New York's Green Light Law:

How Will The Law Stand Up Against Constitutionality Challenges?

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I. INTRODUCTION

On June 17, 2019, New York Governor Andrew M. Cuomo signed the "Driver's License Access and Privacy Act" ("DPLA"), more commonly known as the "Green Light Law," into law.[2] The Green Light Law modifies New York's vehicle and traffic laws by, *inter alia*, granting driver's licenses and learner's permits regardless of proof of immigration status.[3] When New York passed the Green Light Law in 2019, it became the fifteenth United States state or territory to pass a law granting driver's licenses and learner's permits without considering the applicant's immigration status.[4]

To apply for a driver's license or learner's permit, applicants must fill out an application and return the application to their county department of motor vehicles office.[5] Then the applicant must pass a written exam based on the New York State driver's manual, which is available in a number of different languages.[6] If the applicant applies for a learner's permit and it is then issued, the applicant must still follow procedure by only driving with a supervising, licensed driver over the age of twenty one in the passenger seat, take a pre-licensing driving course and pass a road test in order to receive a license to drive alone.[7]

The provisions of the law are currently being challenged in federal court by Michael Kearns, Erie County Clerk, and Frank J. Merola, Rensselaer County Clerk, with very similar arguments.[8] This note seeks to analyze the federal challenges to the Green Light Law raised by the pending lawsuit brought by Kearns and the existing legal framework in place to resolve such challenges.

II. BACKGROUND

New York State follows Article 19 of the New York Vehicle and Traffic Law ("VTL") for the licensing of drivers.[9] As outlined under the VTL, an individual seeking a driver's

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[2] *Driver Licenses and the Green Light Law*, N.Y. STATE DEP'T OF MOTOR VEHICLES, https://dmv.ny.gov/driver-license/driver-licenses-and-green-light-law (last visited Feb. 21, 2021). The DPLA became effective on December 16, 2019. *Id*.

[3] *See* Jon Campbell & Joseph Spector, *Undocumented Immigrants Can Soon Get NY Driver's Licenses: What to Know*, Democrat & Chron. (Dec. 5, 2019), https://www.democratandchronicle.com/story/news/politics/albany/2019/12/05/undocumented-immigrants-drivers-licenses-green-light-bill-licencias-new-york-indocumentados/2598319001/.

[4] Tracey Tully and Michael Gold, *Long Lines as Undocumented Immigrants in N.Y. Rush to Get Licenses*, N.Y. TIMES (Dec. 16, 2019).

[5] *See id*.

[6] *See id*.

[7] *Id*.

[8] *See id*.

[9] *See generally* N.Y. VEH. & TRAF. LAW, § 501 (McKinney 2020).

license must apply for the same to the Commissioner of the New York State Department of Motor Vehicles and provide proof of their identity, age, and fitness.[10] In 1995, section 502 (1) was amended to include the requirement that driver's license applicant must also provide their social security number.[11] Years later, Congress passed the REAL ID Act which establishes minimum federal requirements for state issued drivers licenses and identification cards in order to enter federal facilities and board federally regulated commercial aircrafts.[12] An individual's lawful presence within federal databases must be verified with the state to be able to receive a REAL ID license or identification card.[13] Nevertheless, the REAL ID Act still allows states to issue standard licenses that would not meet the REAL ID lawful presence requirements.[14]

Unlike licenses issued under the REAL ID Act, licenses issued under the Green Light Law cannot be used to board an airline or register to vote.[15] As such, driver's licenses issued pursuant to the Green Light Law are not valid for federal purposes.[16]

Disclosure of applicants' records concerning citizenship status to immigration agencies (i.e., the United States Immigration and Customs Enforcement) is heavily restricted under the Green Light Law.[17] The proof of identity that is normally required to obtain a driver's license or learner's permit is now expanded to accept foreign passports and identification as well.[18] Therefore, an individual who lives in New York without legal immigration status must still " . . . prove their age and identity with valid, foreign issued documents."[19] Further, pursuant to the Green Light Law, applicants must prove that they

[10] N.Y. VEH. & TRAF. LAW § 502 (1) (McKinney 2020).
[11] *See* Cubas v. Martinez, 8 N.Y.3d 611, 617 (2007) (The Department of Motor Vehicles provided regulations stating that "[a]n applicant for a license or a non-driver identification card or an applicant renewing such a license or such identification card must submit his or her social security number or provide proof that he/ she is not eligible for a social security number.").
[12] *See* Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. No. 109-13, 119 Stat. 231 (2005) (enacted May 11, 2005 as part of an emergency appropriations bill but was originally introduced as H.R. 418) [hereinafter "REAL ID."].
[13] *Id.*
[14] *Id.* However, standard licenses will not be accepted as valid identification at airports starting in October 2020. *See* Curtis Tate, *Find Out If You Need A Real ID. You've Got A Year to Get One*, USA TODAY (Oct. 1, 2019, 3:12 P.M.), https://www.usatoday.com/story/travel/news/2019/10/01/real-id-tsa-airport-security-october-2020-deadline-year-away/3831459002/.
[15] *See* Campbell & Spector, *supra* note 4 (noting that trying to use this license to vote is a federal crime and "comes with a fine up to $5000 and up to four years in prison").
[16] *Id.*
[17] See Jon Campbell, New York Law Lets Undocumented Immigrants Apply for Driver's Licenses, Blocks ICE Access, USA Today (Dec. 19, 2019, 8:01 AM), https://www.usatoday.com/story/news/nation/2019/12/19/new-york-drivers-licenses-open-undocumented-immigrants-gr.
[18] *See* Campbell & Spector, *supra* note 4.
[19] *Id.*

live in New York by providing some documentation, such as a recent utility bill with their name and address on it.[20]

III. THE NEW DRIVER'S LICENSE AND PRIVACY ACT ADDITIONS

Section 2 of the DPLA amends the N.Y. VTL § 201 by adding five new subdivisions which ultimately form the Green Light Law, namely, 8, 9, 10, 11, and 12.[21] The Green Light Law helps "secure driving privileges for all residents of New York, including undocumented immigrants[.]"[22] In enacting the Green Light Law, the legislature intended to " . . . address[] the long-held need by undocumented immigrants and workers to secure driving privileges not only to get back and forth to work but to conduct tasks in their personal lives like going to doctor visits and taking their children to school."[23]

Specifically, subdivision 8 provides that "any portion of any record" kept by the commissioner of motor vehicles ("the commissioner") in connection to an application for a driver's license or learner's permit, containing a photo image or identifies an applicant by their country of origin, status as a recipient of public health benefits, or place of employment, does not constitute a public record and cannot be disclosed except to, *inter alia*, the person who these records belong to or to comply with a court order.[24] Next, subdivision 9 prohibits the commissioner from disclosing or otherwise making accessible, an applicants' original documents or copies of documents which show the applicants' identity or age except to, *inter alia*, the person who owns these records or to comply with a court order.[25] Subdivision 10 prohibits the commissioner from disclosing or otherwise making accessible "any portion of any record" that identifies whether a person's driver's license or learner's permit meets the federal standards for identification, with the same exceptions as the subdivisions above.[26] In subdivision 11, the law instructs the commissioner to release specific individual information under a lawful court order, judicial warrant, or subpoena that is properly issued with no extra information disclosed.[27]

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[20] *Id.*

[21] Luis R. Sepúlveda, *S1747B Sponsor Memo*, N.Y. State Senate, https://www.nysenate.gov/legislation/bills/2019/s1747?intent=support (last visited Feb. 21, 2021).

[22] Marcos Crespo, *A03675 Sponsor Memo*, N.Y. State Assembly, https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A03675&term=2019&Summary=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y.

[23] *Id.*

[24] *See* N.Y. VEH. & TRAF. LAW § 201(8) (McKinney 2020).

[25] *See id.* § 201(9).

[26] *See id.* § 201(10).

[27] *See id.* § 201(11).

Specific references to immigration agencies appear in subdivision 12.[28] In subdivision 12 (a), the law prohibits the commissioner or any employee of the commissioner to divulge any information obtained to any agency that enforces immigration law.[29] Further, subdivision 12 (b) provides that the commissioner must require any individual who has access to records or information from the Department of Motor Vehicle to confirm to the commissioner that the individual will not use the records or information for civil immigration purposes or disclose the same to an immigration agency "unless such disclosure is pursuant to a cooperative arrangement between city, state, and federal agencies which arrangement does not enforce immigration law and which disclosure is not limited to the specific records or information being sought pursuant to such arrangement."[30] Subdivision 12(b) goes on to explain that ". . . any person or entity certifying pursuant to this paragraph shall keep for a period of five years records of all uses and identifying each person or entity that primarily enforces immigration law that received department records or information from such certifying person or entity."[31]

IV. IMMIGRATION LEGISLATION

The U.S. government strictly regulates the disclosure of immigration status to immigration authorities, how immigration status effects employment, and immigrant harboring.[32] Title 8 of the United States Code outlines comprehensive rules regarding citizenship, naturalization, entry, removal, and enforcement.[33] 8 U.S.C. § 1324 (a)(1)(A)(iii) provides that it is a felony to conceal, harbor, or shield from detection any "alien [illegally in the United States] in any place."[34] 8 U.S.C. § 1324 (a)(1)(A)(iii) and (a)(1)(A)(v)(I)–(II) provide that it is a felony to attempt these acts, to aid or abet their commission, or to conspire to commit them.[35] As to employment, under the Immigration and Reform Control Act of 1986 ("IRCA"), it is unlawful for employers to knowingly "hire, or to recruit or refer for a fee" or "continue to employ" an individual illegally in the United States.[36] Furthermore, Congress has criminalized the act of knowingly bringing a person that is an alien into the United States by means other than through a designated point of entry, or attempting to transport or move an alien within the United States knowingly or recklessly disregarding the fact that the alien is not lawfully in the United States.[37] Similarly, it is a crime to encourage an alien to enter or reside in the

[28] *See id.* § 201(12).
[29] *See id.*
[30] *See id.*
[31] *See id.*
[32] *See* Kearns v. Cuomo, 415 F. Supp. 3d. 319, 325 (W.D.N.Y. 2019).
[33] *See generally* 8 U.S.C. §§ 1101–1778.
[34] 8 U.S.C. § 1324 (a)(1)(A)(iii).
[35] *See id.*; 8 U.S.C. § 1324 (a)(1)(A)(v)(I)–(II).
[36] 8 U.S.C. § 1324a(a).
[37] 8 U.S.C. § 1324 (a)(1)(A)(i)–(v).

United States knowing their entry or residence would be unlawful.[38] Aiding and abetting in any of the above prohibited activities constitutes a criminal act.[39]

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which prohibits state and local governments from limiting their employees in the voluntary provision of information about the immigration status of aliens to federal immigration authorities and is relevant to the Green Light Law federal issues.[40] Federal law requires that "[n]otwithstanding any provision of Federal, state, or local, law, no State or local government entity may be prohibited, or in any way restricted from sending to [federal immigration authorities] information regarding the immigration status, lawful or unlawful, of an alien in the United States."[41]

V. KEARNS' FEDERAL CHALLENGES TO DPLA

The rule is that a federal court cannot decide a case unless the plaintiff has standing, or a concrete interest in the outcome, to bring it.[42] In other words, "standing generally focuses on whether the plaintiff is the right party to bring particular claims, not on whether the plaintiff has sued the right party."[43] To establish standing, a plaintiff bears the burden of establishing three elements.[44] First, a plaintiff must establish an "injury in fact," which is an invasion of a legally protected interest that is "concrete and particularized . . . actual or imminent . . . and not conjectural or hypothetical."[45] Second, a plaintiff must establish a causal relationship between the injury and the challenged conduct.[46] Third, a plaintiff must establish redressability, or a likelihood that the injury will be redressed by a favorable decision.[47] Since "'standing is an essential and unchanging part of the case-or-controversy requirement of Article III,'" it constitutes not a "'mere pleading requirement[ ], but rather an indispensable part of the plaintiff's case[.]'"[48]

In *Kearns v. Cuomo*, plaintiff Michael Kearns, the Eerie County Clerk, commenced an action in the Western District Court of New York against New York Governor Andrew Cuomo, New York Attorney General Leticia James, Commissioner of the New York

[38] 8 U.S.C. § 1324(a)(1)(A)(iv)-(v).
[39] *Id*.
[40] *See* 8 U.S.C. § 1373; *City of New York v. United States*, 179 F.3d 29, 31 (2d Cir. 1999).
[41] 8 U.S.C. § 1644.
[42] *See* Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
[43] Davis v. Wells Fargo, 824 F. 3d 333, 338 (2016).
[44] *Lujan*, 504 U.S. at 560.
[45] *Id*.
[46] *Id*.
[47] *Id*. at 161.
[48] Kearns v. Cuomo, 415 F. Supp. 3d 319, 322 (W.D.N.Y. 2019) (quoting *Lujan*, 504 U.S. at 560-61).

State Department of Motor Vehicles Mark Schroeder (collectively referred to as the "defendants"), concerning provisions of the Green Light Law.[49] This is the most prominent lawsuit against the Green Light Law. In his first amended complaint, Kearns alleged that the provisions of the Green Light Law are preempted by federal immigration law.[50] Kearns also sought a permanent injunction to stop the implementation and enforcement of the portions of the law that are preempted to avoid his removal from office for any failure to "carry out any and all unconstitutional requirements of the Green Light Law."[51]

More specifically, Kearns claimed that he will suffer injury from the passage of the Green Light Law because in his role as Erie County Clerk, he would be required to comply with the Green Light Law provisions, which will expose him to federal criminal prosecution if he complied or removal from office by Governor Cuomo if he did not comply.[52] Kearns argued that this "credible threat of prosecution" gives him standing in his individual capacity, and he will suffer an injury to his office sufficient to confer standing in his official capacity as well.[53]

The rule is that individuals have standing to challenge an allegedly unconstitutional statute pre-enforcement when fear of criminal prosecution is "not imaginary or wholly speculative."[54] Therefore, it follows that where a plaintiff credibly fears prosecution under an allegedly unconstitutional statute, he is "'not… required to await and undergo a criminal prosecution as the sole means of seeking relief[.]'"[55] A plaintiff asserting standing on the basis that he or she "credibly fears prosecution" must also allege an "intention to engage in a course of conduct proscribed by the challenged statute."[56]

The court in *Kearns* rejected Kearns' argument that he "credibly fears prosecution" and thus, can confer standing based on this assertion.[57] The court reasoned that Kearns did not allege that he would be subject to criminal prosecution under the Green Light Law, nor could he because the Green Light Law is not a criminal statute.[58] Rather, Kearns argued that if he were to comply with the provisions of the Green Light Law, he would face criminal prosecution under 8 U.S.C. § 1324, which prohibits "bringing in and harboring aliens."[59] In rejecting Kearns's argument, the court explained that Kearns did

[49] Id. at 322.
[50] *Id.* at 322-23.
[51] *Id.*
[52] *Id.*
[53] *Id.* at 328.
[54] *See id*. (quoting Hedges v. Obama, 724 F.3d 170, 196 (2d Cir. 2013).
[55] *Ibid.*
[56] *Kearns*, 415 F. Supp. 3d. at 328 (citing Babbitt v. Farm Workers, 442 U.S. 289, 298 (1979)).
[57] *Id*. at 329.
[58] *Id.*
[59] *Id.*

not challenge a law under which he allegedly faces criminal prosecution and thus failed to establish "an intention to engage in a course of conduct proscribed by the challenged statute."[60]

Kearns separately argued that his fear of prosecution is valid because the Trump Administration previously threatened retaliation against officials who interfere with the enforcement of federal immigration law.[61] To buttress this argument, Kearns referred to two incidents. First, Kearns alleged that President Trump publicly urged the United States Attorney General to prosecute the Mayor of Oakland, California for obstruction of justice after she alerted undocumented immigrants of a pending law enforcement raid by immigration officials.[62] However, the court found Kearns' citation to the first incident unpersuasive because the Mayor of Oakland was not criminally prosecuted, despite her deliberate efforts to aid those unlawfully present in the United States to avoid detection by immigration authorities.[63] Second, Kearns cited *United States v. Joseph Sims* for support.[64] In *Sims*, a Massachusetts state court judge and a court officer were criminally prosecuted for obstruction of justice after they allegedly allowed an individual, whom they knew was subject to a final order of removal by United States Immigration and Customs Enforcement, to exit the court through a back door to avoid being taken into custody.[65] Similarly, the court rejected Kearns' citation to *Sims* because the defendants in *Sims* still took deliberate steps to prevent the individual from being taken into custody by immigration enforcement authorities despite being on notice that the individual was subject to a final order of removal.[66]

The court further noted that Kearns "has not plausibly alleged" that he intended to engage in future conduct proscribed by §1324 and he did not allege that he intended to comply with the provisions of the Green Light Law.[67] In order to establish a threat of criminal prosecution sufficiently imminent to establish an injury in fact to have standing, a plaintiff must have "concrete plans to perform, in the near future, conduct that officials would consider illegal."[68] Courts generally find that an intention to engage in future prohibited conduct without "any description of concrete plans" is insufficient to support "a finding of the 'actual or imminent' injury" necessary to establish sufficient standing.[69]

[60] *Id.*
[61] *Id.* at 333.
[62] *Id.*
[63] *Kearns*, 415 F. Supp. 3d. at 333-34.
[64] *Id.*
[65] U.S. v. Sims, 795 Fed. Appx. 488 (8th Cir. 2020).
[66] *Id.*
[67] *Id.* at 330.
[68] *Id.;* Jones v. Schneiderman, 101 F. Supp. 3d 283, 291 (S.D.N.Y. 2015).
[69] Lujan v. Defs. of Wildlife, 504 U.S. 555, 564 (1992).

Finding that Kearns could not confer standing on his pre-enforcement claim, the court explained that Kearns did not reference any "concrete plans," and instead merely addressed the potential legal ramifications of both complying and not complying with the Green Light Law.[70] The court looked to the *mens rea* requirement of § 1324, which subjects those to prosecution for acting in "'reckless disregard' of the fact that an alien is in the United States unlawfully."[71] Meanwhile, as it relates to the Green Light Law, the court noted that "many people who are lawfully present in the United States lack social security numbers for various reasons."[72] The court explained than an individual's lack of a social security number "provides no meaningful information about that individual's immigration status[.]"[73] Thus, merely "knowing" that an individual does not have a social security number does not fulfill the *mens rea* requirement of § 1324.[74]

The court also took issue with the fact that Kearns failed to establish standing in his individual capacity because Kearns did not explain why he would be personally interacting with an individual applying for a driver's license.[75] While Kearns was the elected county clerk for Erie County, that does not mean that he worked at the county's DMV offices helping individuals apply for driver's licenses.[76] Thus, Kearns failed to allege any situation where he was or would be personally responsible for driver's license applicants' documents.[77] On that same token, Kearns did not establish that any driver's license applicant personally told him that he or she was unlawfully in the United States or presented documents suggesting the same.[78] With this in mind, Kearns cannot rely on potential injuries to his staff to establish his own standing to bring this lawsuit.[79]

After determining that Kearns did not have standing in his individual capacity to bring these claims, the court similarly concludes that he does not have standing to bring claims in his official capacity as well.[80] To assess the standing of a state subdivision to be able to challenge a state law under the Supremacy Clause of the Unite States Constitution, the Second Circuit generally applies the traditional Article III test for standing, which requires that the state subdivision demonstrate an "injury in fact."[81] To be able to establish standing with respect to his official capacity claims, Kearns must establish a cognizable injury to his office.[82] Kearns argued that even though the county clerk's office

[70] *See* Kearns v. Cuomo, 415 F. Supp. 3d. 319, 330 (W.D.N.Y. 2019).
[71] *Id*. at 330.
[72] *Id*. at 330-31.
[73] *Id*. at 331.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*; *see* Tweed-New Haven Airport Auth. v. Tong, 930 F.3d 65, 70 (2d Cir. 2019).
[82] Kearns v. Cuomo, 415 F. Supp. 3d. 319, 336 (W.D.N.Y. 2019).

itself cannot be prosecuted, it would be undoubtedly harmed if Kearns and other individuals who hold similar positions were to be prosecuted for a federal offense for complying with the Green Light Law.[83] The court rejected Kearns' argument because Kearns was not specific enough and did not explain what harm would come from having the county clerk replaced.[84]

Moreover, Kearns argues that the clerk's office will inevitably be harmed if the clerk is removed from office each time he or she choose to comply with federal law over the mandates of Governor Cuomo's Green Light law.[85] However, the court similarly rejected Kearns' latter argument because it lacked necessary detail and did not explain why the Green Light Law would harm the Erie County Clerk's office if Kearns were personally criminally prosecuted.[86] Accordingly, the court dismissed Kearns' claims for lack of subject matter jurisdiction.[87] "[A] district court properly dismisses an action under Fed. R. Civ. P. 12 (b) (1) for lack of subject matter jurisdiction if the court lacks the statutory or constitutional power to adjudicate it, such as when the plaintiff lack constitutional standing to bring the action."

The court ultimately held that Kearns failed to establish the "irreducible constitutional minimum" to demonstrate standing because he did not plausibly allege that he suffered or will suffer a cognizable legal injury that is traceable to the implementation of the Green Light Law.[88] As such, the court was unable to resolve the merits of Kearns's claim.[89] Rather, the court granted defendants' motion to dismiss and denied Kearns' motion for a preliminary injunction that sought to enjoin the implementation of the Green Light Law before its effective date.[90] Although Kearns asked the court for a preliminary injunction on enforcing the Green Light Law, the determination that the court lacks subject matter jurisdiction over his claims, eliminated any possibility for the court to grant preliminary injunctive relief.[91]

The court properly found that Kearns lacked standing in his individual capacity and official capacity to sue.[92] Therefore, the court properly dismissed Kearns' claims for lack of subject matter jurisdiction.[93] In order to establish standing, Kearns needed to show a

[83] *Id.*
[84] *Id.*
[85] *Id.* at 336-37.
[86] *Id.*
[87] *Id.*
[88] *Id.* at 327.
[89] *Id.* at 337.
[90] *Id.*
[91] *Id.*
[92] Kearns v. Cuomo, 415 F. Supp. 3d. 319, 337 (W.D.N.Y. 2019).
[93] *Id.*

"concrete and particularized injury that is fairly traceable" to the execution of the Green Light Law. If Kearns established that he was subject to criminal prosecution under the Green Light Law, then he would have a stronger argument for standing. However, this argument fails because the Green Light Law is not a criminal statute. Kearns erroneously focused on arguing the potential consequences of both complying and not complying with the Green Light Law. However, to confer standing, Kearns needed to establish concrete plans to perform the new rules the Green Light Law mandated to be able to establish suffer an actual or imminent injury. As previously mentioned, Kearns identified several possible events, but needed to allege how he would personally be injured from the Green Light Law taking effect.

VI. STATES WITH SIMILAR LAWS IN PLACE

As early as 1993, the first state, Washington State, enacted legislation allowing individuals to be issued driver's licenses without having to present any credentials regarding their immigration status.[94] As of 2020, fifteen states in the United States and the District of Columbia do not require any proof of lawful immigration status to issue a driver's license.[95] Currently, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, New Jersey, New Mexico, New York, Oregon, Utah, Vermont, and Washington issue individuals driver's licenses if they provide certain documentation such as a foreign birth certificate, foreign passport, and evidence of residency in the state such as a utility bill or tax returns.[96] New York, New Jersey, and Oregon are the most recent states to enact this legislation in 2019.[97]

Each state has different versions of legislation to extend driver's licenses and identification cards to individuals without proof of lawful presence in the United States.[98] In California, "A 60," which became effective in 2015, requires the California Department of Motor Vehicles to issue driver's licenses to those who are ineligible for a social security number if a number of listed documents to verify residency in the state and identity are provided.[99] The Connecticut law enacted in 2015 mandates applicants to provide the proof of residency and identity documentation, but also must file to legalize as soon as he or she is eligible to do so.[100] Delaware's law, enacted in 2015, allows undocumented immigrants to obtain a driving privilege card with satisfactory documentary evidence or proof that the individual has filed a Delaware income tax return, or that the individual has resided in Delaware and has been claimed as a dependent

[94] *See States Offering Driver's Licenses to Immigrants,* NAT'L CONF. OF STATE LEGISLATURES (Feb. 6, 2020), https://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx.
[95] *See id.*
[96] *Id.*
[97] *Id.*
[98] *See id.*
[99] *Id.*
[100] *Id.*

by an individual who has filed a state income tax return for the preceding two years.[101] However, this card is not considered a valid form of identification in Delaware due to the individual's inability to prove lawful presence in the United States.[102] The Utah law establishes a one-year driving privilege card for those unlawfully present in the United States if these individuals prove residency in Utah for at least six months and provide a tax identification number.[103]

Most recently, on December 19, 2019, New Jersey Governor Murphy signed legislation into law to issue driver's licenses to undocumented immigrants.[104] New Jersey's Motor Vehicle Commission has until January 2021 to create a process to make the transition and educate citizens and non-citizens in New Jersey about what they need to do.[105] New Jersey is currently training employees to identify and collect genuine birth certificates and passports from the consulates of various nations.[106] The law will not affect commercial driver's licenses, which are still exclusively covered by federal standards.[107]

The Green Light Law in New York takes New Jersey's law a step further by including the provision prohibiting state officials from providing any data on applicants to agencies that enforce immigration law unless a judge orders them to do so.[108] Maryland requires applicants to provide evidence that the applicant has filed two years of Maryland income tax or proof of residency or have been claimed as a dependent by an individual who has filed Maryland income tax returns.[109] The District of Columbia, Washington, Vermont, Oregon, Nevada, New Mexico, Illinois, Hawaii, and Colorado, all have similar laws authorizing the issuance of driver's license with the proper identification documents regardless of immigration status.[110] The federal government has never prosecuted anyone for their compliance with laws similar to New York's Green Light Law.[111]

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[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] Larry Higgs, *How Undocumented Immigrants Will Get Driver's Licenses in N.J.*, N.J. COM (Jan. 3, 2020), https://www.nj.com/traffic/2020/01/how-undocumented-immigrants-will-get-drivers-licenses-in-nj.html.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] Monsy Alvarado, *New Law Says Undocumented Immigrants in NJ Can Get Driver's Licenses*, USA TODAY (Dec. 19, 2019, 9:11 PM), https://www.usatoday.com/story/news/nation/2019/12/19/undocumented-immigrants-can-get-nj-drivers-license-under-new-law/2706182001/.
[109] NAT'L CONF. OF STATE LEGISLATURES, *supra* note 94.
[110] *Id.*
[111] Kearns v. Cuomo, 415 F. Supp. 3d. 319, 332-33 (W.D.N.Y. 2019).

VII. CPB AND ICE

U.S. Customs and Border Protection ("CPB") and U.S. Immigration and Customs Enforcement ("ICE") believe the Green Light Law is a huge problem for the safety of the citizens of New York.[112] The law now requires the state to cut off database access to these federal agencies and a few others.[113] Mark Morgan, the CBP's acting commissioner said in a statement that, "New York's Green Light Law is detrimental to CBP and ICE. The information we receive from New York State is vital to our missions and blocking federal law enforcement officers from accessing it creates a significant threat to both officer and public safety."[114] These officials argue that the data they receive from the state is "vital to building out these criminal cases" and being able to identify criminal suspects while keeping the public safe.[115]

The Department of Motor Vehicles database in New York allows officers to quickly access a lot of personal information about a vehicle registration holder, including their traffic history.[116] Additionally, such data can be helpful in determining the driver's criminal history, outstanding warrants, or whether the driver is on a sex offender registry.[117] The database serves as an important tool for law enforcement officials and officers, where they can efficiently run license plates through the database to find various kinds of information about an individual during traffic stops and similar encounters.[118] U.S. Representative Elise Stefanik has suggested that border patrol agents would be unable to effectively execute their jobs, and also questioned how "citizens with enhanced driver's licenses—which allow the license holder to cross the Canadian border—would be able to re-enter the U.S. if Customs agents don't have access to the database".[119]

There is concern for the Green Light Law, which "[reverses] the state's post-9/11 policy of denying driving privileges to immigrants" who do not possess lawful immigration status.[120] At least one official has expressed concern that, even though these licenses cannot be used for the purpose of voting, there are not enough safeguards to prevent this from happening.[121] Further, the cost of processing new applicants is roughly $141 million in a span of three years, which will be at the cost of taxpayers.[122] Overall,

[112] Campbell, *supra* note 17.
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *See Should States Issue Driver's Licenses to Immigrants in the United States Illegally?*, PROCON.ORG (June 6, 2016), https://immigration.procon.org/questions/should-states-issue-drivers-licenses-to-immigrants-in-the-united-states-illegally/.
[122] *Id.*

some worry that this is a clear threat to the safety and economic security of the state, as a driver's license or state identification card is an essential tool in our society for identification purposes.[123]

VIII. CONCLUSION

Allowing undocumented immigrants to apply for driving privileges will increase public safety, add millions of dollars into the states' economy, and could lower car insurance premiums across states since more drivers will be insured.[124] Those individuals who will now be able to apply for a driver's license will bolster a state's economy by now having to purchase car insurance, gasoline, automobiles, and auto parts.[125] New York has hundreds of thousands of immigrants working and living in the state, and this law is another step officials are taking to "ensure the safety and harmony of all."[126] It allows all residents to be able to "engage in more of the economic, social and cultural life of the state."[127]

In response to some of those arguments presented by critics of the law, ICE and CPB officials and their supporters, promoters of the law insist that it only increases public safety.[128] The bill helps officials to better know who is driving on the roads and help to make sure the drivers are safe and are operating vehicles that are registered and insured.[129] In the states that issue permits and driver's licenses to those in the country unlawfully, the fees collected from the applicant help to pay for the cost of issuing the permit.[130] Additionally, making licensing available to everyone reduces the number of uninsured drivers, creating more equitable insurance costs.[131] In response to the concerns surrounding national security, officials contend that the more law-abiding people within our borders, the easier it will be to identify those who pose a true threat.[132]

U.S. District Court Judge Elizabeth A. Wolford dismissed Kearns' lawsuit entirely, deciding Kearns did not have legal standing to sue without considering the exact questions as to whether the law violates federal law.[133] A number of states have already

[123] *Id.*
[124] Alvarado, *supra* note 108.
[125] *Id*.
[126] *See* PROCON.ORG *supra*, note 121.
[127] *Id.*
[128] *See id*.
[129] *Id.*
[130] *See generally Driver License and Learner Permit Fees and Refunds*, N.Y. STATE DEP'T OF MOTOR VEHICLES, https://dmv.ny.gov/driver-license/fees-refunds (last visited Feb. 20, 2021).
[131] *See* PROCON.ORG *supra*, note 121.
[132] *Id*.
[133] Kearns v. Cuomo, 415 F. Supp. 3d. 319, 337 (W.D.N.Y. 2019).

enacted provisions similar to those in the Green Light Law and no one has been prosecuted for complying.[134] State Attorney General Letitia James defended Judge Wolford's decision, stating "Today's decision reinforces our position all along- the Green Light Law is legal and enforceable. The law aims to make our roads safer, our economy stronger, and allows immigrants to come out of the shadows to sign up as legal drivers in our state."[135] Kearns has voiced his plans to appeal and has said he will not be issuing driver's licenses to immigrants in the country unlawfully, regardless of the outcome on his case.[136] He stated, "if folks who are present in the country illegally want to come to Erie County for a driver's license, let me save them the trip: I will not be issuing a driver's license to illegal immigrants."[137] Still, this ruling was a major victory. Many argue it is important to put the safety of all motorists on the road and interests of the public as a whole ahead of the politics of immigration.[138] The decision was affirmed in November 2020.[139]

[134] *Id.* at 332-33.
[135] Campbell, supra note 17.
[136] *Id.*
[137] *Id.*
[138] *See* PROCON.ORG *supra*, note 121.
[139] Kearns v. Cuomo, 981 F.3d 200 (2d Cir. 2020).