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Calls for National Identity Card to Halt Illegal Immigration

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Sparked by the courage of the people of Arizona to demand enforcement of the rule of law related to illegal aliens entering the state, the issue of illegal immigration is once again at the center of debate. Rising concerns for security and integrity of the national entity have caused the federal government to revisit the issue regarding who is allowed into the country and under what conditions they are allowed to remain. Each year tens of millions of visas are granted to foreign nationals to enter the United States. The reason for entry into the U.S. generally includes reasons related to education, travel or to conduct business. Of paramount concern in weighing this figure is the fact that about 40 percent of the nation's undocumented immigrants have overstayed their visas. Millions of others simply pour across an open border with Mexico. Still, the government has done little to correct the problem.

One proposal to halt or slow illegal immigration is the creation of a national identity card, which is standard fare for all democratic nations in Western Europe. Proponents of this highly debated concept argue that such a card would not only stop the flow of illegal aliens into the U.S., but also prevent terrorists from entering and then operating from within America's borders. Opponents not only worry that an NIC would violate the fundamental right of privacy guaranteed by the U.S. Constitution, but cite historical abuses as well ranging from "pass laws" used to enforce slavery in the north and south prior to the war between the states, to the abuses of the Nazis towards Jews.

In 2010 the democrat controlled senate proposed a new social security card to replace the paper blue and white social security card which is probably the simplest document to forge in the history of documents. The social security card was introduced in 1936. Despite President Roosevelt's promise that it would be a confidential document never to be used for identification purposes, the social security account number is the identifier for all, e.g., the IRS began to use it in 1962; Medicare in 1965; DoD in 1967.

Recognizing that since 1990, each newborn in America is now issued a social security number, which is recorded on the birth certificate, the 2010 senate proposal was to create a new fool-proof type of social security card for U.S. citizens and legal immigrants. The new card would be a high-tech, fraud-proof document with biometric identifiers. While the new social security card would not contain medical information or other personal information, the proposed law mandated that all employers would be responsible for swiping the card through a special machine to confirm the person's identity and immigration status. Those who were caught under the new law would be penalized with fines and community service and forced to the back of the line of prospective legal immigrants if they passed a background check.

Senator Dick Durbin, who worked on the outline of the proposed bill and had long advocated a national identity card for all driver's licenses, cited the inevitability of a NIC saying: "For a long time it was resisted by many groups but now we live in a world where we take off our shoes at the airport and pull out our identification ... people understand that in this vulnerable world we have to be able to present identification."

Perhaps in an ever shrinking world rooted in information and technology, the issue of whether Americans should be required to possess a national identify card that cannot be forged or faked is moot. In reality, the government already "knows" all about the people that are paying taxes and otherwise are here legally. As such, the only people that would potentially suffer harm are those that are illegally present in the national entity. The question then is really about when and where the government can act on the information.

In the 1983 Supreme Court case of Kolender v. Lawson the court struck down a California statute that required individuals "who loiter or wander the streets to identify themselves and to account for their presence when requested by a peace officer" as unconstitutional because it violated the due process clause of the Fourteenth Amendment as vague for "failing to clarify what is contemplated by the requirement that a suspect provide 'credible and reliable' identification."

The California law was struck down not because people were required to have identification (in the democrat bill it would be near "full-proof" identification), but because it constituted an illegal request for said identifica-

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tion by the government which also violated the Fourth Amendment.

In short, the government may only ask for identification from individuals in limited circumstances. Obviously, if the individual is requesting benefits or services from the government they must present valid identification specified by the government in order to receive said things. The government can demand and specify the type of identification that will be accepted. On the other hand, government agents, to include police, may only ask for valid identification pursuant to a limited set of circumstances. They may ask for valid identification if there is a "reasonable suspicion" that the person committed, is committing, or is about to commit a crime. This judge made rule was established by the Supreme Court in Terry v. Ohio (1968). In all other cases, the police may demand valid identification based on a valid arrest as the Fourth Amendment only protects from unreasonable searches and seizures.

In the final analysis, whatever new changes congress may make to existing immigration law, it is painfully obvious that a far better job has to be done. This critique extends from screening and background checks of individuals seeking visas to enter the U.S. to tracking the millions of illegal aliens who have overstayed their visas or simply have come here without a visa.

Despite these troubling facts, concerns must be voiced in the public square that an inordinate tightening of immigration laws may promote "racial profiling" (racial profiling is the practice of targeting individuals solely on the basis of their race or ethnicity in the belief that a particular group is more likely to engage in certain unlawful behavior) or encourage an untoward atmosphere of bigotry and fear in the general population. Still, it is a fact that the vast majority of Islamic terrorists operatives do fit a certain profile. As Justice Kennedy wrote for the majority in Ashcroft v. Iqbal (2009): "It should come as no surprise that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks [9/11] would produce a disparate, incidental impact on Arab Muslims, even though the purpose of the policy was to target neither Arabs not Muslims."

Nevertheless, changes in the law should not negatively affect the vast majority of law-abiding aliens; no American wishes to see a return to the poisoned atmosphere that occurred when, for instance, President Franklin Roosevelt ordered the internment of American citizens of Japanese descent during World War II.

Portions of this article come from a forthcoming book by the author, Terrorism Law: Materials, Cases, Comments, 6th edition, *(2011). Distinguished professor of Law and director of the Center for Terrorism Law, St. Mary s University School of Law. B.A. (with honors), University of Maryland; J.D.; University of Alabama School of Law; LL.M., The Judge Advocate General s Legal Center and School; LL.M. (1992) and S.J.D. (1994), University of Virginia School of Law.*

Pregnancy Rights in the Workplace

Tommy Simmons, Texas Workforce Commission and Paul Pauken, Chairman

Employers have many questions regarding employee pregnancy issues. Here is an outline of the basic things to keep in mind about the rights of a pregnant employee:

1. If a business has fewer than 15 employees, it is not covered by any employment law relating to pregnancy or disability, and the business would be free to handle the situation in any way it deems appropriate. Of course, a business not covered by such laws would still want to treat its employees as fairly and consistently as possible. Businesses with 15 or more employees should see the comments below.

2. If the business has 15 or more employees, it is covered by state and federal pregnancy and disability discrimination laws, which require non-discriminatory treatment of pregnant employees and reasonable accommodation for employees with disabilities.

3. Avoiding liability for pregnancy discrimination involves ensuring that pregnant employees are treated fairly, reasonably accommodated and given the same benefits and treatment as other employees with medical conditions receive. Pregnant employees do not need to be treated any better than other employees with medical conditions, but need to be treated at least as favorably.

4. If an employee claims that she cannot do certain duties due to being pregnant, the company has the right to require her to present medical documentation. Have the employee obtain a statement from her doctor showing which job duties she can perform, which duties she cannot perform, and what accommodations might be necessary to enable the employee to continue working. Documentation

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