



STATE IDENTITY THEFT BILLS

Overview. Some of them have turned immigration proposals at the state level, most of which are focused on undocumented immigrants themselves. In general, these provisions often tread on immigration policy, territory that has been designated as belonging to the federal government. At a time when Congress seems poised to address immigration reform at a federal level, states should stay their hands. Jumping into the development of immigration policy exposes states to costly enforcement mechanisms, costly litigation, and economic, human and political costs. States do well instead to focus instead on positive bills that protect all workers, immigrant and non-immigrant, from unscrupulous employers.

State "identity theft" bills and their effects on immigrant workers. Some state legislators have proposed bills that would punish identity theft. A number of these proposals are so broadly drafted that they sweep in immigrant workers who use a made up Social Security number to get jobs. They impose extremely harsh penalties for what is frequently a victimless crime, and divert precious state prosecutorial resources. These proposals do not represent good state policy.

Duplicative of federal law's sanctions for use of false documents. The Immigration and Nationality Act already imposes civil penalties for knowingly making, using, possessing, or obtaining a false document for the purpose of satisfying any requirement under the immigration law. Federal law also provides for criminal penalties for those who use false identification documents or unlawfully use Social Security numbers.

The federal government is prosecuting immigrants who use false documents to get jobs. The federal government is prosecuting immigrant workers at a massive rate. In September 2008, the government reported 11,454 new immigration prosecutions, a figure that shows a nearly 400% increase from five years ago. Many of these cases involve use of false documents.¹

Diversion of state resources. Nearly every state in the country is suffering from huge budget deficits as a result of the poor economy. Prosecution of immigrant workers at the state level would result in a further diversion of precious state resources. In Arizona, where police resources have been diverted to immigration enforcement, the Goldwater Institute recently noted a sharp rise in violent crime, 911 call response times, and unserved arrest warrants.

Injects states into a federal debate. If used to prosecute immigrant workers who simply use a borrowed number in order to get a job, the proposals would make no distinction between this common situation and true identity thieves who steal another's identification and ruin them financially. The United States Supreme Court will decide a major identity theft case, *United States v. Flores-Figueroa*, in its Spring 2009 term. States that adopt changes to their laws now may be exposing themselves to more litigation.

¹ During the same month, weapons prosecutions numbered 785. Organized crime prosecutions numbered only 40. September 2008, Department of Homeland Security, from Transactional Records Access Clearinghouse, at <http://trac.syr.edu/tracreports/bulletins>.



Punishment does not fit the crime. Earlier this year, our country's sense of fairness and due process was challenged with the arrest of some 389 immigrant workers by some 900 law enforcement personnel, in the massive Agri-processors raid in Iowa. Only one out of the 983 Social Security Numbers used by Agri-processors workers corresponded to an actual case of stolen identity. Yet 270 people, mostly poorly educated indigenous workers from Guatemala and Mexico who did not know that the numbers they submitted to their employer belonged to another person, were accused of the felony of "aggravated identity theft," which carries a two-year mandatory minimum sentence.

❖ **Gives employers a powerful tool with which to retaliate against workers.** Across the country, unethical employers hire immigrant workers without much thought about their immigration status. Then, when workers complain about unlawful working conditions or get injured on the job, employers "reverify" their immigration status and fire them. State identity theft bills invite unscrupulous employers to turn their own workers over for criminal prosecution, with the prospect of a felony conviction, deportation, and a lifetime bar to re-entry to the United States. This is a powerful tool to put into the hands of unscrupulous employers. In this economic climate, desperate workers will suffer all manner of employment abuse rather than be forever barred from legally entering the United States.