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A NATIONAL IDENTITY CARD: INCHING TOWARD BIG BROTHER

INTRODUCTION

Congress made a serious mistake in the 1986 immigration reform and now apparently is attempting to compound it. If they have their way, some Democrats and Republicans will be inching the nation closer toward Big Brother by requiring that every American have a national identification card — or work permit — issued by a federal bureaucracy.

The trouble started when the 1986 Immigration Reform and Control Act (IRCA) sought to prevent illegal immigrants, principally from Mexico and other Hispanic countries, from finding work in the U.S. It sought to do this by imposing civil and criminal penalties against employers who knowingly hired such workers. When the 1986 law was passed, many immigration experts, civil rights leaders, and a Heritage Foundation study argued that the law would prompt employers to discriminate against those foreigners legally residing in this country and against U.S. citizens who appeared to be foreign.¹ These suspicions were confirmed late last March by a General Accounting Office (GAO) study that documents a "serious pattern of discrimination" resulting from the employer sanctions provisions of the bill.²

Missed Opportunity. Under special rules contained in IRCA, once GAO uncovered such a pattern, Congress had thirty days to use a streamlined pro-

1 Stephen Moore, "Halting Illegal Immigration: Employer Sanctions Are Not the Answer," Heritage Foundation *Issue Bulletin* No. 118, April 21, 1985, pp. 1-2.

2 General Accounting Office, *Immigration Reform: Employer Sanctions and the Question of Discrimination*, March 1990.

cedure, known as an expedited vote, to repeal the employer sanctions provisions. Though repeal made sense, Congress allowed this opportunity to pass on April 29. Now to repeal sanctions Congress must go through the normal process of enacting a bill, further prolonging the discriminatory practices uncovered by GAO. Formal repeal legislation is being fashioned in the House by Representatives Bill Richardson, the New Mexico Democrat, and Edward Roybal, the California Democrat. A similar measure will be introduced in the Senate by Orrin Hatch, the Utah Republican.

Opposing repeal are some influential members of Congress, including Senators Alan Simpson, the Wyoming Republican, and Daniel Patrick Moynihan, the New York Democrat, who want to retain employer sanctions and "strengthen" the law by requiring all Americans to have a national identity card. They say that the seventeen different forms of identification, such as a passport, Social Security card, or birth certificate, that a prospective employee can offer to prove his eligibility to work are too confusing and subject to counterfeiting. Supporters of a national ID card also claim that it would eliminate the discriminatory effects of the employer sanctions.

Expanding Use. This national identity card in effect would be a federal work permit. The federal government would have it in its power to deny individuals the right to earn a living by denying them a card. While supporters of such a card claim its use would be limited, it takes little imagination to see the government expanding its use in the future. For example, the government might allow the permit to be denied or revoked for alleged non-payment of taxes or to include other information of alleged importance such as whether a prospective employee had a criminal record or had AIDS or another infectious disease.

Congressional failure to repeal the employer sanctions would be an affront to the thousands of Hispanics and Asians who are legal residents but whose civil rights have been violated because prospective employers have wanted to take no chance on hiring anyone who looks foreign or has a foreign-sounding name. The requirement of a national identity card would compound this damage and would be a step toward the Big Brother societies from which countries across the world have been retreating.

"JIM CROW" IMMIGRATION POLICY

A *Wall Street Journal* editorial recently described IRCA, also referred to as the Simpson-Mazzoli bill after its principal sponsors, Senator Simpson and Kentucky Democratic Congressman Romano Mazzoli, as "the first legislation since Jim Crow where the government is so closely aligned with a process that produces discrimination."³ "It is," added the editorial, "the modern era's

3 "Clocking Immigration Sanctions," *The Wall Street Journal*, April 16, 1990, p. A12.

Prohibition — a misguided attempt to ‘control the borders.’ The bill deputized all employers as immigration cops by requiring that they somehow make sure their employees are in the country legally.”⁴

Early Warnings. Yet, well before IRCA was passed, critics warned Congress that discrimination would result. One year before passage of the bill, a Heritage Foundation study warned:

[E]mployer sanctions would encourage employers to discriminate in their hiring practices against the six million legal Hispanics working in the U.S., as well as against many of the 14 million foreign born Americans. To avoid risking stiff fines or even imprisonment, cautious employers would find excuses not to hire workers who appeared foreign, whether or not the workers could verify their citizenship.... The civil rights of employers and legal alien workers, meanwhile, would be impaired significantly.⁵

Added Hoover Institution scholar Annelise Anderson:

... the employer sanctions approach is a snake-oil remedy. It addresses only a small portion of immigration policy, ignoring legal immigration and illegal immigration for purposes other than job seeking. There is also no reasonable grounds for assuming that it would be anything but a failure — in fact, counterproductive — in accomplishing its fundamental purpose.⁶

By the time the bill passed, Congress had acknowledged the potential for discrimination, and included a provision prohibiting “employers with four or more employees from discriminating on the basis of a person’s national origin or citizenship status.” In its final form IRCA presented the nation’s employers with a double bind: they could risk being penalized for discrimination or face criminal charges for hiring undocumented workers. Because penalties were higher for employing illegal aliens, and because discrimination is more difficult to prove, many employers have been choosing not to hire workers who appeared foreign.

4 *Ibid.*

5 Moore, *op. cit.*, pp. 1-2.

6 Annelise Anderson, *Illegal Aliens and Employer Sanctions: Solving the Wrong Problem* (Hoover Institution, Stanford University, April 1986).

"A SERIOUS PATTERN OF DISCRIMINATION"

Critics of the Simpson-Mazzoli Act were vindicated this March 29 when the GAO found widespread discrimination against individuals who looked foreign or had foreign-sounding names. According to the study, nearly 20 percent — or 891,000 — of the nation's 4.6 million employers used some form of discriminatory hiring practices as a result of the law; and this may be a low estimate admits the GAO. Hispanics and Asians suffer most from this discrimination states the GAO report. "The hiring audit showed that the Hispanic testers [for jobs] were three times as likely to encounter unfavorable treatment when applying for jobs as were closely matched Anglos."⁷

Studies conducted in California and New York, two states with large Hispanic and Asian populations, also found "a widespread pattern of discrimination." *The New York Times* quoted a New York official as saying, "What our report clearly demonstrates is that employers in New York State are adopting practices that discriminate against foreign residents, out of fear of penalties under the immigration law."⁸ Officials reported that 73 percent of the employers surveyed admitted "they would at least delay hiring both American and foreign-born workers who could not document their status immediately." Moreover, a New York City civil rights group reports in 1988 that some 22,000 New Yorkers were denied jobs as a result of IRCA.⁹

Victims By Association. A study by the California Fair Employment and Housing Commission reports that IRCA is responsible for "enormous personal and human costs to workers who are or appear to be foreign-born."¹⁰ It is estimated that more than 50 percent of all undocumented workers live in California.¹¹ Thus many Hispanic and Asian citizens have become victims by association. "Californians who are authorized to work can't get jobs because they lack the necessary paperwork," reports the Commission. "And well-meaning but confused employers have denied jobs to eligible workers."¹²

One GAO finding is particularly disturbing since it points to serious harm to America's economy. As a result of IRCA, smaller companies, those of 25 or fewer employees, tend to discriminate more frequently than larger companies. This is especially true of businesses with four to 25 employees, representing nearly half of the 4.3 million employers in the GAO's survey. Firms of this size employ over 25 percent of the nation's work force and tend to provide a large share of the entry-level jobs, the kind in which young people, and minorities in particular, develop the skills needed for successful careers. The

7 GAO, *op. cit.*, p. 47.

8 Marvine Howe, "Immigration Laws Lead to Job Bias, New York Reports," *The New York Times*, February 26, 1990.

9 Katherine Bishop, "California Says Law on Aliens Spurs Job Bias," *The New York Times*, January 12, 1990.

10 *Ibid.*

11 *Ibid.*

12 *Ibid.*

discriminatory effects of the employer sanctions may well have an especially disparate impact on the future of young minorities.

THE NATIONAL IDENTITY CARD SOLUTION

Supporters of IRCA insist that the bill itself does not prompt discrimination. Rather, they say discrimination results from employers' confusion over the seventeen different kinds of identification which can be used to prove work eligibility.

They are:

- 1) U.S. Passport
- 2) Certificate of U.S. Citizenship (Issued by INS)
- 3) Certificate of Naturalization (Issued by INS)
- 4) A foreign passport that includes an authorization to work
- 5) Resident alien INS Form I-551
- 6) Temporary Resident Card, INS Form I-688
- 7) Employment Authorization Card, INS Form I-688A
- 8) Social Security Card
- 9) Reentry Permit, INS Form I-327
- 10) Refugee Travel Document, INS Form I-571
- 11) Certificate of Birth issued by the State Department
- 12) Certificate of Birth Abroad issued by the State Department
- 13) An original or certified copy of a birth certificate issued by a state, county, or municipal authority
- 14) An employment authorization document issued by INS
- 15) Native American tribal document
- 16) U.S. Citizen Identification Card, INS Form I-197
- 17) Identification card for use of resident alien in the U.S., INS Form I-179.

Since many of these forms of identification are easily forged, employers are simply afraid that they will hire someone with forged documents. If they do, even in good faith, they are subject to the law's penalties. Thus, Charles A. Bowsher, Comptroller General of the United States, told the Senate Judiciary Committee in March that the government should "reduce the num-

ber of work eligibility documents and make them harder to counterfeit, thereby reducing document fraud.”¹³

Senator Simpson explains that:

[T]o protect the employer and the employee, we need some kind of a universal identifier which is presented only at the time of new employment. It is not carried on the person, it is not an internal passport, it is not used for law enforcement. It is presented at the time of new hire, and not just by people who look foreign, but by everyone. And it will say on it, I’m authorized to work in the United States of America — that’s it.¹⁴

Simpson has introduced legislation, “The Employer Sanctions Improvements Amendments of 1990” (S. 2446), which would require the Secretary of Health and Human Services to issue an “Improved Social Security Card.” This new card would be counterfeit-resistant and would contain a photograph or “other identifying information which would allow a United States employer to determine with reasonable certainty that the bearer is not claiming the identity of another individual.” Alternatively, Moynihan’s bill, S. 214, proposes a “plastic, counterfeit-proof Social Security card”¹⁵ that would “employ technologies that supply security features, such as magnetic stripes, holograms and integrated circuits.” The card, moreover, would “contain features allowing it to be utilized as a voter registration card.”

Simpson’s Concern. Simpson is so concerned that the “improved Social Security card” will be thought of as a national identity card that his bill states in Section 3, paragraph (3), “No National Identity Card.” This card “will not be required to be carried on one’s person...not be required to be presented for any purposes other than [for worker identification purposes]...” and the card cannot “be withheld for any reason other than...that the person is not authorized to work in the United States.”

Simpson maintains that these measures will not lead the United States down the road to Big Brother totalitarianism. He says: “Nearly all western nations, including Canada and Mexico, have employer-sanction laws.... And if you’re going to classify countries that have a national ID card as a totalitarian government, how do you describe France and Germany? Because they do.”¹⁶

13 Robert Pear, “Simpler Plan Sought in Congress to Identify All Eligible for Work,” *The New York Times*, March 31, 1990.

14 *Cato Policy Report*, September/October 1986. Transcript of a debate between Alan Simpson and Annelise Anderson.

15 Spencer Rich, “Tamperproof Card Plan Raises An Old Specter,” *The Washington Post*, April 19, 1990.

16 *Ibid.*

Simpson also points to a 1985 GAO study that he commissioned that found employer sanctions laws curtail illegal immigration in countries with stepped-up enforcement.¹⁷

Increased State Powers. What is ignored is that employer sanctions laws work only when there is a sharp increase in state powers and in the size of the bureaucracy wielding those powers. And in these countries that apparently serve as a model for sanctions advocates, more than a national work permit is required. Annelise Anderson reports that "authorities have found it necessary to close off access to housing as well as jobs; housing permits are required as well as work permits. Some countries, for example, West Germany, have landlord sanctions as well as employer sanctions."¹⁸ If employer and housing sanctions failed to curb illegal immigration, one could imagine the government expanding sanctions to bankers, retailers, and even grocers.

Before Congress passed IRCA, California, Connecticut, Delaware, Florida, Kansas, Massachusetts, Montana, New Hampshire, Vermont, and Virginia, and the city of Las Vegas, had employer sanctions on the books. They had few results to show for their efforts. California and Florida, both with huge Hispanic populations, did not bother to enforce their laws, and only five convictions resulted from enforcement in the other nine jurisdictions.¹⁹ Los Angeles is bypassing both the state and federal laws and has launched a program to help day laborers find jobs, though many of them may be undocumented immigrants. Because the city is acting as a job broker, leaving document checking to the employer, the program is technically within IRCA rules. The coordinator of the program calls it "a local solution to a local problem...it is not the jurisdiction of any office of this city to enforce immigration law."²⁰

Swelling the Underground Market. Employer sanctions have not prevented illegal immigrants from entering this country and finding jobs, and there is little likelihood that a national identity card would succeed in doing so either. Rather, a federal work permit would drive undocumented workers further into the underground market and into more dangerous or less secure jobs. According to Wayne A. Cornelius, the director of the Center for United States-Mexican Studies at the University of California at San Diego, "Like the undocumented workers already here who didn't qualify for amnesty, the new arrivals have not become unemployable in this country because of

17 General Accounting Office, *Information on Selected Countries' Employment Prohibition Laws*, October 28, 1985.

18 Anderson, *op. cit.*, p. 17.

19 *Ibid.*, p. 7.

20 Seth Mydans, "Los Angeles Project Aids Illegal Aliens, In Challenge to U.S.," *The New York Times*, October 26, 1989.

employer sanctions. It's just that their range of job options may have been reduced somewhat."²¹

THE IDENTITY CARD NEEDS BIG BROTHER

The American people correctly are jealous of their personal privacy. They resent the need to account for their actions and their lives to the government. For example, this year over 45 percent of the American households did not initially return their census forms on time, feeling, as one Chicago woman summed it up, that "it's too much personal information to give out to a government agency."²² This is certainly a preview of the reception that awaits a national identity card.

The current IRCA provisions already have generated deep suspicion among many new legal immigrants. Last year, hundreds of Laotians quit coming to work in New Jersey's blueberry fields because they distrusted IRCA's proof of eligibility requirement. "They say, 'We are already legal to live in this country, so why are they asking us for more information?'" said one representative. Having fled a communist regime in their homeland, they "are apprehensive about authority figures and governments."²³

IRCA supporters claim that a national identity card could be little more than a "counterfeit-proof" Social Security card. Yet this or anything more extensive would require the federal government to solve the problem of the phony identifications already being used to acquire Social Security cards. An "improved" Social Security card would require a huge data gathering bureau to cross-check every piece of identification. This bureau presumably would have to record each individual's birth, job changes, address changes, and death, effectively charting every moment of Americans' lives. The federal government's invasion of individual privacy would be vast.

Government Strings. A national identity card, functioning as a federal right to work permit, would deprive Americans of a fundamental freedom: the right to earn a living. The federal government literally would have it in its power to deny individuals the right to work. In recent decades the federal government increasingly has tied strings to grants and to other programs. It is thus realistic to assume that the government would attempt to attach other conditions or uses to a national identity card.

Congress, for example, could grant the Internal Revenue Service the power to hold up or suspend an individual's work permit for allegedly not paying his

21 Richard W. Stevenson, "U.S. Work Barrier to Illegal Aliens Doesn't Stop Them," *The New York Times*, October 9, 1989.

22 Barbara Vobejda, "Americans Seen Lacking Time, Tolerance for Census Forms," *The Washington Post*, April 18, 1990.

23 Robert Hanley, "In Berry Fields, Fear on Immigration Rule," *The New York Times*, July 20, 1989.

or her full taxes. An outbreak of infectious disease could bring calls to include an individual's health information on an identity card.

CONCLUSION

Nearly a decade ago the national identity card concept first surfaced. The idea was presented at a Reagan cabinet meeting in 1981 by then-Attorney General William French Smith. At first, no dissent was heard. Only the voice of Martin Anderson, then Assistant to the President for Policy Development, stopped the idea dead. Anderson sardonically stated, "Mr. President, I would like to suggest another way that I think is a lot better. It's a lot cheaper. It can't be counterfeited. It's very lightweight, and impossible to lose. It's even waterproof....All we have to do is tattoo an identification number on the inside of everybody's arm." Ronald Reagan then said, equally sardonically, "Maybe we should just brand all the babies." The national identity card proposal died there.

Potential for Abuse. As many predicted four years ago, the employee sanctions in IRCA have led to widespread discrimination against minorities. This suggests that Congress should repeal this provision of IRCA. The proposal for a national identity card would make a bad policy even worse. Such a card, in effect a federal right to work permit, carries a potential for abuse too great to risk.

It is particularly disturbing that the attempt to deal with illegal immigrants can end up harming people who appear foreign, who are in the U.S. legally, or even are citizens. And it is especially ironic that people fleeing the tyranny and poverty of socialist countries should face increased restrictions in the U.S.

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