

# Municipal ID Cards for Undocumented Immigrants: Local Bureaucratic Membership in a Federal System\*

Politics & Society  
2014, Vol. 42(3) 309–330  
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DOI: 10.1177/0032329214543256  
pas.sagepub.com



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## Abstract

This article examines the municipal ID card programs in New Haven and San Francisco. With a municipal ID card, undocumented immigrants can access basic city services and identify themselves with police and other city officials. The article draws on twenty-eight interviews with key stakeholders to show that city officials navigated the conflicting demands of ID card supporters and opponents to create a local membership policy focused on improving city administration, not expanding the rights of undocumented immigrants. In capitalizing on their discretionary administrative powers to develop programs that safeguard the health, safety, and welfare of all city residents, officials in New Haven and San Francisco managed to promote the integration of undocumented immigrants into city affairs without upsetting the federal monopoly over immigration and citizenship powers. This new form of local bureaucratic membership has implications for the urban citizenship literature and illustrates that city officials have some freedom to develop programs that benefit undocumented immigrants.

## Keywords

membership, undocumented immigrant, city, federalism, ID card, bureaucracy

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\*This article is part of the September 2014 special issue of *Politics & Society* called “The Rights of Noncitizens.” The papers were originally presented at a workshop held in 2012 at the New School of Social Research in New York City. The workshop was titled “The Rights of Noncitizens? Immigration, Boundaries, and Citizenship in Contemporary Democratic Politics.” The event was co-sponsored by *Politics & Society* and the International Center for Migration, Ethnicity, and Citizenship at the New School (ICMEC). Please see the Introduction of this issue for further information.

In recent decades, but especially since the failure of federal immigration reform in 2006-07, cities have become visible sites for political fights about the rights of the estimated 11.1 million undocumented immigrants living in the United States.<sup>1</sup> Some cities have passed ordinances that restrict the rights of undocumented immigrants by barring them from working and renting homes in their cities. Others instead have enacted legislation that seeks to safeguard or expand rights by granting undocumented immigrants local voting rights, municipal ID cards, and local sanctuary from federal immigration laws. Both restrictive and inclusive city policies that target undocumented immigrants have been subject to media, political, and legal scrutiny in large part because they challenge the federal monopoly over immigration and citizenship regulation. Only the federal government can decide which foreigners may enter and legally reside in the United States, acquire US citizenship, and become full members of American society.<sup>2</sup> From a constitutional perspective, cities appear to have no power to expand the *de jure* rights and benefits of undocumented immigrants even when many already are *de facto* members of their communities.

The urban citizenship literature provides a different perspective of cities and inclusive rights in particular. It explores how in the current age of intensive globalization cities provide an alternative locus for the sociocultural, economic, and political membership for growing numbers of international migrants and other marginalized populations.<sup>3</sup> Often with a focus on how grassroots advocates and disenfranchised residents challenge the meaning and practice of citizenship in local communities, this research suggests that cities in federal nations like the United States, Canada, and Germany serve as sites for the progressive reconstitution of formal citizenship.<sup>4</sup> This scholarship has strong normative undertones and often argues that all urban residents, regardless of their immigration or citizenship status, should be recognized as full members of the community with equal access to local resources and decision-making arenas. However, by paying little attention to the reality of the federal monopoly over immigration and citizenship issues, this literature tends to obscure the constitutional difficulties that cities face in enacting and implementing legislation that expands membership rights and benefits to undocumented immigrants.

Through an assessment of the municipal ID card programs in New Haven, Connecticut, and San Francisco, California, this article provides an empirically grounded account of the constraints and opportunities that cities face in improving the living conditions of undocumented immigrants. In navigating the conflicting demands of ID card supporters and opponents, city officials created a local membership policy that is focused on improving city administration, not expanding immigrant rights. I show that while federal law serves as an important constraint on cities' immigration and citizenship policymaking powers, it also provides city officials with some freedom to develop programs that benefit undocumented immigrants. More specifically, officials in New Haven and San Francisco capitalized on their discretionary administrative powers to develop programs that safeguard the health, safety, and welfare of all city residents, including undocumented immigrants. With a focus on improving the delivery of existing services rather than creating new rights, these city officials effectively developed a local membership policy that helps undocumented immigrants to

become active and recognized participants in city affairs without upsetting the federal monopoly over immigration and citizenship powers.

## Federal Restrictions on the Rights of Undocumented Immigrants

A discussion about the rights of undocumented immigrants may seem counterintuitive to those who assume that by definition undocumented immigrants are excluded members of society. It is still the dominant view that only nation-states can confer citizenship status and rights, and that nationality is the basis for full societal membership.<sup>5</sup> Since undocumented immigrants are foreigners who have entered the United States in violation of federal immigration laws, their unauthorized presence automatically precludes them from the rights and benefits that the country bestows on its citizens, including the right to vote, carry a US passport, and access a range of government assistance programs. Yet even undocumented immigrants are covered by certain protections that apply to all persons present within US territory, including equal rights protections under the 14th Amendment to the US Constitution and employment protections under the National Labor Relations Act and Title VII of the 1964 Civil Rights Act.<sup>6</sup> US law thus is much more ambivalent about what undocumented status means for the allocation of rights and benefits than commonly assumed.

Despite this ambivalence, recent federal laws and court decisions have more clearly circumscribed the rights and benefits of undocumented immigrants residing in the United States. Starting with the 1986 Immigration Reform and Control Act (IRCA) and culminating with the 2002 US Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, the workplace rights of undocumented immigrants have become more precarious.<sup>7</sup> Intent on discouraging undocumented immigration, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 have also restricted access to federal public benefits such as housing, food stamps, and Temporary Aid to Needy Families (TANF) for both legal and undocumented immigrants. And federal legislation designed to fight terrorism on US soil—including IIRIRA, the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA), and the 2001 USA PATRIOT Act—has undermined the basic civil rights and civil liberties protections of undocumented immigrants residing in the United States.<sup>8</sup> Despite several controversial openings for immigrant rights, the trend has been toward excluding, rather than including, undocumented immigrants from national membership rights.

An added difficulty for undocumented immigrants today is that they can no longer obtain government-issued identification documents in the United States at a time when such documents are increasingly necessary for accessing locations and services. In the aftermath of the 2001 terrorist attacks, Congress enacted the REAL ID Act of 2005, which imposes national security standards for state-issued photo IDs. Under this federal law, immigrants must provide proof of lawful immigration status to obtain a driver's license or state ID card, thereby making it impossible for undocumented

immigrants to get state-issued photo IDs that federal agencies will accept for official purposes. In 2002, state-issued driver's licenses were still available as a form of identification to undocumented immigrants in most states,<sup>9</sup> but in 2011 that was the case only in New Mexico, Utah, and Washington, whose licensing laws do not require proof of citizenship or legal residency.<sup>10</sup> The lack of a government-issued ID discourages undocumented immigrants from accessing the few public services that are available to them, increases their reluctance to contact those government institutions that can safeguard their rights, and limits their freedom of movement within the country.<sup>11</sup>

## Cities as Alternative Sites for the Rights of Undocumented Immigrants

A growing population of long-term undocumented immigrants in the United States has brought their lack of formal national membership rights into starker relief. This disjuncture between territorial presence and formal rights has driven some scholars to challenge the national assumption of citizenship and consider alternative understandings of citizenship's location. In considering nonnational forms of rights, they have looked *up* at international political organizations such as the United Nations and the emerging international human rights regime to consider the possibilities and pitfalls of global, cosmopolitan, transnational, or postnational citizenship.<sup>12</sup> Increasingly, scholars have also looked *down* to cities (and US states) as another locus of rights in today's rapidly globalizing world. As the most immediate face of government, cities in particular are sites that present undocumented immigrants with opportunities to access the sociocultural, economic, and political rights and services that confer societal membership.<sup>13</sup>

Proponents of urban citizenship see local residence, rather than nationality, as the basis for societal membership and decision-making authority.<sup>14</sup> They argue that undocumented immigrants already are *de facto* members of the community—they work in the city, pay local taxes, are homeowners, tenants, or landlords in the city, send their children to local schools, attend city churches, shop in the city, etc.—and therefore should become *de jure* members and be given the opportunity to influence the city's sociocultural, economic, and political spheres. Existing scholarship is largely normative in nature and tends to approach citizenship as a bottom-up process where grassroots activists use community organizing campaigns to expand the membership rights and benefits of noncitizen immigrants in areas including health care and public education,<sup>15</sup> employment,<sup>16</sup> and voting.<sup>17</sup> These studies illustrate well how citizenship practices are grounded in various aspects of city life, but they largely overlook the agency of city officials and the role of local government in urban struggles over belonging and membership for noncitizen immigrants.<sup>18</sup>

In the United States, cities are subordinate to states and the federal government and they have no independent powers. Constitutional law sees cities merely as administrative creatures of the various states with the responsibility to assist them in carrying out state government functions. Most states have granted cities broad police powers to

regulate and protect the health, safety, and welfare of their residents, and cities in recent years have enjoyed more policymaking discretion due to the federal devolution of government responsibilities.<sup>19</sup> Yet all local legislation still needs to conform to state and federal laws. In the areas of immigration and citizenship, city initiatives to expand membership rights and benefits to undocumented immigrants have been particularly controversial because they challenge the federal government's exclusive power over both immigration and citizenship policy. City officials defend their initiatives as legitimate exercises of municipal power to promote the general welfare of city residents. Critics instead portray local initiatives as thinly veiled attempts by local governments to interfere with the flow of immigration and reconstitute the meaning and practice of US citizenship. How advocates and city officials navigate this difficult constitutional terrain to try to carve out some local autonomy for initiatives that help undocumented city residents is at the heart of this article.

I use the case of municipal ID cards to show that while cities cannot recognize undocumented immigrants as formal members of American society, they can take advantage of their discretionary administrative powers to develop programs that make it easier for undocumented immigrants to participate in key aspects of city life. With a focus on facilitating access to municipal services for which undocumented immigrants are already eligible rather than granting them new rights, municipal ID card programs should not be viewed as constitutionally suspect attempts to unsettle the federal government's power over *citizenship*. Also, because municipal ID card programs are instances of problem-oriented initiatives that seek to combat disadvantages faced by all city residents irrespective of their immigration or citizenship status, they also should not be construed as constitutionally suspect attempts to unsettle federal power over *immigration*. I introduce the concept of "local bureaucratic membership" to highlight how city programs that help undocumented immigrants to access city services for which they are already eligible are substantively different from federal initiatives to expand citizenship rights or regulate undocumented immigration.

## Municipal IDs and Local Bureaucratic Membership

Municipal ID cards are a new type of initiative that several US cities have developed in recent years to advance the civic integration of city residents who have difficulty obtaining government-issued identification documents, including undocumented immigrants, transgender individuals, the homeless, the elderly, youth, and the prison reentry population. Municipal IDs are available to all city residents, regardless of immigration or citizenship status. They are valid only in the city that issued them and can be used for identification with police, school, and other city officials as well as local banks and stores. They serve purposes other than identification and function also as library cards, discount cards for local businesses, and prepaid and full-fledged debit cards. Soon, they will likely also serve as public transit cards. Municipal IDs do not, however, confer legal status, give authorization to work or permission to drive, prove legal age to purchase alcohol or tobacco, establish new city benefits for cardholders, or change cardholders' eligibility for any existing local, state, or federal benefits or services.

With overall modest goals, municipal ID card programs nonetheless are important initiatives that address the most basic rights and benefits of city residents. In the specific case of undocumented immigrants, having a municipal ID card makes it safer for them to interact with frontline city workers and to move around in the city. A municipal ID card also makes it easier for undocumented immigrants to participate in local commerce and to access municipal facilities, including recycling centers, public schools, city-run health clinics, libraries, city parks, and public beaches and golf courses.

These benefits for undocumented immigrants amount to what is best described as local bureaucratic membership. The main goal of municipal ID cards is to facilitate access to municipal service bureaucracies for undocumented immigrants, who—to the detriment of both their own and other city residents' health, safety, and welfare—tend to avoid contact with government officials and agencies. Municipal IDs thus encourage undocumented immigrants who are city residents to use the basic city services and programs for which they are already eligible. As such, local bureaucratic membership differs from national legal citizenship in at least two key respects. First, local bureaucratic membership is an administrative designation that extends to all individuals who reside in the city, regardless of immigration or citizenship status. National legal citizenship, in contrast, is a juridical status that foreigners can acquire after birth only with explicit consent of the federal government. Second, the extension of local bureaucratic membership does not confer new rights, benefits, or responsibilities, but the acquisition of national legal citizenship does.

Local bureaucratic membership and national legal citizenship ultimately vary in the warmth of the welcome that officials at different levels of government provide to undocumented residents, with city officials including them and federal officials excluding them. This disparity between the local inclusion and federal exclusion of undocumented residents is a function of the federated and multiscale structure of the US nation-state.<sup>20</sup> Federalism, with power divided and shared between federal, state, and local governments, creates openings for officials especially in more politically progressive cities to pursue initiatives that reflect local inclusive norms but run counter to federal immigration enforcement goals. And while cities are mere administrative subdivisions of states and the federal government, they have an obligation to regulate and protect the health, safety, and welfare of *all* city residents. From this, city officials derive their authority and autonomy to develop programs that also benefit undocumented immigrants. When such programs are enacted and implemented for the general welfare of all city residents without regard to immigration or citizenship status, they can legitimately operate alongside federal immigration and citizenship laws that seek to exclude undocumented immigrants from formal citizenship rights and benefits.

Local bureaucratic membership is similar to urban citizenship in that both view the city as an alternative locus for membership in a globalizing and migratory world where growing numbers of noncitizen immigrants lack formal citizenship in the country where they reside. Yet the concept of local bureaucratic membership is also distinct from that of urban citizenship in several respects. First, much of the urban citizenship

literature was developed in the 1990s.<sup>21</sup> As such, it predates many of the federal reforms that have rolled back the rights of undocumented immigrants, whose population reached record numbers in the United States in the 2000s. Consequently, urban citizenship scholars have not adequately explored how the issue of illegal status affects their theorizing about cities' potential to confer membership rights on immigrants.<sup>22</sup> Because increased federal immigration enforcement has made undocumented immigrants more fearful of engaging with government institutions and civic life, discussions about membership and belonging at the local level have correspondingly shifted to focus on claiming the few rights and benefits they already have, rather than on expanding rights and benefits. By highlighting the difficult and unique situation of undocumented immigrants, the concept of local bureaucratic membership brings the urban citizenship literature up to date with today's more restrictive immigration policy context in the United States.

Second, the concept of local bureaucratic membership takes more seriously the continued power of the US nation-state over issues of citizenship and belonging. As noted also by others,<sup>23</sup> urban citizenship scholars tend to be idealists who celebrate the demise of the nation-state but give insufficient consideration to how their normative visions of city citizenship can or cannot take shape in real life. The concept of local bureaucratic membership is more grounded in the reality that US cities are still subservient to the real and lasting power of the federal government. It recognizes that advances in local membership rights and benefits for noncitizen immigrants do not happen in a policy or political vacuum, but instead result from federalist dynamics where cities must test and negotiate their discretionary administrative powers with the federal government's exclusive power over both immigration and citizenship policy.

Finally, the concept of local bureaucratic membership also considers the role of local governments and immigration opponents in shaping discourses and outcomes in fights about the local membership rights and benefits of undocumented immigrants. Urban citizenship scholars have focused largely on the role of grassroots mobilization by marginalized city residents and advocacy by immigrant rights groups in attempts to reconstitute the meaning and practice of citizenship.<sup>24</sup> Advocacy by immigrant rights supporters is important, also, in empowering noncitizen immigrants to step forward to demand and claim their rights, but so is the counter advocacy by immigration opponents and the eventual intervention of city officials, who have the power to enact and implement laws affecting city residents' daily lives. By considering a wider range of stakeholders, the concept of local bureaucratic membership provides a more realistic picture of what type of local membership policies can be obtained in a context where advocacy to expand immigrant rights continues to face media, political, and legal scrutiny.

## Methods and Data

Since 2007, six municipalities have developed ID card programs. New Haven (CT) was the first to do so in June 2007, followed by San Francisco (CA) in November 2007, Oakland (CA) in June 2009, Richmond (CA) in July 2011, Los Angeles (CA) in

November 2012, and New York City (NY) in June 2014. Several other cities have considered or are considering ID card programs, including Minneapolis (MN), Chicago (IL), and Dayton (OH). Additionally, law enforcement officials in three New Jersey municipalities have started to endorse the “community ID cards” issued by local nonprofit organizations in Asbury Park (2008), Mercer County (2009), and Freehold (2012).<sup>25</sup> In this article, I focus on the ID card programs in New Haven and San Francisco, because they are the only two programs created by city governments that have been in operation at opposite ends of the country for several years now.<sup>26</sup> As of January 2012, New Haven had issued a total of 10,086 cards,<sup>27</sup> and as of November 2013, San Francisco had issued 19,231 cards.<sup>28</sup>

New Haven and San Francisco both are predominantly Democratic cities that are tolerant of diversity and friendly toward immigrants. Both cities practice limited cooperation with federal immigration officials and in recent years have sought to secure local voting rights for noncitizens. New Haven, however, is six times smaller than San Francisco, with a much smaller proportion of foreign-born residents. In 2010, 16 percent of New Haven’s 129,000 residents were born outside the United States, compared to 36 percent of San Francisco’s 789,000 residents.<sup>29</sup> The cities’ populations also have different ethnoracial compositions. In 2010, New Haven included a relatively large percentage of Latinos (27 percent in New Haven vs. 15 percent in San Francisco) and blacks (35 percent in New Haven vs. 6 percent in San Francisco) and a much smaller percentage of Asians (5 percent in New Haven vs. 33 percent in San Francisco).<sup>30</sup> Both cities, however, have significant populations of undocumented immigrants, estimated at 10,000-12,000 in New Haven<sup>31</sup> and 30,000 in San Francisco.<sup>32</sup>

In both New Haven and San Francisco, the municipal ID card programs were grass-roots initiatives, pushed for most prominently by an assortment of community organizations serving immigrants and other disadvantaged city residents. In New Haven, the program developed as an administrative rather than legislative initiative, with then Mayor John DeStefano and then Police Chief Francisco Ortiz as the biggest government champions of the “Elm City Resident Card.” New Haven received a private grant in the amount of \$250,359 from a local community development bank to fund the program’s implementation.<sup>33</sup> In San Francisco, local legislators on the Board of Supervisors enacted the Municipal ID Ordinance with lukewarm support from then Mayor Gavin Newsom and no public support from then Police Chief Heather Fong. In the first year of the program’s implementation, the city spent about \$1 million of its own funds (i.e., tax-payer dollars) to purchase the equipment to make the cards and pay city staff to run the program. In both cities, immigration opponents mounted unsuccessful legal challenges, attempting to undermine or strike down the municipal ID card programs.

To explain how the ID card programs got off the ground, I draw from twenty-eight semistructured interviews with three sets of respondents in New Haven and San Francisco: (1) elected and appointed officials and other local government employees, (2) staff from local immigrant rights organizations, and (3) staff from a variety of other community-based organizations that serve disadvantaged populations such as transgender and homeless individuals as well as the elderly, youth, and the prison reentry



population. All respondents, whom I interviewed in 2009 (with a few follow-up conversations and emails in subsequent years), have been actively engaged with the creation and implementation of the municipal ID card programs in New Haven and San Francisco. The interviews, which ranged in length from forty minutes to two and a half hours, included questions about respondents' involvement in the policymaking progress, their perceptions of the need for and impact of municipal ID cards, and their reactions to media, political, and legal scrutiny of the ID card programs.<sup>34</sup> All interviews were audio recorded and transcribed. I also draw from newspaper reports on the municipal ID card programs in both cities, a dozen recorded and publicly televised hearings on the ID card programs, and an assortment of government reports that include the original legislative files and program descriptions, implementation studies, Freedom of Information Act (FOIA) requests and rulings (for New Haven), and court documents (for San Francisco).

### **Proponents: Municipal IDs and Local Civic Engagement**

In both New Haven and San Francisco, community groups with progressive views on immigrant rights provided the genesis and strongest support for the municipal ID card programs. Many elected officials in New Haven and San Francisco were receptive to the ID card programs, but community groups originally developed the idea for a municipal ID card and aggressively pushed city officials to act on the issue. Without this community pressure, it is unlikely that either city would have created a municipal ID card program.

In New Haven, the key organizational advocate for municipal IDs was Junta for Progressive Action (Junta), the city's oldest Latino organization, which dates from 1969. This organization worked alongside *Unidad Latina en Acción* (ULA – Latinos United in Action), a relatively new immigrant rights organization founded in 2003, and St. Rose of Lima Church, a Catholic church with an overwhelmingly Hispanic congregation. In San Francisco, the *Alianza Latinoamericana por los Derechos de los Inmigrantes* (ALDI – Latin American Alliance for Immigrant Rights), an immigrant rights organization formed in response to federal immigration raids in the Bay Area in 2006-07, first approached members of the Board of Supervisors with a proposal for municipal ID cards. At the height of the campaign, however, a broad coalition of twenty-one labor unions and community-based organizations serving immigrants, the homeless, youth, the elderly, and transgender individuals advocated for passage of San Francisco's Municipal ID Ordinance.<sup>35</sup>

Advocates in both cities were keenly aware that stricter federal immigration laws and stepped-up interior enforcement practices had made it increasingly difficult for the undocumented immigrants in their communities to conduct their daily lives. A Junta staff member in New Haven commented how the lack of formal citizenship rights made undocumented immigrants "easy targets for crimes, scams promising citizenship, and exploitation in housing, employment, and other areas affecting quality of life" and discouraged them to "interact with city officials and report violators for fear of deportation." A staff member with St. Peter's Housing Committee in San Francisco

specifically mentioned how the REAL ID Act of 2005 had compounded these problems by making it impossible for undocumented immigrants to obtain an official form of ID. Not having an ID, she said, is “such a huge barrier to being integrated . . . Being able to prove who you are is just so basic for so many things, like renting an apartment or getting a job or getting help from a social service agency or traveling.”

These advocates viewed municipal ID cards as a tool critical for fostering the civic engagement of undocumented immigrants by removing identification as a key barrier to participation in community affairs.<sup>36</sup> They all commented that an ID card issued by city government would make undocumented immigrants feel safer and more secure. Carrying a municipal ID card, they explained, would minimize the risk that undocumented immigrants, who—other than their civil violation of the country’s immigration laws were law-abiding residents—would be taken in by local police or detained by federal immigration officials. They also emphasized that undocumented immigrants in possession of an ID card would feel more comfortable interacting with police officers, in particular, to report theft, domestic violence, or other crimes they had witnessed or been victims of. Finally, because undocumented immigrants could use the card for a variety of other purposes—to open a bank account, check out books at local libraries, access health services at city-run clinics, enroll their children in local public schools, rent a home, etc.—they would be further encouraged to step out of the shadows and take advantage of basic public and private amenities.

In explaining why undocumented immigrants in New Haven and San Francisco should be eligible for a municipal ID card, advocates echoed and put into practice the views of urban citizenship scholars. They emphasized that local residence, rather than formal citizenship, serves as the basis for inclusion, often invoking cosmopolitan<sup>37</sup> and postnational<sup>38</sup> ideals to signal the universality of societal membership. In New Haven, a Junta staff member commented that municipal ID cards are “really about human dignity and human rights, and it was about New Haven taking a stance in support of immigrant rights in a way that no other city was willing to do.” Similarly, an ALDI staff member in San Francisco reflected that, “It’s a basic human right that someone has an identity they can prove. Nobody should have to walk around without papers and be excluded from the community because they’re undocumented.” An advocate with Chinese for Affirmative Action in San Francisco added that, “Our advocacy around the city ID card is informed by our belief that because immigrants live and work here, that that creates grounds for claims-making.” The advocates, in other words, envisioned the city as the space where cosmopolitan and postnational ideals for an expanded circle of membership, which includes undocumented immigrants, could be realized.

Although it was first and foremost the plight of undocumented immigrants that advocates sought to ameliorate, they understood that a municipal ID card for specifically undocumented immigrants was highly controversial from a federalist perspective. At a time when federal officials were cracking down on illegal immigration, a card boasting of benefits to undocumented immigrants would likely generate media and political scrutiny. “If we’d moved forward with a proposal for a card for only undocumented immigrants,” a Junta staff member in New Haven commented, “we

might as well have put the proverbial bull's eye on it." Similarly, an advocate with St. Peter's Housing Committee in San Francisco quipped that, "We didn't want this card to be couched as something just for illegal immigrants, because we knew that could burn us." The advocates also feared legal scrutiny. They knew that under federal law cities may issue their own identification cards, but they were unsure of the constitutionality of a card available only to undocumented immigrants. "I looked into this issue," a staff member of ALDI in San Francisco commented, "and I found a case that said it'd be unconstitutional for municipalities to offer IDs only to undocumented immigrants, because they'd be singled out. What I derived from that was the opposite, that if a city offers the card to *everybody*, then it *is* constitutional."

To minimize media, political, and legal scrutiny, advocates in both New Haven and San Francisco strategized to expand the card's beneficiaries to other populations with known difficulties in obtaining government-issued identification documents. They proposed that the card include medical information to appeal to the elderly and emergency contact information to appeal to parents of youth. In San Francisco, advocates proposed that homeless shelters and other social service agencies with city contracts be allowed to confirm the San Francisco residency of homeless individuals so they could also obtain the card. Advocates in San Francisco also proposed that the card be gender neutral to make it attractive to transgender individuals. Furthermore, to appeal to city residents who already have other valid forms of identification, such as a state driver's license or US passport, advocates developed the card's multiple functions beyond identification. In both New Haven and San Francisco, the card offers access to public golf courses and discounts at stores city-wide, including restaurants, bakeries, nail salons, pharmacies, shoe stores, gyms, dry cleaners, and even a cosmetic dental office. In New Haven, the card also serves as a prepaid debit card that cardholders can use to pay for small expenses at participating stores and parking meter fees in the city.

Advocates also sought to make the municipal ID cards widely available to all residents of New Haven and San Francisco to ensure that the cards would advance the civic integration of undocumented immigrants and not facilitate their profiling. "We [. . .] didn't want the ID card to be a scarlet letter for the city's undocumented community," an employee of St. Peter's Housing Committee in San Francisco commented. "We wanted the card to be carried by *all* city residents." A staff member of ULA offered similar reasoning for expanding the card's beneficiary populations in New Haven. "We're about immigrant rights and we initially thought about creating a card just for immigrants, but then we realized that the smart thing to do is to create a card for everybody in New Haven. When everybody has a card, undocumented immigrants can blend in . . . they stand out less, and it'll be easier for them to integrate." According to the advocates, the integration of undocumented immigrants into local civic life could best be accomplished by downplaying the group- or immigrant-specific nature of the municipal ID card programs.

All in all, community advocates in both New Haven and San Francisco envisioned their city as a space where undocumented immigrants could become more empowered members of society by engaging them in aspects of local civic life. The municipal ID

card could help accomplish this by giving undocumented immigrants better access to basic public and private services and amenities already available to them. It is important to note that none of the advocates talked about municipal IDs as a way for undocumented immigrants to gain new rights; instead, municipal IDs would allow undocumented immigrants to claim unclaimed municipal services and facilitate their participation in local commerce. All advocates clearly understood that only the federal government could expand the rights of undocumented immigrants by legalizing their status and providing them a path to full citizenship in the United States.

## Opponents: Municipal IDs and Federal Immigration and Citizenship Powers

Despite advocates' attempts to portray the municipal ID cards in New Haven and San Francisco as civic engagement initiatives benefitting all city residents, national and local media overwhelmingly portrayed them as cards for undocumented immigrants. In 2005, the *New York Times* first reported on the New Haven initiative with a headline that read, "New Haven Mayor Ponders ID Cards for Illegal Immigrants," followed in 2007 by an article titled, "New Haven Approves Program to Issue Illegal Immigrants IDs."<sup>39</sup> Local papers, including the *New Haven Register* and the *Connecticut Post*, reported on the New Haven program with similar headlines.<sup>40</sup> In San Francisco, the *San Francisco Chronicle*—the city's largest newspaper—first reported on the San Francisco ID card policy on September 7, 2007, with a headline reading "City Has a Plan for Immigrant ID Card."<sup>41</sup> That same day, the *San Francisco Examiner*, the city's second largest newspaper, made the issue front-page news with the headline "Immigrants May Be Given City ID Cards."<sup>42</sup>

These and similar news stories did not necessarily portray municipal ID cards negatively, but according to proponents in the advocacy community and city government they did stir a national debate and provided fodder to ID card critics. In San Francisco, the aide to Supervisor Tom Ammiano who worked with the advocates to develop the Municipal ID Ordinance said that she does not remember "ever getting any supportive media on the ID . . . As soon as it became public, the story hit the right-wing news stations and was national news . . . Tom was getting called by Fox, CNN . . . All these stations that wanted to interview him." Similarly, an advocate with ULA in New Haven commented that, "The media blew up around this issue and anti-immigrant organizations seized on all the media attention to say that what the mayor was doing was wrong and illegal." An official in the office of then Mayor John DeStefano who had responsibility for developing the New Haven ID card program added that anti-immigrant groups, which tended to represent white suburbanites, "embraced the early media coverage" and aggressively used the media themselves to keep the ID issue in the public eye. "Their big argument," she noted, "was that if New Haven created this ID program, it would attract more immigrants, and then eventually brown people would start spilling into the suburbs."

The critics who mounted legal challenges to the ID card programs argued that officials in New Haven and San Francisco had unconstitutionally meddled in federal

immigration affairs. In New Haven, the anti-immigrant Community Watchdog Project and the editor of a local newspaper sought to shut down the ID card program by filing separate state FOIA requests in 2007 to force the city to release the names, addresses, and photos of ID cardholders.<sup>43</sup> Dustin Gold, chief strategist for the Community Watchdog Project, argued that the ID cards violated federal laws against aiding illegal immigration. With the help of the Washington, DC-based Immigration Reform Law Institute,<sup>44</sup> he filed a FOIA request to demonstrate to undocumented immigrants “that their information is not secure once it enters the Elm City Municipal Identification Card database,” thereby discouraging them from obtaining the card.<sup>45</sup> Chris Powell, the newspaper editor who filed the other FOIA request, similarly argued that by issuing ID cards to undocumented immigrants, the city was “[subverting] national immigration policy.”<sup>46</sup> He explained that he submitted a FOIA request so he could send cardholder information to federal immigration officials to help them go after undocumented immigrants living in New Haven.<sup>47</sup>

In San Francisco, the Immigration Reform Law Institute filed a lawsuit (*Langfeld et al. v. City and County of San Francisco et al.*) in California Superior Court in 2008 on behalf of four San Francisco residents who sought to strike down the Municipal ID Ordinance. In addition to their charges that the ordinance was an illegal expenditure of city funds and a violation of state environmental laws, the plaintiffs also alleged that the ordinance violated federal law by aiding and abetting illegal immigration and by treating undocumented immigrants like US citizens. In their petition to the Court, the plaintiffs state that by issuing ID cards to undocumented immigrants, San Francisco officials “encourage, induce and aid illegal aliens to reside in the United States” and offer them “all benefits available to citizens and legal residents of San Francisco, as if the cardholder were a lawful citizen or resident of the City.”<sup>48</sup> City officials, according to the plaintiffs, had overstepped their bounds, and for relief they asked the Court to declare the Municipal ID Ordinance null and void on state and federal preemption grounds.

Both challenges to the municipal ID card programs were unsuccessful. The Connecticut Freedom of Information Commission found that the New Haven ID card program does not constitute a local attempt at immigration regulation because card applicants are not asked about their immigration or citizenship status. Citing credible threats of violence against city officials and undocumented immigrants who carry the card, the Commission ruled that New Haven officials could keep secret the identity of cardholders. Similarly, the California Superior Court sustained the city attorney’s demurrer, which emphasized that the Municipal ID Ordinance in San Francisco had only a “purely speculative and indirect impact on immigration” and that city officials at no point make a determination about the immigration status of ID card applicants since “immigration status is not considered at all under the Ordinance.”<sup>49</sup> The judge subsequently dismissed the *Langfeld* case and entered judgment in favor of the city. In the end, both the Commission and the Court helped to sustain programs that do not explicitly identify undocumented immigrants as their beneficiaries, yet in their practical application address the issue of immigration and offer clear benefits to undocumented immigrants. Their rulings sent the message that cities can help undocumented

immigrants if they enact immigration-status neutral programs that benefit all city residents.

### **City Officials: Municipal IDs and Discretionary Administrative Governance**

The city officials who supported the municipal ID cards had to navigate between the demands of the ID card proponents and the criticisms of ID card opponents. Like the proponents in the advocacy community, city officials framed the ID cards as a tool for fostering civic engagement and as a matter of social justice and human rights for the undocumented immigrants who live, work, and pay taxes in their city. New Haven Mayor John DeStefano, in a rare appearance before the city's Board of Aldermen in May 2007,<sup>50</sup> testified that ID cards are "not an immigrant issue," but rather an "issue of social justice and human rights . . . a New Haven issue." He emphasized the need to recognize and give a name to those who are here with "the complicit permission of the national government" but live and work "silently, almost invisibly among us." Similarly, San Francisco Supervisor Tom Ammiano, the chief sponsor of the Municipal ID Ordinance and then representative of the heavily Hispanic Mission district, testified in the Board of Supervisors in November 2007 that because undocumented workers provide the backbone of the city's tourism and hotel industries, they deserve an ID that provides access to basic services and allows them to more fully participate in civic life. The ID card, he commented, is an overdue "gesture of goodwill" and offers undocumented immigrants the deserved recognition as "citizens of San Francisco."

City officials, however, also worried that their decisions and actions would be challenged and declared unconstitutional on federal preemption grounds. Although they knew that cities could issue their own ID cards, they were uncertain of the legality of municipal IDs that also benefit undocumented immigrants. One way city officials tried to signal that they were not overstepping their bounds was by explicitly acknowledging the exclusive federal power over immigration and citizenship issues. The San Francisco city attorney, for example, in his response to plaintiffs' petition in the *Langfeld* case, stated that "the federal government unquestionably has the exclusive power to regulate immigration."<sup>51</sup> He also explained, however, that just because undocumented immigrants are among the beneficiaries of the Municipal ID Ordinance, that did not render the local law a regulation of immigration or an encouragement for undocumented immigrants to settle in San Francisco. Similarly, staff in the New Haven Office of the Mayor commented that in developing the municipal ID card program, "we focused on what we as a city have control over . . . We knew that we couldn't do anything about immigrants' access to driver's licenses or their immigration and citizenship status . . . those are state and federal issues."

New Haven and San Francisco officials also made clear that their ID card programs simply could not be construed as impermissible regulations of immigration because city officials at no point inquire or make decisions about card applicants' immigration or citizenship status. In fact, their point was precisely that immigration and citizenship

status are inconsequential for how city officials treat city residents. In San Francisco, where the program developed as a legislative initiative, city officials even made the conscious and strategic decision to keep the Municipal ID Ordinance completely silent on the issues of immigration and undocumented immigrants. “It isn’t an accident that the word immigrant isn’t in the ordinance or anything about unauthorized immigrants,” explained the aide to Supervisor Tom Ammiano who had a key role in developing the Municipal ID Ordinance. “You can read the entire ordinance,” she added, “and not know that immigrants benefit from this policy.” The city attorney reiterated these and related points in his response to the *Langfeld* challenge to underscore that the Municipal ID Ordinance is not a local attempt to regulate immigration and does not contravene federal enforcement policies.<sup>52</sup>

By making municipal IDs widely available, officials in New Haven and San Francisco signaled not only that the IDs have nothing to do with regulating immigration, but also that they fall fully within the powers of the city to legislate for the health, safety, and welfare of all city residents. In explaining the ID card programs, both Mayor DeStefano and Supervisor Ammiano repeatedly talked about how the cards would bring community-wide benefits and alleviate problems that affected all city residents. In particular, they emphasized how the ID card would increase public safety because cardholders would feel more confident reporting crimes to the police and serving as witnesses in crime investigations.<sup>53</sup> Supervisor Ammiano also discussed the card’s public health benefits by making it easier for cardholders to access preventative medical care at city-run health clinics.<sup>54</sup> Finally, throughout the ID card campaigns, officials in New Haven and San Francisco talked about how the cards would foster more integrated and thereby civically healthier communities. Thus instead of talking about the card’s target beneficiary populations, city officials focused on the specific issues—public safety, public health, and community integration—that the cards would address for the benefit of *all* city residents.

Also contrary to critics’ allegations, officials in New Haven and San Francisco were not trying to challenge federal citizenship power. For city officials, a key goal of the ID card programs was to improve the administrative effectiveness and customer service of local government. Staff in the New Haven Office of the Mayor explained the importance of the ID card in “helping city residents to better connect with available services.” During a November 2007 hearing in the Board of Supervisors, Supervisor Ammiano similarly talked about how the all-in-one San Francisco ID card would “cut bureaucratic red tape” and facilitate “mundane access” to basic city services. In his demurrer to the plaintiffs’ allegations in the *Langfeld* case, the San Francisco city attorney also stated that the ordinance only has “modest utility” and “merely creates an administrative process that would provide an easy way for San Francisco residents to prove identity and residency to police officers, other city officials, and third parties who choose to accept the card.”<sup>55</sup> In sum, municipal IDs were about city administration, not membership in the national community.

Also important to note is that city officials exclusively talked about the ID cards as a tool to facilitate access to services for which cardholders were already eligible prior to the creation of the ID card programs. They made no mention of creating new rights

or new benefits for cardholders more generally or cardholders who are undocumented immigrants. The focus on existing local services rather than new membership rights and benefits is another indication that officials in New Haven and San Francisco were not trying to encroach on the federal government's citizenship power. To city officials, the municipal ID card was a legitimate administrative tool they could use to improve relations between city residents and local government. City officials, in other words, employed a discretionary mode of governance to facilitate the workings of the local bureaucracy, not to shift membership boundaries or reconstitute the formal citizenship for undocumented immigrants who reside in their cities.

## Conclusion

Municipal ID card programs like those launched in New Haven and San Francisco make clear that cities in the US federal system have some freedom to develop initiatives that benefit undocumented immigrants. The federal government continues to have sole power over immigration and citizenship issues, making it constitutionally impossible for cities to expand the formal rights of undocumented immigrants. Yet cities can utilize their discretionary administrative powers to develop initiatives that safeguard the health, safety, and welfare of *all* city residents, regardless of their immigration or citizenship status. When such initiatives are designed to promote residents' access to existing city programs and services for which they are already eligible, they make it easier also for undocumented immigrants to become active and recognized participants in city affairs *without* upsetting the federal monopoly over immigration and citizenship powers. Such initiatives amount to a new form of local bureaucratic membership that is distinct from both national legal citizenship and urban citizenship.

This analysis of the municipal ID card programs in New Haven and San Francisco holds two important lessons for urban citizenship scholars. First, it shows that empirically grounded accounts are necessary to examine and document what cities in a federal system like the United States actually can do to improve the membership and civic integration of undocumented immigrants and other marginalized city residents. Urban citizenship scholars tend to work on a normative plane, giving insufficient attention to how their visions of an urbanized citizenship may or may not be realized. Second, the analysis also underscores the need for urban citizenship scholars to focus not only on community advocates seeking to expand the rights of marginalized city residents, but also their critics and city officials. The New Haven and San Francisco municipal ID card programs reflect—though to different degrees—the motives and goals of all three groups of stakeholders, and it is not possible to explain the programs' development and implementation by considering the actions of only the ID card proponents in the city's advocacy community.

All in all, municipal ID card programs and the local bureaucratic membership they engender make it easier for undocumented immigrants to access basic municipal services and benefits. These programs, however, should not divert attention away from the more important project of pressing for changes in federal law that will allow undocumented immigrants to legalize their status and become US citizens. Without



legal status and a path to citizenship, undocumented immigrants—even those who live in inclusive cities like New Haven and San Francisco—will never be able to become full members of US society. Perhaps positive changes are on the horizon now that Congress is considering immigration reform that may put most of the country's 11.1 million undocumented immigrants on the road to US citizenship. Until then, undocumented immigrants remain excluded from formal citizenship and enjoy a measure of civic inclusion only in those few cities that have opted to grant them local bureaucratic membership.

In this article, I have focused on the role of ID card proponents, opponents, and city officials in realizing and challenging the municipal ID card programs in New Haven and San Francisco. Additional research is needed on the individuals who carry and use the cards. Community advocates in both New Haven and San Francisco have shared anecdotes that suggest that the majority of the individuals obtaining the card are undocumented immigrants, who experience a greater sense of civic inclusion and safety as a result of the card. But why do undocumented immigrants obtain the card? How do they use it on a day-to-day basis? And what does the card mean to them? Do they feel the card conveys formal membership in city affairs, and has it changed their perception of what it means to live in the United States illegally? Studies that answer these and related questions will further add to the literature by incorporating the lived experiences of municipal ID card holders with normative accounts of what urban citizenship should look like.

### **Acknowledgments**

I want to thank David Plotke, who invited an earlier draft of this article as a contribution to the “The Rights of Noncitizens? Immigration, Boundaries, and Citizenship in Contemporary Democratic Politics” workshop at the New School in September 2012. I also benefitted from helpful comments from Shannon Gleeson, Michael Jones-Correa, Helen Marrow, Monica Varsanyi, Phil Wolgin, the editors of *Politics & Society*, and the participants of the “Illegality Regimes: Mapping the Law of Irregular Migration” conference at the VU University in Amsterdam in May 2013. I also thank Sijia Xiang for her research assistance as well as community advocates and government officials in New Haven and San Francisco for sharing their information and experiences with me.

### **Declaration of Conflicting Interests**

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The author disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: Research for this article was made possible with funding from the Hauser Institute for Civil Society at Harvard University and PSC-CUNY 41.

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35. The San Francisco Municipal ID Card Coalition consisted of: ALDI, American Civil Liberties Union of Northern California, ACORN, Bay Area Immigrant Rights Coalition, Bernal Heights Neighborhood Center, Central American Resource Center, Chinese for Affirmative Action, Coalition on Homelessness, Immigrant Legal Resource Center, *La Raza Centro Legal* (the Community's Legal Center), Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Mission Neighborhood Resource Center, People Organizing to Demand Environmental and Economic Rights (PODER), Pride at Work, San

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53. For example: public hearing of the New Haven Board of Aldermen on May 17, 2007; public hearings of the San Francisco Board of Supervisors on October 24, 2007 and November 13, 2007.
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