, Tex. (Sept. 25, 2020) (estimating that 80 percent or more of formerly incarcerated individuals are homeless).

129. Phil Wilson, *Couch Surfing the Waves of American Poverty*, CURRENT AFFAIRS (Nov. 29, 2020), <https://www.currentaffairs.org/2020/11/couch-surfing-the-waves-of-american-poverty> [<https://perma.cc/72DD-USAJ>] (providing information about the ‘couch surfing’ phenomenon present in the homeless community).

130. See Juan Pablo Garnham, *More Texas Renters are Struggling to Find Affordable Housing, New Report Finds*, TEX. TRIB. (Jan. 31, 2020, 12:00 AM), <https://www.texastribune.org/2020/01/31/texas-renters-struggle-find-affordable-housing-2020->

137,000 individuals received eviction filings within Houston, Dallas, and Fort Worth city limits.<sup>131</sup> As the economic fallout of COVID-19 continues, Texans can expect to experience more evictions which often lead to the loss of documentation necessary to obtain a driver's license.<sup>132</sup>

Barriers preventing the homeless population from driving include having to produce multiple forms of identification, such as a social security card, birth certificate, or proof of residency, such as a utility bill.<sup>133</sup> In addition to the regular license programs, there are separate avenues for the homeless population to access a driver license.<sup>134</sup> An individual experiencing homelessness can obtain a driver license only after overcoming various identification hurdles.<sup>135</sup> Individuals may obtain a court declaration of their identity, which they may use to start the identification process at DPS.<sup>136</sup> DPS, however, requires fingerprints along with the court identification declaration, and most fingerprinting service providers require a photo ID.<sup>137</sup> Some nonprofit shelters assist homeless individuals secure identification if they can provide supporting identification.<sup>138</sup> When paired with other formal supporting documents, homeless individuals can use a shelter ID to obtain a driver license.<sup>139</sup>

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harvard-report/ [https://perma.cc/YUE9-JLBU] (pointing to the rising housing costs effect on Texas households).

131. See *Eviction Statistics*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/> (last updated Apr. 9, 2022) [https://perma.cc/24F3-MGT3] (recording the number of individuals who have received eviction citations since the beginning of the COVID-19 pandemic).

132. See Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> [https://perma.cc/979L-HQBD] (noting that escalating evictions are attributable to the pandemic).

133. See Wiltz, *supra* note 120 (enumerating documents necessary to obtain identification).

134. See *id.* (identifying alternative programs for homeless individuals to obtain an ID).

135. See *id.* ("They need this document or that document, and they give up.")

136. See TEX. DEP'T OF PUB. SAFETY, WHAT IT TAKES TO APPLY FOR A DL OR ID CARD 2 (2020), <https://www.dps.texas.gov/internetforms/Forms/DL-57.pdf> [https://perma.cc/4D85-98ZA] (noting a court order is an acceptable form of secondary identification).

137. See Interview with Brettney Moore, *supra* note 128 (identifying an additional barrier homeless individuals must contend with).

138. See Wiltz, *supra* note 120 (highlighting another process designed to help the homeless obtain ID).

139. See *id.* (citing a novel approach where homeless shelter documentation confirming identity is sufficient to secure formal identification); see also TEX. DEP'T OF PUB. SAFETY, *supra* note 136 (accepting shelter ID's as a supporting identification document).

However, alternative license options may not be available for Texans without a criminal record.<sup>140</sup> People who leave state jails and are homeless have access to a Personal Inmate Identification Card, colloquially called a “Jail ID”<sup>141</sup> that DPS accepts as a supplemental form of ID, but alone is insufficient to complete a standard driver license application.<sup>142</sup> Like other alternatives, the Jail ID program fails in practice.<sup>143</sup> Most inmates leaving prison first transfer through a county jail, where Jail ID programs are usually not available.<sup>144</sup> Thus, most individuals leaving incarceration do not receive a Jail ID and are required to return to a prison to obtain one.<sup>145</sup>

First, prisons require a form of identification before issuing Jail IDs to parolees, which the parolee is unlikely to have.<sup>146</sup> Second, an unlicensed individual traveling back to prison requires reliance on a legal driver, or, as is more likely the case, the individual illegally drives.<sup>147</sup> After homeless individuals overcome the hurdles to obtain required identification documents, DPS clerks can create a final, insurmountable obstacle by refusing to accept the alternative forms of identification.<sup>148</sup> Some DPS clerks are unaware of changes to DPS requirements and turn away applicants who have appropriate documentation.<sup>149</sup>

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140. See *Criminal History Review Process*, TX DEP’T OF MOTOR VEHICLES, <https://www.txdmv.gov/dealers/criminal-history-review-process> [<https://perma.cc/NB8E-R862>] (restricting access to identification based on the type, age, and severity of crime).

141. See Jennifer Pero, *ID Cards Behind Bars*, AM. CITY & CNTY. (Apr. 1, 2004), <https://www.americacityandcounty.com/2004/04/01/id-cards-behind-bars/> [<https://perma.cc/NN2S-LCPB>] (describing the Texas Department of Criminal Justice’s Datacard system allowing instant issuance of photographic identification cards).

142. See TEX. DEP’T OF PUB. SAFETY, *supra* note 136 (counting the Inmate ID card as a permissible form of identification, but still requiring at least two other acceptable forms of identification to secure a Texas driver license or identification card).

143. See Pero, *supra* note 141 (counting only thirty-nine operational Datacard terminals in the entire state of Texas).

144. See Interview with Brettney Moore, *supra* note 128 (Providing that not all jails provide Jail ID cards for their inmates).

145. See *id.* (noting the difficulty it is for released prisoners to obtain an ID).

146. See *id.* (mentioning the initial problems of obtaining a Jail ID card).

147. See *id.* (acknowledging additional issues that the Jail ID program has).

148. See *id.* (discussing the possibility of further obstacles being placed on the path to obtaining a driver license).

149. See *id.* (noting that without knowledge of new DPS requirements, employees at DPS offices are turning away individuals that would otherwise be able to obtain a driver license).

Access to a driver license would enable the homeless population to break out of cycles of poverty and obtain independence.<sup>150</sup> Like many unlicensed Texans, homeless individuals illegally drive if given access to a vehicle.<sup>151</sup> Driving illegally can expose the homeless to both criminal and civil penalties, making the already difficult task of achieving self-sufficiency more challenging.<sup>152</sup> Obtaining a photo ID is one of the threshold requirements for employment, housing, and access to government benefits.<sup>153</sup> Inability to access transportation is often an insurmountable barrier to independence, particularly for the poor and homeless.<sup>154</sup>

The largest benefit to this group, however, is the conditional driver permit's secondary function as a government identification card.<sup>155</sup> Access to government identification certifying a picture, name, and date of birth (DOB) would remove barriers to housing and food assistance, enabling this population to gain self-sufficiency.<sup>156</sup> Lack of identification cards makes breaking the cycle of chronic homelessness virtually impossible.<sup>157</sup> Lack of IDs shuts out homeless individuals from "federal, state, and county buildings, where social services agencies" are located.<sup>158</sup> "It makes it much harder to get a job, find a place to live, open a bank account, get food stamps and disability benefits—or in some

150. See Wiltz, *supra* note 120 (enabling impoverished individuals to seek services typically barred without a valid ID, conceding that in the current framework "[y]ou need ID to get the ID").

151. See *Report: Beware of Unlicensed Drivers*, ABC NEWS (Jan. 7, 2006), <https://abcnews.go.com/Travel/story?id=118913&page=1> [https://perma.cc/8TQN-9XSU] (understanding data confirming the total number of unlicensed drivers on the road is lacking, available data shows the proportion of unlicensed drivers involved in traffic accidents is significant).

152. See Langford, *supra* note 22 ("It's a hazard of the impoverished.").

153. See Wiltz, *supra* note 120 (approximating 50% of those lacking ID, but needing housing, medical, and food services were denied benefits).

154. See SIMEK & GEISELBRECHT, *supra* note 48, at 8 (quantifying that in the state of Texas ninety-three percent of the population relies on personal automobiles for primary transportation).

155. See *id.* (quantifying that in the state of Texas ninety-three percent of the population relies on personal automobiles for primary transportation).

156. See Wiltz, *supra* note 120 (allowing access to food pantries, shelters, medical care, financial services, WIC, and other benefits).

157. See *id.* (describing the difficulty of obtaining self-sufficiency without access or ownership of identification cards).

158. *Id.*

instances, even stay at a homeless shelter.”<sup>159</sup> Individuals experiencing homelessness would benefit if less strenuous documentation, such as letters and affidavits from established service organizations, were acceptable to verify their identity.<sup>160</sup>

### 3. Family Violence Victims

Family violence is prevalent in all communities and affects all Texans “regardless of age, socioeconomic status, sexual orientation, gender, race, religion, or nationality.”<sup>161</sup> Texas Department of Public Safety reporting shows 196,902 family violence incidents involving 211,536 victims occurred in 2019.<sup>162</sup> “Assaults accounted for 95.4% of all” reported incidents.<sup>163</sup> The twenty-five to twenty-nine year old age group had the largest percentage of victims that same year.<sup>164</sup> Many had to flee abusive partners and homes, which increased the risk of losing access to a driver license.<sup>165</sup> By relaxing the documentary requirements for identity verification to secure a Texas conditional driver permit, survivors of family violence will gain freedom from abusive partners and the ability to restart their lives.<sup>166</sup>

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159. *Id.*

160. *See id.* (“[I]n 2004, 54 percent of homeless people without photo ID were denied access to shelters or housing services, 53 percent were denied food stamps, and 45 percent were denied access to Medicaid or other medical services”).

161. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE (2020), [https://assets.speakcdn.com/assets/2497/domestic\\_violence-2020080709350855.pdf?1596811079991](https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596811079991) [<https://perma.cc/87E9-46ZQ>].

162. TEX. DEP’T OF PUB. SAFETY, CRIME IN TEXAS 2019 55 (2019), <https://www.dps.texas.gov/sites/default/files/documents/crimereports/19/cit2019.pdf> [<https://perma.cc/5RZK-5HJT>].

163. *Id.* at 56.

164. *See id.* (counting over 35,000 victims in this age group of the 211,536 total incidents of family violence).

165. *See Safety When Preparing to Leave an Abuser*, WOMENSLAW.ORG (Oct. 2, 2017), <https://www.womenslaw.org/about-abuse/leaving-abusive-relationship> [<https://perma.cc/5X89-Y2ES>] (identifying the critical nature of identification, especially a driver’s license, as well as the need to hide these items from the abuser).

166. *See Wiltz, supra* note 120 (highlighting the public benefits an individual without ID will likely be unable to get); *but see Safety When Preparing to Leave an Abuser, supra* note 165 (urging individuals fleeing abusive homes to secure passports, social security cards, green cards, marriage licenses, and birth certificates).

The effects of family violence are far reaching and often “cause long-term physical and mental health problems.”<sup>167</sup> Many victims suffer from depression, anxiety, and low self-esteem because of abuse.<sup>168</sup> On average, survivors require seven attempts before leaving an abuser permanently.<sup>169</sup> Typically, the first step victims face on the road to leaving an abusive relationship is acknowledging their self as abused.<sup>170</sup> After acknowledging abuse, advocacy groups advise victims to begin collecting important documents prior to escape.<sup>171</sup> However, for many victims, these documents are difficult to secure or are often lost when fleeing.<sup>172</sup>

Considering the current COVID-19 pandemic, victims are susceptible to an even greater risk of abuse as they quarantine at home with their partners.<sup>173</sup> “After stay-at-home orders were issued across Texas in March” 2020, emergency calls surged in metropolitan areas.<sup>174</sup> “The Houston Area Women’s Shelter reported a 40 percent” increase in requests for shelter within the first week of the stay-at-home order.<sup>175</sup> Aggravated family assaults were reported to have increased by 158

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167. *Effects of Violence Against Women*, OFF. ON WOMEN’S HEALTH, <https://www.womenshealth.gov/relationships-and-safety/effects-violence-against-women> (last updated Jan. 30, 2019) [<https://perma.cc/N3X7-2V9V>].

168. *See id.* (listing the effects of violence).

169. *See Why It’s so Difficult to Leave*, WOMEN AGAINST ABUSE, <https://www.womenagainstabuse.org/education-resources/learn-about-abuse/why-its-so-difficult-to-leave> [<https://perma.cc/XPQ6-N93D>] (recognizing that victims of abuse often return to an abusive relationship after leaving).

170. *See 7 Stages of Leaving an Abusive Relationship*, THE WOMEN’S SAFE HOUSE, <https://twsh.org/community-education/stages-of-leaving-a-dv-relationship/> [<https://perma.cc/BE57-UWWL>] (necessitating the recognition of being abused is the starting point to abandoning an abusive relationship).

171. *See Safety When Preparing to Leave an Abuser*, *supra* note 165 (“Social Security cards, passports, green cards, medical records, insurance information, birth certificates, marriage license, wills, welfare identification information and copies of any court orders.”).

172. *See id.* (clarifying that documents may be lost because the abusive partner prevents access to these documents as a means of exerting control, much like withholding money).

173. *See Arielle Avila & Cat Cardenas, Domestic Violence Calls Spike in Texas Cities, While Falling in Rural Areas*, TEX. MONTHLY (May 19, 2020), <https://www.texasmonthly.com/news/domestic-violence-pandemic/> [<https://perma.cc/H3NJ-VNJW>] (“COVID-19 is just another tool that abusers can use to exercise their power and control. They can use it to isolate and coerce their victims and use this pandemic to their advantage to manipulate the victim into thinking that they don’t have any resources available to them.”).

174. *Id.*

175. *Id.*

percent in Harris County from February to March of 2020.<sup>176</sup> In Dallas, officers reported a twenty percent increase in domestic violence reports from February to March.<sup>177</sup> The San Antonio Police Department noted an eighteen percent increase in domestic violence reports compared to March of last year.<sup>178</sup>

Family violence victims in rural communities face a particularly unique set of challenges compared to their urban counterparts.<sup>179</sup> Rural women and children have less access to domestic violence shelters, healthcare providers, mental health services, law enforcement, and court officials.<sup>180</sup> Geographical isolation is one of the most powerful tools rural abusers have over their victims.<sup>181</sup> According to a study from the University of Iowa College of Public Health, “[o]ver 25% of women in small rural and isolated areas live more than 40 miles from the closest Intimate Partner Violence Program, compared with less than 1% of women living in urban areas.”<sup>182</sup>

The geographical isolation women in rural Texas communities continue to face emphasizes the need for victims to have access to legal driving privileges.<sup>183</sup> For victims to access violence shelters, healthcare

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176. See Hannah Dellinger, *Houston to Help Prevent Domestic Violence During COVID-19*, HOUS. CHRON. (Apr. 22, 2020), [https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-to-help-prevent-domestic-violence-during-15219710.php?t=792eaec6e7&fbclid=IwAR0pSPVwyEiUX0yO\\_3zZzvnXit8rOpnKMhkzQbXO4s5b86feceMo-FKvrX8#](https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-to-help-prevent-domestic-violence-during-15219710.php?t=792eaec6e7&fbclid=IwAR0pSPVwyEiUX0yO_3zZzvnXit8rOpnKMhkzQbXO4s5b86feceMo-FKvrX8#) [<https://perma.cc/J8UJ-EAMP>] (describing Houston’s targeted efforts to assist women who experience domestic violence during the pandemic).

177. See Avila & Cardenas, *supra* note 173 (highlighting the power structures in a domestic violent relationship and why it is even more difficult to escape the relationship while in a pandemic).

178. See *id.* (comparing different rates of calls for domestic violence in three major cities in Texas).

179. See Violence and Abuse in Rural America, RURAL HEALTH INFO. HUB, <https://www.ruralhealthinfo.org/topics/violence-and-abuse> [<https://perma.cc/J6NU-4AHC>] (last updated Mar. 26, 2021) (“Their effects in rural America are often exacerbated by limited access to support services for victims, family connections with people in position of authority, distance, and geographic isolation.”).

180. See *id.* (emphasizing the long list of barriers that come with living in rural areas for domestic violence survivors).

181. See *id.* (providing insight on the struggle correlated between victims of domestic violence and isolation due to geographic location).

182. Corinne Peek-Asa et al., *Rural Disparity in Domestic Violence Prevalence and Access to Resources*, 20 J. WOMEN’S HEALTH 1743 (2011).

183. See *id.* (“Access to health, prevention, and protection services in the United States is disparate based on population density: rural women have less access than urban women to domestic

providers, mental health services, law enforcement, and court officials, it is essential that victims can drive lawfully.<sup>184</sup> As mentioned above, because these victims generally do not have access to the required documentation to obtain a driver license, a Conditional Driver Permit would allow these women to gain freedom from their abusers and time to collect the required documentation to apply for a traditional Texas driver's license.<sup>185</sup>

Undocumented immigrants who are victims of family violence are exposed to a higher risk of danger since they do not possess documentation.<sup>186</sup> A national survey conducted of law enforcement officers, judges, and prosecutors discovered that—amid increasingly hostile federal immigration policies—immigrants have been more reluctant to report domestic violence, human trafficking, and sexual assault.<sup>187</sup> Prosecutors report that domestic violence has become more difficult to investigate and prosecute, making it more difficult for public safety officials to do their jobs and leaves victims in dangerous circumstances.<sup>188</sup>

Fleeing domestic violence or sexual abuse can be a sudden and dramatic step for victims.<sup>189</sup> A conditional driver permit option would allow victims of domestic violence access to safe and legal driving

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violence shelters, physical and mental health professionals, law enforcement and judicial personnel.”).

184. See Antoinette Sedillo Lopez, *Licenses Help Violence Victims in Several Ways*, ALBUQUERQUE J. (Jan. 11, 2015, 12:02 AM), <https://www.abqjournal.com/524332/licenses-help-violence-victims-in-several-ways.html> [<https://perma.cc/6BZA-GCEL>] (“Having a driver’s license has saved people’s lives. The license has done this in a number of ways, because an individual can use it: to get a court order of protection against an abuser; to cash a check; to open a bank account. . . . to drive away from a violent partner”).

185. See *id.* (describing the difficulties a domestic violence survivor has without a license, such as the inability to drive away from a violent partner additionally making the assertion that a license would help fix that).

186. See *id.* (discussing the overall dangers of not having a license and how it is an important tool to allow victims to flee from their violent partners).

187. See Ching, *supra* note 15, at 6 (“82% of prosecutors reported that domestic violence has become more difficult to investigate or prosecute.”)

188. See *id.* (conversing about the dangers of domestic violence for immigrants who do not have a license and how it has gotten more difficult to help those immigrants).

189. See Lopez, *supra* note 184 (“Having the ability to access resources and opportunities is paramount for immigrant survivors and their children.”).

options.<sup>190</sup> A conditional driver permit would reduce the previously discussed obstacles victims of family and domestic violence face without access to legal driving options.<sup>191</sup> By providing the means to drive effectively and legally, such a permit would allow victims to escape a potential life-threatening situation and help rebuild their lives.<sup>192</sup> This, in turn, can provide economic benefits and increase public safety in affected areas.<sup>193</sup>

#### 4. *Immigrant Families*

A recent report from the American Immigration Council reported that one in six Texans, or 4.9 million residents, are immigrants.<sup>194</sup> While thirty-eight percent of those immigrants, or 1.9 million, are U.S. citizens, the vast majority are not.<sup>195</sup> The United States Department of Homeland Security (“DHS”) reported that in 2019, approximately 990,000 Texans were lawful permanent residents who were eligible to apply for citizenship.<sup>196</sup> Another 106,090 Texans were Deferred Action for Childhood Arrivals (“DACA”) recipients as of March 2020.<sup>197</sup> Recent

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190. *See id.* (implores that a driver’s license should be given to immigrants to remove the barriers hindering them from acquiring help).

191. *See* Ching, *supra* note 15 (“Allowing all drivers to obtain licenses ensures all people can access basic necessities and contribute to the economy without living in fear.”)

192. *See* Lopez, *supra* note 184 (describing how an immigrant is in a cage with invisible bars when they are in abusive relationships with no license).

193. *See* Ching, *supra* note 15 (explaining how providing the option to obtain a license can cause state revenue to increase).

194. *See* AM. IMMIGR. COUNCIL, IMMIGRANTS IN TEXAS 1 (2020), [https://web.archive.org/web/20201018203304/https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants\\_in\\_texas.pdf](https://web.archive.org/web/20201018203304/https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_texas.pdf) (providing statistics about immigrants, such as those who have become citizens and those who are undocumented in Texas).

195. *See id.* (showing the statistics about immigrants who were naturalized in 2018, the point the American Immigration Council is trying to make with these numbers, is to demonstrate that immigrants are an “integral part of Texas’s diverse and thriving communities.”)

196. *See* BRYAN BAKER, U.S. DEP’T OF HOMELAND SEC., ESTIMATES OF THE LAWFUL PERMANENT RESIDENT POPULATION IN THE UNITED STATES AND THE SUBPOPULATION ELIGIBLE TO NATURALIZE: 2015-2019 (2019), [https://www.dhs.gov/sites/default/files/publications/lpr\\_population\\_estimates\\_january\\_2015\\_-\\_2019.pdf](https://www.dhs.gov/sites/default/files/publications/lpr_population_estimates_january_2015_-_2019.pdf) [<https://perma.cc/94BG-CGYD>] (finding that 34.9 million immigrants who entered the United States in 1980 or later became LPR’s by January 1, 2019.).

197. *See* Jorge Ramos, *DACA Ruling Personal for West Brook, Lamar Grad Guadalupe Gomez*, BEAUMONT ENTER. (June 18, 2020), <https://www.beaumontenterprise.com/news/article/Guadalupe-Gomez-a-local-DACA-member->

data from the Migration Policy Institute estimates that 1.73 million undocumented immigrants are residing in Texas.<sup>198</sup> Out of this group, 94% (1,626,000), are at least sixteen years old.<sup>199</sup> Additionally, immigrants who are currently in the process of affirmatively seeking relief such as visa extensions, asylum claims, and those seeking an adjustment of status—including international students—may not be included in these figures.<sup>200</sup>

Additionally, as a border state, Texas receives several refugees every year.<sup>201</sup> According to the U.S. Department of State Bureau of Population, from October 2020 through April 2021, a total of 186 refugees arrived in Texas.<sup>202</sup> Of these, Afghan refugees are on top with a total 20 refugees from that time frame.<sup>203</sup>

During the months of July 2021 through October 2021, Texas received an increase in Haitian refugees.<sup>204</sup> Political instability and natural disasters are among factors that contributed to the need for Haitians to

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cherishes-15351107.php [https://perma.cc/LQF3-KPJR] (“... Texas was home to 16% of the 643,56 total DACA recipient as of March 2020.”)

198. See *Profile of the Unauthorized Population: Texas*, MIGRATION POL’Y INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/TX> [https://perma.cc/AW2T-6W8D] (providing statistics of the immigrant population from different countries. These statistics are an analysis of the U.S. Census Bureau Data).

199. See *id.* (providing statistics of immigrants by age groups).

200. See Maria D. Castillo, Comment, *!Si Se Puede! An Overview of State Initiatives Addressing the Urgent Need for Driver Licenses for Undocumented Immigrants and Why the Time for Change in Texas is Now*, 17 SCHOLAR: ST. MARY’S L. REV. ON RACE & SOC. JUST. 445 (2015) (walking through different immigrant categories that of which may be excluded from statistics since they are not Legal Permanent Residents).

201. See U.S. DEP’T OF STATE BUREAU OF POPULATION, REFUGEES AND MIGRATION, REFUGEE ARRIVALS BY STATE AND NATIONALITY, 8–9 (2021), <https://cis.org/sites/default/files/2021-05/Refugee%20Arrivals%20by%20State%20and%20Nationality%20as%20of%2030%20Apr%202021.pdf> [https://perma.cc/WTU9-G89K] (showing the statistics of refugee arrivals by the states and where the refugees are from).

202. See *id.* (conveying data regarding refugees in Texas).

203. See *id.* (showing month-by-month how many refugees were from Afghanistan).

204. See Uriel J. García & Jolie McCullough, *Thousands of Haitian Migrants Fleeing Disaster and Unrest Seek Asylum at Del Rio Bridge*, TEX. TRIB., (Sept. 17, 2021, 7:00 PM) <https://www.texastribune.org/2021/09/17/texas-border-del-rio-migrants/> [https://perma.cc/FK8B-QEYH] (referring to the arrival of migrants at the Del Rio International Bridge during the month of July after political turmoil emerged in Haiti).

seek refuge.<sup>205</sup> “Political violence and instability have plagued Haitian politics since gaining its independence.”<sup>206</sup> The governing apparatus has maintained a tense state with the people of Haiti throughout the nineteenth century.<sup>207</sup> The way state power operates produces structural conditions that lead to extreme vulnerabilities and worsening of economic conditions.<sup>208</sup> These economic conditions continue to ravage the nation.<sup>209</sup> The dominant class continues to benefit to the detriment of the poor.<sup>210</sup>

On August 14, 2021, a 7.2-magnitude earthquake struck the southern region of Haiti.<sup>211</sup> Tropical Storm Grace brought extremely heavy rains and flooding, and “[h]ave caused additional damage to areas where people are already struggling with access to basic services, such as medical care.”<sup>212</sup> According to The Haitian Civil Protection General Directorate (DGPC), 137,000 families were affected by the earthquake.<sup>213</sup> Nearly 61,000 homes were destroyed, and more than 76,000 homes were damaged, leaving thousands of people without

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205. *See id.* (citing the assassination of Haitian President Jovenel Moise, a 7.2-magnitude earthquake, and violence ravaging the country as reasons why migrants are seeking asylum in the United States).

206. Jean Max Charles, *The Cost of Regime Survival: Political Instability, Underdevelopment, and (Un)natural Disasters in Haiti Before the 2010 Earthquake*, 52 J. BLACK STUD. 465, 473 (2021) (summarizing the issues that have permeated Haitian history and have led to long term vulnerability for its people).

207. *See id.* (noting that the relationship between the government and the people of Haiti is contentious and has thus led to turmoil).

208. *See id.* at 477 (describing how the relationship between power, stability and its maintenance produces socioeconomic vulnerabilities).

209. *See id.* (highlighting the fact that the failure to establish new systems of democratic power led to the further destruction of the nation).

210. *See id.* at 479 (pointing out the injustices that arise from political turmoil and who benefits from inequality).

211. *See Haiti Earthquake: Getting Help to People Injured and Displaced by the Disaster*, DOCTORS WITHOUT BORDERS, (Aug. 18, 2021), <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/haiti-earthquake-getting-help-people-injured-and-displaced-disaster> [<https://perma.cc/Y9WV-CQWD>] (detailing the horrors left behind by the earthquake’s magnitude, including but not limited to thousands of individuals being injured, mass displacement and casualties).

212. *See id.* (elaborating on the complications that arose from Tropical Storm Grace in relief and rescue efforts).

213. *See id.* (approximating the number of families in affected regions that require humanitarian assistance).

shelter.<sup>214</sup> Earthquake, hurricanes, and floods have killed more than 220,000 Haitians, injured thousands, and left about 1.5 million people homeless.<sup>215</sup>

Thousands of Haitians are making the journey to the United States-Mexico border from Chile and arriving at the international bridge in Del Rio, Texas, to apply for asylum.<sup>216</sup> According to the Homeland Security Secretary, between September 9 and September 24, 2021, an estimated 15,000 to 30,000 migrants had crossed Del Rio.<sup>217</sup> Thousands of people arriving at the border are being denied the ability to apply for asylum.<sup>218</sup> In 2017, the Trump Administration revoked temporary protected status (TPS) for Haitian migrants.<sup>219</sup> Temporary protected status is a form of legal immigration status provided to migrants from countries impacted by civil unrest or natural disasters.<sup>220</sup>

In Texas, immigrants account for 37% of the state's construction industry, 28% of the administrative and support industry and 27% of the State's manufacturing industry.<sup>221</sup> In 2018, at least 1/5 of business owners were immigrants in the Austin, Dallas, Houston, and San Antonio metropolitan areas.<sup>222</sup> Many immigrants are essential workers that are the lifeline of the Texas economy and kept the state afloat during

214. *See id.* (revealing the deadly extent and massive damage caused by the back-to-back natural disasters).

215. *See* Marisa Peñaloza, *Haiti Faces Disasters and Chaos. Its People Are Most Likely to Be Denied U.S. Asylum*, NPR (Oct. 16, 2021, 7:00 AM), <https://www.npr.org/2021/10/16/1043458530/haitians-u-s-asylum-racist> [<https://perma.cc/6AJS-FYQX>] (emphasizing that the country's development on an island increases its risk and vulnerability in experiencing intense damage from natural disasters).

216. *See id.* (chronicling the experiences of asylees traveling across continents for the hope of gaining asylum in the United States).

217. *See id.* (citing the confusion surrounding the number of migrants arriving at the Texas border seeking asylum).

218. *See id.* ("Haiti is the country with the highest rate of asylum denial in the United States, according to data from the Justice Department. As reported by the Associated Press, from October 2018 through June 2021, of 4,202 applications, only 194 were granted during this period.")

219. *See id.* (defining temporary protected status as a form of legal immigration status provided to migrants from countries impacted by violent unrest or natural disasters).

220. *See id.* (clarifying the meaning of TPS and its history in the United States).

221. *See* AM. IMMIGR. COUNCIL, *supra* note 194, at 3 (summarizing the largest shares on immigrant workers in various industries within the state of Texas).

222. *See id.* at 4 (showing the powerful economic impact of immigrant entrepreneurs in Texas).

economic hardship.<sup>223</sup> As such, providing immigrant workers with the lawful authority to drive is imperative because these workers contribute significantly to the Texas economy.<sup>224</sup> Some states that enabled undocumented drivers to obtain licenses report when more people enter the workforce, there are increases in economic activity and tax revenue.<sup>225</sup> In addition to employees, 29% of self-employed Texans in 2018 were immigrants that generated roughly \$10.8 billion in business income.<sup>226</sup> Immigrants in the state of Texas—whether lawfully present or not—contribute tens of billions of dollars in federal, state, and local taxes.<sup>227</sup>

Immigrants are part of the fabric of many communities in Texas, but under current law many are denied the right to lawfully drive to the grocery store or to take their children to school.<sup>228</sup> Research has shown that 4.4 million U.S. citizens under the age of 18 lived with at least one undocumented parent as of 2018.<sup>229</sup> Access to early education can “narrow achievement gaps, increase access to health-care screenings, improve nutrition, [and] increase graduation rates[,]” which may

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223. See ANN BEESON ET AL., CTR. FOR PUB. POL’Y PRIORITIES, IMMIGRANTS DRIVE THE TEXAS ECONOMY: ECONOMIC BENEFITS OF IMMIGRANTS TO TEXAS 1 (2014), [https://everytexan.org/images/EO\\_2014\\_09\\_PP\\_Immigration.pdf](https://everytexan.org/images/EO_2014_09_PP_Immigration.pdf) [<https://perma.cc/QV8H-KY22>] (emphasizing the contributions made to the Texas economy by immigrants).

224. See Cecilia Rouse et al., *The Economic Benefits of Extending Permanent Legal Status to Unauthorized Immigrants*, WHITE HOUSE, (Sept. 17, 2021) <https://www.whitehouse.gov/cea/written-materials/2021/09/17/the-economic-benefits-of-extending-permanent-legal-status-to-unauthorized-immigrants/> [<https://perma.cc/D6V2-AWXE>] (arguing how providing legal status to immigrants would increase their economic productivity and contributions).

225. See *id.* (addressing the common misbelief that legalizing unauthorized immigrants would be costly).

226. See AM. IMMIGR. COUNCIL, *supra* note 194, at 4 (demonstrating the billions of dollars that immigrant business owners contribute to our local and national economies).

227. See *id.* (reporting that in 2018, it is estimated that immigrant-led families in Texas paid \$26.3 billion in federal taxes and another \$12.3 billion in state and local taxes. As a subset of that group, undocumented immigrants in Texas contributed \$2.6 billion in federal taxes and \$1.6 billion in state and local taxes.).

228. See Langford, *supra* note 22 (inferring undocumented individuals would benefit from some form of driving licensure so that they can avoid the detriments associated with driving without a license).

229. See AM. IMMIGR. COUNCIL, U.S. CITIZEN CHILDREN IMPACTED BY IMMIGRATION ENFORCEMENT 1 (June 24, 2021) <https://www.americanimmigrationcouncil.org/research/us-citizen-children-impacted-immigration-enforcement> [<https://perma.cc/UA4U-4SYB>] (underscoring the point that punishing undocumented immigrants not only impacts the individual but also has secondary and tertiary effects on their families and community).

positively impact people in their adult lives.<sup>230</sup> While immigrant parents are more likely to enroll children if they have access to a driver license, many immigrant families cannot fully participate in early education and medical care programs because Texas does not have reliable public transportation systems.<sup>231</sup>

Nationally there are at least 5.5 million U.S. citizens or lawful permanent residents that have at least one family member who is undocumented.<sup>232</sup> One in six U.S. citizens in Texas have at least one immigrant parent.<sup>233</sup> “Undocumented immigrants are already a part of [local and state economies] and communities, with many living in ‘mixed-status’ families with lawfully present and U.S. citizen relatives.”<sup>234</sup> Access to licenses for undocumented immigrants would not only be a benefit for them, but also to U.S. citizens and the lawfully present family members that depend on the unlicensed individuals for

230. See Erika Nava, *Top Six Reasons to Expand Access to Driver’s Licenses*, N.J. POL’Y PERSPECTIVE 1, 4 (Dec. 16, 2019), <https://www.njpp.org/wp-content/uploads/2019/12/NJPP-Top-6-Reasons-to-Support-Drivers-License-Expasion-Dec-2019-5.pdf> [https://perma.cc/DYD7-NK9D] (acknowledging the positive correlation between having a driver license and education. Having a driver license “broadens mobility” for individuals by providing access to education).

231. Compare *id.* at 4 (showcasing that immigrants are likely to enroll their children into school when they have access to a driver license. As such, the restricted access to a driver license and a “robust public transportation system” forces immigrants to not participate in educational programs) with Peter Simek, *Is Good Public Transit Becoming More Politically Viable in Texas?*, D MAG. (Oct. 7, 2019, 12:48 PM), <https://www.dmagazine.com/frontburner/2201/10/is-good-public-transit-becoming-more-politically-viable-in-texas/> [https://perma.cc/2FBY-TGEZ] (highlighting reliable public transportation “amplif[ies] equitable mobility,” yet Texas funding for transportation is often allocated to highways and roads rather than buses and trains for communities).

232. See *Fact Sheet: Mixed Status Families and COVID-19 Economic Relief*, NAT’L IMMIGR. F. (Aug. 12, 2020), <https://immigrationforum.org/article/mixed-status-families-and-covid-19-economic-relief/> [https://perma.cc/T8VQ-H7C4] (clarifying what mixed status family means in America and how they file taxes. In this sense, mixed family status refers to people living in a household where at least one person is a citizen, a lawful permanent resident, or undocumented. People that live with undocumented individuals file taxes through an ITIN).

233. See AM. IMMIGR. COUNCIL, *supra* note 194, at 4 (noting that the immigrant population in Texas is substantial. Due to people immigrating from Mexico into Texas, this population has considerably grown throughout the years due to Texans being immigrants themselves or being descendants of immigrants).

234. Laura Goren, *Accounting for Cars: Expanding Access to Drivers Licenses Regardless of Immigration Status Will Help Virginia’s Fiscal Bottom Line as Well as Helping Families and Communities*, COMMONWEALTH INST. (Jan. 10, 2020), <https://www.thecommonwealthinstitute.org/2020/01/10/accounting-for-cars-expanding-access-to-drivers-licenses-regardless-of-immigration-status-will-help-virginias-fiscal-bottom-line-as-well-as-helping-families-and-communities/> [https://perma.cc/8K7E-QKU5].

transportation and support.<sup>235</sup> The current limitations to driving can result in criminal prosecution and an increase in public safety risks, both which burden the state.<sup>236</sup> For most families in Texas, driving is a necessity, not a choice.<sup>237</sup>

Expanding access to licenses for immigrants would help parents get their children to school, get family members proper health care, and travel to jobs they need to sustain their families and contribute to the economy.<sup>238</sup> Allowing immigrants to drive lawfully promotes better public health outcomes because they are able to adequately seek medical care.<sup>239</sup> “Expanding access to driver’s licenses . . . addresses social determinants of health, which includes factors like neighborhood and physical environments and access to health care and education.”<sup>240</sup> If one family member becomes ill due to not being able to access health care, that risks the chances of another close family member contracting their

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235. *See generally id.* (acknowledging access to driver license for undocumented immigrants is a necessity for families. Access to a driver license would allow for undocumented individuals to get to work, in which families are dependent on that support).

236. *See generally id.* (“The main reason to expand access to driver’s licenses regardless of immigration status is because it makes our families and communities safer; safer from being unfairly caught up in the criminal justice system and deportation pipeline for just trying to get to church or a child’s school, and safer from being on the roads with unlicensed drivers who have [not] had the opportunity to access the state’s system of training and testing.”).

237. *See Texas: State of Driving*, AM. ASS’N OF RETIRED PERS’S., <https://www.thehartford.com/aarp/car-insurance/texas/state-driving> [<https://perma.cc/9R9N-E4AY>] (emphasizing that driving is a necessity for Texans, especially due to the distance and the commute drivers make to and from work. Driving is also a necessity because of lack of transportation in suburban areas in Texas).

238. *See generally* Goren, *supra* note 234 (showcasing how access to driver licenses allows undocumented individuals to take their children to school or church, without fear of the “justice system and deportation pipeline.” Expanding access may also enable communities to be more prosperous since job openings can be filled with those that are newly licensed); *see also Free to Drive: National Campaign to End Debt-Based License Restrictions*, FINES AND FEES JUST. CTR., <https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/> [<https://perma.cc/FP4H-XBZZ>] (“86% of Americans drive to work, and many jobs require a driver’s license. Without a license, you can’t take your children to school, buy groceries, or get healthcare. Many people have no choice but to continue driving—meaning they risk more fines and fees, a criminal conviction, and incarceration.”).

239. *See generally* Nava, *supra* note 230, at 1 (discussing the top six reasons for access to driver’s licenses, including promoting healthier communities).

240. *Id.*

illness and spreading the illness until the entire community becomes ill.<sup>241</sup>

Access to a conditional driver permit would also provide a more accessible path to obtain motorist insurance.<sup>242</sup> States that restrict undocumented drivers from obtaining licenses tend to have higher rates of uninsured motorists in comparison to states that do not bar undocumented individuals from access to a driver's license.<sup>243</sup> Providing undocumented drivers with access to lawful driving, through the possession of a driver's license, also promotes their access to motorist insurance.<sup>244</sup> If undocumented immigrant drivers, who already drive due to necessity, can show proof of motorist insurance after they receive their permit, they can also shoulder the financial burden if a traffic accident occurs.<sup>245</sup>

A conditional driver permit would increase public safety for all Texans.<sup>246</sup> In particular, Texans impacted by natural disasters,

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241. See generally Julie Kiefer, *Viruses Thrive in Big Families, in Sickness and in Health*, UNIV. OF UTAH (Aug. 04, 2015, 10:05 PM), [https://healthcare.utah.edu/publicaffairs/news/2015/08/08-05-15\\_Viruses-Thrive-In-Big-Families.php](https://healthcare.utah.edu/publicaffairs/news/2015/08/08-05-15_Viruses-Thrive-In-Big-Families.php) [<https://perma.cc/V7XX-9MLS>] (acknowledging that illness spreads quickly within families, especially those with children.); see also Nina R. Joyce et al., *Driver's License Suspension Policies as a Barrier to Health Care*, 109 AM. J. PUB. HEALTH 1692, 1692 (2019) ("Each year, approximately 3.6 million Americans miss or delay health care because of transportation barriers, resulting in increased health care costs and potentially serious long-term health consequences. Because the majority of individuals use a personal vehicle for medical related trips, lacking access to a vehicle has become the most commonly reported transportation-related barrier to care.").

242. See Mosquera, *supra* note 32, at 623 (asserting car insurance is typically difficult to obtain because individuals need to have a driver's license to receive insurance. In New Mexico and Utah, the expansion of driver's license has allowed for an increased in insured drivers.).

243. See Ching, *supra* note 15 (contending that accessibility to car insurance increases when individuals have access to a driver license. This would eventually lead to higher revenue for insurance companies, which would then decrease annual premiums for those with car insurance).

244. See Mosquera, *supra* note 32, at 623 ("California mandates that all drivers have car insurance but, in order to obtain insurance, a driver typically must already have a driver's license.").

245. See *id.* (stating uninsured individuals, especially undocumented immigrant drivers, burden licensed drivers with expenses in the event of a car accident. Having insured undocumented individuals alleviates costs in accidents as they will have an opportunity to pay for damages).

246. See Steve Taylor, *Gire: In Support of Conditional Driver's Permits*, RIO GRANDE GUARDIAN (May 26, 2021), <https://riograndeguardian.com/gire-in-support-of-conditional-drivers-permits/> [<https://perma.cc/Q7YV-AZBJ>] ("By providing permits to individuals without access to a drivers license is good for everyone. It increases public safety on our roads and ensures that drivers are tested, licensed, and insured."); see also Michael McCardel, *Should Texas Finally Give Driving Permits to Undocumented Immigrants?*, WFAA (Jan. 30, 2021, 3:00 PM), <https://www.wfaa.com/article/news/politics/inside-politics/texas-politics/texas-driving-permits->

experiencing homelessness, harmed by domestic violence, and immigrants—whether documented or not—will benefit from such a permit.<sup>247</sup> In addition to the public safety benefits, a conditional driver permit would also provide economic benefits for these impacted populations.<sup>248</sup> The individual and community benefit is further supported by increased revenue generated for all Texans through the fees generated by such a permit.<sup>249</sup>

## II. PART TWO: STATE JURISDICTION TO ISSUE DRIVER LICENSES AND PERMITS

Congress enacted the REAL ID Act in 2005 based on the “9/11 Commission’s recommendation that the federal government set a

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undocumented-immigrants-state-rep-ramon-romero/287-28dbca08-6d1d-4c1c-9e0e-e7879661f7f8 [https://perma.cc/KC88-DSRD] (stating undocumented immigrants need access to driver licenses in order to be identified. If individuals are unable to be identified, then it poses as a public safety issue. Currently, 2.5 million undocumented immigrants drive in Texas, and it would be best to teach these state laws to increase public safety).

247. *See generally* Taylor, *supra* note 246 (asserting that providing a conditional permit would allow for an opportunity to speed up identifying individuals in need “and it can provide assistance to those in need when natural disasters strike.”); *see also* TEX. CT. APPOINTED SPECIAL ADVOC. FOR CHILD., HB 2286/SB 2054: REDUCING BARRIERS TO OBTAINING A DRIVER’S LICENSE: CREATING A PATHWAY TO SUCCESS FOR VULNERABLE YOUTH 2, <https://texascasa.org/wp-content/uploads/2021/03/Drivers-Education-Fund.pdf> [https://perma.cc/WV7D-MK6D] (addressing the barrier to access a driver’s license is an issue that impacts homeless individuals, and it also impacts children in foster care to successfully transition into adulthood).

248. *See generally* MINN. BUDGET PROJECT, DRIVER’S LICENSES ASSOCIATED WITH INCREASED EARNINGS AND CAN BOOST ECONOMY 1 (Oct. 2016), [https://www.mnbudgetproject.org/docs/default-source/default-document-library/drivers\\_licenses\\_associated\\_with\\_increased\\_earnings\\_and\\_can\\_boost\\_econoec.pdf?sfvrsn=3a59a8a7\\_2](https://www.mnbudgetproject.org/docs/default-source/default-document-library/drivers_licenses_associated_with_increased_earnings_and_can_boost_econoec.pdf?sfvrsn=3a59a8a7_2) [https://perma.cc/U9NB-3GSC] (“Access to driver’s licenses is the first step for unauthorized immigrants to greater independent mobility and the resulting economic benefits. Several studies have found improvements in employment rates, hourly wages and the number of hours worked from car ownership. Efficient, reliable transportation increases the number of hours people are available to work each week. It provides access to a greater number of jobs, enabling the unemployed to find jobs and the employed to find new jobs with higher wages.”).

249. *See generally* Nava, *supra* note 230, at 1 (suggesting that providing licenses to currently barred communities may increase state revenue and boost local economies. For example, in New Jersey, expansion can generate twenty-one million dollars from permit, title, and driver’s license fees, with an additional ninety million dollars from registration fees, gas tax, and sale taxes of motor vehicles and auto parts).

national standard to issue identification, such as a driver license.”<sup>250</sup> The goal of the federal legislation was to reduce identity fraud and terrorism by reinforcing the integrity and security of state-issued IDs.<sup>251</sup> Support for the REAL ID Act is based on national security concerns and the need to provide uniform security across state lines.<sup>252</sup> Despite significant opposition to the legislation as unconstitutional<sup>253</sup> on the basis of states’ rights,<sup>254</sup> infringement on privacy,<sup>255</sup> and unfair limitations on immigrants to travel,<sup>256</sup> states had to comply no later than October 1,

250. See *REAL ID Frequently Asked Questions*, U.S. DEP’T OF HOMELAND SEC., <https://www.dhs.gov/real-id/real-id-faqs> [<https://perma.cc/SD5M-E26X>] (last updated Feb. 1, 2022) (explaining the reason the REAL ID Act of 2005 came into fruition).

251. See *Federal Real ID Act*, TEX. DEP’T PUB. OF SAFETY, <https://www.dps.texas.gov/driverlicense/federfederalreal.htm> [<https://perma.cc/2F9N-5EEW>] (declaring that the importance for the REAL ID is to help reduce attacks and crimes, and make sure information about an individual is adequately verified before they obtain an ID).

252. See Ariana Garcia, Comment, *The Real ID Act and the Negative Impact on Latino Immigrants*, 9 SCHOLAR: ST. MARY’S L. REV. ON RACE & SOC. JUST. 275, 285 (2007) (quoting the legislator who introduced the bill into the House of Representatives, Congressman James Sensenbrenner. The Congressman mentions that the Real ID Act’s true purpose is to prevent another terroristic attack in America like 9/11. He goes on to state that by implementing this act into the country, Congressmen and women would move towards ensuring more national security).

253. See Michael J. Allen, Comment, *A Choice That Leaves No Choice: Unconstitutional Coercion Under Real ID*, 32 SEATTLE U. L. REV. 231, 249 (2008) (arguing that the Real ID Act may be unconstitutionally coercive, may violate the anti-commandeering doctrine, and infringe on the fundamental rights to travel and the right to access federal buildings).

254. Cf. Miranda Sasinovic, Comment, *Removing Roadblocks: Alternatives to Lawful Status and Social Security Number Requirements for Pennsylvania Driver’s Licenses*, 126 DICK. L. REV. 305, 310 (2021) (“The issuance and regulation of driver’s licenses is a traditional state power. The federal government lacks the authority to obstruct state licensing schemes except when those schemes interfere with spheres of federal power. One of the spheres is federal immigration law, an area where the federal government enjoys the exclusive power to create immigration classifications. States expanding or restricting eligibility for their driver’s licenses should consider whether federal immigration law will preempt their licensing statutes.”).

255. See *REAL ID*, ACLU, <https://www.aclu.org/issues/privacy-technology/national-id/real-id> [<https://perma.cc/5KBB-LQ9J>] (informing that REAL ID would impact an individual’s privacy because it allows for the tracking of individuals’ data).

256. See Shirley Lin, Comment, *States of Resistance: The REAL ID Act and Constitutional Limits Upon Federal Deputization of State Agencies in the Regulation of Non-Citizens*, 12 N.Y. CITY L. REV. 329, 345 (2009) (contending REAL ID places a wide range of economic and social activity limitations, including “traveling by major alternatives of transportation.”); see also Rachael Marvin, Comment, *The REAL ID Act: Real Consequences Involving Immigration Status & Eligibility Requirement Concerns for Immigrants*, 26 CARDOZO J. EQUAL RTS. & SOC. JUST. 499, 517–19 (2020) (demonstrating the Supreme Court has held traveling and interstate migration is a fundamental right, so the REAL ID significantly infringes on immigrants because the restriction on air travel); see also Marisa S. Cianciarulo, *Terrorism and Asylum Seekers: Why the Real ID Act Is*

2021.<sup>257</sup> As a result of the COVID-19 Pandemic, that deadline was pushed to May 3, 2023.<sup>258</sup> However, Texas driver's licenses are required not only for interstate activity, but to drive within the state boundaries as well.<sup>259</sup>

Section 202(c)(1) of the REAL ID Act outlines the minimum issuance standards for a state to issue a federal law compliant identification, which may also serve as a driver license.<sup>260</sup> To be compliant with the REAL ID Act, a state must require, at a minimum, that a resident: (1) present and verify their identification document with their photo or with their full name and date of birth; (2) prove their social security number or prove they are ineligible for a social security number; and (3) present and verify documentation with their name and address.<sup>261</sup> In addition, a state must

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*a False Promise*, 43 HARV. J. ON LEGIS. 101, 102 (2006) (arguing that the REAL ID Act is detrimental to asylum seekers and restricts their mobility to the United States. “[A]pplication of the Real ID Act’s asylum provisions is not limited to asylum seekers who may match the profile of a terrorist. It instead affects all asylum seekers, including those fleeing female genital mutilation, domestic violence, religious persecution, politically based persecution, genocide, and ethnic cleansing. Thus, the Real ID Act has the potential to have a severely negative impact on the U.S. asylum system by making acquisition of asylum even more difficult for those who need it most.”).

257. See *DHS Announces Extension of REAL ID Act Full Enforcement*, DEP’T OF HOMELAND SEC. (Apr. 27, 2021), <https://www.dhs.gov/real-id/news/2021/04/27/dhs-announces-extension-real-id-full-enforcement-deadline> [<https://perma.cc/8GC5-MESR>] (extending state compliance date from October 1, 2021, to May 3, 2023, due to effects of the COVID-19 pandemic).

258. *Id.* (updating the public on when REAL ID would be fully enforced. Due to COVID-19, the Department of Homeland Security has had to push back the date when REAL ID would go into effect by 19 months since they have had to operate at limited capacity).

259. See generally *Written Testimony of Office of Policy Assistant Secretary David Heyman for a House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security Gearing Titled “Secure Identification: The REAL ID Act’s Minimum Standards for Driver’s Licenses and Identification Cards”*, DEP’T OF HOMELAND SEC. (Mar. 12, 2021) <https://www.dhs.gov/news/2021/03/21/written-testimony-plcy-house-committee-judiciary-subcommittee-crime-terrorism-and> [<https://perma.cc/QM6K-HMAB>] (requiring states to implement guidelines where people need to provide their ID for interstate activities. Some of these activities include boarding airplanes, renting cars, opening bank accounts, and other activities that requiring assurance of the ID-holder’s identity. Not only do people need an ID for this, but they will also be required to use it for driving within the state. The purpose of this act was a response to the 9/11 attacks. By requiring IDs from people to fulfill simple activities, DHS believes they could catch and stop terrorist a lot easier).

260. See generally REAL ID Act of 2005, H.R. 418, 109th Cong. § 202(c)(1) (2005) (outlining the requirements for states to issue a driver’s license or an identification card).

261. See *id.* (“[A] State shall require, at a minimum, presentation and verification of the following information before issuing a driver’s license or identification card to a person . . . [a] photo identity document . . . [d]ocumentation showing the person’s date of birth . . . [p]roof of the

comply with the Act's "special requirements" that a person prove their "lawful status."<sup>262</sup> Specifically, the REAL ID Act requires that states verify a person is authorized to reside in the United States.<sup>263</sup> Finally, to issue a compliant ID, states must also authenticate the requisite documents.<sup>264</sup> The authentication requirements are not needed if the identification is not intended for a federal official purpose.<sup>265</sup>

#### A. Current Law in Texas

Texas can still legally create a conditional driver permit.<sup>266</sup> The state has the authority to issue a supplemental conditional driver permit that does not comply with the REAL ID Act.<sup>267</sup> The Department of Homeland Security (DHS) has expressly recognized a state's ability to offer two tiers of driver licenses: (1) one that complies with federal law and is valid for federal "official purposes," and (2) an alternative form that does not.<sup>268</sup> Under § 202(d)(11) of the REAL ID Act, states may choose to issue non-compliant IDs, so long as the identification card indicates that it is invalid for a federal official purpose.<sup>269</sup> In addition, the Act's implementing regulation and official statements by DHS also

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person's social security . . . [and] [d]ocumentation showing the person's name and address of principal residence").

262. *Id.* at 202(c)(2)(B).

263. *Id.*

264. *Id.* at § 202(c)(3).

265. *Id.*

266. *See generally* Castillo, *supra* note 200, at 448–9 (discussing the requirement, creation, and issuance of licenses are a state power enumerated by the 10th Amendment).

267. *See id.* ("Each state retains the power to create its own requirements for granting driver's licenses."); *see also* Press Release, Dep't of Homeland Sec., Remarks by Homeland Security Secretary Michael Chertoff and New York Governor Eliot Spitzer on Secure IDs (Oct. 27, 2007) (available at <http://docplayer.net/149060933-Remarks-by-homeland-security-secretary-michael-chertoff-and-new-york-governor-eliot-spitzer-on-secure-ids.html>

[<https://perma.cc/Q37A-AYWL>]) ("To the extent that New York issues a class of license that is not based on lawful presence in the United States, those licenses will not comply with REAL ID or WHTI requirements [B]ut federal law does allow states to make that choice.").

268. *See id.* (differentiating between the two kinds of IDs that states can offer to residents. One ID would be used for federal purposes and allows one to travel by airplane, cross the border, drive and more. The other ID would explicitly state that it is "not valid for federal ID" and cannot be used for traveling or other federal purposes, only for driving).

269. *See* REAL ID Act of 2005, Pub. L. No. 109-13, § 202 (d)(11), 119 Stat. 231, 315 (acknowledging that states are allowed to issue IDs that do not comply with the REAL ID Act so long as "[the ID] clearly states on its face that it may not be accepted 3by any Federal agency" and has a unique design or color different from the federal IDs).

expressly recognize a state's right to offer a non-compliant permit or license.<sup>270</sup> The implementing regulations stipulate that "[s]tates that . . . choose to *also* issue driver licenses and identification cards that are not acceptable by Federal agencies for official purposes must ensure that such driver licenses and identification cards" meet the requirements of § 202(d)(11).<sup>271</sup> Per se, Texas has the authority and the right to offer driving privileges to Texans who cannot comply with the REAL ID Act.<sup>272</sup>

Texas' compliance with the REAL ID Act, although necessary for national security, results in many Texans unable to legally drive because providing the required documentation is unduly burdensome for significant segments of the population.<sup>273</sup> When a resident is unable to provide documentation, he or she may resort to driving without a license.<sup>274</sup> This means some Texans drive without the driver training or

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270. *See id.* (providing guidelines for states to follow in case they want to issue non-compliant IDs for their residents); *see also* 85 Fed. Reg. 23205 (Apr. 27, 2020) (stating that each state may issue IDs that do not comply with the REAL ID Act. These licenses, however, will not be valid for federal purposes).

271. *See* 6 C.F.R. § 37.71 (2022) (reiterating the requirements outlined in the REAL ID Act that states must meet for the issuance of non-compliant IDs); *see also* REAL ID Act of 2005 § 202 (d)(11) (setting requirements for states to follow in order to properly issue IDs that do not comply with the REAL ID Act. The reason this is needed is because the different marks will let someone know whether a person's ID can be used for federal purposes or not).

272. *See generally* REAL ID Act of 2005, § 202 (d)(11) (announcing a new opportunity for states to issue driver licenses and identification cards to residents that are unable to meet the requirements of the REAL ID Act. The new requirements allow all states to issue IDs, that look different and state they are not for federal purposes, to residents that need an ID to drive or identify themselves. This opportunity is extended to all states including Texas).

273. *See* Claire Means, *The State of the REAL ID Act*, EXTRACT SYS. (Mar. 27, 2018), <https://www.extractsystems.com/govnews-blog/2018/3/26/the-state-of-the-real-id-act> [<https://perma.cc/NXN6-W547>] (commenting on the pros and cons of the REAL ID Act. Although the act could potentially prevent future terroristic threats, identity theft, and the selling of people's personal information, it also targets undocumented immigrants who do not have the required documents to obtain an identification under the REAL ID Act).

274. *See* SARAH E. HENDRICKS, IMMIG. POL'Y CTR., *LIVING IN CAR CULTURE WITHOUT A LICENSE: THE RIPPLE EFFECTS OF WITHHOLDING DRIVER'S LICENSES FROM UNAUTHORIZED IMMIGRANTS* 2, 6 (2006), [https://www.americanimmigrationcouncil.org/sites/default/files/research/living\\_in\\_car\\_cultcul\\_without\\_a\\_license\\_3.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/living_in_car_cultcul_without_a_license_3.pdf) [<https://perma.cc/C74P-LEQH>] (highlighting that when excluded from receiving a driver's license, many individuals will either not drive or will drive without a license due to necessity).

testing meant to increase driver safety.<sup>275</sup> Therefore, limiting driver license options and documentation requirements solely to meet a restricted federal purpose undermines public safety.<sup>276</sup> Offering Texans a conditional driver permit option would increase the number of legal and insured drivers.<sup>277</sup> In Texas, there are two main avenues to obtain state-issued driver authorization: a Driver License or a Learner License.<sup>278</sup>

### 1. Driver License

A Texas driver license complies with federal law and can be used for driving, for domestic air travel, entering federal property, and entering nuclear power plants.<sup>279</sup> A Class C driver license is the most common form of license, which authorizes the holder of the license to operate a standard passenger vehicle.<sup>280</sup> The Texas Department of Public Safety (DPS) also provides an occupational driver license (ODL), a special restricted license available to persons whose license has been suspended

275. See generally Ching, *supra* note 15 (implying that because some states do not provide a non-compliant ID option for people that cannot meet the REAL ID requirements, there are people that are driving on the streets without a license. This defeats the purpose of implementing a program to promote public safety).

276. See *id.* (recognizing that the lack of non-compliant IDs offered within states that do not offer this option is undermining the goal of the REAL ID Act which is public safety).

277. See Taylor, *supra* note 246 (advocating for permits to individuals without accessibility to driver's licenses would increase public safety); see also Ching, *supra* note 15 ("Better access to driver's licenses also means better access to car insurance. Unsurprisingly, rates of uninsured motorists tend to be higher in states that bar undocumented drivers from obtaining licenses. Allowing all Massachusetts drivers to access licenses—and, therefore, insurance—could generate more revenue for insurance companies—about \$62 million. Insurance-holders in general could also see a decrease in their annual premiums by about \$20 . . .").

278. See TEX. TRANSP. CODE ANN. § 521.141 (1999) (codifying general requirements for original driver's licenses in Texas); see also TEX. TRANSP. CODE ANN. § 521.222 (2021) (listing the requirements in order to receive a Learner License in Texas. A learner's license is provided to individuals under eighteen years old.)

279. See *Federal Real ID Act*, *supra* note 251 (stating Texas has been in compliance with the REAL ID Act since 2019. Once an individual either renews their license or applies for one and meets the REAL ID requirements, they will be able to use their ID for traveling domestically, entering federal property, and more).

280. See TEX. TRANSP. CODE ANN. § 521.083 ("[A] Class C driver's license authorizes the holder of the license to operate: (1) a vehicle or combination of vehicles not described by Section 521.08; and (2) a vehicle with a gross vehicle weight rating of less than 26,001 pounds towing a farm trailer with a gross vehicle weight rating that is not more than 20,000 pounds."); see also *How to Get Your Texas Driver's License: Requirements for 2022*, DRIVING TEST, <https://driving-tests.org/texas/drivers-license-guide/> [<https://perma.cc/ZRB3-BG8X>] (stating the most prevalent license in a Class C type, which is pictured with a standard vehicle).

or revoked.<sup>281</sup> A person receives an ODL by petitioning and receiving a court order, then submitting the order to DPS for the license issuance.<sup>282</sup> To be eligible for an ODL, the individual must show an essential need to drive.<sup>283</sup>

## 2. Learner License

A learner license is a restricted driver license for applicants between 15 and 17 years of age, which allows the applicant to practice driving with a licensed adult prior to qualifying for a driver license.<sup>284</sup> Specifically, a learner license allows a student driver to legally practice driving when accompanied by a licensed driver who is at least 21 years of age and has at least one year of driving experience.<sup>285</sup> A learner license includes the phrase “Learner License” on the front of the card and expires on the minor’s 18th birthday.<sup>286</sup> An applicant who is 18 years of age or older who wishes to legally practice driving is issued a Class C license with the same restrictions as a learner license.<sup>287</sup>

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281. See *What is an Occupational Driver License?*, TEX. DEP’T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/occupational-driver-license> [<https://perma.cc/E3PX-SCAF>] (creating driver’s license option for individuals who have had their license revoked, suspended, or denied in Texas).

282. See *id.* (detailing the process one has to go through in order to obtain an occupational license in Texas).

283. See TEX. TRANSP. CODE ANN. § 521.241 (1)(A–C) (defining “essential need”); see also *id.* at § 521.244 (requiring judges to make the determination of essential need by reviewing the ODL applicant’s driving record and any evidence they present to the court to demonstrate the necessity of the ODL).

284. See TEX. TRANSP. CODE ANN. § 521.222 (a)(1) (“[T]he department may issue a learner license, including a Class A or Class B driver’s learner license, to a person who: (1) is 15 years of age or older but under 18 years of age . . .”).

285. See *id.* at (d)(2)(A–C) (“[A] learner license entitles the holder to operate a type of motor vehicle on a highway while . . . the holder is accompanied by a person occupying the seat by the operator who: (A) holds a license that qualifies the operator to operate that type of vehicle; (B) is 21 years of age or older; and (C) has at least one year of driving experience.”).

286. See *How to Apply for a Texas Driver License*, *supra* note 10 (showing that a driver’s license is very different from a learner’s permit).

287. See generally TEX. TRANSP. CODE § 521.083 (showing what a Class C license entails).

### B. Texas Legislative Efforts

The Texas Legislature previously considered four bills that would amend the Transportation Code to provide an additional license option.<sup>288</sup> All four bills are similar.<sup>289</sup> For instance, they prohibit use of the license alternative for federal identification, require the license to clearly and easily be distinguishable from other licenses, and require proof of financial responsibility, such as motor vehicle insurance.<sup>290</sup> Each bill also requires information from the applicant, such as name, date and place of birth, fingerprints, and history of past driver licenses.<sup>291</sup> Every bill, however, leaves the important task of determining which documents can prove identification, residency, and ineligibility for a social security number to DPS.<sup>292</sup> The bills impose an application fee, creating an increase in revenue of more than \$5.4 million during the first year in effect.<sup>293</sup>

House Bill 3206 in 2013, later reintroduced in 2015 as House Bill 68, proposed to provide a temporary driver license with its related provisional and instruction permit.<sup>294</sup> The bills proposed to give licenses to individuals who could establish: (1) Texas residency for one year; (2) an inability to present proof of U.S. citizenship or a certain immigration status; and (3) no Class A, Class B, or felony convictions.<sup>295</sup> Applicants could use consular or other government documents from their home

288. See, e.g., Tex. H.B. 693, 84th Leg., R.S. (2015) (demonstrating one of the bills that brought upon such change).

289. Compare *id.*, and Tex. H.B. 3206, 83d Leg., R. S. (2013), with Tex. H.B. 68, 84th Leg., R. S. (2015), and Tex. H.B. 68, 84th Leg., R. S. (2015) (showing the similarities between the house bills).

290. See Tex. H.B. 693, 84th Leg., R.S. (2015); see also Tex. H.B. 3206, 83d Leg., R. S. (2013); cf. Tex. H.B. 68, 84th Leg., R. S. (2015).

291. See Tex. H.B. 693, 84th Leg., R.S. (2015); see also Tex. H.B. 3206, 83d Leg., R. S. (2013); Cf. Tex. H.B. 68, 84th Leg., R. S. (2015); see generally Tex. H.B. 35, 86th Leg., R. S. (2019) (demonstrating what information was required from each applicant).

292. Compare Tex. H.B. 693, 84th Leg., R.S. (2015), and Tex. H.B. 3206, 83d Leg., R. S. (2013), with Tex. H.B. 68, 84th Leg., R. S. (2015), and Tex. H.B. 68, 84th Leg., R. S. (2015) (stating that DPS has final decision on what documents can be used for identification purposes).

293. See Tex. H.B. 3206, 83d Leg., R. S. (2013); see also Tex. H.B. 68, 84th Leg., R. S. (2015) (highlighting the revenue accumulated after one year).

294. See Tex. H.B. 68, 84th Leg., R. S. (2015); see also Tex. H.B. 3206, 83d Leg., R. S. (2013) (showing the new language that the bill wanted to introduce).

295. See Tex. H.B. 68, 84th Leg., R. S. (2015) (demonstrating what was needed for an individual to receive a license).

country to prove identification.<sup>296</sup> Applicants were also required to provide sufficient information to run a criminal background check.<sup>297</sup> The application fee was \$150 for the first year, then \$24 for each renewal after two years.<sup>298</sup> The bill's Fiscal Note—which only considered undocumented immigrants as the bill's impacted population—estimated the revenue would quickly exceed the cost of the DPS program, bringing in nearly \$30.8 million in revenue after five years.<sup>299</sup>

House Bill 693, introduced in 2015, shared the same application requirements and created an additional penalty for failure to always have proof of insurance.<sup>300</sup> The license application was only \$75, and the license expired after four years.<sup>301</sup> Due to the reduced application fee and fewer renewals, the Fiscal Note estimated the revenue raised by the program would exceed its costs after five years.<sup>302</sup>

In 2019, the Texas Legislature considered House Bill 35.<sup>303</sup> This bill provided a conditional driver permit for any Texan who: (1) has one year of residency; (2) is ineligible for a social security number; (3) is eligible for a tax identification number; (4) is unable to present citizen or immigration documentation; (5) has not been convicted of a felony; and (6) completes a driver education course regardless of age.<sup>304</sup> Applicants were required to show proof of insurance and authorized the DPS to set the application and renewal fees.<sup>305</sup> If passed, this bill may have had the

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296. *See id.*; *see also* Tex. H.B. 3206, 83d Leg., R. S. (2013) (claiming that various documents could be used as a form of identification).

297. *Cf.* Tex. H.B. 3206, 83d Leg., R. S. (2013) (showing what information was needed for the background check).

298. *See* Tex. H.B. 68, 84th Leg., R. S. (2015) (showing the application fee for each applicant).

299. *See* Fiscal Note, Tex. H.B. 3206, 83d Leg., R.S. (2013) (demonstrating between 2014–18, the probable revenue exceeded \$5 million per year).

300. *See* Tex. H.B. 693, 84th Leg., R.S. (2015) (indicating operating a vehicle without financial responsibility would be an offense).

301. *See id.* (reflecting on the cost of license application fees).

302. *See* Fiscal Note, Tex. H.B. 693, 84th Leg., R.S. (2015) (indicating that the costs associated with implementing this new system is outweighed by the revenue that it would bring in).

303. *See* Tex. H.B. 35, 86th Leg., R. S. (2019) (showing that the bill was considered in full).

304. *See id.* (showing what was needed in order for the applicant to receive a license).

305. *See* Tex. H.B. 35, 86th Leg., R. S. (2019) (calculating the application fee at \$24. The Fiscal Note for H.B. 35 also estimates significantly higher program costs—roughly \$4.5 million—whereas previous fiscal notes estimated program costs of roughly \$1 million).

greatest impact on public safety as this version required applicants to complete a driver education course.<sup>306</sup>

Proposed legislation for a conditional driver permit does not restore a driver license that was suspended or revoked due to failure to pay outstanding fines, fees, or warrants.<sup>307</sup> Drivers who have lost driving privileges for unsafe driving or other court-imposed requirements would still be required to correct those problems.<sup>308</sup> Likewise, the proposed legislation does not alter other license-revoking penalties, such as those associated with driving under the influence.<sup>309</sup> If a conditional driver permit holder has committed two or more moving violations in one year, DPS can suspend that driver's license.<sup>310</sup> This law-enforcement check on unsafe driving would logically be applied to the conditional driver permit.<sup>311</sup> Also, DPS can suspend a license for its unlawful use.<sup>312</sup>

These past legislative efforts in Texas are instructive.<sup>313</sup> The ongoing push for alternative licensure signals that Texans find a compelling interest in providing a licensure option.<sup>314</sup> Concerns raised in past efforts can be addressed in new legislation that is tailored to the realities of the

306. *See id.* (highlighting the impact the bill will have on public safety).

307. *Cf. id.* (claiming individuals would be subject to both a statewide and nationwide criminal background check in the application process. Further, the department will consider whether a license has been suspended or revoked in the deciding to grant an application).

308. *Cf. id.* (combining the background check requirement along with the driver education course emphasizes the safety requirements that come with the temporary permit).

309. *See generally id.* (claiming that legislation does not alter penalties granted to applicants).

310. *See generally* TEX. TRANSP. CODE ANN. § 521.292(a)(8) (indicating that a person's license can be suspended for two or more moving violations for a person under the age of 18).

311. *Cf. id.* (applying the age restriction mentioned in the law to include conditional permits as well).

312. *Cf. id.* at § 521.292(a)(4) (referencing another area of potential license suspension).

313. *See* Tex. H.B. 693, 84th Leg., R.S. (2015); *see also* Tex. H.B. 3206, 83d Leg., R. S. (2013); *Cf.* Tex. H.B. 68, 84th Leg., R. S. (2015). *See generally* Tex. H.B. 35, 86th Leg., R. S. (2019) (showing that regardless of the individual bill's proposal or fiscal impact, each House bill was not introduced to the full House. H.B. 3206 was the only version to pass out of committee but was never scheduled for floor debate or vote).

314. *See generally* Texas A&M School of Law, *TAMU Law Clinic Students Draft Report that Drives State Legislation*, TAMULAWNEWS, (Apr. 8, 2021), <https://tamulawnews.com/students/tamu-law-clinic-students-draft-report-that-drives-state-legislation/> [<https://perma.cc/2ADC-3WUY>] (citing Texas A&M University, Drive Texas Adelante, and the Mexican American Legislative Caucus as some of the organizations in Texas advocating for an alternative licensure option).

residents who would most benefit from a conditional driver permit.<sup>315</sup> The next section demonstrates the breadth of benefits this type of legislation can provide for Texans and details how specific populations stand to benefit from a conditional driver permit.<sup>316</sup>

### C. Other States

Other states have exercised their right to create a second licensing option for drivers.<sup>317</sup> As of 2019, sixteen states and the District of Columbia passed legislation to create some variation of a Conditional Use Permit.<sup>318</sup> These states allow residents to obtain driving privileges by permitting an applicant to prove their identity with supplemental documents that are not deemed acceptable under federal law or by allowing an applicant to provide a substitute for a social security number.<sup>319</sup>

In 2020, Virginia legislators passed a law that allows individuals who do not meet the requirements for a driver license to receive a driver privilege card or permit.<sup>320</sup> Applicants must be able to report income and deductions from state sources or must have been claimed as a dependent on an individual income tax return filed with the Commonwealth in the

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315. See generally Cary Cheshire, *Driving Texas Leftward*, TEX. SCORECARD, (May 4, 2015), <https://texasscorecard.com/state/driving-texas-leftward/> [<https://perma.cc/T8R8-H9WB>] (pointing out concerns of legislative opposition which include, non-disclosure of criminal history).

316. See RITA, *Why a Driver's Permit*, DRIVE TEX. ADELANTE, <https://drivetexasadelante.org/Why-a-Driver-Permit.html> [<https://perma.cc/9K94-JYTL>] (granting conditional driver's permits allows populations who do not have traditional forms of identification to drive and access local economies at a greater level).

317. GILBERTO MENDOZA & CHESTERFIELD POLKEY, NAT'L CONF. OF STATE LEGISLATURES, STATES OFFERING DRIVER'S LICENSES TO IMMIGRANTS 2–3 (July 16, 2019), [https://www.ncsl.org/documents/immig/Driver's\\_Licenses\\_to\\_Immigrants\\_July%202019.pdf](https://www.ncsl.org/documents/immig/Driver's_Licenses_to_Immigrants_July%202019.pdf) [<https://perma.cc/S85G-5UNQ>] (listing California, Colorado, Connecticut, Delaware, and others as examples of states exercising the right to create an alternative licensure option for drivers).

318. See *id.* at 1 (summarizing the legislative initiatives by the states that have created the conditional use permits).

319. See *id.* (according to various forms of state level legislation, vehicle registrations, bank statements, documents issued by a local educational institution, or other documents that prove state residency, are examples of permissive substitute documents).

320. See S.B. 34, 2020 Reg. Sess. (Va. 2020) (“The bill provides that driver privilege cards shall confer the same privileges and shall be subject to the same provisions as driver’s licenses and permits; however, driver privilege cards shall not (a) confer voting privileges, (b) permit an individual to waive any part of the driver examination, or (c) have their issuance be contingent upon the applicant’s ability to produce proof of legal presence in the United States.”).

preceding twelve months before applying.<sup>321</sup> An applicant for a driver privilege card or permit is not required to present proof of lawful presence in the United States.<sup>322</sup>

Similarly, a Nevada law, enacted in 2013, created a driver authorization card and allowed applicants to provide alternate documentation as proof of identity.<sup>323</sup> Applicants must provide proof of identity, age, and two separate documents to establish residency in Nevada.<sup>324</sup> Applicants must state whether they have been licensed as a driver, and, if so, when and by which state or country, and whether such licenses have ever been suspended or revoked, or whether the applicant has ever submitted an application that has ever been refused, and if so, the date of and reason for the suspension, revocation or refusal.<sup>325</sup> The law prohibits the release of information relating to a cardholder's lawful status for purposes of enforcing immigration laws.<sup>326</sup>

In 2019, legislators in New Mexico passed legislation permitting issuance of a standard driver license to an applicant "who is otherwise eligible for a Real ID-compliant driver license, but who does not provide proof of lawful status and who affirmatively acknowledges that the applicant understands that a standard driver license may not be valid for

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321. *See id.* ("Driver privilege cards; penalty. Authorizes the issuance of new driver privilege cards by the Department of Motor Vehicles to an applicant who (i) has reported income from Virginia sources or been claimed as a dependent on an individual tax return filed with the Commonwealth in the preceding 12 months and (ii) is not in violation of the insurance requirements for the registration of an uninsured motor vehicle.").

322. *See id.* ("The bill provides that driver privilege cards shall confer the same privileges and shall be subject to the same provisions as driver's licenses and permits; however, driver privilege cards shall not . . . (c) have their issuance be contingent upon the applicant's ability to produce proof of legal presence in the United States.").

323. *See* S.B. 303, 77th Gen. Assemb., Reg. Sess. (Nev. 2016) (citing to Section 5 of S.B. 303 and its purpose for establishing alternative requirements for the purpose of obtaining a driving privilege card); *see also* MENDOZA & POLKEY, *supra* note 317, at 1 (stating that foreign birth certificates and passports may be used as proof of identity for obtaining a driving privilege card).

324. *See* S.B. 303, 77th Gen. Assemb., Reg. Sess. (Nev. 2016) (citing to Section 5 of the Nevada law that lists the requirements needed to establish residency for the purpose of obtaining a driving privilege card).

325. *See id.* (detailing the information required to be provided by an individual if they wish to obtain a driving privilege card).

326. *See id.* ("Section 1 of this bill prohibits the Director of the Department from releasing any information from the files and records of the Department relating to legal presence to any person or federal, state or local governmental entity."); *see also* MENDOZA & POLKEY, *supra* note 317, at 3 ("This law also prohibits the release of information relating to legal status for purposes relating to the enforcement of immigration laws.").

federal purposes.”<sup>327</sup> The new law requires applicants to provide proof of identity, state residency, age, and history of driver licensure.<sup>328</sup>

#### *D. Proposed Legislation*

Texas lawmakers should pass legislation that creates a conditional driver permit option.<sup>329</sup> The proposed legislation should provide flexibility to prove identity by widening the type of documentation permitted to prove identification.<sup>330</sup> As this research illustrates, many Texans lack the multiple identity documentation currently required by DPS; however, because the conditional driver permit will not serve as a formal proof of identification for purposes other than legal driving, the identification requirements can be simplified.<sup>331</sup>

Conditional driver permit legislation should remove the requirement to show proof of U.S. citizenship or a certain immigration status, social security number, or a tax identification number.<sup>332</sup> This additional documentation creates an unnecessary barrier to legal driving.<sup>333</sup> Proof of Texas residency should allow for proof of residency in temporary housing, such as shelters, FEMA housing, and other “halfway”

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327. S.B. 278, 54th Cong., Reg. Sess. (N.M. 2019) (highlighting the amendments to New Mexican legislation that would now allow greater access to a driver’s license).

328. *See id.* (noting that amongst other things, New Mexico requires that the application indicate whether he or she was previously licensed as a driver in another state or country. If so, they must provide information about the jurisdiction that granted the driving privilege and indicate if the license was ever an indication of whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked.)

329. *See generally* Texas A&M School of Law, *supra* note 314 (advocating for the creation of a conditional driver’s permit so that more Texans have greater access to socioeconomic opportunities).

330. *See id.* (providing examples of how natural disaster victims, domestic violence survivors, and individuals immigrating to the United States face complicating factors in obtaining documents for purposes of identification).

331. *See id.* (estimating roughly that almost 286,338 Texans could benefit from legislation that would expand access to conditional driver permits).

332. *See How to Apply for a Texas Driver License, supra* note 10 (indicating the current documentation requirements to obtain a driver’s license in Texas). *But see* Sasinovic, *supra* note 254, at 338 (stating that even with the removal of status and current forms of identity verification, driver licensure is still possible, these licenses would however be non-REAL ID compliant).

333. *See generally* Sasinovic, *supra* note 254, at 305 (pinpointing that in the early 1990s and with the enactment of the REAL ID Act of 2005 vehicle codes became amended and effectively barred certain classes of individuals from obtaining licenses).

housing.<sup>334</sup> There are a variety of documents that can be used to prove identity and residency.<sup>335</sup>

A list of documents that should be deemed acceptable to prove identification and residency are included in Exhibit A.<sup>336</sup> The list provides options and is not intended to be used to add more documentation to an already difficult process.<sup>337</sup> New legislation should remove unnecessary application requirements that currently prevent Texans from obtaining licenses.<sup>338</sup>

To further the goals of increased public safety, applicants for the conditional driver permit should show proof of completion of a driver safety training course just as a driver seeking a standard license would.<sup>339</sup> This requirement directly contributes to increasing public traffic safety.<sup>340</sup> Applicants may have access to low-cost driver education courses or community-based programs for impacted populations.<sup>341</sup>

Similarly, proof of financial responsibility directly contributes to public safety and increased private insurance revenues.<sup>342</sup> Proof of

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334. See *Texas Residency Requirement for Driver Licenses and ID Cards*, TEX. DEP'T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/texas-residency-requirement-driver-licenses-and-id-cards> [<https://perma.cc/6LDB-RTS8>] (providing several examples of documents that can be used for establishing residency in Texas that exclude forms of emergency shelter or halfway housing).

335. See *id.* (listing current deeds, preprinted W-2s, utility bills, and unexpired, valid voter registration cards as examples of documents that can be used to establish residency in Texas).

336. See TEXAS A&M UNIVERSITY SCHOOL OF LAW COMMUNITY DEVELOPMENT CLINIC, ESTABLISHING A CONDITIONAL DRIVER PERMIT IN TEXAS 23–25 (2021).

337. See *id.*

338. See Texas A&M School of Law, *supra* note 314 (advocating for the removal of current application requirements that bar additional Texans from receiving a driver's license).

339. See *id.* (emphasizing the goal of public safety by requiring that with the ID expansion legislation there are provisions that require driver training requirements the same way any other typical licensure would).

340. See *id.* (finding that there are Texans currently driving without a license, which means they have not been tested for driver safety or responsibility which is a public safety hazard).

341. See Kathi Valeii, *Driver's Ed is Becoming Harder for Poor Kids to Afford*, PAC. STANDARD (Jan. 16, 2018), <https://psmag.com/economics/why-poor-people-and-poc-dont-take-drivers-ed> [<https://perma.cc/LV5D-V4WD>] (discussing the insurmountable barriers low-income families experience when it comes to weighing the cost of obtaining a driver's education).

342. See Goren, *supra* note 234 (advocating for increased access to driver education and driver licenses as a means to create enormous benefits to society); see also KALLICK & ROLDAN, *supra* note 1, at 2 (“The estimate of the number of people who would get a driver's license allows us to estimate the revenue generated from driver's license fees. The anticipated number of

financial responsibility is also a general DPS driver license requirement that is not tied to identity documents and, therefore, should not be an insurmountable burden to impacted populations.<sup>343</sup> To make this accessible, allowing permit applicants to provide proof of insurance after the permit is issued would avoid the significant financial burden of insurance coverage when the driver does not have driving privileges.<sup>344</sup> Just as a standard driver's license, all people receiving a conditional driver permit should be required to maintain motorist insurance.<sup>345</sup>

The conditional driver permit should cost only what is required to cover the state's costs to process the initial fee and its renewal, which should be at most every two years.<sup>346</sup> The cost should only offset the expense of implementing the program, which may be primarily administrative costs that do not require adding significant state agency staff.<sup>347</sup> Since many of the populations identified in this report may be financially vulnerable, a high cost of entry for such a permit can become a barrier for the most the impacted populations.<sup>348</sup>

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additional cars purchased makes it possible to estimate added revenues from car registration and related fees, as well as from sales tax and gasoline taxes paid.”).

343. See *Financial Responsibility Insurance Certificate (SR-22)*, TEX. DEP'T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/financial-responsibility-insurance-certificate-sr-22> [<https://perma.cc/AJ65-77YF>] (explaining that a Financial Responsibility Certificate, also known as SR-22, is required by Texas law to certify the driver has minimum liability insurance). See generally TEX. TRANSP. CODE ANN. § 601.454 (requiring insurance companies to certify certain information about their customers' policies).

344. *Contra* TEX. DEP'T OF PUB. SAFETY, GUIDE FOR FIRST TIME DL/ID APPLICANTS 15 (Apr. 2019), <https://www.dps.texas.gov/Internetforms/Forms/DL-100E.pdf> [<https://perma.cc/T3SM-BBXX>] (noting the current requirement of proof of insurance for Texans attempting to obtain a driver license).

345. *Cf. How to Apply for a Texas Driver License*, *supra* note 10 (asserting that a conditional permit should adhere to the same standards as a regular driver license, such as requiring proof of car insurance).

346. See *Driver License Fees*, TEX. DEP'T OF PUB. SAFETY, <https://www.dps.texas.gov/section/driver-license/driver-license-fees> [<https://perma.cc/44LH-6MPP>] (recognizing that a conditional permit, like other types of driver licenses, will require a fee to be processed).

347. See Fiscal Note, H.B. 3206, 83d Leg., R.S., (2013) (“It is assumed that implementing . . . the bill would require 33.3 Customer Service Representatives to handle the additional workload. DPS would also require two Program Supervisor III positions and one Manager II position to oversee the 33.3 additional employees for this new program.”).

348. *Cf. Valeii*, *supra* note 341 (revealing how cost of driver's education is already a barrier for financially vulnerable populations. If the cost of a conditional permit is high as well, then it will pose as another barrier to those in need).

A conditional driver permit would serve as a steppingstone for state residents to overcome immediate barriers to access legal driving.<sup>349</sup> It also has the potential to generate millions of dollars in revenue through the permit fees, vehicle sales tax, and vehicle registration revenue.<sup>350</sup>

### III. PART THREE: ECONOMIC IMPACT

Legislation that offers a conditional driver permit option can generate state revenue that exceeds implementation costs.<sup>351</sup> The 2019 Fiscal Note that accompanied the 2019 legislative effort identified a cost of \$8.7 million, but did not properly identify all of the possible revenue.<sup>352</sup> Possible revenue through the implementation of this policy includes fees from additional driver licenses (and renewals), vehicle registrations (and renewals), vehicle titles, vehicle license plates, and sales taxes related to vehicle use.<sup>353</sup> Expanding access to conditional driver permit increases the number of licenses and vehicles purchased.<sup>354</sup>

#### A. Permit Application Fee

Concerns about costs to the state associated with offering a conditional driver permit are not justified.<sup>355</sup> DPS has experience handling increased wait times and costs, which can be easily mitigated.<sup>356</sup> For example, DPS allows you to virtually get in line by registering online, which can reduce

349. See Nava, *supra* note 230, at 1 (“Driver’s license expansion would address these barriers for a diverse group . . . by expanding the scope of documents accepted . . .”).

350. See *id.* at 4 (illustrating how expanding driver license access boosts local and state economies).

351. Taylor, *supra* note 246 (“Providing an additional driving permit option will increase socio-economic opportunities for individuals, all the while improving public safety and generating revenue for our state.”).

352. Fiscal Note, H.B. 35, 86th Leg., R. S., (2019).

353. See *id.* (listing the various streams where revenue will generate from a conditional license program).

354. See KALLICK & ROLDAN, *supra* note 1, at 1 (presenting research from the Fiscal Policy Institute, estimating if roughly 265,000 undocumented immigrants were to obtain their license, then an estimated 97,000 cars would be purchased in New York alone).

355. See Lisa Minton, *Texas Driver’s Licenses: A Customer Service Challenge*, COMPTROLLER.TEXAS.GOV (Oct. 2019), <https://comptroller.texas.gov/economy/fiscal-notes/2019/oct/license.php> [<https://perma.cc/6Z3B>] (recognizing how the State is growing and the Texas Department of Public Safety is concerned regarding their services).

356. *E.g., id.* (highlighting how there has been a struggle with wait times at DPS. However, not only can these potential problems be mitigated, but there is also no evidence to suggest there would be an increase in wait times or additional costs to the state).

the amount of time Texans have to wait in line.<sup>357</sup> DPS can also run pilot programs whereby driver license offices can temporarily extend their hours of operation during disaster periods as it did during COVID-19 to cope with the backlog of Texans needing to renew their licenses.<sup>358</sup> During these extended hours, appointment times can be reserved only for Texans seeking a permit.<sup>359</sup> DPS could determine which aspects of the application could be done online ahead of time.<sup>360</sup>

Similarly, the additional cost to the state is not a concern.<sup>361</sup> Previous Texas bills proposing similar legislation addressed this exact concern.<sup>362</sup> Bills presented during the 83rd and 84th Regular Sessions proposed a two-tier license system and suggested that the increase in costs would be covered by additional fees associated with providing a conditional permit.<sup>363</sup> For example, the estimated additional costs for DPS to implement an additional license program in 2013 was \$400,000, while the additional revenue from fees was estimated to be \$5,460,000.<sup>364</sup>

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357. Texas Department of Public Safety, *How to: Get in Line, Online*, YOUTUBE (Sept. 20, 2018), <https://www.youtube.com/watch?v=ssPBT-ZTjDU> [<https://perma.cc/FP5M-S5RT>].

358. *See DPS Expands DL Service Offerings, Now Accepting Appointments for Renewals and Replacements in Offices*, TEX. DEP'T OF PUB. SAFETY (July 7, 2020), [https://web.archive.org/web/20201018211540/https://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/pr/2020/0707a](https://web.archive.org/web/20201018211540/https://www.dps.texas.gov/director_staff/media_and_communications/pr/2020/0707a) [<https://perma.cc/4DZC-5Z6Z>] (illustrating how following the brunt of pandemic, DPS provided additional hours to accommodate for backlogs in driver license renewals and replacements); *see also DPS Extends Hours at Four Driver License Offices as Part of Pilot Program*, TEX. DEP'T OF PUB. SAFETY (July 1, 2020), [https://web.archive.org/web/20200805083820/https://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/pr/2020/0701a](https://web.archive.org/web/20200805083820/https://www.dps.texas.gov/director_staff/media_and_communications/pr/2020/0701a) [<https://perma.cc/8HEX-8YYD>] (recognizing that Texas DPS has previously extended their hours to accommodate for the increased workload).

359. *Cf. DPS Extends Hours at Four Driver License Offices as Part of Pilot Program*, *supra* note 358 (suggesting that proposed conditional permit appointments follow similar procedures and restrictions as were in place during the pilot program at Texas DPS).

360. *Cf. Texas Department of Public Safety*, *supra* note 357 (summarizing the services already offered online by Texas DPS).

361. *Cf. DPS Expands DL Service Offerings, Now Accepting Appointments for Renewals and Replacements in Offices*, *supra* note 358 (presuming Texas has the resources to incorporate a conditional permit based on the State's ability to expand DPS services and offerings in the past).

362. *See Fiscal Note*, H.B. 3206, 83d Leg., R.S., (2013) (noting no significant fiscal implications exist for this bill); *see also Fiscal Note*, H.B. 68, 84th Leg., R.S. (2015) (anticipating no significant fiscal impact based on the changes this bill proposes).

363. *See Fiscal Note*, H.B. 3206, 83d Leg., R.S. (2013) (estimating that any increased costs would be offset by the fees associated with issuing the permits); *see also Fiscal Note*, H.B. 68, 84th Leg., R.S. (2015) (proposing there is no concern with additional fees because revenues from issuing conditional permits will cover the increase in fees).

364. *Id.*

These estimates were based on the assumption that at least 36,400 residents would apply.<sup>365</sup> But that estimate of applicants was based only on the number of undocumented immigrant applicants.<sup>366</sup> Adding to the applicant pool victims of natural disaster and domestic violence, in addition to individuals experiencing homeless, would yield higher revenue estimates.<sup>367</sup>

A more adequate projection of the permit application fees generated requires a better understanding of the number of Texans most likely to apply for a conditional driver permit.<sup>368</sup> Data published by DPS shows that in January 2020, the office produced 745,006 driver license and ID cards.<sup>369</sup> A new driver license fee is \$33 for applicants ages 18–84 years.<sup>370</sup> The best estimates of the number of the most impacted populations described in this report are gathered in [Table 1](#) and total over 2.7 million individuals.<sup>371</sup> If we assume that only 10 percent of the impacted populations would need and be able to pay for a conditional driver permit, the state can expect to generate approximately \$9,449,154

365. *Id.*

366. *See id.* (predicting roughly 36,400 applicants, consisting of those who are undocumented individuals, during the fiscal year 2014).

367. *See* Cory Smith, *DPS Sets up Mobile Driver's License Unit for Tornado Victims*, NBCDFW (Jan. 1, 2016), <https://www.nbcdfw.com/news/local/dps-sets-up-mobile-drivers-license-unit-for-tornado-victims/106977/> [<https://perma.cc/W525-Z364>] (illustrating how in the past, Texas has assisted victims of natural disaster in obtaining their lost and destroyed IDs); *see also Identity Theft and Domestic Abuse*, EPIC.ORG, [https://archive.epic.org/privacy/dv/identity\\_theft.html](https://archive.epic.org/privacy/dv/identity_theft.html) [<https://perma.cc/NEU8-3Z4C>] (recognizing how victims of domestic violence often experience some form of identity theft); *Cf.* Wiltz, *supra* note 120 (examining the various pilot programs states have begun to provide individuals experiencing homelessness IDs). *See generally* Fiscal Note, H.B. 35, 86th Leg., R. S. (2019) (contending that implementation of a conditional driver permit program would yield significant revenue based on the number of individuals who apply).

368. *Cf.* Fiscal Note, H.B. 3206, 83d Leg., R. S. (2013) (recognizing the potential applicant pool is unknown. If the State had a better estimate of how many applicants would apply for a conditional permit, it would provide an accurate representation of fees expended).

369. TEX. DEP'T OF PUB. SAFETY, DRIVER LICENSE DIVISION HIGH VALUE DATA SET JANUARY 2020 1 (2020) <https://www.dps.texas.gov/DriverLicense/PSC/docs/2020-01.pdf> [<https://perma.cc/37BJ-YNNH>] (providing data regarding the use of the Driver License Division's services).

370. *Driver License Fees*, *supra* note 346 (listing the various fees to obtain a driver license depending on the type of license and age of applicant).

371. *Cf.* Nava, *supra* note 230, at 2 (discussing groups of people and communities who benefit from license expansion).

based on a \$33 fee.<sup>372</sup> While the additional revenue will likely be most significant in the year the new law takes effect, additional fees will be generated each year due to renewals and new applications.<sup>373</sup>

**Table 1. Estimated Number of Impacted Population Benefitted by Conditional Driver Permit**<sup>374</sup>

<b>Impacted Population</b>	<b>Estimated Population</b>	<b>Estimated Number (10%)</b>
Victims of Natural Disasters <sup>375</sup>	1,000,000	100,000
Homeless <sup>376</sup>	27,229	2,723
Family Violence Victims <sup>377</sup>	211,536	21,153
Immigrants <sup>378</sup>	1,739,000	173,900
<b>TOTAL</b>	<b>2,977,765</b>	<b>297,776</b>

372. E.g., U.S. Interagency Council on Homelessness, *Texas Homelessness Statistics*, USICH, [https://www.usich.gov/homelessness-statistics/tx/#:~:text=Texas%20Homelessness%20Statistics,and%20Urban%20Development%20\(HUD\)\[https://perma.cc/5TBS-MADY](https://www.usich.gov/homelessness-statistics/tx/#:~:text=Texas%20Homelessness%20Statistics,and%20Urban%20Development%20(HUD)[https://perma.cc/5TBS-MADY)] (reporting the number of homeless individuals present in Texas); see also TEX. DEP'T OF PUB. SAFETY, *supra* note 162, at 55 (presenting the annual crime report based on type of crime); Cf. *Profile of the Unauthorized Population: Texas*, *supra* note 198 (providing data regarding undocumented immigrants in Texas); see generally *Driver License Fees*, *supra* note 346 (presenting the fees associated with obtaining a driver license).

373. Cf. Goren, *supra* note 234 (asserting that expansion of access to driver licenses in Virginia would result in a significant increase in revenue during the two years after promulgation of rules to that effect).

374. Cf. Nava, *supra* note 230, at 2 (depicting the communities who benefit from license expansion in New Jersey).

375. See Huber, *supra* note 77 (estimating roughly 13 million people were impacted by Hurricane Harvey); see also *Disaster Declarations for States and Counties*, *supra* note 43 (displaying the data on how many natural disasters have occurred in each state and county from 1953 to present).

376. See U.S. Interagency Council on Homelessness, *supra* note 372 (providing statistics regarding the number of people experiencing homelessness in Texas).

377. TEX. DEP'T OF PUB. SAFETY, *supra* note 162, at 55 ("Incidents of family violence in 2019 involved 211,536 victims. Of the victims whose sex was known, 28.7% were male and 71.3% were female. The age group with the highest number of victims was the 25-to-29-year-old bracket.").

378. Cf. *Profile of the Unauthorized Population: Texas*, *supra* note 198 (capturing a statistical picture of the undocumented population in Texas).

*B. Vehicle Sales and Tax Registration*

A thorough economic analysis should also consider additional sources of revenue generated from fees associated with vehicle purchases.<sup>379</sup> According to the Texas Comptroller, the state charges a 6.25% sales tax on the value of each vehicle registered.<sup>380</sup> In August 2020, the Texas Department of Motor Vehicles reported 13,979,427 passenger vehicles weighing 6,000 pounds or less.<sup>381</sup> Even if a new conditional driver permit increased the purchase of vehicles by only 2.5% of existing vehicles—likely a conservative estimate—it would generate millions in sales tax revenue, as demonstrated in Table 2 below.<sup>382</sup>

**Table 2. Percentage of Added Vehicle Purchases as a Result of Conditional Driver Permit<sup>383</sup>**

Percentage of added vehicle purchases	Cost of car	Average annual sales tax revenue fee
2.50	\$5,000	\$1,747,425,000
2.50	\$2,500	\$873,712,500
2.50	\$1,000	\$349,485,000

379. Cf. Goren, *supra* note 234 (advancing a similar argument about expanding access to driver licenses in Virginia).

380. Glenn Hagar, Texas Comptroller of Public Accounts, *Taxes: Motor Vehicle – Sales and Use Tax*, COMPTROLLER.TEXAS.GOV, <https://web.archive.org/web/20201112023835/https://comptroller.texas.gov/taxes/motor-vehicle/sales-use.php> [<https://perma.cc/9MKT-XD2Q?type=image>].

381. TEX. DEP'T OF MOTOR VEHICLES, CURRENT REGISTERED VEHICLES BY REGISTRATION CLASS FOR THE MONTH OF AUGUST 2020 (Aug. 2020) (listing the number of vehicles registered by type).

382. See Table 2, *supra* (illustrating the increased revenue Texas would see by expanding access to licenses).

383. Cf. Goren, *supra* note 234.

Each vehicle also requires an annual registration fee of \$51.75.<sup>384</sup> If we estimate that only five percent of the impacted population registers a vehicle as a result of the conditional driver permit, we can expect to generate more than \$7 million.<sup>385</sup> Table 3 demonstrates the possible revenue.<sup>386</sup>

**Table 3. Percentage of Additional Revenue Based on Vehicle Registration as a Result of Conditional Driver Permit**<sup>387</sup>

Percentage and number of added registration <sup>388</sup> vehicle	Registration fee for vehicle under 6,000 pounds <sup>389</sup>	Average annual car registration fee
10% or 297,776	\$51.75	\$15,409,908
5% or 148,888	\$51.75	\$7,704,954
2.5% or 74,444	\$51.75	\$3,852,477

Table 4 offers a few scenarios of possible new state revenue that can be generated by registration fees, if only a portion of the undocumented immigrant population that is 16 years and older would pay annual registration fees.<sup>390</sup>

384. *New to Texas*, TEX. DEP'T OF MOTOR VEHICLES (2021), <https://www.txdmv.gov/motorists/new-to-texas> [<https://perma.cc/6Y7K-AP3U>] (guiding new Texans through the process of transferring their vehicles and licenses to Texas).

385. The calculation follows: 5 percent of the 2,977,765 estimated impacted population equals 148,888 new registrations. Those new registrations multiplied by \$51.75 equals \$7,704,966. See Table 1, *supra* (estimating the total number of persons impacted by this proposed policy change); see also *New to Texas*, *supra* note 384 (announcing the cost to register a vehicle in Texas).

386. See Table 3, *supra* (listing the percentages of estimated additional revenue based on vehicle registrations following the establishment of the conditional driver license).

387. Cf. Goren, *supra* note 234.

388. See Table 1, *supra* (breaking down the total estimated population impacted by conditional licensure).

389. See *New to Texas*, *supra* note 384 (totaling the cost to register a vehicle weighing less than 6,000 pounds in Texas at \$51.75).

390. See *Profile of the Unauthorized Population: Texas*, *supra* note 198 (estimating the number of undocumented people aged 16 years or older in Texas to be 1,730,000. Based on American Community Survey Data, approximately 94 percent of the undocumented population is 16 years and older).

**Table 4. Annual Vehicle Registration Fee Estimated for Percentage of Driving Age Undocumented Immigrants in Texas<sup>391</sup>**

Percentage of Undocumented immigrants	Registration fee for vehicle under 6,000 pounds	Average annual car registration fee
5.00	\$51.75	\$4,207,275
2.50	\$51.75	\$2,103,637.50
1.50	\$51.75	\$1,262,182.50

(N=1,626,000)

If only five percent of the undocumented population paid car registration fees, the revenue to the state would exceed \$4 million each year.<sup>392</sup> This sector of the immigrant population could itself generate significant resources through car registrations.<sup>393</sup> However, we must keep in mind that the population that would benefit from a conditional driver permit is greater than the undocumented population accounted for in [Table 4](#).<sup>394</sup>

### C. Other Economic Benefits

Apart from the revenue projections based on permit and registration fees, there are additional economic benefits that are difficult to quantify but should be considered.<sup>395</sup> These benefits include:

- Additional revenue generated by the state in title fees;
- Revenue generated by local government entities on use taxes;
- Employment opportunities for populations that do not have access to job opportunities near their homes;
- Job retention for those who are not able to comply with a consistent work routine based on a lack of transportation options;

391. See *New to Texas*, *supra* note 384 (quantifying the cost to register a vehicle weighing less than 6,000 pounds in Texas).

392. See [Table 4](#), *supra* (estimating revenue in Texas if a certain percentage of the impacted populations registered vehicles).

393. Cf. Goren, *supra* note 234 (reporting similar findings for expanding access to driver licenses in another state).

394. See Nava, *supra* note 230, at 2 (recognizing populations that will benefit from expanding driver licenses).

395. See *id.* at 4 (noting various economic benefits expanding access to driver licenses would have for the state).

- Increase community economic development by accessing local services such as grocery stores, banks, service providers, and other retail providers;
- Increased access to education and housing opportunities;
- Reduction of financial and criminal penalties for engaging in daily activities;
- Reducing recidivism; and
- Reduction of uninsured motorist claims and related damages.<sup>396</sup>

Legislative notes for previously proposed legislation failed to account for all the income that a conditional driver permit option would generate for the state.<sup>397</sup>

### CONCLUSION

Current law is restrictive and requires applicants for a state-issued driver license to present a valid social security number and other official documentation, which a significant number of Texans are unable to obtain.<sup>398</sup> Many states offer a non-compliant license option that grants residents the privilege to drive without granting them other governmental privileges.<sup>399</sup> This article demonstrates how increasing safe and legal driving privileges for Texans could provide more socioeconomic opportunities for individuals, improve public safety, and generate new revenue for the entire state.<sup>400</sup>

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396. See Goren, *supra* note 234 (putting forth arguments for expanded access to driver licensure which include economic benefits and community welfare benefits); see also Nava, *supra* note 230, at 1 (giving six reasons, ranging from economic benefits to community health benefits, as to why New Jersey should expand access to driver licenses).

397. See generally H.B. 1058, 87th Leg., R. S. (Tex. 2021) (proposing conditional licensure for undocumented Texans. During the 2021 Legislative Session, the legislation did not reach the floor of either the House or Senate chamber, and no fiscal note was produced.).

398. See *How to Apply for a Texas Driver License*, *supra* note 10 (requiring Texans to have evidence of U.S. citizenship or lawful presence in the U.S., Texas residency, identity, and a social security number before they may obtain a Texas driver license).

399. See MENDOZA & POLKEY, *supra* note 317, at 1 (showcasing the states that offer licenses to immigrants and the laws that allow them to do so).

400. See Goren, *supra* note 234 (“Some communities, however, cannot access the documents they need to obtain a license. Driver’s license expansion would address these barriers for a diverse group of New Jerseyans by expanding the scope of documents accepted by the New Jersey Motor Vehicle Commission’s (MVC) 6 Point ID Verification process.”); Cf. Nava, *supra* note 230, at 1 (advocating for a conditional licensure in New Jersey as a means to make the “communities and commonwealth more prosperous.”).