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Employer Sanctions and National Identification Cards

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The ACLU Immigrants' Rights Project welcomes this opportunity to present its views on employer sanctions and the various proposals currently under consideration for a national employment card. These are vitally important issues that affect not just immigrants but all residents of this country, including U.S. citizens. The ACLU has consistently opposed employer sanctions on the grounds that they lead to discrimination against foreign-appearing U.S. citizens and lawful residents. It is our hope that in this current climate of anti-immigrant hysteria, we do not exacerbate matters by adopting a national identification (ID) card system that would only add to the problems already caused by employer sanctions.[1]

Under the Immigration Reform and Control Act (IRCA), employers are required to verify the identity of potential employees and their eligibility to work in the United States (8 U.S.C. § 1324a). A variety of documents are acceptable, including passports, birth certificates, driver's licenses, voter registration cards, and Social Security cards. Employers are liable for sanctions for failing to comply with the verification requirements ("employer sanctions") (8 U.S.C. § 1324a).

When Congress enacted IRCA in 1986, it explicitly declined to authorize the establishment of a national identification card as a means of implementing the verification procedures and enforcing employer sanctions:

> Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of a national identification card or the establishment of a national identification card (8 U.S.C. 1324a(c)).

During the debate on IRCA, Senator Alan Cranston (D-CA) presciently stated that the failure of employer sanctions might, however, lead a future Congress to enact a national identification card:

> Employer sanctions can be the first step toward a national identification card – internal passport system – a primary tool of totalitarian governments to restrict the freedom of its citizens. And, when employer sanctions are discovered not to be working . . . that is when the danger of taking the second step occurs (132 Cong. Rec. S16904, daily ed. Oct. 17, 1986).

As Senator Cranston predicted, debate over the national identity card has been revived in recent years in response to the problems arising from the employer sanctions provisions of IRCA. Indeed, in 1990 alone there were several bills introduced that moved in the direction of creating mandatory identification/work authorization cards.[2] In 1992, the Senate Subcommittee on Immigration and Refugee Affairs recommended that driver's licenses be issued only after an applicant's Social Security number (SSN) has been verified and validated.[3] Under this proposal, a driver's license with a Social Security number would become the American identification/work authorization card. Anyone not holding a valid driver's license or state identification card (for nondrivers) would not be eligible for employment.

The identity card proposal that came closest to becoming law was proposed in 1990 by Senator Alan Simpson (R-WY). The provision called for an identity card/driver's license pilot program, using the Social Security number and biometric identification, such as a fingerprint. The card was intended as a document that would establish both work authorization and identity. Significantly, the identity card provision was dropped after strenuous opposition fro m the Congressional Hispanic Caucus and other civil rights advocates (Cong. Rec. H12980-12987, daily ed. Oct. 26, 1990). Nonetheless, a similar proposal was revived by the Senate Subcommittee on Immigration and Refugee Affairs, and Congressman Beilenson (D-CA) introduced legislation (H.R. 1031) that called for the development of a new Social Security card with biometric information to be used as the single acceptable work authorization document.

Proponents of such measures contend that a national employment card would solve two problems. First, they assert that because at least some of the sanctions-related job discrimination against racial and ethnic minorities, the foreign born, and persons who are not citizens of the United States can be attributed to employer confusion regarding the multiple documents that currently can be used to verify the identity and status of prospective employees, a single employment card would eliminate much of the discrimination.[4] The second force driving a national ID card system has been the widespread perception that use of fraudulent documents is commonplace. Proponents of a card system argue that the establishment of a single identification/work authorization card would allow employers to distin-

guish between authorized and unauthorized workers quickly and easily and would eliminate the likelihood of fraud (1990 GAO Report).

The creation of a national employment card and data base is a misguided solution to an overstated problem. It will cost billions of dollars to implement, it will not achieve its intended goals, and it will create new problems - problems that potentially dwarf those the card is intended to fix. Specifically, a national employment card would require an overhaul of existing governmental computer records, would lead to new forms of discrimination against "foreign-appearing" persons, would threaten individual privacy, and would move us toward a national ID card system.

DATA QUALITY AND COST

In order for a national identification/employment card system to accomplish its objectives, there must be a reliable means of ensuring that only authorized workers can obtain valid cards. That requires, in turn, that there be an underlying database that will accurately distinguish between authorized and unauthorized workers. No such database currently exists.

The databases of both the Immigration and Naturalization Service (INS) and the Social Security Administration (SSA) are incomplete, unreliable and inaccurate. Of the more than 210 million Social Security numbers in use today, more than 60 percent were issued before evidence of age, identity, and citizenship or alien status was required. Only 76 million of the initial and replacement cards have been issued using the new counterfeit- and tamper-resistant paper, so that most cards in use are easy to alter or forge. Besides, there is no method to assure positively that any person presenting a Social Security card is the person to whom it was issued since the card contains only a name, SSN and signature.

The INS database and recordkeeping system is also demonstrably unreliable. Among other examples, a federal district court in New York recently entered an injunction because of the agency's recordkeeping practices.[5] In the course of that litigation, an audit revealed that INS had failed to enter 4,000 political asylum files into its database. A similar suit was recently filed in Los Angeles because an INS official revealed publicly that 60,000 files had been "lost out in space."[6] The INS Telephone Verification Project has also revealed glaring deficiencies. According to a recent Justice Department report, the INS telephone verification system was unable to verify the applicant's eligibility to work in 28 percent of the cases, requiring INS to institute secondary verification procedures. Moreover, in more than one-half of the cases that required secondary verification, the alien turned out in fact to have work authorization.[7]

Equally problematic, the capability to create a reliable database, or to "cleanse" existing databases, does not exist. To do so, there must be a means

of determining the identity and alienage status of every individual in the country. Yet, there is virtual consensus that the underlying documents presently used to verify one's identity and status (*e.g.*, birth certificates, driver's licenses, etc.) are themselves not reliable and can be easily counterfeited. Until these underlying identification documents are made reliable and counterfeit-resistant, there will be no means of substantially improving the accuracy of the current INS and SSA databases.

Moreover, even if it were possible to create a reliable database, the federal government would then have to maintain its accuracy. Yet, as the amount of information collected and the number of individuals increases, the problems that result from human error - which are already widespread in current systems - would increase exponentially. Mistakes in data entry, mistaken matches of information, and data either mistakenly or willfully divulged will inevitably result in embarrassment, inconvenience, and denial of rights.

In addition to these technological problems, the General Accounting Office (GAO) has estimated that reissuing 210 million new counterfeit-resistant Social Security cards would be enormously expensive and could cost billions of dollars even without the cost of labor and of purging old records.[8] The Comptroller General, in the report entitled *Reissuing Tamper-Resistant Cards Will Not Eliminate Misuse of Social Security Numbers,* estimated that the cost of reissuing cards is between $850 million and $2 billion. Any identification system would also need safeguards to protect the information and limit the exchange of information, to guarantee the accuracy and continued reliability of the information, and to address situations when information is inaccurate. These safeguards, which are essential before any system should be allowed to become operational, all present additional financial hurdles and administrative obstacles.

Finally, there is no way to ensure that unauthorized workers will not obtain fraudulent cards. No card is tamper-proof or counterfeit-resistant, and none of the proponents of a national card have offered a realistic means of creating such a document. In fact, most experts agree that it will never be possible to create a truly tamper-proof card.

DISCRIMINATION

Before its enactment, IRCA's employer sanctions provision was opposed by a broad coalition of civil rights groups on the grounds that it would cause widespread discrimination against anyone perceived by an employer as looking or sounding "foreign," including U.S. citizens of ethnic origin and lawful aliens authorized to work. In response to these concerns, Congress added an antidiscrimination provision to IRCA, introduced by Rep. Barney Frank (D-MA), which prohibits certain kinds of citizenship status and national origin discrimination (8 U.S.C. § 1324b). Additionally, Congress

mandated that the GAO prepare three annual reports to determine whether employer sanctions were causing discrimination and to review their implementation and enforcement (8 U.S.C. § 1324a(j)). At the time IRCA was enacted, Congress also explicitly recognized the appropriateness of repealing sanctions if the final GAO report found a widespread pattern of discrimination (8 U.S.C. § 1324a(l)).

As had been feared, the GAO, in its third report published in 1990, found that employer sanctions has caused a widespread pattern of discrimination against citizens and lawful residents. The report revealed that almost 20 percent of U.S. employers began discriminatory hiring practices as a result of IRCA (1990 GAO Report). These findings were substantiated by numerous other studies conducted by both governmental agencies and private entities.

Discriminatory Impact of Employer Sanctions

The 1990 GAO survey of a random sample of the nation's employers found that an estimated 891,000 employers (19%) of the 4.6 million survey population reported initiating discriminatory practices because of employer sanctions. The GAO estimates that 461,000 (10%) of the 4.6 million employers in its survey population nationwide began one or more practices that represent national origin discrimination and that 430,000 employers (9%) discriminated on the basis of citizenship status (1990 GAO Report:38).

The GAO findings were based on thorough investigations and analyses of the broad impact of sanctions-related employment discrimination. For example, in preparation for its third report, the GAO undertook an extensive survey of available data on the implementation of IRCA and used independent research to obtain data on IRCA's effects. The methodologies included a statistically valid survey of more than 9,400 employers, which represented a universe of approximately 4.6 million employers. Moreover, the GAO consulted with federal agencies, many nongovernmental organizations, and the staff of the House Immigration Subcommittee regarding methodologies for the report. Based on all of the evidence, GAO concluded that employer sanctions have caused a substantial increase in employment discrimination against citizens based on national origin and against legally authorized aliens on the basis of their citizenship status. Moreover, the brunt of this discrimination has been felt by persons of Hispanic and Asian ancestry.

Numerous other reports and studies conducted by federal, state and local governmental agencies have substantiated the GAO findings of increased discrimination. A September 1989 report by the U.S. Commission on Civil Rights found that the 1988 GAO study "understated the extent of discrimination resulting from IRCA."[9] The New York State Inter-Agency Task Force on Immigration Affairs, in a study of IRCA, concluded that "at least 22,262 persons, U.S. citizens or aliens authorized to work, have been denied

employment" and that "a widespread pattern of discrimination has been documented in New York."[10] The City of New York Commission on Human Rights found that 41 percent of employers treated applicants with accents differently.[11] The California Fair Employment and Housing Commission reported that federal immigration reforms have imposed "enormous personal costs" on workers "who are or appear to be foreign born."[12]

Private nongovernmental organizations have also confirmed the GAO findings. Moreover, they have brought to life the impersonal statistics of the GAO by documenting the experiences of victims of sanctions-related discrimination. For example, in 1989 the ACLU released a report prepared jointly with the Mexican American Legal Defense and Educational Fund (MALDEF) that documented dozens of cases of individuals who were denied employment or improperly fired from their jobs because of the discrimination resulting from IRCA.[13] A study by the Coalition for Humane Immigrant Rights of Los Angeles and the Legal Aid Foundation of Los Angeles showed the extent of differential treatment between accented and unaccented job seekers to be disturbingly high: accented Hispanics were commonly denied the opportunity even to fill out applications for jobs that were available to unaccented job seekers with similar qualifications.[14] The New York-based Center for Immigrants Rights has also documented numerous instances of IRCA-related discrimination and abuse.[15]

Proponents of employer sanctions argue that at least some of the sanctions-related employment discrimination may be attributable to employer confusion over the variety of permissible work authorization documents and employer concern over the authenticity of documents offered by prospective employees. For example, the GAO suggested that employers may discriminate because IRCA's verification system does not provide a simple or reliable method to verify eligibility to work. Thus, in the GAO's view, discrimination should be reduced if employers were provided with more education on the law's requirements and a simpler and more reliable verification system (1990 GAO Report:4).

However, experience demonstrates that increased education efforts, although welcome, would not solve the problem of IRCA-caused discrimination. Three years after the GAO report, and despite significant increased education efforts by the Office of Special Counsel, misunderstanding and discrimination continue. Indeed, as the reaction to the Zoe Baird and Kimba Wood nominations indicates, increased attention to employer sanctions leads to increased misunderstanding of the law and to more, not less, discrimination. As the fear of sanctions increases, employers typically adopt discriminatory practices, such as hiring only citizens, in a misguided effort to avoid violating the employer sanctions provision of IRCA.[16]

A simplified employer verification system would also create new forms of discrimination without solving IRCA-caused discrimination. Discrimi-

nation related to the selective nature by which employers request documentation would remain. In areas of high immigrant concentration, such as Los Angeles, 16 percent of employers surveyed by the GAO said they applied IRCA's verification system exclusively to persons whose accent, appearance or name suggested that they might be foreign (1990 GAO Report:41-42). Thus, a discriminatory burden has been - and will continue to be - placed upon those who diverge from what is conceived to be the mainstream norm. Providing a uniform document to all would not have any effect upon this burden: some will be asked to produce the work authorization document, others won't.

Moreover, the basic premise of a single document system presumes that a fraud-resistant and tamper-proof card will clarify any doubts as to whether someone is authorized to work or not, thus reducing any confusion or suspicion that may lead to discrimination by the employer. However, no system can eliminate the suspicion to which a "foreign-looking" person is subjected under an employer sanctions system because a completely tamper-proof document is not possible to create. Indeed, although the Social Security card is usually suggested as the most adequate card to adapt to this role, the former Acting Commissioner of Social Security has stated in the past that use of the card as the single work authorization document is ill-advised for many reasons, including that the Social Security Administration "will never be able to entirely eliminate fraud or misuse of the SSN."[17]

Furthermore, hiring audits persuasively show that employers are screening out applicants who look or sound foreign prior to the point at which they are required to establish employment eligibility. The 1990 GAO report, as well as the reports by the City of New York Commission on Human Rights, the Coalition for Humane Immigrant Rights of Los Angeles and the Legal Aid Foundation of Los Angeles, support the conclusion that discrimination occurs at a stage in the application process earlier than that which could be meaningfully affected by more reliable documentation. This type of discrimination has undoubtedly increased substantially as a result of IRCA.

New Forms of Discrimination

The reliability of the entire single-document system is based on the assumption that only citizens or authorized workers will obtain the new document. Yet, as already noted, issuance of any single work authorization document will necessarily be based on underlying or "breeder" documents, such as birth certificates, whose authenticity cannot be assured and which can be easily obtained through fraudulent means.[18] Thus, the focus of suspicion will shift from the employment document to the breeder documents. Individuals who look or sound foreign will be subject to greater scrutiny by bureaucrats, inexperienced and untrained in document fraud detection,

who are charged with issuing the new national identification document. Moreover, any individual who does not possess the traditional birth and identity documents would be treated with suspicion and may be denied documentation altogether. As a result, the shift to a single-document system will transfer the discrimination from the employment stage to the document-issuance stage. Low income, foreign-born, foreign-appearing, and authorized noncitizen workers - particularly Hispanics, Caribbeans and Asians - would continue to suffer the brunt of discrimination caused by employer sanctions.

In addition, once a national card is in place, foreign-appearing citizens and residents would likely face additional discrimination outside of the employment context. Despite proposed penalties against the use of the card for nonemployment-related reasons, it would become the document demanded by private and public entities to prove identity and status. Latino, Asian or Caribbean-origin citizens and lawful residents would be especially susceptible to status and identity checks by law enforcement, landlords, banks and others. The fact that these individuals may be able to produce the card does not lessen the stigma and humiliation caused by being singled out for suspicion. Moreover, just as the Social Security Act's original strict prohibition against use of that number for any unrelated purposes has been ignored over time or gradually legislated away, so too will any legislative restrictions on a national employment card.

PRIVACY

The proposals for an identification/work authorization card rely on the SSN as the primary identifier. However, reliance on the SSN is dangerously misguided given that current use of the SSN has resulted in substantial invasion of individual privacy. The creation of a national identification card based on the SSN would exacerbate the privacy problems that already exist. Perhaps more importantly, the establishment of such a system would virtually preclude reducing the country's reliance on the SSN (or any other number) that threatens to link vast amounts of personal information through a single national identifier.

History of the Social Security Number

While use of the SSN has increased significantly since its inception, such expansion has been the result of incremental congressional action that oftentimes led to unforeseen results. Whenever Congress has specifically focused on whether to convert the SSN into an actual or *de facto* national identifier, it has voiced strong opposition and repeatedly prohibited such use.

The SSN was created in 1935 solely for the purpose of tracking contributions to the Social Security fund. In 1943, in a move towards efficient record keeping, President Roosevelt issued Executive Order 9397, which encouraged federal agencies to use the SSN when establishing a "new system of permanent account numbers pertaining to individual persons." In 1961, the Civil Service Commission began using the number to identify all federal employees. The following year, the IRS required the number on all individual tax returns. In each instance, Congress or the Executive considered only the immediate proposal and not the broader implications of expanded reliance on the SSN.

Over the next decade, the number's use by the government and the private sector expanded dramatically. A person was required to provide an SSN when applying for many government benefits and programs, and the private sector began to use it as the identifier of choice for a wide variety of commercial transactions, including credit, insurance, as identification on personal checks, and even to enroll in college. During the 1980s, Congress again authorized piecemeal expansion of the uses of the SSN. For example, states were authorized to require the number as the identifier on driver's licenses, and the Tax Reform Act of 1988 requires that children claimed as dependents on tax returns have an SSN.

Yet, whenever Congress explicitly confronted whether the SSN should be converted into a national identification system, it rejected doing so. As already noted, in both 1986 and 1990, Congress refused to allow the SSN to become the sole identifier for employment authorization purposes.

Abuse of Information

Today, the Social Security number has unfortunately come to be the gateway for accessing information about individuals in a manner never envisioned by its creators. In a chilling example, a 1990 brochure by TRW Credit Data, which holds itself out as the nation's largest provider of consumer credit information and claims to maintain information on nearly 170 million consumers nationwide, advertised a service called Social Search:

> In pursuit of those who have disappeared - former customers, college alumni or missing shareholders - TRW brings you Social Search: A state-of-the-art locating tool that puts our expansive databases to work for you. All you need are the Social Security numbers of those you're attempting to locate and you can reach those hard-to-find individuals who may have moved or changed their names.

This is not an isolated example. Endless information, including credit history, personal spending habits, stock ownership, residential addresses, unlisted home telephone numbers, family information, and employment data, is accessible to ingenious, and occasionally unscrupulous, investigators with access to an individual's Social Security number.

In an April, 1993 *New York Times* Op-Ed article, Jeffrey Rothfeder described the ease with which he - a private citizen - obtained, for only $50, a copy of former Vice President Dan Quayle's credit report.[19] The credit report contained Mr. Quayle's SSN, and with that information Mr. Rothfeder was able to obtain the Quayles' unlisted address and telephone number.[20] Through similar efforts, he also obtained information on Dan Rather's spending habits for a specific month and television celebrity Vanna White's home phone number.

The Court of Appeals for the Fourth Circuit, in a recent decision that prohibits public disclosure of a person's SSN as a condition of the right to vote, stated, "the harm that can be inflicted from the disclosure of an SSN to an unscrupulous individual is alarming and potentially financially ruinous."[21] In California, reported fraud involving the use of others' SSNs has increased from 390 cases in 1988 to more than 800 in 1991.[22] Even President Clinton implicitly recognized that public disclosure of the SSN is in and of itself an invasion of privacy when he redacted his own SSN prior to making public his tax returns.

Privacy Implications of a National Identification Card

The dangers inherent in over-reliance on the SSN or any other all-purpose single identifier have been known for years. Indeed, as early as 1971, a Social Security Administration Task Force issued a report decrying the runaway use of the SSN for identification purposes and questioning the desirability of "any kind of universal identification system." In the same year, the Senate Judiciary Subcommittee on Constitutional Rights held hearings on "Federal Data Banks, Computers and the Bill of Rights." Department of Health, Education and Welfare (HEW) Secretary Elliot Richardson testified that while "[t]here would be an enormous convenience in having a single identifier for each individual . . . it is this very ease of assembling complete records, of course, which raises the specter of invasion of privacy."[23]

Two years later, in 1973, HEW issued a report entitled *Records, Computers and the Rights of Citizens*, warning that the creation of a standard universal identifier would lead to a national dossier system able to track people throughout their lifetime. The HEW report strongly opposed the implementation of a national identifier because an "uncontrolled linkage of records about people, particularly between government or government-supported automated personal data systems," had the potential to lead to invasions of privacy. The following year Congress enacted the Privacy Act of 1974, which prohibited new uses of the SSN unless Congress itself authorized them and recognized that if the use of the SSN as an identifier continued to expand, the incentives to link records and broaden access would also increase.

Yet, despite these clear warnings, we have steadily increased our reliance on the SSN over the past two decades. The same warnings are now being sounded with respect to a national identification system, but they are also in danger of being ignored.

Some proponents of a SSN national ID card system assert that because the number is already so widely used, it has become a *de facto* national identifier. While use of the SSN is widespread, further misguided action threatens to diminish individual privacy even more. Any system requiring the use of the SSN as the sole or primary verifier for identity and employment authorization will exacerbate significantly the problems that already exist. The temptation will be irresistible to use the SSN as the identifier for additional purposes and to make the SSN and its underlying database available to countless other agencies. In fact, a study that proposes the creation of a national work authorization card makes that frightening recommendation: "[F]uture legislation should permit greater flexibility for use of work authorization data for broader public administration and law enforcement purposes."[24] Such proposals demonstrate why a national identity card system, however benignly intended, must be rejected before the ability to control access and dissemination is lost entirely. (The U.S. Commission on Immigration Reform has suggested using the employment registry pilot projects to verify an individual's eligibility for public benefits.)

Moreover, there is an urgent need to strengthen privacy protections in our society and to begin rolling back the damage that has been caused by gradually moving toward a single identifier system. If billions of dollars are expended to create a national identification card based on the SSN, taking the necessary steps to recapture individual control over private information will become even more difficult. In effect, the creation of such a national ID system would lock us into our current reliance on the SSN and move us inexorably toward universal linkage of all private and governmental information through the SSN. The status quo is far from ideal. However, those who defend the identity card proposal on the grounds that informational privacy has all but disappeared underscore the need for resistance instead of acquiescence.

Identification Systems in Other Countries

Advocates of a single document employment verification system often point to other countries, such as Germany and France, as examples of Western industrialized nations with successful national identification card systems. However, a more careful review of the systems in those countries shows that they are not as invasive as the proposed uses for the SSN. In fact, the national identity card systems of Germany and France are fairly limited, with little information on the cards and preservation of databases that are

widely decentralized.[25] Moreover, the systems are not problem-free despite attempts to limit their scope. In both countries, there have been problems with forgeries and with the inability of data protection agencies to safeguard individual privacy. Most fundamentally, perhaps, neither country has the social or legal history and tradition comparable to the United States of protecting and valuing individual privacy and civil rights. In fact, those countries that share a legal tradition with the United States - Australia, Great Britain and Canada - have rejected a national identification system comparable to the one proposed by American advocates, or are consciously moving away from it.

In Germany, each person is issued a national identity document at age sixteen. The card includes a photograph, name, date and place of birth, nationality, issuing authority, address, and identity card number. Individuals are not required to carry the ID, and Germany prohibits inclusion on the card of fingerprints or coded serial numbers based on the age or other personal data about the holder.[26] The German identity cards are administered at the local level, with no linkage to a central data bank. The IDs are produced at a central location, but any data stored during the process of production is erased immediately afterwards. Nonetheless, there is still great concern that the German system will lead to the matching and linking of information among databanks. There is an additional concern that the identity cards promote discrimination and increase polarization between the police and individuals. For example, information gathered about individuals at borders and at control points set up near demonstrations and meetings of radical groups has been stored for lengthy periods under certain circumstances. This has been criticized on the grounds that innocent people will be entered into the computer of the Federal Criminal Bureau or a state police agency.[27]

In France, French residents are also issued identity cards but they are not required to carry them. The card includes name, signature, date and place of birth, height and photograph. A pilot program was developed to study the feasibility of automating identity cards and placing a fingerprint on the cards. Although the pilot program was limited (individuals did not need to use the new identity cards to establish their identities and the databases remained at the local level instead of being centralized), it caused much outrage. One French Senator, Jacques Thyraud, commented, "[T]he difference between a totalitarian state and a democratic one is that in the former all individuals are suspects while in the latter there are special rules to identify those who disturb the public peace." France, like Germany, does not have a national database to run the system. Currently there are nearly 40,000 places in France where a citizen can be issued a card. If, in spite of strong opposition, the pilot program were implemented at a national level, the system would nevertheless continue to be decentralized, and there

would be about as many different databases as issuing centers - approximately 100. France does have a national database for reporting stolen or lost cards. However, only local authorities and police have access to this limited database when issuing new cards.[28]

Australia has considered implementing a national identity card system but has rejected doing so. After the Australian government announced in 1985 that it intended to introduce legislation to establish a national identity card, many concerns were raised. The criticism raised issues of privacy, abuse of the card, fraudulent use of the card because of breeder documents, data protection, and human rights. Justice Michael D. Kirby, President of the Court of Appeal, stated, "What is at stake is nothing less than the nature of our society and the power and authority of the state in relation to the individual. . The danger of the new surveillance is that all this will change." After much heated debate, the proposal for the card was ultimately dropped. In fact, the 1989 Privacy Act significantly curtailed the use of the tax file number. Great Britain has similarly rejected the creation of a national identity card, and has even rejected an identity card system that would be used throughout the European Community.[29]

Canada, at first glance, appears to be the one limited exception to this widespread rejection of a national identity system. But its experience and current policy confirm the antipathy of Western governments to a national identity card. Canada introduced the Canadian Social Insurance Number (SIN) in 1964. It was intended to register Canadians for the Unemployment Insurance scheme, but the number has been expanded for a large number of public and private uses. Though the SIN was not intended to be a national identifier, Gerry Montigny, the Canadian Privacy Commissioner, has stated, "Over the last twenty years this thing [the SIN] has grown so that it is now, in fact, a national identifier. You can not do anything in Canada without it. You can not cash a check without being asked the number. So, no, we don't have a national identifying number, but, yes, we do."

The SIN has caused great concern over privacy in Canada. The abuse of the SIN is the only privacy issue that has regularly received attention in the House of Commons in the last twenty years. Canada's SIN has been used as an example of the dangers posed by governmental personal identifiers. In 1986, the identifiable tax records of 16 million Canadians were stolen from the Toronto office of Revenue Canada Taxation. Privacy Commissioner John Grace called it "a Chernobyl for data protection."

As a result of these and other events, Canada has made attempts to limit the use of personal identity numbers. In 1988, the Canadian government restricted its own use of the SIN and implemented new procedures for reviewing existing uses by the federal government to ensure compliance with the Privacy Act. Canadian Treasury Board president, Pat Carney, has stated,

> Many Canadians feel threatened by the use of the social insurance number as a universal identifier. This measure marks the first step by the government toward its commitment to cap unnecessary collection and use of SIN.[30]

In short, countries that are akin in history and legal tradition to the United States are either moving away from or have flatly rejected a system that some advocates in this country now suggest implementing.

CONCLUSION

The fear among civil rights groups that employer sanctions would lead to widespread discrimination against American citizens and authorized workers has proven to be well founded. The conclusions of the 1990 GAO report are thorough, impartial and compelling, and are corroborated by numerous other studies. Almost 20 percent of an estimated population of 4.6 million employers is engaged in discriminatory employment practices as a result of employer sanctions.

The suggestions that an identity card document or system can address the discrimination caused by sanctions does not acknowledge that such a card would not respond to much of the discrimination that is occurring and would foster discrimination of its own. Furthermore, the single card system would threaten individual privacy and bring us closer to a national identity card. When IRCA was enacted, it reflected a careful and delicate balance. Part of that balance was that employer sanctions would be implemented so long as they did not cause a widespread pattern of discrimination or lead to a national identity card. In light of all the evidence on the impact of employer sanctions, the requirements of IRCA itself dictate that Congress repeal the provision, not that it establish a national identification card.

NOTES

[1]This paper was prepared prior to the U.S. Commission on Immigration Reform's 1994 recommendation that pilot projects be created to study the feasibility of implementing a national employment registry based on the Social Security number. Although the Commission contends that a national employment card would not necessarily be required, the Commission has recognized that a registry cannot be effective unless employers have some means of ensuring the identity of each individual. If a registry is ultimately created, we believe a national employment card is inevitable.

[2]*See, e.g.*, S.214, introduced January 25, 1989, 101st Congress, 1st Session (directing the development of a prototype of a counterfeit-resistant Social Security card); S.2446, introduced April 5 (legislative day, January 23), 1990, 101st Congress, 2d Session (calling for an improved counterfeit-resistant Social Security card with a photograph and a reduced number of work authorization documents).

[3]Subcommittee on Immigration and Refugee Affairs of the Senate Committee on the Judiciary, *Options for a New Employment Verification System* (1992).

[4]*See, e.g.,* 1990 GAO Report. (*Immigration Reform: Employer Sanctions and the Question of Discrimination,* GAO/GGD-90-62 at 60–62 (1990)) .

[5]*Najera-Borja v. Slattery,* 89 CV 2320 (E.D.N.Y. August 23, 1993) (Nickerson, J.).

[6]*See* Complaint in *Turcios v. Reno,* CV 94-5220 (C.D. Cal 1994) at ¶45; "Asylum-Seekers Sue Over Delays," *Los Angeles Times* (Wash. Ed.), Aug. 3, 1994, at B-1.

[7]*Telephone Verification Systems (TVS) Pilot: Report On the Demonstration Pilot – Phase I* at 11–12.

[8]*Immigration Control: A New Role for the Social Security Card,* GAO/HRD-88-4, at 5 (1988).

[9]United States Commission on Civil Rights, *The Immigration Reform and Control Act: Assessing the Evaluation Process,* July 1989.

[10]New York State Inter-Agency Task Force on Immigration Affairs, *Workplace Discrimination under the Immigration Reform and Control Act of 1986: A Study of Its Impact on Workers,* November 1988.

[11]The City of New York Commission on Human Rights, *Tarnishing the Golden Door: A Report on the Widespread Discrimination Against Immigrants and Persons Perceived as Immigrants Which Has Resulted from the Immigration Reform and Control Act of 1986,* August 1989.

[12]Report and Recommendations of the California Fair Employment and Housing Commission, *Public Hearings on the Impact and Effectiveness in California of the Employer Sanctions and Anti-Discrimination Provisions of the Immigration Reform and Control Act of 1986,* January 11, 1990.

[13]ACLU and MALDEF, *The Human Costs of Employer Sanctions,* November 1989.

[14]A. Kamsvaag and A. Mischel, *Employment Discrimination Against Immigrants: A Study of the Job-Seeking Experience of People Who Speak English with an Accent,* Preliminary Report, March 15, 1990.

[15]The Center for Immigrants Rights, *The Impact of Employer Sanctions on Citizen and Immigrant Workers: A Report to the General Accounting Office, September 1988;* The Center for Immigrants Rights, *Employer Sanctions: An Update on its Impact upon Authorized and Unauthorized Workers in the New York Metropolitan Area,* August 1989.

[16]In the aftermath of the Baird nomination, major publications, including Newsweek, the *Chicago Tribune* and the *Washington Post,* suggested that employers only hire people with green cards, or even only hire citizens. Efforts to educate journalists on IRCA's requirements were largely unsuccessful. *See* The National Council of La Raza, *Testimony on the Employer Sanctions Provisions of the Immigration Reform and Control Act of 1986, before the House Subcommittee on International Law, Immigration and Refugees,* June 16, 1993.

[17]Louis Enoff, *Statement on Fraudulent Social Security Numbers before the House Subcommittee on International Law, Immigration, and Refugees,* June 16, 1993. Notably, in oral testimony, the Acting Commissioner also testified that reissuing tamper-proof Social Security cards would cost at least $2 billion and that adding a photograph or fingerprint could raise the cost to $6 billion.

[18]Professor Michael Teitelbaum has provided examples of the "chaotic and uncontrolled" U.S. birth certificate system that show the ease with which anyone can get a certified copy of any other person's birth certificate. Michael S. Teitelbaum, *Testimony before the House Subcommittee on International Law, Immigration and Refugees,* June 16, 1993, pp. 5–6.

[19]Jeffrey Rothfeder, "What Happened to Privacy?" *The New York Times,* April 13, 1993.

[20]*Use of Social Security Number as a National Identifier: Hearing Before the Subcommittee on Social Security of the House Committee on Ways and Means,* 102d Cong., 1st Sess. 75–76 (1991) (statement of Jeffrey Rothfeder).

[21]*Greidinger v. Davis,* 988 F.2d 1344, 1354 (4th Cir. 1993).

[22]"Thieves Hit Social Security Number," *San Francisco Chronicle*, August 30, 1991 at A-1.

[23]*Federal Data Banks, Computers and the Bill of Rights: Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary*, 92d Congress, 1st Session (1971), at 794.

[24]David Simcox, *Secure Identification: A National Need - A Must for Information Control*, Center for Immigration Studies, 1989.

[25]The only Western European countries that use a national identifier broadly for both public and private purposes are Denmark, Greece, Luxembourg, Norway, Spain and Sweden. These countries, however, have a data protection agency and/or protective legislation in place. Yet, even these minimum safeguards have apparently not been contemplated by the current proposals in the United States.

[26]J. Eaton, *Card-Carrying Americans: Privacy, Security, and the National ID Card Debate*, at 123 (1986).

[27]G. Brunthal, *Political Loyalty and Public Service in West Germany*, at 168 (1990).

[28]L. Cadoux, Background Paper for *International Conference on Secure Personal Identification: Balancing Security, Efficiency and Privacy*, 1990.

[29]"Home Office Rejects Eurocop Force," *Press Association Newsfile*, January 15, 1991.

[30]"Saying No to SIN," 11 Transnational Data and Communications Report 24, 25, October 1988.

PART V

ASYLUM REFORM IN COMPARATIVE PERSPECTIVE