MUNICIPAL TARGETING OF UNDOCUMENTED IMMIGRANTS' TRAVEL IN THE POST 9/11 SUBURBS: WAUKEGAN, ILLINOIS CASE STUDY

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ABSTRACT

As the U.S. went to war on terrorism, the small Midwestern city of Waukegan began confiscating undocumented immigrants' cars. Waukegan's towing policy demonstrates the post 9/11 trend of restricting undocumented immigrants' travel inside our nation's borders. This article locates Waukegan's policy within that trend and the older trend of increasing local enforcement of immigration policy, and then compares Waukegan's policy with Civil War era pass laws that restricted slaves' travel within and between towns.

INTRODUCTION

When I asked Mayor Dick Hyde of Waukegan, a former driver's education instructor, why the city had adopted an ordinance that effectively mandates towing undocumented immigrants' cars, he began his answer to me with this story: two Waukegan police officers were in their patrol car driving through an intersection. The light was green. Suddenly, a car shot out in front of them from a laundromat parking lot. The driver of that car, an undocumented Honduran immigrant with no valid Illinois license, was killed on impact. The Mayor said that despite the fuss that followed from his Latino constituents, the judge threw out the suit the immigrant's family brought against the city. Mayor Hyde said, "I think they said the guy had just had a fight with his girlfriend. I feel sorry for the guy. But the truth is, the guy was undocumented, and he wasn't supposed to be here." Mayor Hyde introduced the towing ordinance with this story to show me that undocumented people are often not well-educated drivers, bad things result and Latino activists protest, and the city sympathizes but does not regret enforcing the law.¹

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¹ I later read that the city paid a court-ordered settlement to the family. Waukegan Pagara, LA RAZA NEWSPAPER, Nov. 8, 2007.
Waukegan is a former rust belt city on Lake Michigan, about 40 miles north of Chicago. As of 2005, out of the population of 88,000, 45 percent of the town's population is Latino, up from 23 percent in 1990, and 14 percent in 1980. If undocumented immigrants were counted, the mayor believes the population might increase by another 20,000. Waukegan's undocumented immigrants do agricultural work like detasseling corn. They also have landscaping and factory jobs.

In Illinois, undocumented immigrants cannot get driver licenses. Waukegan police, authorized by a post-9/11 city ordinance, became the first of several Chicago suburbs to automatically impound unlicensed drivers' cars. Owners can reclaim their cars only after paying $700 or more in fines and towing fees.

Most of Waukegan's new immigrants are part of a massive wave of immigration from Mexico over the past thirty years. Unemployment among Mexican corn farmers rose drastically after cheaper corn from more efficient, subsidized mid-western farms flooded the Mexican market. Agricultural economist Phil Martin has compared the northern migration of Mexican corn farmers in the 1990s to the northern migration of African American cotton farmers in the 1950s, the era when Waukegan's African American population exploded.

Legal scholars have noted for more than a decade that individual states and municipalities balk at the magnitude of illegal immigration that the federal government tacitly allows. States and towns take advantage of limits on constitutional protections for undocumented immigrants and restrict benefits to them. Since September 11th 2001, the trend of such "local enforcement"
of immigration law has taken off.\textsuperscript{12} Waukegan’s towing ordinance is an example of that trend. Some argue that local enforcement of immigration law is an unconstitutional encroachment on an exclusively federal immigration power, and that it also tends to be racist, burdening Latinos generally.\textsuperscript{13} Others argue that local enforcement is necessary to fill a gap that the federal government has left open.\textsuperscript{14}

Filling such gaps has more urgency at a time of perceived national security threats after terrorist attacks within the U.S. and our military engagement in Iraq and Afghanistan. Still, impounding undocumented and therefore unlicensed drivers’ cars in Waukegan does little enough to combat terrorism or traffic accidents, though the city police and administrators claim to impound cars out of a concern for safety and security.\textsuperscript{15} The impoundment ordinance does make it prohibitively expensive to operate a car in Waukegan for those not in the United States legally. This and other similar Waukegan ordinances are designed to shore up city revenue and halt a dive in property values caused by low-income workers crowding into the area. The city council fears that the influx of immigrants will bring more poverty to Waukegan, make it “more like Mexico,” rather than the affluent bedroom community it aspires to be. Anti-immigrant activists in town and nationally applaud the city’s initiative in the face of a hostile illegal alien takeover.

In Waukegan, post 9/11 safety and security concerns mask the acquisitiveness that motivates the enactment of Waukegan’s towing ordinance. The specter of the terrorist looms over undocumented immigrants, overshadowing the ghosts of slaves. Though Waukegan’s undocumented immigrants are no more slaves than terrorists, they are like slaves in that their employers depend on them, and the federal government affords them fewer constitutional protections than other residents. Features of Waukegan’s post 9/11 towing policy as applied to undocumented immigrants recall Civil War era pass laws, as applied to slaves.

Part I recounts the enactment and enforcement of Waukegan’s new towing ordinance, responses from immigrant organizations, city reaction and escalating immigration enforcement efforts, and anti-immigrant groups’ participation in the debate. Part II summarizes other post 9/11 controls of the travel within our borders of undocumented immigrants. Part III contrasts the limitations on the mobility of undocumented immigrants in Waukegan.

\begin{itemize}
  \item \textsuperscript{12} Id.
  \item \textsuperscript{13} Id.
  \item \textsuperscript{15} Waukegan Police Chief Biang asserts a small drop in accidents since the ordinance went into effect, though their statistics do not address unlicensed drivers as a category distinct from drivers with no insurance or revoked or suspended licenses. Daniel Gibbard, Car Seizure Law Angers Hispanics; Waukegan Police Deny Targeting Latino Drivers, CHI. TRIB. (North Shore Final Edition), Jan. 16, 2004, at 1.
\end{itemize}
post-9/11 with limitations on the mobility of slaves during the Civil War.

I. WAUKEGAN'S TOWING ORDINANCE

This Section considers Waukegan's towing ordinance as part of Waukegan's broader political response to both 9/11 and new immigration, a response that most recently includes increased cooperation with federal immigration enforcement agents. The Section also reviews immigrant organizations' efforts to protest against the City's enforcement efforts, claims of discrimination, and litigation. Finally, the Section considers anti-immigrant groups' support for Waukegan's immigration enforcement efforts.

A. Enactment of the Towing Ordinance

During the first Waukegan City Council meeting after September 11th, Aldermen prayed for the victims, their families, and members of the U.S. armed forces, and noted that the tragedy had brought Waukegan citizens closer together. Waukegan passed motions in support of New York's police and fire-fighters as well as its own, and took steps to secure its water supply, waterfront, and downtown area. Handgun sales at the Smoke N'Gun in Waukegan rose 50 percent.

After the town's mayor, Dan Drew, died suddenly of a heart attack in early January of 2002, longtime alderman Richard Hyde became acting mayor. Dan Drew had been known for including Latino residents in Waukegan's political process—one of his first acts as mayor was to fill a vacancy on Waukegan's City Council with what was at the time its only Latino member. Mayor Hyde is a former WWII fighter pilot, who had a career in Waukegan as a high school athletic director and wrestling coach. With his first city council meeting, Mayor Hyde started a practice of leading a pledge of allegiance at the beginning of every meeting. The first motion passed under his watch established a National Patriotism Week in Waukegan.

Perhaps the large turnout for the first annual Waukegan celebration of Mexican Independence Day on September 17, 2001—a week after 9/11—had grated on Alderman Hyde. As the wars in Afghanistan and Iraq began,

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20. Id.
21. Waukegan City Council Minutes (Feb. 6, 2006).
22. Waukegan City Council Minutes, Item 5 (Feb. 6, 2006).
some of the measures the city took under Mayor Hyde's watch in the name of safety and security make the town less welcoming to its thousands of immigrant residents, documented and undocumented. Many of the ordinances focused on overcrowded housing. One targeted residential daycare providers who care for more than three children; others provided for comprehensive rental inspections and enforcement of limitations on the number of people who can live in rental homes, limitations enforced carefully, since ten years ago a court had found that Waukegan city discriminated against Hispanic families by not allowing extended families to live together in homes. Mayor Hyde said twice in public that he wished school buses could refuse to carry children from multi-family Latino households, because the city collects only one property tax per house, while paying bussing fees per child.

Mayor Hyde's fifteen years as a driver's education instructor may have had something to do with the city's particular focus on drivers' licenses. In March of 2002, Waukegan police arrested the proprietors of a business that had sold at least 6,000 fraudulent International Driver's Licenses to immigrants since 1997, selling fifty a day in its last months of operation.

In the meantime, Illinois state legislators, in response to 9/11, called off planned hearings in Waukegan and elsewhere on extending drivers' license privileges to undocumented immigrants. Once driver's licenses for undocumented immigrants were clearly politically infeasible, Chicago police began recognizing for the purposes of identification a document issued by the Mexican Consulate called the matricula consular. Pressure arose for suburban towns to do the same.

When the issue came before the Waukegan City Council, Alderman Rickerd complained about losing "good" neighbors as Mexican immigrants crowded into houses in his neighborhood. Alderman Harris suggested that recognizing the matricula consular would crowd schools, and he bemoaned resulting costs for taxpayers, particularly older residents living on fixed

24. First mentioned in Waukegan City Council Minutes (Nov. 5, 2001).
27. Interview with Hyde, supra note 3.
30. Rex W. Huppke, Hispanics are Flexing Their Political Muscle; Waukegan Rally May Be Just Start, CHI. TRIB., Sept. 15, 2002, at 1.
31. Id.
income. Harris also said "we do have to have a meeting of the minds, where people don’t come in and want to see everything changed to make it more like Mexico." Alderman Balan suggested ominously that the Mexican consulate provide the city a list of all the Mexican immigrants in Waukegan, whereupon Alderman TenPas began talking of protecting our borders and standing up and fighting illegal immigration.

To end the controversy, Mayor Hyde issued a decree in August of 2002 stipulating that Waukegan police would accept a Mexican *matricula consular* as a form of identification, side-stepping further City Council discussion.

This victory for Mexican immigrants in Waukegan soon proved pyrrhic. In June 2003, Waukegan adopted an ordinance that allows police to impound the cars of drivers who carried no licenses—often undocumented Mexican immigrants ineligible for an Illinois driver’s license. The expansion of the war on terrorism into Iraq that spring may have stirred up anti-immigrant sentiment in Waukegan. Local events probably swayed the City Council’s views on immigration enforcement policy even more. First, at the end of January, sixty-nine-year-old Alderman Larry TenPas, another former driver’s education instructor, was slightly injured after a Latino driver rear-ended him and then drove off. In the police station where TenPas filed his accident report, he mistook police officer Antonio Salinas for the driver who had injured him. Salinas charges that TenPas then attacked him and used expletives and racial slurs. Salinas filed a formal complaint against TenPas for battery and a hate crime. Alderman TenPas was one of the most vehement opponents to recognition of the *matricula consular*.

Second, in the spring before the revision of the ordinance, Miguel Juarez, the chief of police in Waukegan and the Mexican immigrant holding highest
office in the city, died suddenly of a heart attack. Mayor Hyde replaced him with Bill Biang, a career member of Waukegan’s police force, who has been recognized for his role in dramatically reducing gang-related crime during his few years as chief.

Finally, during this same period, Mayor Hyde was elected to serve out another four years, having received at least $27,000 from local towing companies to support his campaign. The revision of the ordinance provided a new revenue stream for the towing companies, a new enforcement tool for Mr. Biang, and likely satisfaction to Mr. Tenpas and others on the city council concerned with the influx of undocumented immigrants to Waukegan. Under the ordinance, to reclaim an impounded car, the owner must pay a $500 fine, approximately $150 in towing fees, and $25 to $30 per day in storage costs. If the owner cannot pay the fine within 30 days, the car is sold or demolished. In 2003 alone, Waukegan Police Chief Biang said that 6,830 cars were impounded under the ordinance. While nearly 3,000 people apparently could not afford to reclaim their cars, the city collected about $2 million in fines on 3,863 reclaimed vehicles, and traffic accidents went down by 7 percent.

The local Spanish newspaper recounts story after story of the new ordinance’s enforcement against Mexican immigrants, beginning in mid-summer 2003. Residents complain of getting pulled over for seemingly pretextual offenses like going straight from a right hand turn lane, not having lights on in the rain, or having snow covering a license plate during a snow storm. Several drivers also complained that they could not get their cars back at all, because of thefts and destruction of vehicles in towing lots.

### B. Immigrant Organizations’ Response and Litigation

The towing ordinance and federal Immigration and Customs Enforcement (ICE) raids angered and frightened members of the Latino immigrant

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46. See Gibbard, supra note 15.
47. Id. See also Code of Ordinances, City of Waukegan, Ill., Sec. 15-45.2(k)(2008).
49. Id.
51. Id.
53. Sossa & Mujica, supra note 50 (quoting Ted Richter, owner of JR Wreckers, saying that his premises was the victim of three thefts in March of 2004).
community in Waukegan. In 2003, after the towing ordinance first went into effect, Mexican American leaders, together with Muslim community leaders held their first joint press conference, accusing the city of Waukegan and other northern Chicago suburbs of violating the civil rights of immigrants under cover of response to September 11th. In addition, Father Gary Graf, a Catholic priest at the largest parish in Waukegan, has conducted several town-hall meetings at the church to discuss the ordinance, attended by Latino parishioners, aldermen, and police. Margaret Carrasco, a local attorney who is president of the Waukegan Mexican American Political Committee, and director of a soccer league in town has coordinated large-scale demonstrations against the ordinance along with church leaders. La Raza, the Chicago-based Spanish-language newspaper, has also been generally critical of the city of Waukegan’s treatment of immigrants.

These advocates claim not only that the towing ordinance most heavily impacts Latinos, but also that Waukegan police discriminate in their enforcement of it. Carrasco and Sossa say checkpoints set up in the first year of the ordinance’s enforcement were mostly in Latino neighborhoods. Along with Father Pedro Martinez, of Immaculate Conception Church in Waukegan, Jackie Herrera, from Waukegan Interfaith Refugee and Immigrant Ministries, and Ramon Becerra, regional head of the Labor Council for Latin American Advancement, advocates report complaints from Latinos who believe they were stopped for no other reason than looking Latino, by police who assumed Latino drivers have no licenses or invalid licenses. Community leaders also claim that some Latino drivers who have licenses and insurance have gotten their cars towed anyway. There are reports of mothers with small children left on the side of the road at night, police offering rides home only to go on to tow the other cars parked in family driveways, and police towing cars rather than allowing licensed passengers to drive cars away.

Perhaps the strongest evidence these groups have that there is intent to discriminate in the ordinance’s enactment and enforcement comes from controversy over Wisconsin licenses. Waukegan is less than a half hour from Wisconsin.

55. Quiroz, supra note 43.
56. Id.
57. Interview with Margaret Carrasco, President, Mexican American Political Committee of Waukegan (Jan. 15, 2007).
58. Id.; Interviews with Alexandra Sossa, Legal Assistant, Migrant Worker’s Assistance Project (Spring 2006).
59. Gibbard, supra note 15; Interview with Jackie Herrera, Interfaith Refugee and Immigrant Ministries (Jan. 2007); Interview with Carrasco, supra note 57.
60. Interview with Carrasco, supra note 57.
61. Sossa & Mujica, supra note 50.
the Wisconsin border. In Wisconsin, residents have not needed social security numbers to get licenses until recently. This means some undocumented immigrants who really live in Waukegan established residence in Wisconsin for long enough to get a license, and then came back across the state border to Illinois to work. Mayor Hyde told me that if a police officer knew a driver to be a Waukegan resident, and that resident carried a Wisconsin license, the resident's car would be impounded.62 Margaret Carrasco says similarly that, according to her constituents, showing a Wisconsin license is not enough to stop the police from towing a car for unlicensed driving; her account differs from Mayor Hyde's in that she believes Waukegan police tow Wisconsin license-holders' cars when the drivers look Latino and speak little English. For example, she helped Nelson Tejeda, a resident of nearby Kenosha, Wisconsin, register a complaint with the police when he was ticketed in Waukegan for having an invalid license, after presenting a valid Wisconsin license. Mr. Tejeda's ticket was cancelled, but a press spokesman for the Waukegan Police Department subsequently renewed a warning that "a Wisconsin license is valid only for residents of Wisconsin."63 One can only imagine that white, English-speaking drivers endure much less police scrutiny of valid Wisconsin licenses.

The Mexican-American Legal Defense Fund (MALDEF) has supported the ordinances' opponents by filing a First Amendment suit against the City, based on actions by the mayor and police at a City Council meeting in June 2004.64 There, police refused to allow Latino demonstrators to attend a city council meeting, though the meetings are open to the public and many seats were vacant. The police chief also attempted to collect funds from Margaret Carrasco to pay for police overtime and cleaning costs in connection with the demonstration.65

A federal judge briefly enjoined impoundments under Waukegan's towing ordinance in the winter of 2006.66 She did so on the basis that courts in California and Illinois have held that mandatory impoundment when a car is parked or a licensed driver is available to drive the car away do not serve any community care-taking function that exempts them from the prohibition on unreasonable, warrantless seizures that violate the Fourth Amendment.67 A few months later, the same court reconsidered, staying the injunction.68 The

62. Interview with Hyde, supra note 3.
65. Letter from Diver, Grach, Quade & Massini, LLP, attorneys for the City of Waukegan, copying William Biang, Chief of Police in Waukegan, to Margaret Carrasco, President, Waukegan Mexican American Political Committee (July 6, 2004).
court concluded that the case was moot because Waukegan had paid damages. The court said the plaintiff’s claim for equitable relief was unlikely to prevail, since the plaintiff would have to show “real likelihood” that her car would be towed again.69 “When considering the likelihood that the plaintiff will suffer future harm from the defendants’ alleged practice of wrongful conduct” the federal court reasoned, “courts must assume that [the plaintiffs] will conduct their activities within the law and so avoid . . . exposure to the challenged course of conduct said to be followed by the defendants.”70 Since courts must assume that all drivers will be properly licensed, and legally in the country, no plaintiff would then be entitled to equitable relief.

In this case the plaintiff had been legally in the country; were an undocumented driver or a class of undocumented drivers to file a claim, the city of Waukegan might file a motion to dismiss for lack of standing because Fourth Amendment constitutional protections do not extend to undocumented immigrants. Such a motion might or might not succeed, as undocumented immigrant protections under the Fourth Amendment are uncertain in Supreme Court jurisprudence after United States v. Verdugo-Urquidez.71

Advocates for immigrants do not seem to believe that now is the time to clarify that area of the doctrine. In December 2006, while the injunction was still in effect, the Mexican American Legal Defense Fund (MALDEF) and the Illinois Coalition for Immigrant and Refugee Rights (ICIR) held an exploratory meeting with 175 immigrants and potential class members who claimed their cars had been towed.72 They have still filed no claim.

C. City’s Response and Subsequent City Action

Waukegan had initially attempted to rebuild bridges with Latinos without backing down on the towing ordinance. Police Chief Bill Biang said that the

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69. Id. at *6 (quoting Knox v. McGinnis, 998 F.2d 1405, 1413-14 (7th Cir.1993)).
70. Id. at *6 (quoting O’Shea, 414 U.S. 488, 497).
71. In INS v. Lopez-Mendoza, a majority of Supreme Court justices assumed that the Fourth Amendment did extend to undocumented immigrants. 468 U.S. 1032 (1984). The Rehnquist majority opinion in the subsequent case of United States v. Verdugo-Urquidez, suggested in dicta that notwithstanding the Lopez decision, if the question of Fourth Amendment protection for undocumented immigrants were squarely before the Court, such protection would not necessarily be extended. 494 U.S. 259, 272-73 (1990). However Kennedy’s concurrence, what was then Rehnquist’s fifth vote, explicitly rejected the idea. Id. at 276-77. Justice Brennan’s dissent protested that “numerous lower courts . . . have held that illegal aliens in the United States are protected . . . and not a single lower court has held to the contrary.” Id. at 283, n.6. Some commentators suggest sensibly that a close reading of Verdugo-Urquidez indicates that principles of territoriality and voluntary presence limit Fourth Amendment protections for undocumented immigrants. See generally James G. Connell, III & Rene L. Valladares, Search and Seizure Protections for Undocumented Aliens: the Territoriality and Voluntary Presence Principles in Fourth Amendment Law, 34 AM. CRIM. L. REV. 1293 (1997). Thus, immigrants voluntarily in the country with significant ties to it may well still receive Fourth Amendment protections.
percentage of drivers who are Hispanic and whose cars have been impounded is consistent with the percentage of the Waukegan population that is Hispanic.\textsuperscript{73} During the 2005 election season, the mayor announced his intention to reach out to the Latino community, and the city developed a bilingual video explaining the appeals process for the impoundment ordinance.\textsuperscript{74} The mayor has said publicly that he supports licenses for undocumented residents, and claimed that the ordinance led to impoundment of only 1,000 cars in 2005, versus more than 6,000 in the first few months of its enactment.\textsuperscript{75} Amid fears that stops for unlicensed driving could lead to deportation,\textsuperscript{76} Chief of Police Bill Biang said in late 2006 that Waukegan police were not interested in taking on direct immigration enforcement through 287(g), the federal Immigration and Customs Enforcement (ICE) program that trains and deputizes police to enforce immigration law.\textsuperscript{77} Biang said it was “not what we were looking for in our community” and explained that local officers stuck to criminal prosecution and let federal agents pursue immigration violations.\textsuperscript{78}

During an interview about the town’s response to immigration and shortly after the lifting of the injunction on the towing ordinance, Mayor Hyde emphasized his efforts to bring condominium development and a casino to Waukegan’s lakefront, the main project of an administration with a goal of keeping property values high and property taxes low.\textsuperscript{79} A lifelong Waukegan resident, he said the departure of heavy industry has made Waukegan’s population poorer and more transitory than it once was.\textsuperscript{80} The issue of people moving around too much came up frequently. “We don’t want any jerks living in there,” Mayor Hyde said, pointing at the condominium plans, and “no apartments,” because people who live in apartments move around.\textsuperscript{81} He described, disapprovingly, undocumented immigrants moving into Waukegan, and moving in with family when their apartments are closed for code violations.\textsuperscript{82} He also described, disapprovingly, wealthy professionals moving out, and attributed their exit to crime linked to poverty, and the crowding of schools and neighborhoods with low-income Mexicans and blacks.\textsuperscript{83}

On the other hand, he said that having seen slums outside of Cancun, he


\textsuperscript{74} Jorge Mujica, \textit{Apoyan Licencias, Pero . . .}, \textit{La Raza Newspaper}, Dec. 9, 2005.


\textsuperscript{76} Id.

\textsuperscript{77} Interview with Hyde, \textit{ supra note 3}.

\textsuperscript{78} Id.

\textsuperscript{79} Id.

\textsuperscript{80} Id.

\textsuperscript{81} Id.

\textsuperscript{82} Id.

\textsuperscript{83} Id.
has some sympathy for Mexicans who struggle to get to Waukegan and find work.\textsuperscript{84} He supports work visas and drivers' licenses for undocumented immigrants, but not citizenship and the vote, since he said most Mexicans are headed back home for retirement.\textsuperscript{85} He said he felt for undocumented people protesting the ordinance who tell him they need to get to work and take their children to school. The problem is, like the Honduran immigrant killed by the police patrol car in the intersection, "they aren't supposed to be here." The point of the ordinance, for him, is that undocumented immigrants had been getting away with opting out of Illinois' drivers' licensing system, under which those who violate traffic laws get licenses suspended or revoked.\textsuperscript{86} Now, in Waukegan, there are consequences for driving without a license and violating traffic laws, no matter where you are from or what your immigration status is.\textsuperscript{87}

In the late spring and summer of 2007, with the injunction on the towing ordinance removed, Waukegan again went on the offensive against undocumented residents. Discussions began in earnest of submitting a 287(g) application to the Department of Homeland Security; in late May, Waukegan police revealed that they were in fact already using federal Immigration and Customs Enforcement (ICE) resources and databases to identify and deport immigrants.\textsuperscript{88} Despite large protests, the City Council voted to have the Waukegan police force submit a 287(g) application—"one of the best things that could happen to this city," according to Mayor Hyde.\textsuperscript{89} Mayor Hyde told alarmed immigrant residents that the program would not be used to deport unlicensed drivers, but rather dangerous criminals, and in a church with an audience of thousands, he signed a pact to that effect.\textsuperscript{90}

A month after the vote went through authorizing the 287(g) application, Waukegan police cooperated with federal Immigration and Customs Enforcement (ICE) officials under operation Community Shield, a different federal ICE program, to detain and put in deportation proceedings 58 undocumented immigrants accused of being gang members or "gang associates," an ill-defined criminal status.\textsuperscript{91} In this round of raids, immigrants were picked up

\begin{itemize}
\item \textsuperscript{84} Craig Peterson, \textit{Waukegan Seeks ICE Certification}, \textit{LAKE COUNTY NEWS-SUN}, May 30, 2007.
\item \textsuperscript{85} Id.
\item \textsuperscript{86} Id.
\item \textsuperscript{87} Id.
\item \textsuperscript{88} Craig Peterson, \textit{Waukegan Seeks ICE Certification}, \textit{LAKE COUNTY NEWS-SUN}, May 30, 2007.
\item \textsuperscript{89} Aprueban polémico 287(g) En Waukegan, \textit{Desafiando Protestas}, \textit{LA RAZA NEWSPAPER}, July 17, 2007 (Mayor's quote; author's translation); Margaret Ramirez & Andrew L. Wang, \textit{Priest Walks Tightrope in Divided Waukegan Pastor Sees His Role as Peacemaker in a City Where Emotions Run High Over Immigration}, \textit{CHI. TRIB.}, July 31, 2007.
\item \textsuperscript{90} Id.
\item \textsuperscript{91} ICE Captura A 58 Pandilleros Mexicanos En Suburbios De Chicago, \textit{LA RAZA NEWSPAPER}, Aug. 30, 2007. Jennifer Chacon has made ICE's Community Shield program notorious among immigration law scholars and immigrant advocates for deporting immigrants who have been here since early childhood for minor crimes or no crime other than having been designated "gang associates" by local police. Jennifer Chacon, \textit{Whose Community Shield? Examining the Removal of the "Criminal Street Gang Member,"} 2007 U. CHI. LEGAL F. 317.
\end{itemize}
on old warrants dating back ten years or more, for crimes as minor as statutory rape of women whom they went on to marry and with whom they have multiple children.\textsuperscript{92} Chief Biang downplayed the raids claiming that immigration enforcement was in fact part of the regular practice of the Waukegan police department, with ten officers devoted full time to the task.\textsuperscript{93}

D. Anti-immigrant Organizing

While it is unclear that membership in formal anti-immigrant organizations is large in Waukegan, participants in national anti-immigrant groups trumpet the towing ordinance’s success, and hold it up as a model for other communities wishing to drive illegal immigrants away.\textsuperscript{94} When the City voted to submit the 287(g) application, national anti-immigrant groups again claimed victory.\textsuperscript{95} Controversy around the towing ordinance revealed that there is a self-professed Minuteman on the Waukegan police force who spends his vacations on the border.\textsuperscript{96} Minutemen also protested against Father Graf for his support of the revocation of the ordinance in 2004 and 2006, and returned to show their support for the City Council’s vote on 287(g) in 2007.\textsuperscript{97}

Other groups that have taken an interest in Waukegan include American Renaissance, which promotes “racial realism,” or the recognition of differences between races, Americans for Legal Immigration PAC (ALIPAC), and Federation for American Immigration Reform (FAIR).\textsuperscript{98} These groups characterize the influx of immigrants to Waukegan as an invasion, and hint that it is a dangerous and violent one.\textsuperscript{99}

A local town forum website is frequented by one activist who uses the same name “fedupinwaukegan,” the same name as a prolific blogger on the Americans for Legal Immigration PAC (ALIPAC) forums. “Fedup” pitches in regularly on the Waukegan town forum to continual conversation with a decidedly hysterical bent on how to maintain the town’s character with high levels of immigration—local residents explain to each other that the towing ordinance and the increased rental inspections will drive immigrants out

\textsuperscript{96} Interview with Carrasco, \textit{supra} note 57.
\textsuperscript{99} Id. See also http://www.sourcewatch.org/index.php?title=Choose_Black_America (last visited April 19, 2008).
without explicitly singling them out. Fred Flanagan, a radio host listed on the Federation for American Immigration Reform (FAIR) website, rallies local anti-immigrant activists on his show “A Citizen’s Voice,” where the Mayor reportedly once called to talk about the invalidity of Wisconsin licenses in Waukegan.

Finally, Ted Hayes, who helped lead pro-287(g) protestors outside Waukegan City Hall, is an African-American homelessness activist who calls his Chicago-based chapter of FAIR “Choose Black America.” His organization’s board is made up of African-American professionals who promote economic development in black communities, and see immigration as a threat to that development. The organization understands both illegal immigration and the use of civil rights rhetoric by immigrant groups as in opposition to African American communities and their advancement.

In a climate where supporters of such groups in Waukegan were celebrating, organizers of the 6th annual Mexican Independence Day parade on September 16, 2007, were taken aback by record turnout. As of December 2007, Waukegan’s 287(g) application was still pending, and County officials had also submitted an application. Waukegan’s towing ordinance was still enforced, and still a political lightening rod.

II. STATE AND LOCAL MEASURES THAT RESTRICT IMMIGRANT TRAVEL AND CRIMINALIZE UNLICENSED DRIVING AFTER SEPTEMBER 11TH

Waukegan is not an isolated case, whether you look at Chicago suburban impoundment ordinances enacted after September 11th, or consider the well-documented national phenomena of increased municipal and state-level
targeting of undocumented immigrants after September 11th.\textsuperscript{109} Then Attorney General John Ashcroft set the tone in a speech to the U.S. Mayors conference in October of 2001: "Let the terrorists among us be warned. If you overstay your visa, even by one day, we will arrest you. If you violate a local law, you will be put in jail and kept in custody for as long as possible."\textsuperscript{110} Local governments continue to take their cues from frustrated federal enforcement agents. In a speech at the University of Chicago in the fall of 2006, Bush-appointee Julie Myers, the Assistant Secretary of Homeland Security for Immigration and Customs Enforcement (ICE), compared the unmanageable task of enforcing immigration law with enforcing the prohibition, in that the country is deeply divided on the merits of a body of law widely violated.\textsuperscript{111} She talked of limited resources and of a resulting need to target resources, as well as focus them on cooperation with local law enforcement.\textsuperscript{112}

Federal immigration enforcement officials after September 11th have concentrated their limited resources on restricting the travel of immigrants, not only into the country, but also inside it. After the September 11th attacks, federal immigration agents and border control haven’t stopped at airports; they also now make travel by Amtrak and Greyhound difficult for undocumented immigrants, responding in part to Congressional anxiety about terrorists choosing other forms of travel.\textsuperscript{113} Now, border patrol more regularly check and detain passengers from Amtrak trains and Greyhound buses.\textsuperscript{114} Greyhound has been eager to co-operate, and was itself subject to


\textsuperscript{111} Julie Myers, Assistant Secretary of Homeland Security for Immigration and Customs Enforcement, Address at the University of Chicago Legal Forum Symposium on Immigration Law and Policy (Oct. 28, 2006).

\textsuperscript{112} \textit{Id.}


\textsuperscript{114} Guillermo Contreras, Border Violation Denied, ALBUQUERQUE J., Oct. 27, 2002, at B5 (reporting apprehensions by U.S. Border Control at the Amtrak Station in Los Angeles, CA); Cindy Gonzalez, More Undocumented Immigrants are Taking the Bus, OMAHA WORLD-HERALD Co., Feb. 1, 2002 (discussing the post 9/11 shift from airport to bus—seventy-five undocumented immigrant
suit in Los Angeles because of a post-9/11 policy of having ticket-sellers make an ad hoc determination of whether potential ticket buyers were legally in the country, and refusing to sell them tickets if so.\textsuperscript{115} All of this has led to the development of a national network of Latino-run van services for long-distance travel, like a national gypsy cab system, where passengers can buy tickets and ride for less without being subject to special scrutiny.\textsuperscript{116}

In targeting driving privileges of undocumented immigrants in particular, states and towns also take their cues from the federal government. In the aftermath of September 11\textsuperscript{th}, federal debate began on measures that would make it more difficult for undocumented U.S. residents to obtain driver’s licenses.\textsuperscript{117} These culminated in the passage of the Real ID Act in 2005, under which states’ licenses will continue to get federal recognition after May 11\textsuperscript{th}, 2008, but only if they standardize documentation requirements for getting driver’s licenses, and make any licenses available to those with no social security numbers distinguishable from those of legal residents.\textsuperscript{118} A total of forty-five states now require that an applicant for a driver’s license provide proof of legal residence in the United States, and one allows undocumented drivers to obtain a distinct “driving privilege card.”\textsuperscript{119} Now that it is harder for undocumented immigrants to get licenses, states are increasing penalties for driving with no license, distinct from driving with a suspended or revoked license. Rhode Island increased penalties for unlicensed driving in 2005 so that they are equivalent to those for driving on a suspended or revoked license.\textsuperscript{120} In Virginia, as of March 2007, a second offense of driving without a license is now punishable by up to a year in prison.\textsuperscript{121} South Carolina has also considered similar increases in 2007.\textsuperscript{122} As for impoundment, while California has had an impoundment policy for second offenses of driving without a license for more than ten years, Arizona,
in late 2006, became the second state to enact a measure like the city of Waukegan's, mandating impoundment for a first offense of driving without a license.  

In other Chicago suburbs, and elsewhere around the country, ordinances similar to Waukegan's have taken hold. Margaret Carrasco says she's had calls from Mexican Americans and community organizations in North Chicago, Round Lake, Park City, and South Chicago describing a change in police impoundment policy. La Raza reports that on May 23, 2005, the neighboring city of Round Lake adopted an ordinance like Waukegan's. Elgin, Illinois adopted a copycat ordinance in July 2007. Mayor Hyde claims that though Waukegan was the first, sixteen other local municipalities have adopted similar impoundment ordinances. Towns as far away as Athens, Alabama have since latched onto the idea. 

Interestingly, two states with large immigrant populations, Texas and possibly California, now seem to be swinging back the other direction on the question of licenses for immigrants or penalties for unlicensed driving. Though Wisconsin licenses aren't recognized in Waukegan, Mexican licenses may soon be recognized in the state with the longest Mexican border, Texas. After debating a number of bills that would have restricted licensing to immigrants, the Texas legislature enacted a law that allows the Texas DMV to enter into reciprocal agreements with foreign nations whereby each affords a driver's license to drivers over eighteen who hold licenses in the other's jurisdiction. The California Police Chiefs Association, in a turnaround based on recent state and federal court precedent, told its members that the law does not allow them to impound cars of those whose only violation is driving without a license and whose cars don't create a traffic hazard. 

123. "A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while the person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction." 28 AZ. REV. STAT. § 3511 (2007). See Saxon Burns, Cars Behind Bars, TUCSON WEEKLY, Feb. 9, 2006, available at http://www.tucsonweekly.com/gbase/Currents/Content?oid-oid%3A78267 (last visited Mar. 19, 2008).
125. Emily Bazar, Cities Car Ordinances Hurt Illegal Immigrants; City Officials Punish Non-Licensed Drivers, USA TODAY, Aug. 15, 2007.
126. Interview with Hyde, supra note 3.
III.  Waukegan’s Towing Ordinance and Pass Laws Imposed on Slaves and Former Slaves During and After the Civil War

Towing ordinances and restrictions on immigrants’ travel would be little obstacle for organized, determined terrorists, who could recruit citizens, or get valid licenses using passports based on forged birth certificates. So why target immigrants’ ability to travel in time of war? Commentators who consider the post-9/11 backlash against immigrants have made comparisons to registration and persecution of Germans during WWI, Japanese internment in WWII, and registration of Iranians after the Iran Hostage Crisis. These comparisons are particularly salient to treatment of Arab men in the U.S. after September 11th. When we consider the backlash against Latino immigrants, we can turn to our Civil War history, the last time the federal government was under a physical attack from within the continental borders of the U.S. Towns in the south, like Waukegan today, restricted the mobility of a culturally distinct subpopulation whose labor was welcome but whose loyalty was doubted.

During the Civil War, white men in the south took their turns serving on slave patrols, militia that intermittently enforced a system whereby black people could not travel off plantations, particularly at night, unless they had written passes from their masters that said where they were going. Sally Hadden’s history of these militias observes that as the Civil War broke out, patrolling increased and pass laws were more strictly enforced. As the northern armies approached, fewer passes were given out. Then once northern armies were close, suddenly everybody had to have a badge, white and black. “With the approach of Union troops to Southern towns, town councils began to issue passes to white inhabitants, ironically turning a system of control that had once been aimed solely at slaves into a universal requirement for all residents... passes specified the complexion, hair and eye color, height, and age of the person given permission to leave the restricted area.” After the war, the pass system remained in place for southern cities, but only as applied to blacks. Hadden quotes Richmond

130. For a “how-to” manual on obtaining a valid U.S. passport today whether you are a legal resident of the country or not, see Egelman and Cranor’s 2005-06 article based on a study funded by the National Science Foundation. Serge Egelman & Lorrie Faith Cranor, The Real ID Act: Fixing Identity Documents With Duct Tape, in Federal Secrecy After September 11 and the Future of the Information Society, 2 I/S J. OF L. & POL’Y. FOR INFO. SOC’Y 3 (2006). See also Aldana & Lazos, supra note 109 at 1685 (citing the 9/11 Report which documented how the 9/11 attackers entered the country legally and planned around U.S. immigration laws. Bin Ladin chose Saudi Arabian operatives because visas from Yehmin were harder to obtain.). See also THE COUNCIL OF STATE GOVERNMENTS AND THE NATIONAL CONFERENCE OF STATE LEGISLATURES, Driver’s License Integrity, http://www.ncsl.org/statefed/DLRCSG.htm (last visited Mar. 20, 2008).
131. See, e.g., Pfitsch, supra note 109, at 166-69.
133. Id. at 170.
134. Id. at 183.
135. Id. at 185.
policeman of the day: "all niggers that did not have a paper from their master, showing that they were employees, must be taken to jail and hired out for $5 per month." 136 Vigilante groups, including the Klan, continued to enforce passes in rural South Carolina for some time after the war. 137

Constitutional reforms bestowing citizenship on blacks after the Civil War recognized black Americans’ liberty to travel as part of the citizenship grant. Reformers intended both to resolve conflicts arising out of blacks’ travel between slave states and free states, and to dismantle pass law systems. 138 Opponents of granting citizenship to African-Americans and other nonwhites worried in particular about the increased mobility that would be a privilege of citizenship. Senator Cowan of Pennsylvania sought to preserve the right of a state, “if she deems it proper, to forbid the entrance into her territory of any person she chooses who is not a citizen of some one of the United States.” 139 He was “unwilling, on the part of my State to give up the right . . . of expelling” those of a different race. 140 His particular concern was gypsies. 141

Waukegan’s mayor and City Council are similarly uneasy about ethnically distinct outsiders. Like Senator Cowen, they seek to consolidate control over who lives in their jurisdiction, and they have their suspicions of people who may just be traveling through and free-loading off long-term residents.

Comparisons between the situation of illegal immigrants today and African American slaves are often made overtly in the political arena and produce strong reactions. As noncitizens, undocumented Latino immigrants enjoy many freedoms that slaves did not. They choose to enter the country. Once here, transportation allowing, they can choose employment in a relatively broad spectrum of less desirable jobs for which English is not a requirement. They earn wages. They can usually choose to return to their countries of origin. Many are more recent immigrants than African Americans were at the time of the Civil War, when slave importation had been banned for fifty years. The Fourteenth Amendment established citizenship and a right to travel not for immigrants, but for children of immigrants, a group still

136. Id. at 193.
137. Id. at 206, 211-12.
138. “The pass laws ended formally with the Thirteenth Amendment’s abolition of slavery and involuntary servitude in 1865 and with freedmen becoming ‘citizens by virtue of their birth in the United States under the Fourteenth Amendment in 1868.’ Richard Sobel, The Demeaning of Identity and Personhood in National Identification Systems, 15 HARV. J.L. & TECH 319, 343 (2002). See also CHESTER J. ANTEAU, THE ORIGINAL UNDERSTANDING OF THE FOURTEENTH AMENDMENT 33 (1981) (stating “The denial of the opportunity to move freely throughout the land was one of the badges of servitude imposed on the slave . . . and, in ratifying the Fourteenth Amendment the people intended that the privileges and immunities clause of that Amendment would protect Blacks, as well as Whites, in their freedom to move and travel around the country, without restriction by the States and their political subdivisions”).
140. Id.
141. Id.
eligible for social security numbers and thus licenses in Waukegan and the rest of the United States.

However, the driver's license controversy and increasing penalties for unlicensed driving come at a time, like the Civil War, when Americans perceive a threat from within their borders. Undocumented workers in post-9/11 United States are like slaves in that their loyalty and ability to assimilate is doubted, perhaps more so because many are economically exploited. Their future political status is uncertain, though their work is important to their employers and certain industries. Waukegan's town level effort to penalize unlicensed driving therefore recalls Civil War era pass law schemes.

**CONCLUSION**

During the Civil War, southerners used pass laws to control free blacks, and to keep slaves from deserting to a hostile army. In contrast, Waukegan's post-9/11 ordinance seems aimed to nudge undocumented immigrants out of town, and, if anything, risks alienating a loyal population. Still, Waukegan's ordinance recalls the far more severe town-enforced restrictions on the travel of slaves and blacks. During the Civil War, town militia stopped slaves and free blacks in the wrong state for not having passes. Now, in Waukegan, police stop undocumented immigrants for not having licenses, even if they have licenses from other states. Restrictions on the travel of African Americans between and within states became illegal after the passage of the 14th Amendment and the granting of citizenship to slaves born in the United States. Federal immigration reform providing a path to citizenship for undocumented immigrants, and a state licensing regime accessible to undocumented immigrants, would keep towns like Waukegan from car seizures that now restrict undocumented immigrants' travel.

Absent such reform, invalidating the ordinance might be counterproductive from an immigrant perspective. In a broader cooperation with federal Immigration and Customs Enforcement (ICE), Waukegan's patrol officers could legally arrest many of those who drive without a license.142 Impoundments pursuant to those arrests would be found constitutional.143

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Mexican American and Mexican immigrant families pack into Catholic churches on December 12th every year to celebrate an early morning service for the Virgin of Guadalupe. A mariachi band often leads the crowd in songs. The service celebrates the Virgin Mary's appearance as an indigenous

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142. Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (holding arrests for minor traffic violations constitutional); Todos Los Indocumentados Serian Detenidos, LA RAZA NEWSPAPER, July 26, 2007 (quoting the spokesperson for ICE in Chicago warning that all undocumented immigrants are eligible for deportation).

143. Id.
woman to Juan Diego Cuauhtlatoatzin in 1568 in the countryside near Mexico City. The virgin brought Juan Diego roses in the desert as a sign, to help him convince a bishop to build a church in her honor.

When Father Gary Graf celebrated the mass for the Virgin of Guadalupe in Waukegan in 2006, Waukegan had been enjoined for three weeks from enforcing its towing ordinance against unlicensed drivers. In the middle of the sermon, parishioners noticed that a tow truck had arrived in the church parking lot. They got Father Graff’s attention. He left the pulpit and walked out into the lot to negotiate with the tow truck driver, who had already gotten the mandolin player’s car up onto his truck bed. The tow truck driver said that an employee of a neighboring school had complained that the car was illegally parked in the crowded church lot. Father Gary took up a second collection on the spot. The tow truck driver grudgingly lowered the car, took $100, and drove away.

145. Id.
146. Id.
147. Id.