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## The California Package: Immigrant Integration and the Evolving Nature of State Citizenship

### EXECUTIVE SUMMARY

*Immigration law is no longer the exclusive domain of the federal government. That was certainly clear in the mid 2000s, with restrictive laws on immigration enforcement in many states and localities. Starting in 2012, however, momentum shifted away from these restrictionist laws, and towards a growing number of state laws that push towards greater immigrant integration, on matters ranging from in-state tuition and financial aid to undocumented students, to expanded health benefits and access to driver's licenses. California has gone the furthest in this regard, both with respect to the number of pro-integration laws passed since 2000, and in their collective scope. Indeed, as we argue in this paper, these individual laws have, over time, combined to form a powerful package of pro-integration policies that stand in sharp contrast to the restrictive policies of states like Arizona. In this paper, we provide a deeper look into the "California package" of immigrant integration policies, and ask two fundamental questions, one empirical (why have we seen a shift from Arizona-type laws on immigration restriction towards California-type laws on immigrant integration?), and the other theoretical (what are the implications of the "California package" of immigrant integration laws for our notions of citizenship?). As we elaborate, California has created a de facto regime of state citizenship, one that operates in parallel to national citizenship and, in some important ways, exceeds the standards of national citizenship—both as currently established and as envisioned in Congressional efforts on comprehensive immigration reform.*

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Immigration law is no longer the exclusive domain of the federal government. That was certainly clear in the mid 2000s, as restrictive laws on immigration enforcement and access to public benefits took hold, perhaps most famously with Arizona's laws on employment verification and enforcement, including SB1070, an omnibus immigration law passed in April 2010, that created a state immigration enforcement scheme, including state criminal penalties.<sup>1</sup> In the wake of Arizona's SB 1070, other states such as Alabama, Georgia, and South Carolina enacted similar copycat legislation. Many of these states had also followed Arizona's lead in mandating employer verification, with state-level penalties that exceeded any employer sanctions imposed under federal immigration law. Starting in 2012, however, the tide began to turn against these types of restrictive laws on immigration enforcement. The U.S. Supreme Court, in a 5-3 ruling in *Arizona v. United States*, struck down most of the provisions in the enforcement law.

At the same time, the Supreme Court kept in place provisions that requires state and local law enforcement officers to check the immigration status of people in their custody and to share that information with federal authorities. Furthermore, the Supreme Court upheld in a 5-3 ruling in May 2011 (*Chamber of Commerce v. Whiting*) that states like Arizona could revoke the licenses of businesses who failed to participate in an electronic employee verification program, and federal courts have also cleared the way for states to impose restrictions on the ability of unauthorized immigrants to access welfare benefits, state driver licenses, and postsecondary education. Arizona has restrictive laws on all of these dimensions, making the state among the most exclusionary when it comes to immigrant integration.

The situation could not be any more dissimilar in California, which shares an extensive border with Arizona. Indeed, if Arizona arguably anchors the low end of immigrant integration policies in the United States, California marks the opposite extreme, of the most number and the most far-reaching laws intended to assist with immigrant integration, particularly those without documented status. These policies include in-state tuition for unauthorized immigrants (passed in 2001) and financial aid for unauthorized students (2011); access to driver licenses and professional licenses for unauthorized immigrants (2014); non-cooperation on federal immigration enforcement involving minor offenses (2013); and statewide bans on local landlord ordinances (2007) as well as local mandates on e-Verify (2011).

When advocates in California initially pushed for pro-integration legislation in 2001, it was meant as a stopgap measure in anticipation of federal comprehensive immigration reform.<sup>2</sup> However, with recurring delays in federal legislation and with the rise of local efforts at restrictive policies, statewide integration laws began to accumulate—emerging gradually in 2007 and accelerating after 2012. Indeed, as we argue in this policy brief, we now have a set of integration laws cumulated over time that provide a bundle of rights to unauthorized immigrants. Indeed, this “California package” on immigrant integration goes well beyond any benefits envisioned in federal proposals on immigration reform, and it pushes towards a new conception of de-facto state citizenship that operates in parallel with formal citizenship at the national level.

In this policy brief, we provide a deeper look into the “California package” of immigrant integration policies. In addition to providing a definitive descriptive account of the package of integration laws in California and its relationship to similar pieces of legislation in other states, we tackle two additional questions: 1) What factors at the state level help explain the shift towards pro-integration policies in the past five years, and 2) What are the implications of the “California package” of immigrant integration laws for our notions of citizenship? On the latter question, we argue that California's package of pro-immigrant integration policies, cumulative over time, have created a de facto regime of state citizenship, one that operates in parallel to national citizenship and, in some important ways, exceeds the standards of national citizenship, including those envisioned in Congressional efforts on comprehensive immigration reform.

## The “California Package” on Immigrant Integration

California today provides the most integrationist laws in the country with respect to unauthorized immigrants, both in terms of their number and scope. These laws include postsecondary education, driver licenses, professional licenses, health care, and federal immigration enforcement, and as a package, these laws have significantly expanded the access of unauthorized immigrants to what we call “life chances,” the right of access to an education, health and employment, as well as to what we call “free presence,” the right to freedom of movement into and within the state through access to identification documents and limited state enforcement of federal immigration law. We place these laws under the umbrella term “California package” to

credit California’s leadership in state-level legislation today and to distinguish these laws as a significant innovation in immigrant inclusion. In Table 1, we provide a timeline of these laws as they were passed by the state legislature and signed by the governor. Together, these laws work as a bundle of rights granted at the state level to authorized and unauthorized immigrants denied access under federal law.

What are these laws, and what problems do they seek to solve? To what extent are these laws being adopted in other states, and to what extent is California unique? Also, is California a leader on some of laws, but a laggard on others? Below, we provide a typology and detailed description of these laws, followed by a brief discussion of how developments in California relate to developments in other states.

**Table 1. The “California Package” of Immigrant Integration Laws**

1996	Health Care - Immediate Temporary Prenatal Care for All Pregnant Women
1997	Health Care - CHIP for All Unborn Children
1998	
1999	
2000	
2001	Higher Education - In-State Tuition (AB 540)
2002	
2003	Driver Licenses for Unauthorized Immigrants (SB 60, passed under Gray Davis, repealed under Arnold Schwarzenegger)
2004	
2005	
2006	
2007	Ban on Local Landlord Ordinances (AB 976)
2008	
2009	
2010	
2011	Postsecondary Education - DREAM Act (AB 130; AB 131) Federal Immigration Enforcement - Anti-E-Verify (AB 1236)
2012	Driver Licenses for DACA recipients Health Care – Medi-Cal for DACA recipients
2013	Driver Licenses for Unauthorized Immigrants (AB 60) Federal Immigration Enforcement - TRUST Act (AB 4)
2014	Higher Education - DREAM Loan Program (SB 1210) Higher Education - In-State Tuition Qualification Expanded (AB 2000) Professional Licenses - Admission to the State Bar (AB 1024) Professional Licenses - 40 Licensing Boards (SB 1159)
2015	*Health Care (Proposed Legislation) - The Health for All Act (SB 1005) **"Immigrants Shape America" (April 7, 2015 Proposed CA Package of 10 Laws)

**Postsecondary Education**

In 1996, a federal law, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), restricted the states’ ability to provide postsecondary education benefits on the basis of state residency, unless a U.S. citizen from another state would also be eligible for that benefit. Expanding on these federal restrictions, five states have expressly denied in-state tuition to legal immigrants and two states have taken a further step of prohibiting unlawfully present immigrants from attending state institutions of higher learning.<sup>3</sup>

More common, however, is the movement by states to grant undocumented students access to postsecondary education benefits. Today, seventeen states provide in-state tuition to undocumented students who attend an in-state high school for a specified period, usually between one and three years. In 2001, California and Texas were the first states to pass in-state tuition laws.<sup>4</sup> Eight states followed between 2002 and 2006, including New York, Utah, Washington, Oklahoma, Illinois, Kansas, New Mexico and Nebraska. A notable gap in legislation existed between 2007 and 2011, a period when states were passing many restrictive immigration laws.<sup>5</sup> Wisconsin enacted a tuition equity law in 2009, but repealed it in 2011. But, momentum started again in 2011 with Connecticut’s enactment, and accelerated in 2013 and 2014 when five states – Colorado, New Jersey, Minnesota, Oregon and Florida – all passed in-state tuition policies.<sup>6</sup> In 2014, California expanded its policy by allowing any combination of elementary and secondary schooling within the state to fulfill the three year requirement for in-state tuition. Finally, in four states that have not passed laws, college and university systems have passed their own policies granting in-state tuition to undocumented students.<sup>7</sup>

While in-state tuition addresses important educational equity concerns for immigrants, states have also moved to grant undocumented students access to state and private forms of financial aid. Today, seven states provide undocumented students access to some form of aid, including scholarships and grants from state and private funds.<sup>8</sup> In 2011, California passed the California Dream Act through two bills: AB 130 granted non-state funded scholarships for public colleges and universities; AB 131 granted state-funded financial aid such as institutional grants, community college fee waivers, Cal Grant and Chafee Grant. In 2014, California passed SB 1210 establishing a State DREAM Loan Program for undocumented students at the Uni-

versity of California and California State University systems.<sup>9</sup> This same year, a few California colleges and universities joined the national program, TheDream.US, offering scholarships to low-income undocumented students.<sup>10</sup> Three states have passed similar Dream Acts – Texas, New Mexico and Washington – that grant access to state financial aid, and three states – Hawaii, Illinois and Minnesota – grant access to private scholarships.

### ***Driver's Licenses***

The REAL ID Act of 2005 maintains minimum standards for state-issued licenses and identification cards if those cards are to be used for federal purposes, such as access to federal buildings, identification for airline travel, and proof of identity for accessing benefits. Importantly, REAL ID provides states with the discretion to issue federally approved licenses to unlawfully present persons who are recipients of deferred action.<sup>11</sup> Using this statutory discretion, many states maintained a policy even prior to 2012 of allowing temporary immigrants and undocumented persons who had received deferred action and obtained employment authorization documents, or EADs, from the federal government to apply for driver licenses. States, however, may maintain more stringent standards than the minimum allowed by REAL ID<sup>12</sup> or may choose to provide licenses that fail to meet the minimum federal status-verification standard with the understanding that such licenses may not be acceptable for federal purposes once the REAL ID Act becomes fully implemented.<sup>13</sup>

While a few states had provided licenses to undocumented persons prior to REAL ID, the trend during the recent restrictionist heyday was clear. Between 2003 and 2010, seven states that previously granted driving privileges to undocumented immigrants either rescinded or overturned their policies.<sup>14</sup> By early 2012, only three states remained that allowed undocumented persons to apply for driver licenses. The Obama administration's implementation of the Deferred Action for Child Arrivals (DACA) program in mid-2012, however, appears to have galvanized a significant reversal in that trend.<sup>15</sup> In the wake of DACA, 46 states now offer driver licenses to DACA recipients, who are eligible to receive EADs during the time of deferral. More broadly, the momentum created by DACA moved state policy on driver licenses for undocumented persons generally.

Eleven states, along with Washington, D.C. and Puerto Rico, currently provide or are preparing to provide licenses regardless

of immigration status.<sup>16</sup> Of those 13 jurisdictions, 10 changed their policies in the past 18 months, most likely as a response to the policy climate created by DACA. Further, other states, such as New York, New Jersey, Pennsylvania, and Massachusetts, are considering a similar change.<sup>17</sup> California was among the early movers in this policy area, passing a driver license bill in 2013 that included an anti-discrimination provision making it illegal for police to target and investigate drivers with new licenses for possible immigration violations. Upon signing the law Governor Jerry Brown stated, "No longer are undocumented people in the shadows. They are alive and well and respected in the State of California."<sup>18</sup> Pragmatic concerns also animate the arguments of advocates who pushed states further, to make driver licenses more broadly available to unauthorized migrants, couching their arguments in public safety concerns. They have argued that broader provision of licenses allows states to ensure that more drivers are insured, which in turn improves traffic safety and reduces the cost of auto insurance. They have also pointed out the fact that driver licenses also operate as identity documents, facilitating interaction between immigrants and state agencies, including law enforcement.

Although a significant number of states are now welcoming undocumented driver license applicants and all states allow DACA recipients to apply, two states initially opposed this trend. Both Arizona and Nebraska announced their intention to deny driver licenses to DACA recipients and subsequently engaged in litigation over their policies. The Ninth Circuit Court of Appeals recently struck down Arizona's policy as a violation of equal protection, as it prohibited DACA recipients, but not other recipients of deferred action, from license eligibility.<sup>19</sup> In May 2015, the Nebraska legislature passed a law granting driver licenses to DACA recipients.<sup>20</sup>

### ***Professional Licensing***

In 1996, IIRAIRA generally prohibited states from conferring a "public benefit," including a professional license, to an unauthorized immigrant unless the state affirmatively enacted a state law providing the benefit after 1996.<sup>21</sup> Following the pattern of postsecondary education benefits and driver's licenses, after 2012, states began passing laws that grant professional licenses to undocumented immigrants. Two states – California and Florida – passed laws allowing the state bar to admit qualified applicants regardless of legal status to practice law. In 2012, the California Supreme Court was presented with an undocu-



mented applicant who had completed law school and passed the state's bar exam and whose admission was recommended by the state bar association.<sup>22</sup> Just weeks after oral argument in the case, the California legislature enacted a law expressly allowing undocumented applicants to become members of the state bar.<sup>23</sup> Relying on that statute, the state supreme court ruled to admit the undocumented applicant.<sup>24</sup> A similar dynamic occurred in Florida, where the State Supreme Court initially rejected the application of an undocumented bar applicant,<sup>25</sup> but that decision was made moot when the Florida legislature passed a bill, in accordance with federal law, that granted undocumented immigrants the ability to become members of the bar.<sup>26</sup> New York has failed to pass legislation similar to California's and Florida's, although the State Supreme Court ruled in June 2015 that DACA recipients could practice law in the state without the need for any new state law affirming this benefit.<sup>27</sup>

California expanded access to professional licensing one step further in October 2014, when Governor Jerry Brown signed SB1159 into law requiring "all 40 licensing boards under the California Department of Consumer Affairs to consider applicants regardless of immigration status by 2016."<sup>28</sup> So far, no other state has followed California's lead. While these state laws expand who is permitted to have certain professional licenses, undocumented immigrants still face federal prohibitions that would prevent employers from hiring them without obtaining employment authorization or benefitting from a change in federal law.<sup>29</sup> Nevertheless, even without federal reform, such professional licensees might work as self-employed, work on a pro bono basis, or practice in a foreign country. Under these new state laws, undocumented immigrants are able to practice in their profession by using a federal individual tax identification number (ITIN) rather than a social security number.

### **Health Care**

In 1996, the federal government's Personal Work Opportunity and Reform Act (PWORA) made many groups of non-citizens ineligible for important federal health care benefits, including federally funded public benefit programs: Temporary Assistance for Needy Families (TANF), Food stamps, Supplemental Security Income (SSI), Medicaid and Children's Health Insurance Program (CHIP).<sup>30</sup> While unauthorized immigrants and temporary immigrants were ineligible for these programs prior to 1996, this new federal law expanded restrictions by placing a five-year ineligibility period for new lawful immigrant

residents in the US. Further, individuals granted DACA status under President Barack Obama's 2012 executive order are also ineligible for these federal programs. Importantly, the 1996 law devolved some decision making over noncitizen eligibility for jointly funded federal-state programs and state-only public assistance programs to state governments, and it also required states that desired to provide public assistance to unauthorized immigrants to do so through enactment of affirmative legislation after 1996.<sup>31</sup> This allows states to spend their own resources to cover non-qualifying legal and unauthorized immigrants without a federal match in funds.<sup>32</sup> States have done this in two key areas: prenatal and child health care.

Ineligible immigrants have minimal access to prenatal health care only in emergencies under federal law. In particular, the Emergency Medical Treatment and Active Labor Act (EMTALA) of 1986 prevents hospitals from turning away any uninsured patient in need of emergency treatment, including labor and delivery, as well as other "emergency" health care services related to childbirth. However, this federal law does not provide access to routine prenatal care, and under PWORA, noncitizens are ineligible for regular prenatal care. In 2002, the U.S. Department of Health and Human Services gave states the option to provide prenatal care to undocumented immigrant women by extending CHIP coverage to unborn children. Today, states have expanded immigrant access to prenatal health care in three ways: laws granting access to CHIP for unborn children, laws granting access to presumptive eligibility (PE) for pregnant women to obtain immediate temporary Medicaid coverage, and states setting up more comprehensive low-income insurance for pregnant women through state funded programs. In particular, thirty-two states provide access to CHIP regardless of legal status, thirty states provides access to PE with seventeen of these states offering access to PE regardless of legal status, and three states have comprehensive state funded insurance programs for low-income pregnant women regardless of legal status.<sup>33</sup>

States are also expanding health care to immigrant children. Today, twenty-seven states provide "legal" immigrant children access to CHIP, and four of these states – California, Massachusetts, New York and Washington – provide immigrant children access to CHIP regardless of legal status.<sup>34</sup> California has broadened its health care coverage beyond prenatal and child health care to low-income individuals. While the Affordable Care Act (ACA) of 2010 considers DACA individuals ineligible, California has granted low-income lawfully present immigrants

as well as DACA individuals eligibility for Medi-Cal benefits by defining their status under the Permanently Residing in the U.S. under Color of Law (PRUCOL).<sup>35</sup>

California also provides important private and locally funded health programs for immigrants who might not be eligible for federal programs. Healthy Way L.A. “Unmatched,” Healthy San Francisco, and Alameda County HealthPAC are available to immigrants regardless of legal status, which include benefits such as primary care, emergency care, mental health services, and prescription drugs. Thirteen California counties participate in the Healthy Kids program, an insurance program funded by both public and private sources, that provides comprehensive medical, dental, and vision coverage to low-income uninsured county residents regardless of legal status. Similar coverage to all immigrants is provided by the Kaiser Permanente Child Health Program, which offers premium subsidies for uninsured California children regardless of immigration status and currently covers thirty counties across the state.<sup>36</sup>

In 2015, California proposed a new bill SB 1005 – The Health for All Act – that would expand health insurance coverage to all undocumented immigrants in the state. Currently, the federal ACA specifically excludes undocumented immigrants from being insured under California’s health care exchange system. SB 1005 would create a new exchange system, the California Health Benefit Exchange Program for All Californians, which would include all residents of California regardless of legal status. The law would also extend Medi-Cal benefits to low-income undocumented immigrants in the state.<sup>37</sup> While undocumented immigrants remain outside the protection of federal and most state public assistance programs, important movements are occurring at the state and local levels to expand protections in prenatal care and child health care.<sup>38</sup> Moreover, California and a few other states have proposed bills that would expand health coverage to an even larger segment of immigrant residents.

## Federal Immigration Enforcement

Alongside the growing movement by states and localities to expand immigrant access to public benefits in postsecondary education, driver licenses, professional licenses, and health care, subnational jurisdictions are also passing laws that prevent or limit their participation in the enforcement of federal immigration law.

*Anti-E-Verify.* Two states currently limit the use of E-Verify,

California also provides important private and locally funded health programs for immigrants who might not be eligible for federal programs.

a federal database that uses both Department of Homeland Security and Social Security Administration databases to electronically verify the identity and work authorization of employees. In addition to its recent leadership on laws granting in-state tuition, financial aid, driver licenses and professional licenses, in 2011 California passed AB 1236 – the Employment Acceleration Act – expressly stating that neither the state nor jurisdictions within the state of California could mandate private employers to use E-Verify.<sup>39</sup> Before AB 1236 was enacted, at least 20 California municipalities required city contractors or private employers to use E-Verify.<sup>40</sup>

The first state to pass an anti-E-Verify law, however, was Illinois in 2007. Proponents of the law argued that the E-Verify system was often inaccurate and led to many wrongful employment ineligibility outcomes.<sup>41</sup> The first of two bills passed by Illinois, HB 1743, outlined specific procedures to be used by employers while participating in E-Verify in order to protect the civil rights employees. The second bill, HB 1744, prevented all governmental jurisdictions in the state from requiring employers to use any employment verification system for any reason, including E-Verify, and mandated procedures and responsibilities for proper use by employers, including posting notices and alerting all employees of the employer’s participation in E-Verify and antidiscrimination protections in the state.<sup>42</sup> The provision of HB 1744 prohibiting employers from using E-Verify was challenged by the Department of Homeland Security (DHS) and overturned in federal court. In 2009, Illinois passed an amended version of the law to create strict standards regulating how employers use E-Verify, including proper training, posting of legal notices displaying that the business is enrolled in E-Verify and antidiscrimination procedures.

Illinois and California are the only two states today that have anti-E-Verify laws; however, these two states are indicative of a larger movement by states to reverse the previous trend in mandating the use of E-Verify. In 2008, Rhode Island’s Governor Don Carcieri issued Executive Order 08-01 requiring all employers in the state to enroll in E-Verify; Governor Lincoln Chafee rescinded this executive order in 2011. In 2012, one year following California’s anti-E-Verify law, twenty states voted

down bills that would have mandated the use of E-Verify in the state, highlighting a movement away from anti-immigrant policies in E-Verify.<sup>43</sup>

These states' policies cannot prevent employers' voluntary use of the database, and other federal laws that prohibit employment of unauthorized workers still apply.<sup>44</sup> Regardless, the states' anti-E-Verify bills stand in sharp contrast to Arizona's approach with the Legal Arizona Workers Act.

*Anti-Detainer.* In addition to resisting the use of E-Verify, between 2011 and 2014 subnational jurisdictions have expressly resisted cooperation with federal immigration officers by passing anti-detainer laws. A detainer request is a formal notice by the US Immigration and Customs Enforcement (ICE) to federal, state or local law enforcement agencies of their intention to take custody of potential unauthorized immigrants. While the federal government can incentivize and encourage state and local compliance with ICE holds, they cannot force local officials to use their own resources and personnel to hold noncitizens. The federal court of appeals for the Third Circuit recently adopted this reasoning in holding that Lehigh County, Pennsylvania, was not obligated to comply with an ICE detainer that resulted in the unlawful detention of a U.S. citizen.<sup>45</sup> Moreover, non-enforcement laws are protected under the Tenth Amendment, which forbids the federal government from mandating local law enforcement to enforce federal law.

In 2013, California and Connecticut were the first two states to enact non-enforcement laws called Transparency and Responsibility Using State Tools (TRUST) Acts, which stipulate that officers can only enforce immigration detainers issued by the federal government for persons convicted of serious crimes.<sup>46</sup> The District of Columbia currently restricts detainers by requiring ICE to provide court ordered warrants, and in a joint statement, every jail in the state of Colorado said that they would not honor ICE detainer requests. Counties and cities have also begun to move in this direction. In 2011, Santa Clara County in California passed a resolution that effectively declined to honor immigration detainer requests from ICE.<sup>47</sup> After the enactment of California's TRUST Act, in 2014, the city of San Francisco and counties of Contra Costa, Alameda and San Mateo, all within the state of California, announced that they would no longer cooperate with any ICE detention requests of possible unauthorized immigrants in local jails.<sup>48</sup>

Local jurisdictions throughout the US are passing anti-de-

tainer policies without leadership by their state capitals, including for example, Cook County, Illinois, Miami-Dade County, Florida, the Newark Police Department, which maintain policies that function as refusals to respond to federal detainer requests.<sup>49</sup> At least seventeen local jurisdictions or county penal institutions maintain some form of a detainer-resistance or anti-cooperation policy throughout the US.<sup>50</sup> These jurisdictions offered varied policy reasons for resisting ICE hold requests, including the high costs of detention, the desire to focus on more pressing public safety priorities, and the risk to law enforcement's relationship with immigrant communities, who might be less willing to come forward and contact the police if they fear they could be put into removal proceedings for doing so.<sup>51</sup>

These laws have already had a notable impact on both enforcement and federal law. The total number of deportations after the first year of California's TRUST Act being enacted decreased considerably.<sup>52</sup> Moreover, in 2014, as part of the President's announcements on expanding deferred action through the DACA and DAPA programs, he also announced the end of Secure Communities (S-Comm), a program established in 2008 to effectively co-opt state and local law enforcement authorities into providing federal immigration authorities with information regarding undocumented persons.<sup>53</sup>

Critical to the Administration's discontinuance of S-Comm was the state and local resistance in the form of detainer-resistance policies and TRUST Acts. As Secretary Jeh Johnson admitted in his memorandum on the end of S-Comm:

The goal of Secure Communities was to more effectively identify and facilitate the removal of criminal aliens... But the reality is the program has attracted a great deal of criticism, is widely misunderstood, and is embroiled in litigation; its very name has become a symbol for general hostility toward the enforcement of our immigration laws. Governors, mayors, and state and local law enforcement officials around the country have increasingly refused to cooperate with the program, and many have issued executive orders or signed laws prohibiting such cooperation.<sup>54</sup>

A new program called the Priority Enforcement Program (PEP) still utilizes local law enforcement agencies to provide notice and information to federal authorities. While PEP was clearly formulated to attempt to assuage the growing resistance movement to blanket federal enforcement, it is still too early to tell whether those states and localities are satisfied with the new enforcement regime.

**Table 2. California's Integration Policies: Timing and Spread**

	Leader	Early Mover	Laggard	High Spread	Medium Spread	Low Spread
Postsecondary Education	√			√	√	
Driver License		√			√	
Professional Licensing	√					√
Health Care	√			√		
Immigration Enforcement		√				√
Office of Immigrant Affairs			√			√

## The Timing of California's Integration Laws: Leader or Laggard?

To what extent has California been an early mover or late mover on immigrant integration? In Table 2, we provide an overview of state laws across various policy types, on two dimensions: timing and the spread of legislation across states. On access to public benefits, California has been an important leader. It led in all areas of law granting postsecondary educational benefits to authorized and unauthorized immigrants within the state. Alongside Texas, California passed one of the first laws granting unauthorized immigrants in-state tuition in 2001, and more recently, California has singularly led in expanding financial aid benefits in 2011 and 2014 to undocumented students. Today, seventeen states offer in-state tuition, three states provide similar comprehensive financial aid, and seven states provide limited forms of financial aid to undocumented students. Similarly, on driver licenses, California is a relative early mover with respect to legislative attempts. First, in 2003, California managed to get Democratic Governor Gray Davis to restore driver's licenses to undocumented immigrants as he faced a voter recall, although this victory was short-lived as Republican Arnold Schwarzenegger won the election, pressured lawmakers to repeal the measure, and vetoed further attempts to restore driver licenses.<sup>55</sup> There were several subsequent legislative attempts to restore driver licenses, although these did not succeed until 2013, as California became one of 8 states that expanded driver licenses beyond DACA recipients, to include undocumented immigrants more generally.

California has also been a leader in granting professional licenses. In 2014, California followed by Florida granted unauthorized immigrants the ability to practice law in the state. That same year, California passed another law requiring 40 licensing boards under the state's Department of Consumer Affairs to consider applicants regardless of their legal status. No other state has yet to pass similar protections. On immigrant access to

health care, California is an important early mover. It provides unauthorized immigrant children access to CHIP, and prenatal health care and a comprehensive state funded insurance program for low-income pregnant women regardless of legal status. For legal immigrants, 32 states currently provide some form of access to prenatal health care. However, California alongside three other states has been an early mover in extending health care to pregnant women and children regardless of their legal status. Moreover, California has led states by granting low-income lawfully present immigrants as well as DACA individuals eligibility for Medi-Cal benefits by defining their status under the Permanently Residing in the U.S. under Color of Law (PRUCOL).<sup>56</sup>

On resistance to federal immigration enforcement, California has not been a leader but it has consistently played the role of an early mover. In 2011, California became the second and only state other than Illinois to pass an Ant-E-Verify law. Similarly, California has been an early mover on anti-detainer laws by passing the second TRUST Act in 2014, following Connecticut's lead after a few months. While other states have not yet passed TRUST Acts, similar state and local policies have been enacted through other means.

The one key area where California is a relative laggard in passing pro-immigrant integration laws is the lack of a state office of immigrant affairs. This gap in the California Package, however, is currently being addressed through proposed legislation that would create an Office of New Americans. In 2009, Massachusetts led by announcing its "New American Agenda" as a new direction for its existing Governor's Advisory Council for Refugees and Immigrants, one that actively engages in immigrant integration. Illinois followed in 2010, then New York in 2013, and Michigan in 2014. While California is relatively late to this policy, its proposed Office of New Americans would go much further than other states that have preceded it. In states like New York and Michigan, offices of immigrant affairs compensate for the relative dearth of pro-integration laws,



while in California, the intent of the proposed Office of New Americans is to institutionalize and coordinate the various laws on immigrant integration that have been enacted since 2001.<sup>57</sup> Thus, while California lags behind other states in the creation of a statewide office of immigrant affairs, the state already has a comprehensive set of pro-immigrant integration laws, upon which the proposed Office of New Americans would draw, to better facilitate immigrant integration throughout the state. Indeed, as we can see in Table 3, California’s Office of New Americans is just one of various proposed laws in 2015 that would deepen the integration of immigrants, documented and undocumented, living in California—closing the gap on one policy dimension while further extending California’s lead on public benefits.

On April 7, 2015 California expanded its effort on immigrant integration by proposing ten new laws bundled in a package they called “Immigrants Shape America,” which included laws that would provide unauthorized immigrants access to state-subsidized health care coverage, criminalize discrimination based on legal status, citizenship or language, protect unauthorized immigrant workers, children and victims of a crime, and further limit state enforcement of federal immigration law (see Table 3).<sup>58</sup>

The fact that these laws were packaged together illustrates the significance of California’s larger effort in developing de facto state citizenship through expansive immigrant rights and protections that we call the California package. One proposed law would create an Office of New Americans that would educate and facilitate immigrant navigation of both federal and state laws, and in the process, this law would serve an important function in solidifying the California package generally by creating a mechanism that brings together all existing state laws aimed to integrate and protect immigrants.

### Explaining the Shift Towards Immigrant Integration

As we have noted earlier, 2012 was a pivotal year in the trend away from restrictive legislation at the state level towards more pro-integration policies on immigration. As Pratheepan Gulasekaram and Karthick Ramakrishnan show in their forthcoming book,<sup>59</sup> three major developments prompted this change in momentum. First, the U.S. Supreme Court issued its *Arizona v. United States* opinion, rejecting several provisions of Arizona’s enforcement bill, SB 1070. Second, President Barack Obama,

**Table 3. “Immigrants Shape America” (Package of 10 California Laws Proposed April 2015)**

2015	Ensuring Due Process for Immigrant Defendants (AB 1343) Extension of Probate Jurisdiction to Protect Vulnerable Immigrant Children (AB 900) Health Care for All (SB 4) Immigrant Civil Rights Protection; Non-Discrimination (SB 600) Immigrant Services Fraud Protection (AB 60) Immigrant Victims of Crime Equity Act (SB 674) Immigrant Worker Protection; Anti-E-Verify (AB 622) Juvenile Confidentiality (AB 899) Office of New Americans (SB 10) Preventing Unintended Immigration Consequences for Rehabilitated Immigrants (AB 1352)
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against the backdrop of a stalemate in comprehensive immigration reform (CIR) in Congress, instituted the Deferred Action for Child Arrivals (DACA) program, providing administrative relief and a form of lawful presence to hundreds of thousands of undocumented youth. Finally, Mitt Romney, who supported laws like Arizona’s and called them a model for the rest of the country, lost his bid for the White House with especially steep losses among Latinos and immigrant voters. After these events in 2012, restrictive legislation at the state level waned in frequency, and a growing number of states began to pass laws aimed at the integration of unauthorized immigrants. Importantly, as Gulasekaram and Ramakrishnan’s statistical analysis of these state laws shows, these integrationist laws were significantly more likely to be passed in states with Democratic legislatures and, in some cases, states with larger Latino electorates.

While these factors are important background conditions, there were other factors related to the strategies and activities of immigrant rights funders, state advocacy organizations, and supportive legislators that were also significant. In order for those groups to capitalize on those opportunities, they need to have sufficient organizational resources and politically viable ideas in order to successfully change policy.

*Funders:* After the failure of the DREAM Act in 2010, there was a growing concern about the stalemate in Congress and passage of restrictive state laws like Arizona’s SB1070. Subsequently, the immigrant-rights funding community<sup>60</sup> realized that comprehensive immigration reform might not happen for the foreseeable future, and that policy battles were shifting to the state level in the absence of federal legislation.<sup>61</sup> These concerns grew even stronger after the drawn-out partisan fight over implementation of the Affordable Care Act and the government shut-

down of 2013. Consequent to this realization, some national funders of immigrant rights organizations joined the efforts of local funders in California, devoting greater resources to make the state a model of pro-integration legislation.

*State organizational capacity:* In many states that had seen the passage of restrictive legislation, assistance from national funders largely flowed to organizations providing technical assistance and convening a broad coalition of stakeholders, to beat back future efforts at restriction and slowly build support for pro-integration policies.<sup>62</sup> In many of these places, immigrant-rights and civil-rights organizations often teamed up with clergy, police chiefs, and business organizations to pass pro-integration laws.<sup>63</sup> Still, most nationally-funded efforts in 2011 and 2012 were aimed at preventing restrictive state legislation in the wake of enforcement laws in Arizona and Alabama, and building support for comprehensive immigration reform in traditionally conservative areas.<sup>64</sup>

The organizational infrastructure was quite different, however, in states with Democratic-controlled legislatures and an immigrant rights infrastructure that had been built up over a decade or more. This was perhaps most evident in California, which has passed various restrictionist measures in the 1990s, including Proposition 187 in 1994. The reaction to Proposition 187 among Latino voters helped usher in a new era of Democratic Party dominance in the state,<sup>65</sup> and affected the political sensibility of a new generation of Latino legislators in Sacramento who had “cut their teeth” by organizing immigrants.<sup>66</sup> Immigrant rights organizations also grew stronger in the aftermath of Proposition 187. As we indicated earlier, they managed to get some pro-integration legislation passed under Gray Davis. During the Schwarzenegger administration, the immigrant rights movement scored a limited policy victory with a statewide ban on landlord ordinances, but was mainly focused on building its organizational capacity and sophistication. Part of this growing sophistication involved improvements in messaging and framing. Starting in 2005, immigrant rights organizations began to coordinate on messaging strategy, investing in research on frames that could resonate with the public, developing messaging tools from that research, and providing media training for organization leaders.

In addition, a network of statewide funders poured significant resources over several years to build a regional infrastructure of immigrant advocacy organizations.<sup>67</sup> These organiza-

tions, in turn, started coordinating on legislative and advocacy strategies that have included acts of civil disobedience by immigrant youth, outreach to business organizations and clergy, and research on messaging strategies designed to sway public opinion toward more welcoming strategies.<sup>68</sup> This cross-regional strategy in building organizational capacity proved useful over the years, as immigrant rights organizations helped elect more pro-integration legislators to state office and kept those representatives accountable by holding large-scale protests and rallies in their home districts. Thus, they could push for legislation such as driver’s license bills or the TRUST Act in successive legislative sessions, each time building greater legislative and public support to eventually secure enactment.

In states like New York and Michigan, offices of immigrant affairs compensate for the relative dearth of pro-integration laws, while in California, the intent of the proposed Office of New Americans is to institutionalize and coordinate the various laws on immigrant integration that have been enacted since 2001.

In addition to California, statewide organizations and networks grew stronger in places like New York (*New York Immigration Coalition*), Illinois (*Illinois Coalition for Immigrant and Refugee Rights*), Massachusetts (*Massachusetts Immigrant and Refugee Advocacy Coalition*), and Oregon (*CAUSA*). Indeed, in 2010, these organizations and eight others joined forces to form the National Partnership for New Americans (NPNA), which promotes cross-regional efforts at immigrant integration.<sup>69</sup> Thus, in response to a shifting policy landscape after DACA and the failure of comprehensive immigration reform, national funders increased their support for state and local efforts, and a growing number of state-level organizations and networks began pushing effectively for pro-integration laws, particularly in Democratically-controlled state legislatures.

## De-Facto State Citizenship in California

What are the implications of the “California package” of immigrant integration laws for our notions of citizenship? On the latter question, we argue that California’s package of pro-immigrant integration policies, cumulative over time, have created a de facto regime of state citizenship, one that operates in parallel to national citizenship and, in some important ways,

exceeds the standards of national citizenship, including those envisioned in Congressional efforts on comprehensive immigration reform.

Scholars studying citizenship largely focus on national citizenship, and the few scholars that explore subnational areas of citizenship have focused on a reciprocal and cohesive system of federalism, and they describe citizenship as having multiple, tiered or nested characteristics.<sup>70</sup> The prominent idea in these studies is that each level of government has a unique role in facilitating various aspects of citizenship and that each level of government works together to establish full citizenship. The California Package, on the other hand, provides an alternative form of civic membership. As highlighted throughout this brief, federal health care law expressly excludes authorized and unauthorized immigrants from benefits established under the California Package. Unlike previous conceptions of citizenship within a federal system, by providing unauthorized immigrants increased life chances through health care, education and employment opportunities that are expressly denied or left unaddressed under federal law, the California Package functions as an autonomous form of *de facto* state citizenship, or membership.

Notably, a key area of rights granted by the California Package is based on an inherent conflict with federal immigration law, including laws like the TRUST Act and Anti-E-Verify laws. While these laws do not directly interfere with federal enforcement of immigration law, they provide an important sanctuary over unauthorized immigrants by limiting state resources and officials from being used to aid in the enforcement of immigration law. We argue that this creates a new concept of physical presence at the state level, one that we call free presence, which grants unauthorized immigrants freedom of movement into and within the state. Free presence is partly an indirect set of rights granted through sanctuary laws like the TRUST Act, but they are also expressly granted rights found in the California Package in the form of driver licenses that facilitate increased free movement in the state. Together, life chances and free presence highlight a significant autonomy in the California Package, one that we argue sets up a unique form of *de facto* state citizenship that is unaddressed by the citizenship scholarship, which has focused on providing a unified conception of citizenship that links federal and state membership rather than explores how states can in fact establish an autonomous state citizenship.<sup>71</sup>

Until now, however, no state has passed a state citizenship

law, and although the recent proposal in 2014 – the New York Is Home Act – would set up a formal state citizenship in the state of New York, there are particular advantages in conceptualizing state citizenship as a *de facto* cumulative outcome of pro-immigrant integration laws as establishing under the California Package.<sup>72</sup> First, focusing on pro-immigrant integration laws adds important flexibility by not confining state citizenship to a formal status.<sup>73</sup> Second, the California Package provides a clear range of boundaries upon which the state has extended its membership. As a result of focusing on the bundling of rights, rather than formal citizenship status, this brief is able to capture not only variation across states and over time, it is also able to identify states that are leaders, early movers or laggards in passing pro-immigrant integration laws and identify how these laws diverge from federal law. Thus, while scholars have motivated their studies of state citizenship by the context of federal failure to pass CIR, and while they highlight the possibility of state citizenship schemes that are inclusive of unauthorized immigrants to re-frame national debates on immigration reform away from enforcement and towards integration, in this brief, we identify key ways in which the California Package is unique in itself.

As we show in this section, the California Package of immigrant integration is consonant with federal immigration reform, but is distinct in one key respect: California's laws blur the lines between unauthorized and authorized immigrants, while most efforts at immigration reform have sought to sharpen the distinction between authorized and unauthorized immigrants even further. The California package blurs legal status by granting all immigrants equal access to what we call life chances and free presence, as well as by deviating from federal practices in applying a length of time requirement before granting the benefits of inclusion to immigrant outsiders. In essence, by not requiring legal status, all immigrants including future unauthorized immigrants are being included under the California Package, an innovation in state citizenship that federal immigration law is unable to supersede. These state level innovations, we argue, go well beyond current scholarship on state citizenship in decoupling state and national citizenship.

How is the California Package unique to national citizenship? The California Package not only offers immigrants a parallel state citizenship to national citizenship, its standards for granting inclusion set up *lower barriers* than rules on naturalization. National citizenship is automatically granted to all persons

born inside the US through the principle of *jus soli*, to children born abroad to American parents through the principle of *jus sanguinis*, and to naturalized immigrants through rules setup by Congress. In contrast to naturalization, the process by which immigrants can become national citizens, the California Package does not place a pre-requisite length of time before granting membership. This distinction is critical for recognizing the California Package as a unique innovation occurring at the state level.

As Hiroshi Motomura argues, pathways to citizenship rules have been justified on the idea that immigrants are “Americans-in-waiting.”<sup>74</sup> The idea here is that the longer time immigrants are physically present inside the US, regardless of legal status, is an important factor for determining worthiness of citizenship at the national level. Similarly, Elizabeth Cohen argues that the rule of *jus temporis*, or time, is a principle used in immigration and citizenship policies that bases full inclusion on “probationary periods” such as time of being physically present, time of residence, time of employment, or time of education.<sup>75</sup> This emphasis on time is exemplified by the Immigration Reform and Control Act (IRCA) of 1986, which gave amnesty to unauthorized immigrants based on time qualifications, including amnesty to those who resided in the US before 1982 and continuously thereafter until applying for permanent legal residency as well as amnesty to agricultural workers who were employed for at least 90 days a year for three years.<sup>76</sup> Notably, the California Package goes well beyond federal law by altogether forgoing time-based barriers, and instead, by granting immediate inclusion to both authorized and unauthorized immigrants.

This distinction in granting membership is also found in differences between the California Package and DACA and DAPA, both of which are federal programs where time-based requirements are a bedrock for granting inclusion. On November 20, 2014 Obama issued the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program, granting temporary reprieve to certain undocumented parents of US citizens and parents of lawful permanent residents (LPRs). Obama also expanded the existing DACA program, which granted temporary reprieve from deportation to young unauthorized immigrants brought to the US as children and who meet certain education requirements, by ending the program’s minimum age requirement that capped eligibility to persons under 31 years of age and expanded the date of arrival eligibility

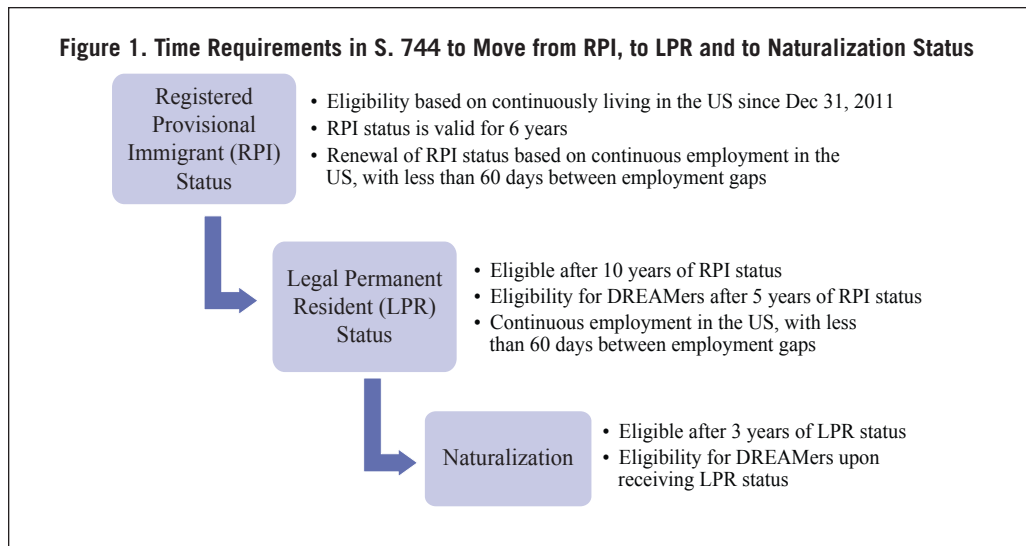
from 2007 to 2010. Both DACA and DAPA programs use time of being physically present inside the US as a key determinant for eligibility.

The only part of the California Package that applies a time-based barrier is its in-state tuition law, but this law is notably different from its federal counterpart. California based its eligibility requirement for undocumented students to receive in-state tuition on attending in-state elementary or high school for at least 3 years, not to determine who is worthy of its membership, but rather, to fill a policy gap of placing undocumented students into the state’s larger class of California students. By broadening the category to include all students within the state regardless of legal status, California had to differentiate between unauthorized immigrants within the state and out-of-state students prior to granting the former group in-state tuition. Therefore, while California’s law AB 540 appears at face value to apply a similar time based-barrier as federal law, in actuality, this state law is a step forward in defining all resident immigrants as citizens. In-state tuition therefore demonstrates how the California package is not only divergent from federal law, but also how it solidifies membership boundaries at the state level by simultaneously excluding out-of-state citizens.

Most importantly, the California package universally expands who is included in key areas of the state, going well beyond federal programs of DACA and DAPA. In 2013 and 2014, California’s passed a driver license law and a professional licensing law respectively, that grants all California residents licenses regardless of legal status and expands these benefits without placing time requirements on eligibility. Notably, California proposed a law in 2015 that would provide health insurance to all California residents regardless of legal status, which also places no additional requirements like time of residency in the state for eligibility. In other words, the state of California has moved well beyond federal action by continuing to expand who has access to state resources and benefits to all of its residents.

Distinction with federal reforms: The direction of expanding inclusion to immigrants regardless of legal status in the state of California, and in many other subnational jurisdictions across the US, is expected to have a long-lasting impact. First, this movement by subnational jurisdictions establishes a significant departure from federal action. In the event that Congress passes CIR, inclusive subnational laws will continue to provide important sanctuaries that will not be supplanted by CIR. Un-





like subnational laws, the recent bi-partisan CIR proposal, S. 744 – “Border Security, Economic Opportunity, and Immigration Modernization Act” – would sharpen the legal and illegal lines through increased enforcement and establish long wait times before unauthorized immigrants are granted a pathway to legal status. In particular, S. 744 would establish an enforcement first strategy that prioritizes the completion of border security goals that include a 700-mile expansion in fencing, a functioning mandatory E-Verify system for all employers, an increase in Border Patrol so that there are at least 38,405 full-time agents and an electronic exit system at all air and sea port entries. After these goals are met, S. 744 would begin to implement a Registered Provisional Immigrant (RPI) program that provides undocumented immigrants a pathway to Lawful Permanent Residence (LPR) status.

Similar to DACA and DAPA, the pathway to legal status that would be established by S. 744 emphasizes a merit system based on time, education, employment, and family ties in the US. After a 10-year continuous RPI status, immigrants will become eligible to apply for LPR status. S. 744 also incorporates DACA goals by establishing an accelerated legalization program for DREAMers, which include a reduced 5-year RPI status requirement for LPR applicants. Undocumented agricultural workers will also be granted a similar path to legalization through a work program that issues blue cards to establish temporary legal status and sets up similar requirements as in RPI before agricultural workers can apply for LPR and naturalization.

In general, the proposed S. 744 as well as Obama’s DACA and DAPA programs apply merit systems for determining who is worthy of legalization, and in all three, probationary periods slow the legalization of unauthorized immigrants. Notably, RPIs under S. 744 would not be eligible for federal public benefits such as Medicaid, food stamps, and benefits under the Affordable Care Act.

As we indicated earlier, a key difference between the California package and federal reform efforts is that the former tends to blur the lines rather than sharpens the lines between legal and illegal immigrants. While S. 744 would provide a blanket legalization scheme to integrate undocumented immigrants, the process of integration would take a minimum of 13 years between RPI, LPR and naturalization statuses. In addition to the imposed probationary time period before integration, S. 744 would prioritize strict border enforcement and expanded interior enforcement of unauthorized immigrants. In contrast, California’s laws do not impose a probationary time period before granting certain benefits like access to driver licenses or professional licenses, but instead, California immediately grants these benefits to all residents regardless of legal status. California has also diverged from federal law by limiting its involvement in federal immigration enforcement through its anti-E-Verify law and its TRUST Act, expanding the benefit of free movement within the state to legal and unauthorized immigrants. (see Table 4)

Although California has not formally granted state citizenship to all resident immigrants, the California Package makes

**Table 4. Divergence: California Blurring and Federal Sharpening of Legal and “Illegal” Lines**

		California Package	S. 744	DACA
“Unqualified”	K-12 Education	High Inclusion	High Inclusion	High Inclusion
	Postsecondary Education	High Inclusion	N/A	N/A
	Health Care	Low Inclusion	High Exclusion	N/A
	Employment	High Inclusion	High Exclusion	N/A
	Professional Licenses	High Inclusion	N/A	N/A
	Driver License	High Inclusion	N/A	N/A
	Immigration Enforcement	High Inclusion	High Exclusion	High Exclusion
	“Time” Requirement	High Inclusion	N/A	N/A
	“Life Chances” (Cumulative)	High Inclusion	High Exclusion	N/A
	“Freedom of Movement” (Cumulative)	High Inclusion	High Exclusion	High Exclusion
“Qualified”	K-12 Education	High Inclusion	High Inclusion	High Inclusion
	Postsecondary Education	High Inclusion	N/A	N/A
	Health Care	Low Inclusion	Medium Inclusion	N/A
	Employment	High Inclusion	High Inclusion	N/A
	Professional Licenses	High Inclusion	N/A	N/A
	Driver License	High Inclusion	N/A	N/A
	Immigration Enforcement	High Inclusion	High Inclusion	High Inclusion
	“Time” Requirement	High Inclusion	Low Inclusion	Medium Inclusion
	“Life Chances” (Cumulative)	High Inclusion	Medium Inclusion	N/A
	“Freedom of Movement” (Cumulative)	High Inclusion	High Inclusion	High Inclusion

significant leaps in this direction. To further illustrate how the California Package blurs the lines between legal and illegal, and why this significantly diverges from federal law, the chart above highlights variation in the levels of inclusion based on life chances, freedom of movement and time requirements. The chart above (Table 4) compares the California Package, S.744 and DACA on their levels of inclusion for both qualified and unqualified immigrants, according to the qualification criteria established under each policy. This chart not only helps clarify the current state of expansive inclusion setup by the California Package, it also sheds light on how federal law actually sharpens the distinction between legal and illegal.

In its current state of development, the California Package is highly inclusive at all measured levels except for one: health care. While the passage of S.744 would automatically expand the number of immigrants who have access to health care in California, as highlighted earlier in the brief, California currently has two proposed health care laws that would shift inclusion from low to high for both qualified and unqualified immigrants, both of which supersede the level of health care based inclusion that would be granted if S.744 were passed. Moreover, the California

Package comparatively offers more areas of inclusion in general than both S.744 and DACA combined, as highlighted by the multiple areas of “N/A” in the chart (see Table 4). Notably, the California Package is identical on all levels of inclusion for qualified and unqualified immigrants, illustrating the unique blurring between legal and illegal categories at the state level. In contrast, both S.744 and DACA sharpen legal and illegal boundaries; both policies are highly exclusive towards unqualified immigrants. Moreover, these federal policies are less inclusionary in general, as highlighted by the fluctuation between low to high inclusion of qualified immigrants across various policies dimensions.

### Avenues for Future Research

The flurry of immigration laws emerging after 2005 has created important opportunities for research on immigration federalism, particularly for exploring questions about the constitutional separation of federal and state powers over immigration law, questions on the scope of innovative space for varying sub-national levels to pass laws, questions on the dynamics leading to increased subnational activity, and questions on the real impact

that subnational legislation has on immigrant lives and the political communities they reside in. These questions are important for studying both anti and pro-immigrant state legislation.

As highlighted in the case of Arizona, jurisdictions that passed anti-immigrant laws that exclude immigrants and strengthen immigration enforcement efforts have faced constitutional barriers of federal preemption, equal protection and due process. The Tenth Amendment provides an important constitutional protection on state rights to enact laws protecting their residents. This raises interesting questions about federalism, the decoupling of federal and state laws, immigration enforcement and citizenship. What are the limits and scope of state and local level innovations to include and protect unauthorized immigrants? How will the court system begin to address pro-immigrant laws, and will these follow the same direction as its course on anti-immigrant laws by setting limitations or will the court system set a new path of protecting pro-immigrant subnational legislation at the expense of cohesion between federal and sub-federal law? How much more flexibility or innovative space do subnational jurisdictions have to pass pro-immigrant laws than anti-immigrant laws?

Next, what kinds of effects can we expect from immigrant-friendly state policy environments on immigrant integration and society more generally? Research in this area is relatively sparse in this regard, and mainly confined to education outcomes, with studies indicating that in-state tuition laws increase college enrollment rates of Latino undocumented students, who remain in college at rates that are similar to Latino peers who are U.S. citizens and legal residents.<sup>77</sup> Studies also indicate that in-state tuition policies has increased student motivation and reduced high school dropout rates among undocumented youth.<sup>78</sup> As more states consider and pass components that are part of the California package of immigrant integration laws, rigorous policy research will be essential to determine policy effects and ways to improve policy implementation.

What is clear from our foregoing analysis, and the growing body of research on “the new immigration federalism,” the entry of states and localities into more robust forms of immigrant integration and exclusion is not merely a blip. It has staying power, even in the event that comprehensive immigration reform is passed at the national level, with potentially significant implications for the lives and livelihoods of immigrants, on labor markets, and state/local economies more generally.

## Notes

<sup>1</sup> This policy brief draws heavily from research conducted as part of other publications, including S. Karthick Ramakrishnan, and Pratheepan Gulasekaram. “Importance of the Political in Immigration Federalism.” *Ariz. St. LJ* 44 (2012): 1431; Pratheepan Gulasekaram and S. Karthick Ramakrishnan. “Immigration Federalism: A Reappraisal.” *NYUL Rev.* 88 (2013): 2074; S. Karthick Ramakrishnan and Pratheepan Gulasekaram, *Understanding Immigration Federalism In The United States*, Washington DC: Center for American Progress (March 2014); and Pratheepan Gulasekaram and S. Karthick Ramakrishnan, *The New Immigration Federalism*, Cambridge University Press (2015, forthcoming). We thank Pratheepan Gulasekaram for the development of many of the ideas and comparisons that appear in this analysis, and we thank the various organization leaders, foundation program officers, and legislative staff who participated in our interviews.

<sup>2</sup> Interviews with California immigrant advocacy leaders, March 2014 and May 2015; see also Sturrock, Carrie. “Tuition Bill to Assist Immigrants.” *Contra Costa Times*, June 27, 2001.

<sup>3</sup> For changes made under the 1996 law, see 8 U.S.C. § 1623(a). States denying in-state tuition include Arizona, Georgia, Indiana, Alabama and South Carolina. Further, Alabama and South Carolina deny admission. National Conference of State Legislatures, “Undocumented Student Tuition: Overview.”; National Immigration Law Center, Basic Facts About In-State Tuition for Undocumented Students.

<sup>4</sup> “In State tuition for undocumented students sailing through the House” available at <http://www.orlandosentinel.com/news/blogs/political-pulse/os-instate-tuition-for-undocumented-students-sailing-through-the-house-20140305,0,609028.post>

<sup>5</sup> National Conference of State Legislatures, Undocumented Student Tuition: State Action, June 12, 2014 available at <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx>

<sup>6</sup> National Conference of State Legislatures, Undocumented Student Tuition: State Action, June 12, 2014 available at <http://www.ncsl.org/research/education/undocumented-student-tuition-state-action.aspx>

<sup>7</sup> Hawai'i Board of Regents, Michigan Board of Regents, Rhode Island Board of Governors and Oklahoma Board of Regents.

<sup>8</sup> “Table: Laws & Policies Improving Access to Higher Education for Immigrants.” 2014. National Immigration Law Center. June 9. <http://www.nilc.org/eduaccesstoolkit2a.html#tables>.

<sup>9</sup> [http://www.ncsl.org/documents/immig/2014\\_Immig\\_Laws\\_by\\_State.pdf](http://www.ncsl.org/documents/immig/2014_Immig_Laws_by_State.pdf)

<sup>10</sup> Rivera, Carla. 2014. “Two Long Beach Colleges Will Offer Dream Scholarships.” *Los Angeles Times*, February 4. <http://www.latimes.com/local/lanow/la-me-ln-college-dream-20140204-story.html>.

<sup>11</sup> REAL ID Act, 49 U.S.C. § 30301 note § 202(c)(2)(B)(viii) Importantly, the federal government has delayed full implementation of REAL ID, and has extended the deadline for state compliance several times. Several states have expressly stated their intention to continue resisting REAL ID requirements.

<sup>12</sup> The Iowa Supreme Court upheld a state law requiring applicants to produce a social security number or other federal documentation attesting to their authorized status to obtain a license. *Sanchez v. State*, 692 N.W. 2d 812 (Iowa 2005). Similarly, a federal appeals court upheld Tennessee’s statute limiting driver’s licenses to citizens and legal permanent residents. *League of United Latin Am. Citizens v. Bredesen*, 500 F.3d 523 (6th Cir. 2007). Notably, while preventing lawfully present nonimmigrants and undocumented immigrants from receiving licenses, the Tennessee law did provide “certificates of driving” for lawfully present nonimmigrants.

<sup>13</sup> After many delays in implementation, DHS once again delayed full implementation of REAL ID until 2020. See 6 C.F.R. 37, Federal Register, Vol. 79, No. 248 (Dec. 29, 2014)

<sup>14</sup> States that repealed their policies granting undocumented immigrants driver’s licenses, from 2003-2010: California, Hawaii, Maine, Maryland, Michigan, Oregon, Tennessee. Michael Csere, “Issuance Of Driver’s Licenses To Undocumented Immigrants,” Connecticut Office of Legislative Research Report 2013-R-0194 (revised), May 29, 2013 available at <http://www.cga.ct.gov/2013/rpt/2013-R-0194.htm>. For an in-depth look at state driver license policy prior to 2012, see Waslin, Michele L. “Driving While Immigrant: Driver’s License Policy and Immigration Enforcement.” In *Outside Justice*, edited by David C. Brotherton, Daniel L. Stageman, and Shirley P. Leyro, 3–22. Springer New York, 2013.

<sup>15</sup> Karthick Ramakrishnan and Pratheepan Gulasekaram, “Driver’s Licenses for Undocumented Immigrants: How the Obama Ad-

ministration’s Deferred Action Policy Paved the Way,” *San Jose Mercury News*, Oct. 12, 2013.

<sup>16</sup> States and jurisdictions currently allowing, or preparing to allow, undocumented persons to apply for driver’s licenses: California, Colorado, Connecticut, District of Columbia, Illinois, Maryland, New Mexico, Nevada, Puerto Rico, Utah, Vermont, and Washington. Note that New Mexico, Utah, and Washington permitted the practice prior to 2012. See National Immigration Law Center, “State Laws Providing Access to Driver’s Licenses or Cards Regardless of Immigration Status,” available at <http://nilc.org/DLaccesstoolkit2.html#table> (last updated Nov., 2013).

<sup>17</sup> National Immigration Law Center, Pending State Laws and Policies on Driver’s Licenses for Immigrants, Feb. 2014, available at <http://www.nilc.org/driverlicenseamap.html>; Kimberly Railey, “State Prodded on ID Security,” *The Boston Globe*, Feb. 7, 2014; Michael Matza, “Debate over Municipal IDs for immigrants,” *Philadelphia Inquirer*, Jan. 11, 2014; Karen Lee Ziner, “Hope Grows for R.I. Bill to Extend Driver’s Licenses to Undocumented Immigrants,” *The Providence Journal*, Jan. 10, 2014; Erica Pearson, “Advocates Push to Give Undocumented New York Immigrants Driver’s Licenses,” *New York Daily News*, Jan. 8, 2014; Matt Friedman, Immigrants in the Country Illegally could Legally Drive in NJ under Bill, *The Star-Ledger*, Mar. 9, 2014. It is worth noting, however, that the state of Oregon in November 2014, by popular referendum, defeated a driver’s license proposal that had previously passed the legislature.

<sup>18</sup> Stephen Dinan, “California Grants Driver’s Licenses to Illegal Immigrants,” *The Washington Times*, October 3, 2013, <http://www.washingtontimes.com/news/2013/oct/3/calif-grants-drivers-licenses-illegal-immigrants/>.

<sup>19</sup> *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (2014) (Order granting Plaintiff’s Motion for Preliminary Injunction)

<sup>20</sup> The state legislature overrode the governor’s veto of the measure by a 34-10 vote. “Nebraska Ends Ban on Driver’s Licenses for Immigrant Youths.” *KETV*, May 28, 2015.

<sup>21</sup> 8 U.S.C. § 1621(d).

<sup>22</sup> Jordan Fabian, Sergio Garcia: USA’s First Undocumented Lawyer, *National Journal*, Jan. 6, 2014.

<sup>23</sup> Cal. Bus. & Prof. Code § 6064 (b) (2014).



<sup>24</sup> In re Sergio C. Garcia on Admission, S202512 (Cal. Jan. 2, 2014).

<sup>25</sup> Florida Board of Bar Examiners Re: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar, N. SC11-2568 (Fla. Mar. 6, 2014).

<sup>26</sup> Katie Mettier, Undocumented Immigrant Jose Godinez-Sampeiro Tells of Becoming a Lawyer, *Tampa Bay Times*, Oct. 21, 2014.

<sup>27</sup> Robbins, Liz. “New York Court Rules for Immigrant in Fight to Become Lawyer.” *New York Times*, June 4, 2015.

<sup>28</sup> Josie Huang, Immigrants without legal status able to apply for professional licenses in CA Southern California Public Radio (2014), <http://www.scpr.org/blogs/multiamerican/2014/09/29/17360/immigrants-professionally-licensed-california/> (last visited Jan 20, 2015).

<sup>29</sup> Jennifer Medina, Allowed to Join the Bar, but Not to Take a Job, *N.Y. Times*, Jan. 2, 2014.

<sup>30</sup> 8 U.S.C. § 1601 et. seq.

<sup>31</sup> 8 U.S.C. § 1622; 8 U.S.C. § 1621(d).

<sup>32</sup> Available at <http://www.ncsl.org/Portals/1/documents/immig/immighealthprimer.pdf>

<sup>33</sup> Fabi, Rachel. 2014. “Undocumented Immigrants in the United States: Access to Prenatal Care.” *The Hastings Center: Undocumented Patients Project*. September 29. <http://www.undocumentedpatients.org/issuebrief/undocumented-immigrants-in-the-united-states-access-to-prenatal-care/>.

<sup>34</sup> “MAPS: Health Coverage for Immigrant Children and Pregnant Women.” 2015. *National Immigration Law Center*. January 6. <http://www.nilc.org/healthcoveragemaps.html>.

<sup>35</sup> <http://laborcenter.berkeley.edu/realizing-the-dream-for-californians-eligible-for-deferred-action-for-childhood-arrivals-daca-demographics-and-health-coverage/#endnote15>

<sup>36</sup> <http://laborcenter.berkeley.edu/realizing-the-dream-for-californians-eligible-for-deferred-action-for-childhood-arrivals-daca-demographics-and-health-coverage/#endnote15>

<sup>37</sup> <http://sd33.senate.ca.gov/news/2014-02-14-senator-lara-intro>

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<sup>38</sup> National Immigration Law Center, “MAPS: Health Coverage for Immigrant Children and Pregnant Women.” (2015) <http://www.nilc.org/healthcoveragemaps.html> (last visited Jan 14, 2015).

<sup>39</sup> Notably, federal law requires some employers, such as federal contractors, to use e-Verify.

<sup>40</sup> <http://www.cis.org/feere/california-limits-everify>

<sup>41</sup> <http://www.nilc.org/Illinois-model-policy-2008-10-29-ri.html>

<sup>42</sup> <http://www.nilc.org/Illinois-model-policy-2008-10-29-ri.html>

<sup>43</sup> National Immigration Law Center, E-Verify in the States, July 2012.

<sup>44</sup> 8 U.S.C. § 1324 (making employment of unauthorized aliens unlawful, and providing federal employer sanctions scheme); 8 U.S.C. § 1373 (“a Federal, State, or local government entity... may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [federal immigration authorities] information regarding the citizenship or immigration status... of any individual.”).

<sup>45</sup> *Galarza v. Lehigh County*, No. 12-3991 (3rd Cir. Mar. 4, 2014) (holding that immigration detainers are requests and cannot be mandatory pursuant to the Supreme Court’s “anti-commandeering” interpretation of the Tenth Amendment).

<sup>46</sup> The Trust Act of 2013 Cal. Stat. 4650 (codified at CAL. GOVT CODE §§ 7282–7282.5 (West Supp. 2014))

<sup>47</sup> Santa Clara County Board of Supervisors Policy Manual § 3.54 (Civil Immigration Detainer Requests) (Adopted Oct. 18, 2011; Reaffirmed Nov. 5, 2014).

<sup>48</sup> “San Francisco Joins Neighboring Counties In Suspending Undocumented Immigrant Jail Holds,” accessed December 7, 2014, <http://sanfrancisco.cbslocal.com/2014/05/29/san-francisco-joins-neighboring-counties-in-suspending-undocumented-immigrant-jail-holds/>.

<sup>49</sup> Cook County Code, Ch. 46 Law Enforcement, § 46-37; D.C. Official Code § 24-211.01 (“Immigration Detainer Compliance Amendment Act of 2011); Miami-Dade County Board of County

Commissioners Resolution No. \_\_\_ (Dec. 3, 2013); see also Samuel A. Demaio, “Detainer Policy, Newark Police Department General Order,” July 24, 2013 (“All department personnel shall decline ICE detainer requests.”).

<sup>50</sup> Champaign County, IL; Chicago, IL, Amherst, MA, Berkeley, CA, Los Angeles, CA; Milwaukee County, WI; New York, NY; Newark Police Department, New Jersey; Multnomah County, OR; Alameda County, CA; Newark, NJ; Orleans Parish, LA; San Francisco, CA; Sonoma County, CA; San Bernadino County, CA; Mesilla, NM; San Miguel County Detention Center, NM; Taos Detention Center, NM; King County, WA; Milwaukee County, WI. See generally, Catholic Legal Immigration Network Inc, States and Localities that Limit Compliance with ICE Detainer Requests (Silver Spring, 2014) available at <https://cliniclegal.org/resources/articles-clinic/states-and-localities-limit-compliance-ice-detainer-requests-jan-2014>,

<sup>51</sup> Tracey Kaplan, Jailed illegal immigrants: Santa Clara County sticks with lenient policy, San Jose Mercury News, November 5, 2013; “Letter of Law Professors in Support for Santa Clara County Civil Detainer Policy” 3.54, Nov. 4, 2013.

<sup>52</sup> Amy Taxin and Elliot Spagat, California Immigration Holds Drop Significantly Under Trust Act, Associated Press, June 6, 2014.

<sup>53</sup> Immigration and Customs Enforcement, “Secure Communities,” n.d., [http://www.ice.gov/secure\\_communities/](http://www.ice.gov/secure_communities/); Adam B. Cox and Thomas J. Miles, “Policing Immigration,” 80 U. Chi. L. Rev. 87 (2013)

<sup>54</sup> Dep’t of Homeland Security Secretary Jeh C. Johnson, Memorandum re: Secure Communities, Nov. 20, 2014.

<sup>55</sup> Robert Salladay & Jennifer Delson, “Governor Vows to Veto Driver’s License Bill,” *Los Angeles Times*, September 9, 2005.

<sup>56</sup> <http://laborcenter.berkeley.edu/realizing-the-dream-for-californians-eligible-for-deferred-action-for-childhood-arrivals-daca-demographics-and-health-coverage/#endnote15>

<sup>57</sup> Interview with State Senate Chief of Staff, April 15, 2015.

<sup>58</sup> Jessica Calefati, “Illegal Immigration: California Democrats Unveil Far-Reaching Package of Bills Aimed at Helping Newcomers,” April 7, 2015, [http://www.mercurynews.com/immigration/ci\\_27866668/immigration-reform-california-democrats-unveil-far-reaching-package?source=infinite](http://www.mercurynews.com/immigration/ci_27866668/immigration-reform-california-democrats-unveil-far-reaching-package?source=infinite).

<sup>59</sup> Pratheepan Gulasekaram and S. Karthick Ramakrishnan, *The New Immigration Federalism*, Cambridge University Press (2015, forthcoming).

<sup>60</sup> These include particular foundations such as Carnegie Corporation of New York and the J.M. Kaplan Fund, as well as immigrant-rights funder collaboratives like Grantmakers Concerned with Immigrants and Refugees (GCIR) and the Four Freedoms Fund.

<sup>61</sup> This shift in thinking among funders after the failure of the DREAM Act has been confirmed in several of our organizational interviews, including with National Immigration Law Center, Progressive States Network, and America’s Voice.

<sup>62</sup> See Gulasekaram and Ramakrishnan, forthcoming, Chapter 5.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Adrian Pantoja, Ricardo Ramirez, and Gary M. Segura. 2001. “Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization in Naturalized Latinos.” *Political Research Quarterly* 54(4): 729–750.

<sup>66</sup> See Gulasekaram and Ramakrishnan, forthcoming, Chapter 5.

<sup>67</sup> Cathy Cha, “Lessons for Philanthropy from the Success of California’s Immigrant Rights Movement,” *National Philanthropy*, [http://ncrp.org/files/rp-articles/RP\\_Winter14-15.pdf](http://ncrp.org/files/rp-articles/RP_Winter14-15.pdf) (last accessed April 23, 2015).

<sup>68</sup> See Gulasekaram and Ramakrishnan, forthcoming, Chapter 5.

<sup>69</sup> National Partnership for New Americans: Members, <http://www.partnershipfornewamericans.org/partners/> (last accessed April 23, 2015). For several years, NPNA has organized national conferences to bring together various types of immigrant-serving organizations and local government officials to build new partnerships and to encourage cross-regional learning (The White House Task Force on New Americans, Strengthening Communities by Welcoming all Residents: A Federal Strategic Action Plan on Immigrant & Refugee Integration 17-19, Apr. 2015). At the same time, the building of state organizational capacity is no guarantee of success, as was evident in Oregon. Andrea Silva’s case study of the Oregon measures indicates that the closing of political opportunities made a critical

difference in the case of driver's licenses in Oregon (Andrea Silva, *Undocumented Immigrants, Driver's Licenses, and State Policy Development: A Comparative Analysis of Oregon and California*, Paper presented at the Annual Meeting of the Western Political Science Association, April 2, 2015).

<sup>70</sup> Gerald L. Neuman, "Justifying U.S. Naturalization Policies," *Immigration and Nationality Law Review* 16 (1994): 83; Jackson Vicki C., "Citizenship and Federalism," in *Citizenship Today: Global Perspectives and Practices*, ed. Aleinikoff T. Alexander and Klusmeyer Douglas (Washing, D.C.: Carnegie Endowment for International Peace, 2001), 127–82; Peter H. Schuck, "Citizenship in Federal Systems," *The American Journal of Comparative Law* 48, no. 2 (April 1, 2000): 195–226, doi:10.2307/840970; Spiro Peter J., "The Citizenship Dilemma," *Stanford Law Review* 51, no. 3 (1999): 597–639.

<sup>71</sup> Peter Markowitz points to a similar dynamic in a recent law review article, where he argues that states have significant power to state citizenship laws that are inclusive of unauthorized immigrants as long as these laws do not directly conflict or interfere with federal immigration law (Peter L. Markowitz, "Undocumented No More: The Power of State Citizenship," *Stanford Law Review* 67 (2015). According to Markowitz, state citizenship can be inclusive of unauthorized immigrants as long as they are based on alienage law and avoid being based on immigration law. This position by Markowitz builds on previous scholarship that distinguishes between alienage and immigration law and that highlights the state as an important actor in alienage law (Hiroshi Motomura, "Immigration and Alienage, Federalism and Proposition 187," *Virginia Journal of International Law* 35 (1995 1994): 201; Linda Bosniak, "Universal Citizenship and the Problem of Alienage," *Immigration and Nationality Law Review* 21 (2000): 373.). In this brief, we propose a similar concept of state citizenship, although we do not limit citizenship to a formal status. Instead, de facto state citizenship is established through a bundle of laws granting rights and protections for what we call life chances and free presence within the state. This does not prevent a state like California from passing a law that formalizes its current de facto state citizenship. In fact, we argue that these two types of state citizenship – de facto and formal – are movements in the same direction.

<sup>72</sup> Josh Eidelson, "New York State Mulls Citizenship for Undocumented Workers," *Bloomberg Businessweek: Politics & Policy*, June 16, 2014, <http://www.businessweek.com/articles/2014-06-16/in-new-york-a-bill-to-grant-undocumented-immigrants-state-citizenship>.

<sup>73</sup> Elizabeth Cohen similarly approaches national citizenship as a disaggregated rights-based citizenship that has multiple bundles of rights, including political, social, civic and nationality rights. (Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics*, Cambridge University Press, 2009).

<sup>74</sup> Jessica Chasmar, "White House Calls Illegal Immigrants 'Americans-in-Waiting,'" *The Washington Times*, February 25, 2015, <http://www.washingtontimes.com/news/2015/feb/25/white-house-calls-illegal-immigrants-americans-in-/>.

<sup>75</sup> Elizabeth Cohen, "Citizenship and the Law of Time in the United States," *Duke Journal of Constitutional Law & Public Policy* 8, no. 2 (November 1, 2013): 55.

<sup>76</sup> Elizabeth F. Cohen, "Reconsidering US Immigration Reform: The Temporal Principle of Citizenship," *Perspectives on Politics* 9, no. 03 (September 2011): 580, doi:10.1017/S1537592711002787.

<sup>77</sup> Stella M. Flores and Jorge Chapa, "Latino Immigrant Access to Higher Education in a Bipolar Context of Reception," *Journal of Hispanic Higher Education*, December 11, 2008; Stella M. Flores and Catherine L. Horn, "College Persistence among Undocumented Students at a Selective Public University: A Quantitative Case Study Analysis," *Journal of College Student Retention: Research, Theory & Practice* 11, no. 1 (May 1, 2009): 57–76; Stella M. Flores, "State Dream Acts: The Effect of In-State Resident Tuition Policies and Undocumented Latino Students," *The Review of Higher Education* 33, no. 2 (2010): 239–83.

<sup>78</sup> Stephanie Potochnick, "How States Can Reduce the Dropout Rate for Undocumented Immigrant Youth: The Effects of in-State Resident Tuition Policies," *Social Science Research* 45 (May 2014): 18–32, doi:10.1016/j.ssresearch.2013.12.009.

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## **The California Package: Immigrant Integration and the Evolving Nature of State Citizenship**

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