



July 15, 2003

Mexican Consulate ID Card Poses Security Threat
Treasury Reconsiders Banking
Customer-Identification Regulations

Introduction

In response to congressional scrutiny, on July 1 the Treasury Department issued a “Notice of Inquiry,”¹ reopening regulations issued in May which established new banking customer-identification rules that, if left intact, could hinder national security and encourage illegal immigration.

Ironically, Treasury was mandated to issue the banking customer-identification regulations under the title of the U.S.A. PATRIOT Act [P.L. 107-56] *designed to combat* money laundering and the financing of terrorism. The Treasury Department was directed by Congress to establish minimum identification standards for customers opening accounts at any of the nation’s financial institutions. But, rather than making it more difficult to use the banking system to break the law and support terrorism, Treasury made it easier by too broadly defining acceptable documentation for opening an account. Among the identity documents that Treasury ordained as permissible are certain foreign-government-issued identification cards.² And in a report to Congress, Treasury specifically identified as an acceptable document the *matricula consular*, a Mexican-government-issued card which the FBI and Department of Justice have concluded “is not a reliable form of identification” and which poses criminal and terrorist threats.³

Bolstering this concern, Mexico’s Director General for Consular Affairs, Roberto Rodriguez, the official behind the *matricula consular* program, has just been “separated” from his duties pending the outcome of an investigation into a visa-trafficking scam run

¹ See *Federal Register*, July 1, 2003, p. 39039.

² Department of the Treasury, “Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks,” Joint Final Regulation, *Federal Register*, May 9, 2003, p. 25098.

³ Testimony of Steve McCraw, Assistant Director of Intelligence, Federal Bureau of Investigation, before the U.S. House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, June 26, 2003.

out of Mexico's consulates in Latin America and the United States.⁴ It does not inspire confidence in the security of the *matricula consular* if its chief promoter was allegedly allowing fraudulent Mexican visas to be issued to illegal immigrants in the United States and elsewhere.

It would be enough to raise concern if the *matricula* were merely unreliable – but the problem is compounded by the fact that *the only people who need it are illegal aliens*. According to the FBI, virtually all other non-U.S. citizens have some other, more secure, form of identification, such as a passport or a green card.⁵ The concern is that unless Treasury now removes its essential endorsement of the *matricula* to open a bank account, it will increasingly be accepted not only by banks, but by other commercial and governmental entities, thus making it more difficult to enforce federal antiterrorism, immigration, drug trafficking, and money laundering laws.

In its July 1 notice, Treasury indicated it would make no decision on amending its regulations until after regulators review all the comments received during this new comment period, which runs through July 31.⁶ This paper argues that Treasury must revise its regulations to delete the *matricula* and other such foreign-government-issued identity cards as acceptable for opening a bank account. It should do this quickly so that banks – which still are being told they must comply with the rules by October 1 – may move forward with their compliance efforts.

This paper contends that the regulations, as promulgated, will harm both national security and immigration law enforcement. The use of the *matricula* will not enhance the ability of a bank to identify its customers, but well may encourage foreign nationals to immigrate illegally, bolstered by the knowledge that they already have a means of identification that will permit them to remain in the United States uncontested. Would terrorists be among those to exploit the wider acceptance of such less secure IDs as the *matricula*? Officials with the FBI and Department of Homeland Security say yes.⁷

Section 326 of the PATRIOT Act was about making it more difficult for terrorists to move money through the U.S. banking system, not about making it easier for criminals, terrorists, and illegal immigrants to open bank accounts. Treasury now has an opportunity to effectuate Congressional intent, not thwart it.

⁴ Ricardo Sandoval, "Mexico Official Suspended in Visa Inquiry," *The Dallas Morning News*, July 10, 2003.

⁵ Testimony of Steve McCraw, June 26, 2003.

⁶ The July 1, 2002 "Notice of Inquiry" seeks additional comment on two provisions in Treasury's original Customer Identification Programs (CIP): the acceptance of foreign-government-issued identification documents – which is the subject of this paper – and a recordkeeping requirement, which this paper does not address.

⁷ Testimony of Steve McCraw, June 26, 2003; and U.S. Department of Homeland Security, internal memo from Bureau of Immigration and Customs Enforcement Intelligence Division (BICE) Forensic Document Laboratory to Special Assistant to the Chief of Staff, BICE, April 23, 2003.

Regulation Fails to Enhance National Security

Specifically, section 326 of the PATRIOT Act required the Secretary of the Treasury to establish new regulations for domestic financial institutions to verify the identity of *any* person opening an account, that is both U.S. citizens and non-citizens.

Treasury's regulations, entitled "Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks," therefore surprised many in Congress with its essential endorsement of the *matricula* as acceptable ID for Mexican nationals opening U.S. bank accounts.⁸ Although the mention of the *matricula* was relegated to a footnote in a report Treasury submitted to Congress in October 2002, it has created significant controversy because of the great potential for abuse of the card.

What Treasury's Regulations Allow

Treasury's final regulations state that "for a non-U.S. person, a bank must obtain one or more of the following: a taxpayer identification number (social security number, individual taxpayer identification number, or employer identification number); passport number and country of issuance; alien identification card number; *or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*"⁹ Following that description is a footnote referring the reader to Treasury's report to Congress for a more detailed explanation. However, the report to Congress, entitled "Report to Congress in Accordance With Section 326(b) of the USA Patriot Act," uses the exact same language as the final regulations – with one exception. There is a footnote that mentions the *matricula* by name as acceptable ID.

As rationale for allowing a profusion of acceptable identity options, Treasury cites both the prevalence of document fraud and forgery and the fact that there is no U.S. database or uniform system that banks could access which would include all the various identification numbers that all foreign nationals use in this country for identification purposes.

With respect to document forgery, Treasury noted that "officials have testified before Congressional committees about the ease with which all types of identification documents, from Social Security cards to driver's licenses to graduation certificates to birth certificates, may be falsified." Treasury further noted that "counterfeit foreign identification documents are as easy to obtain as counterfeit U.S. documents."¹⁰

⁸ Treasury's final regulations reference the Treasury Department's "Report to Congress in Accordance With Section 326(b) of the USA Patriot Act," October 21, 2002, which includes a footnote, Footnote 17, that reads: "Thus, the proposed regulations do not discourage bank acceptance of the '*matricula consular*' identity card that is being issued by the Mexican government to immigrants."

⁹ Department of the Treasury, May 9, 2003, p. 34. (italics added)

¹⁰ Department of the Treasury, October 21, 2002, p. 10.

With respect to the database concept, Treasury appears to have concluded that because no such single system exists that could verify the identity of all foreign nationals, there would be an inherent need to rely on various forms of foreign identification.

But, Treasury acknowledges that there are challenges associated with relying on foreign identification because “they vary widely from country to country, and they change from time to time.” “Such documents,” Treasury says, “are not standardized and even so-called ‘standard’ documents differ widely among countries.” It even discounts the passport, a document that is subject to both treaty and international law provisions requiring a number of important security features. Its report to Congress says, “For example, some passports do not contain a picture of the passport holder, thereby making it an inherently less reliable form of identification.”¹¹

As a result of there being so many possible forms of identification, Treasury concluded that it would be impossible for any identification verification system to list all possible forms of identification that would apply in every case.¹²

All Identity Documents Are Not Equal

While it is true there is not any one single foreign identification number or system that could be used to identify all foreign nationals, there is ample official evidence that some forms of identification are preferable to others because they are harder to forge or obtain fraudulently.

For instance, the passport is harder to falsify. There are compliance standards for countries in issuing passports. The International Civil Aviation Organization (ICAO), whose mandate long has been to provide security standards for all passports, was established by international treaty and its guidelines and standards have the force of international law. As of June 2002, 188 “contracting States,” or countries, have agreed to follow the passport standards set by ICAO – such standards as utilization of the Machine Readable Travel Document (MRTD) technology. MRTDs contain data that helps match the identity of the bearer against lists of high-risk persons. Yet Treasury treats the various options with equal skepticism.

It should also be noted that new ICAO standards are in the process of being implemented that will eventually require biometric features on the passports of all who wish to enter the United States – similar standards are also being implemented for U.S. entry visas. This will further enhance the reliability of the passport as a more secure document than various other forms of foreign ID.

The State Department issues country-specific ‘consular fact books’ to its embassies worldwide to help train foreign service officers how to verify the identities of visa applicants who may present one or more of a wide array of government-issued identification forms. The book for Mexico, for instance, lists the Mexican-government-

¹¹ Department of the Treasury, October 21, 2002, p. 9.

¹² Department of the Treasury, October 21, 2002, p. 9.

issued passport and voting card as highly reliable because they have the most security features. From these fact books, one could effectively rank the various types of identification documents that foreign governments issue to their citizens. While they are not all-inclusive, the books provide something that Treasury's regulations did not – the recognition that some forms of foreign identification have fewer security features than do others.

In fact, the Mexican *matricula consular* was examined by the Department of Homeland Security's (DHS) Forensic Document Laboratory (FDL) and found to be a much less secure document than the Mexican passport. In a memo dated April 23, 2003, the document examiners told the Bureau of Immigration and Customs Enforcement (BICE) [formerly the INS, now under the umbrella of DHS] that “the present version of the Mexican passport contains many more components and features that make it a much more secure document” than the *matricula*. The memo also said another area of concern was the latitude given consular officers issuing the card in verifying the applicant's biographical information.¹³

Treasury also indicated that a foreign ID is acceptable as long as it bears “a photograph or similar safeguard.” As to what constitutes a “similar safeguard,” Treasury does not provide that explanation. This puts banks in an awkward position of having to determine on their own what those other safeguards should be.

Congress directed Treasury to design minimum standards for U.S. financial institutions to enhance their ability to verify the identity of any person opening an account. However, Treasury essentially punted, falling back on the difficulties in identifying foreign nationals and in recognizing forged, false or fraudulently obtained identity documents. Treasury did not give banks the tools they need in the post-September 11 effort to fight terrorism, to determine what documents best assure them of the identity of their customers. If, after the extended public commentary period, the Treasury Department continues to maintain that the *matricula* is an acceptable document, it must justify how it can view the security and reliability of that document as being on the same footing as a passport.

Origin and Functions of the *Matricula Consular*

The *matricula* has been available to Mexican nationals worldwide since 1870. It may be issued in any country by Mexican consulate offices under the Vienna Convention on Consular Relations. However, international law does not govern whether a host government must accept the card for such purposes as gaining access to a bank account or a driver's license. Mexican nationals may obtain the card at any one of the 47 Mexican consulates in the United States by presenting a Mexican birth certificate;

¹³ U.S. Department of Homeland Security, internal memo from Bureau of Immigration and Customs Enforcement Intelligence Division (BICE) Forensic Document Laboratory to Special Assistant to the Chief of Staff, BICE, April 23, 2003. The memo was referenced at a hearing before the U.S. House Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims, June 26, 2003.

applicants are not required to state their immigration status. About one million matriculas were in circulation in the United States before September 11, 2001.

In 2002, recognizing the heavier emphasis now placed by the United States on secure identification, the Mexican government upgraded its *matricula*, adding such security features as an “advantage seal” that is superimposed over the bearer’s photograph. A website for the ‘SRE,’ or Secretaria de Relaciones Exteriores, the Mexican agency that issues the card, describes additional security features that are either visible only under fluorescent or infrared light, or by using a decoder.¹⁴

Investigations by the FBI, Department of Homeland Security, and members of Congress, however, reveal that the *matricula* remains an unsecure document whose data is still largely unverifiable. Moreover, the one million *matriculas* issued before the security upgrades were not recalled; those documents are still out on the streets. The FBI estimates that more than 90 percent of the *matriculas* that are in circulation in the United States are ones that were issued before the latest, most secure version (of three) was issued on March 6, 2002. The FBI regards the earlier versions as “little more than simple laminated cards without any security features.” *The government of Mexico has not yet invalidated the older, less secure cards – and U.S. state and local entities reportedly still accept them as valid ID.*

The card also has sparked controversy among some U.S. officials who maintain that *the only Mexican nationals who would need consular identification cards to open U.S. bank accounts or obtain other services in the United States are illegal immigrants.* For instance, the Assistant Director of Intelligence for the FBI testified recently, “It is believed that consular ID cards are primarily being utilized by illegal aliens in the United States.” Mexican immigrants living in the United States legally, by contrast, necessarily possess valid documentation issued by the U.S. federal government, such as a passport, green card, visa, taxpayer identification number (TIN), alien identification number, or border crossing card. Additionally, foreign nationals who are here in the United States, either legally or illegally, are able to obtain a passport from their own country’s embassy or consulate office.¹⁵

Threats Posed by Acceptance of the *Matricula*

The *matricula* is not unknown in the banking community. Some 80 U.S. banks, including some of the larger ones such as Citibank, Wells Fargo, and Bank of America, were accepting the *matricula* before the Treasury regulations were issued. Some banks want to accept it because it will give them access to a huge market of individuals who haven’t had accounts either because of their immigration status or income level. The existing trend toward accepting the *matricula* would no doubt be spurred by the new regulation, were it left in place.

¹⁴See website for Secretaria de Relaciones Exteriores (SRE), Consulado General de Mexico, Phoenix, Arizona, *Matricula* Consular Fact Sheet,

<http://www.sre.gop.mx/phoenix/spanish/servicios/factsheet/matrifactsheet.htm>.

¹⁵ Testimony of Steve McCraw, June 26, 2003.

But U.S. government endorsement of the card is problematic, as testimony on June 26, 2003 from FBI Assistant Director of Intelligence, Steve McCraw, reveals: “The Department of Justice and the FBI have concluded that the *matricula consular* is not a reliable form of identification, due to the non-existence of any means of verifying the true identity of the card holder.”¹⁶

According to the FBI testimony, the following are the primary problems with the registration process that could allow criminals to fraudulently obtain the *matricula*:

- The government of Mexico has no centralized database to coordinate the issuance of consular cards – making it possible for multiple cards to be issued under the same name, the same address, or with the same photograph.
- The government of Mexico has no interconnected databases to allow it to verify who has or has not applied for or received a consular ID card.
- The government of Mexico issues the card to anyone who can produce a Mexican birth certificate and one other form of identity, including documents of very low reliability. Mexican birth certificates are easy to forge and they are also a major item able to be obtained cheaply on the fraudulent-document black market omnipresent across the country and around the world. A September 2002 raid on a document production operation in Washington State illustrates the size of this trade. A huge cache of fake Mexican birth certificates was discovered. The FBI believes that the primary reason a market for these birth certificates exists is the demand for fraudulently-obtained *matricula consular* cards.
- In some locations, when an individual seeking a *matricula* is unable to produce any documents whatsoever, he may still be issued a *matricula* by the Mexican consular official, so long as he fills out a questionnaire and satisfies the official that he is who he purports to be.

As a result of these problems, the FBI sees two major criminal threats posed by the card, and one potential terrorist threat.

1. The *matricula* is a perfect “breeder” document for establishing a false identity. Thirteen states currently accept the card for purposes of getting a driver’s license. Once in possession of a driver’s license, a criminal can use it to facilitate a number of crimes, from money-laundering to check fraud. A false identity also serves to conceal a criminal who is already on the run from law enforcement. Consider the example of the illegal immigrant, who possessed three different *matriculas*, each with the same photograph, but with a different name, arrested for a criminal infraction in Colorado by INS agents.¹⁷ Such a criminal could also use

¹⁶ Testimony of Steve McCraw, June 26, 2003. (italics added)

¹⁷ See <http://members.lycos.co.uk/lamigra/NEWS/MexCardsUnreliable021010.html>.

his concealed identity to establish one or more bank accounts under completely fictitious names.

2. The second criminal threat is from the thriving alien smuggling trade. *FBI testimony states that alien smugglers have been arrested with as many as seven different matriculas in their possession.*¹⁸

Beyond these criminal threats, which are of major concern, there is an even more urgent problem: the terrorist threat that is the focus of the USA Patriot Act.

FBI testimony confirms that federal officials have discovered individuals from many different countries – not just Mexico – in possession of the Mexican government’s *matricula consular* card. While most of these individuals are citizens of Central or Latin American countries, at least one individual of Middle Eastern descent has also been arrested in possession of the *matricula* card. FBI Assistant Director of Intelligence, Steve McCraw, testified that the individual was from Iran and had obtained the *matricula* using a Mexican birth certificate fraudulently obtained through his sister in-law.¹⁹ The ability of such foreign nationals to use the *matricula* to establish a fraudulent identity in the United States may aid terrorists in moving freely within U.S. borders without flagging name-based terrorist watch lists disseminated to local law enforcement officers. They can also board domestic flights without revealing their true identity because they can, as mentioned, use the *matricula* to obtain a driver’s license in some 13 states.

In addition to the FBI’s concerns, Representative F. James Sensenbrenner (R-WI), Chairman of the House Committee on the Judiciary, has voiced concern. In a letter to the Bush Administration, he noted that banks’ acceptance of the *matricula* “would undermine, rather than advance, the goals of the USA PATRIOT Act” because “aliens would be able to open accounts in U.S. banks by furnishing validly issued cards containing false information to launder the proceeds of crime (in particular of drug and human trafficking), and to use American banks to safeguard funds earmarked for acts of terrorism.”²⁰

Most recently, in the wake of the FBI testimony, on July 8 House Homeland Security Committee Chairman Christopher Cox (R-CA), Chairman Sensenbrenner, House Judiciary Subcommittee on Courts, the Internet, and Intellectual Property Chairman Lamar Smith (R-TX), and House Appropriations Subcommittee on Homeland Security Chairman Harold Rogers (R-KY), sent a letter to Homeland Security Secretary Tom Ridge, urging him to “act decisively in response to the homeland security concerns associated with domestic acceptance of consular identification cards.”²¹

¹⁸ Testimony of Steve McCraw, June 26, 2003.

¹⁹ Testimony of Steve McCraw, June 26, 2003.

²⁰ Rep. F. James Sensenbrenner, Jr. (R-WI), Chairman of the House Committee on the Judiciary, in a letter to Dr. Richard Falkenrath, Assistant Director, The Homeland Security Council, Executive Office of the President, May 23, 2003.

²¹ Rep. Christopher Cox (R-CA), Rep. F. James Sensenbrenner, Jr. (R-WI), Rep. Lamar Smith (R-TX), and Rep. Harold Rogers (R-KY), in a letter to Tom Ridge, Secretary of the Department of Homeland Security, July 8, 2003.

Banking the Unbanked

One possible explanation for why Treasury did not discourage banks from accepting the *matricula* was to encourage what is called “banking the unbanked.” The Treasury Department has ongoing policies designed to move more of the population into the banking system. Reasons include easing the Department’s ability to track criminals’ money and giving individuals a more secure repository for cash, which otherwise may be vulnerable to theft or unregulated “banking.” The banking industry, too, has a legitimate interest in the Latino population’s growth in numbers and in wealth. Communities benefit when more of the residents have access to banking and mortgage services.

Yet, post-September 11, national security interests have top priority. Treasury admits as much in noting that “in its efforts to deter money laundering and disrupt terrorist financing,” it was “cognizant that additional regulatory burdens on financial institutions might have a negative impact on other Treasury programs, such as the initiative to encourage ‘unbanked’ families and individuals, including non-U.S. persons living and working in the United States, to use mainstream financial services.”²²

Treasury has many competing interests that it must balance; in fact, the bank promotion policy and the regulation to implement section 326 of the Patriot Act can be said to be on a direct collision course. Nor can it be overlooked that among the largest cohort of “unbanked” are illegal immigrants. They are, in large number, included in this category.

According to the Immigration and Naturalization Service, some 33 million immigrants reside in the United States, 8-11 million of whom are here illegally. While many factors other than immigration status, such as income level, play a role in who has more access to mainstream financial services, it is not difficult to understand why an immigrant who is here illegally would not have a bank account.

Whether the customer is illegal or legal, there is a thriving market for financial services. According to the Central Bank of Mexico and the U.S. State Department, in 2002, Mexican immigrants remitted more than \$10 billion to friends and relatives in Mexico, or roughly 1.7 percent of that country’s GNP.²³ While legal Mexican immigrants could use their U.S. government-issued identification to effect remittances using mainstream financial services, illegal immigrants were forced to use money-transfer services like Western Union or MoneyGram that did not require identification, but charged high transaction fees of up to 10 percent of the amount being remitted.

Banks saw an opportunity to attract more customers through lower remittance fees. When the Mexican government issued its latest, most secure version of the *matricula* in 2002, banks felt more comfortable accepting it. Now, about 122 U.S.

²² “A Report to Congress in Accordance with Section 326(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT),” Report submitted by the Department of the Treasury, October 21, 2002, p. 14

²³ See <http://www.state.gov/p/wha/rls/fs/8919.htm>

financial institutions accept the *matricula* for the purpose of allowing immigrants to make remittances and to open bank accounts. As a result, demand for the *matricula* has soared.

The U.S. government's role in encouraging the banking of the "unbanked" began when the Treasurer of the United States was charged by the current administration to "work to highlight awareness of competitive products by promoting financial literacy and *expanded use of the banking system by American Hispanics.*"²⁴ Under the "Partnership for Prosperity" (created to reduce immigration to the United States from Mexico by promoting economic prosperity in Mexico), one of the goals was to lower the cost of these remittances to Mexico by increasing competition in the financial services industry. This market-driven increase in efficiency was intended to ensure that more money was sent home to the people in Mexico. If over 10 percent of remittances were transaction costs, this meant Mexican families were losing close to \$1 billion a year. As a result of the "Partnership," some banks now accept the *matricula* to enable the unbanked to send money home to Mexico through ATM machines without incurring any fees.

Treasury recognized the inherent conflict between promulgating anti-terrorist, money-laundering regulations and encouraging "unbanked" foreigners to become U.S. bank customers. If it saw its "banking the unbanked" policy as a higher priority than U.S. national security and law enforcement, Treasury misinterpreted its obligations under the PATRIOT Act.

Impact of the *Matricula* on the Illegal Immigrant Population

No federal laws govern the acceptance of the *matricula* by agencies of the 50 states, but various state driver's license-issuing agencies and local law enforcement agencies in areas with a high concentration of legal and illegal immigrants have begun to accept the new card as a primary form of identification. As mentioned, at least 13 state departments of motor vehicles accept the *matricula* as adequate documentation to apply for a driver's license, and over 900 local law enforcement agencies allow their police officers to accept the card as valid ID when stopping or questioning an individual for any reason.²⁵

The *matricula* makes life for illegal immigrants in the United States significantly easier – with it they can open checking accounts, obtain ATM cards, leverage bank accounts to get credit cards, get healthcare benefits, buy a house, and obtain a marriage license – but more importantly they can use it to obtain a driver's license. The driver's license is widely considered to be the 'gold standard' of U.S. identification documents accepted within our borders – and with it aliens can board domestic flights.

²⁴ See <http://www.state.gov/p/wha/rls/fs/8919.htm>. (italics added)

²⁵ See <http://www.sre.gop.mx/phoenix/spanish/servicios/factsheet/matrifactsheet.htm>.

Other Countries Set to Imitate Mexico

Increasing acceptance of the Mexican government's *matricula consular* in the United States has prompted at least six other foreign governments to either begin issuing their own version of the *matricula* in the United States, or to enter the planning stages of developing one. These countries are Guatemala, El Salvador, the Dominican Republic, Honduras, Nicaragua, and Poland. This raises concerns that countries such as Syria, Saudi Arabia, Iran, or North Korea could issue their own form of *matricula* in their consular offices in the United States.²⁶

Fueling this interest is the recent admission by the Mexican Foreign Minister that other countries can benefit from Mexico's example and issue identity cards for their own immigrants: "He [Foreign Minister Derbez] pointed out that these actions could benefit migrants from other countries, 'because the law [U.S. law] will not be able to discriminate between migrants', and the U.S. government will not say: this is a law only for Mexican migrants."²⁷

One illustration of the desire of foreign governments to issue their own identity cards can be seen in a cable sent on May 6, 2003, by the U.S. Embassy in Managua, Nicaragua, to the U.S. State Department, concerning Nicaragua's proposed consular identification card. It indicates that the Nicaraguan government, in response to requests by Nicaraguans in the United States who have seen the *matricula* and want a similar card, may launch its identity card in the United States by the end of this year.²⁸

However, the cable indicates that the Nicaraguan government, in issuing the card, will not require applicants to provide a birth certificate or a passport. Instead, it will allow them to verify their identity merely by bringing in two witnesses to vouch for their identity.

The millions of illegal immigrants in the United States are, to a considerable degree, enjoying the benefits of the new *matricula* – it hardly needs the encouragement of the U.S. government. And such encouragement would set a dangerous precedent for the reasons stated.

²⁶ Jerry Seper, "More Countries Issue ID Cards to Illegal Aliens in U.S.," *The Washington Times*, January 29, 2003; Seth Kugel, "Neighborhood Report: Urban Tactics; Iffy Prospects for a New Dominican ID Card," *The New York Times*, May 4, 2003.

²⁷ *El Universal* (Mexico City), "Presentará Mexico protesta en EU por sátira con imagen de Fox," May 23, 2003, http://www.eluniversal.com.mx/pls/impreso/noticia.html?id_nota=144438&tabla=notas.

²⁸ U.S. Department of State, internal cable from American Embassy, Managua, Nicaragua, to Secretary of State, Washington, D.C., "GON [Government of Nicaragua] Seeks to Emulate Mexico With Consular ID Cards," May 6, 2003.

Congressional Response

- H.R. 687, the “Identification Integrity Act of 2003,” introduced by Rep. Elton Gallegly (R-CA) and 86 cosponsors (now over 100 cosponsors) on February 11, 2003, would restrict federal employees from accepting any form of foreign-government-issued identification other than a passport.
- H.J. Res. 58, introduced by Rep. Tom Tancredo (R-CO) on May 22, would disapprove (under the procedures of the Congressional Review Act) the Treasury Department’s final regulations.
- H.R. 502, introduced by Rep. Tancredo, would forbid federal entities, in providing federal public benefits or services that require identification, from accepting any document not issued by a U.S. federal or state authority and subject to verification by the federal government.

Conclusion

After September 11, Congress passed section 326 of the PATRIOT Act to enhance the security of the citizens of the United States. The Treasury Department’s response to its assignments under this law was to note that, since foolproof identification procedures do not exist, banks may decide for themselves what documentation is best, including acceptance of the problematic *matricula*. Treasury’s pursuit of its pre-existing “banking the unbanked” policy may have played a role in its decision.

There are other ways to achieve the goals of the “Partnership for Prosperity” program and Treasury’s policy for “banking the unbanked” that do not undermine national security. All *legal* immigrants already have the ability to apply for and acquire more secure identity documents, such as the green card. As to *illegal* immigrants, however, the federal government should not write policies that induce – directly or indirectly – illegal status in the United States. The use of fraud-prone, unverifiable foreign documentation should not be promoted by the federal government, especially when the underlying concern is national security.

It appears the private sector is adequately addressing the issue of the remittance of Mexicans’ earnings back home to Mexico. Treasury regulations do not appear necessary to encourage banks and others to charge fair rates to remit money to Mexico, even the money sent by illegal immigrants. That is now being done. Competitive rates and advertising campaigns work to expand the pool of participants in our financial system. Promoting such expansion should not come at the expense of subverting the rule of law.

Further, some of the U.S. financial institutions with the largest market share, such as Citibank, have addressed the national security issue without government direction. Citibank announced a new policy in June, 2003 that relegates the Mexican *matricula consular* to the category of secondary identification (whereas it had accepted it as a primary form since March, 2002). Now it must be used in conjunction with some other

form of identification. Surely the U.S. government should not send signals that banks should go in the other direction.

In fairness to the Treasury Department, there is no one uniform U.S.-issued identification number by which to identify all foreign nationals, so the Department was faced with a complex problem. It outlined those complexities in its report to Congress and concluded it is not the right institution to decide this critical question. In the meantime, while waiting for what it deems a more appropriate federal department such as Justice, BICE (former INS), or DHS to provide a solution, Treasury determined that banks should be allowed to decide for themselves what they should accept. This is obvious in the new notice of inquiry giving the public less than a month – where the Treasury Department had more than 12 months – to propose a solution that properly balances national security with commercial activity in a free-market economy.

The notice of inquiry is an indication by Treasury that it recognizes it needs more input to fulfill its responsibilities under the PATRIOT Act. This is an excellent opportunity for the Senate to provide Treasury with some guidance, specifically with regard to the acceptance of consular identification. For instance, Treasury specifically asks in its inquiry whether the regulations should preclude financial institutions' reliance on certain forms of identification issued by certain foreign governments. This all but begs commentary on the *matricula*.

More broadly, though, Treasury raises difficult questions about whether banks should now be required to accept a passport number from all non-U.S. citizen customers. Doing so would certainly change the way we treat certain foreign nationals, such as Canadians, who are not required to produce a passport when entering our country. It could also restrict U.S. banks unduly because they would be limited to allowing only customers who possess a valid passport to open an account. But such problems need not bolster the legitimacy of the *matricula* with all of its deficiencies.

Unless Congress did not mean what it said in the USA PATRIOT Act, it should expect that this current public comment period will result in the Treasury Department suspending and revising the regulations issued pursuant to section 326, and reissuing regulations that truly will combat money laundering and terrorist financing in furtherance of preventing terrorist attacks on the United States.