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Office of Senator Charles E. Schumer
313 Hart Senate Building
Washington, DC 20510

Dear Senator Schumer:

We write on behalf of the New York Civil Liberties Union and its 48,000 members to express concerns about your recent proposal to include a biometric worker ID system in forthcoming immigration reform legislation. We support passage of comprehensive immigration reform legislation, and we applaud you for playing a national leadership role in advancing critical reform of our broken immigration system. However, we do not support the creation of a biometric national worker ID system, and we request that you do not include such a provision in any future immigration reform legislation.

In recent public statements, you have indicated that you plan to propose the creation of a “forgery-proof” worker ID card or biometric database system for all workers in the United States, citizen and non-citizen alike.¹ According to media reports regarding your proposal, the system will contain biometric data, which, as you know, is a term used to describe technology that identifies a person through his or her physical attributes, such as fingerprints, facial features, iris patterns or DNA. If this proposal was to be adopted, for the first time in American history, all workers would have to submit biometric data to the government and wait for affirmative permission from the government before they can begin working.

We believe that such a biometric national worker ID system will result in grave consequences for the constitutional rights of American citizens and non-citizens. More than 80 years ago, Supreme Court Justice Louis Brandeis described the “right to be let alone” as “the most comprehensive of rights and the right most valued by civilized men.”² We fear that a biometric national worker ID system will effectively rescind the right to be let alone by establishing an enormous electronic infrastructure that government and law enforcement officials, as well as private corporations, could eventually use to track law-abiding Americans’ activities and movements.

Threat to Americans’ Privacy

A biometric national worker ID system will pose a serious threat to Americans’ privacy rights because it will form the backbone of a system that could lead to large-scale surveillance of

¹ Spencer H. Hsu, “Senate Democrats Address Immigration,” *The Washington Post*, June 25, 2009.

² *Olmstead v. United States*, 277 U.S. 438, 478 (1928).

Americans' everyday activities and the creation of electronic profiles of every American. It will do so in two ways: (1) It will centralize in one national database sensitive and personal information on tens of millions of law-abiding Americans; and (2) We believe it will gradually become a requirement for commonplace transactions, and thus allow the government and private corporations to monitor Americans' activities.

First, while the details of your proposal have not yet been released, it is fair to assume that in order to be fully functional a proposed biometric worker ID system will have to create a national database that will contain information included in the worker ID card and the records used to obtain such a card. This information will include, at a minimum, a digital photograph of the worker, biometric information such as digital fingerprints or iris scans, as well as the person's name, address, date of birth, gender, and a personal identification number. It is likely to also include digital copies of identity and source documents, such as an applicant's birth certificate, or documents such as bank statements or tax records used to verify an applicant's address.

Although you have been forthright about your intention to limit the information contained in these cards to that required for employment verification, we believe it is unlikely that the information contained in the worker ID database will be limited to that in the original proposal. The temptations of expanding the use of a centralized government database on millions of Americans will be very strong for future administrations who will find it difficult to justify failing to broaden the uses of and access to the database, thus creating an "efficiency incentive" to broaden the information contained in the database. Future administrations may seek to add additional information into the database, including information on Americans' travel records, employment history, gun ownership, health history, past welfare assistance, or any other information deemed appropriate.

Second, the national biometric worker ID card will greatly enhance the government and private sector's ability to collect information about Americans' private lives. While access to data contained in the card will initially be limited and unauthorized use could even result in criminal penalties, government and private sector pressures will likely lead to third party access to the card's "machine-readable zone," which could contain sensitive biometric and other identifying information. It may even contain a radio frequency identification device (RFID) chip that will emit a radio signal with personally identifiable information contained in the card. With RFID chips installed in worker ID cards, the government, business sector or even individual criminals could capture someone's personal information and track his or her movements remotely without the individual's knowledge.

Over time, Americans will undoubtedly have to produce the national worker ID card to perform any number of activities, and a biometric ID card would likely become a requirement for activities such as voting, receiving public benefits, or even buying alcohol.³ State governments as well as the private sector may compel people to present their worker ID cards for a number of purposes,

³ For example, the final Department of Homeland Security regulations on the Real ID Act contemplated additional uses for the Real ID card that we not contained in the initial legislation. See U.S. Department of Homeland Security, Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 6 C.F.R. § 37, DHS comments discussion on "Responses to Specific Solicitation of Comments," Section IV(Q) at 196-197.

even if not mandated by federal legislation. Potentially, under such a system, Americans will be forced to go through an endless series of electronic checkpoints in the course of their daily routines. Each checkpoint would leave a digital record that both government and businesses could capture and use to develop detailed “lifestyle” profiles of people’s activities.

Recipe for Discrimination

A biometric national worker identity card will also increase discrimination and harassment against documented immigrants and racial minorities. Failure to carry proper identification could become a reason for local law enforcement to search, detain and even arrest people they suspect of being foreign.

While initially a biometric worker ID card will not be statutorily required to prove lawful immigration status in settings other than when applying for work, over time rogue law enforcement agents, in addition to private actors, may begin to ask for a person’s worker ID card to prove their immigration status.

Such a concern is well-founded. Similar programs that have given authority to employers and to law enforcement agents to get in the business of immigration enforcement, such as E-Verify and 287(g) agreements, have led to widespread abuse. A biometric worker identity card will be no different, and immigrants and people of color will bear a disproportionate burden of having to constantly prove their lawful status on the street as well as in the workplace.

Real Alternatives to a National Worker ID Card

A biometric national worker identity card is not required to ensure that employers hire only documented immigrants. Rather, the best way to discourage the employment of undocumented immigrants is by (1) strict enforcement of labor and employment laws, and (2) ensuring that fraudulent documents are not used by undocumented immigrants in order to obtain employment.

Our nation's systematic lack of wage and labor law enforcement has contributed to the dysfunction of our immigration system. Undocumented workers are all too often afraid to speak up about abuses in their workplaces, and corrupt employers take advantage of such fears by violating wage and benefits laws, as well as allowing for degrading working conditions. Cracking down on employers who violate minimum wage laws will make it less attractive for employers to hire undocumented immigrants, who are often paid below the legal minimum. The same holds true for enforcement of industrial safety laws. We encourage you to include strong labor and employment protections and resources in your legislation.

Second, the government must focus its resources on ensuring that employers are able to identify fraudulent documents used by prospective employees. Instead of spending precious resources on creating a national worker ID system that will result in grave consequences to Americans’ privacy rights, the federal government should create a state-of-the-art anti-fraud infrastructure to assist states and the private sector in preventing the proliferation of false identity documents. One example of how this may be done is by the creation of “document verification units” that are staffed by specially-trained anti-fraud experts who would verify the validity of identity documents

submitted to obtain employment. Following the verification of source documents, all records would be expunged to protect the privacy of the employee.

Conclusion


In the United States, plans for a national ID card have been rejected repeatedly. The battle against a national ID system first arose during the debate in the 1930s preceding the establishment of the Social Security system. As a result, for years Social Security cards stated on their face that they were not to be used for identity purposes. In 1973, an advisory committee for President Richard Nixon rejected outright a national ID card as a threat to privacy and liberty. In 1981, the proposal for a national identity card emerged and was rejected once again during the Reagan administration.⁴ In 1986, when language to establish a national ID system for verifying the legal status of job applicants resurfaced in a congressional debate, similar to the national debate taking place today, it was ultimately struck from the Immigration Reform and Control Act. The proposal was scrapped in large part because legislators recognized that a national ID system clashes with fundamental American principles.⁵

We believe that a national ID continues to be antithetical to American beliefs. Including such a proposal in comprehensive immigration reform would make a controversial piece of legislation even more explosive. As supporters of immigration reform we fear that a national ID – and the fingerprinting of every worker – could sink the entire bill.

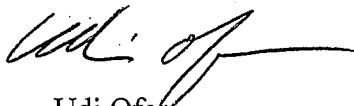
We ask that you consider our concerns and reject any plan for a biometric worker ID system. While you have publicly stated that you oppose the creation of a national ID card, the infrastructure that the biometric worker ID card proposal will create will put the United States on the path of no return to a national ID card system.

We look forward to discussing this issue with you and working closely with you and your staff to create policy alternatives that will protect fundamental civil rights and liberties. Should you have any questions, or want to discuss this issue further, please contact Udi Ofer by phone at 212-607-3342 or by email at uofer@nyclu.org.

Sincerely,



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⁴ Anderson, Martin, *Revolution*, Harcourt (1988): 277.

⁵ Fears, Darryl, "ID backers Bemoan Decades-Old Defeat; Card Called Immigrant Solution." *The Washington Post*. June 25, 2006.