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Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation

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Summary

The current debate about consular identification cards in the United States has centered around the *matrícula consular*, the consular identification card issued by Mexican consulates to Mexican citizens in the United States. In May 2003, the Treasury Department issued regulations allowing acceptance of the cards as proof of identity for the purpose of opening a bank account, and the cards are accepted for other purposes as well, including issuance of drivers licenses.

Consular identification cards raise issues for domestic policy and foreign policy. With respect to domestic policy, supporters argue that acceptance of the cards is necessary in a post-September 11, 2001 America, where photo identification is required to conduct daily business. They maintain that the card is a secure and fraud-resistant document that improves security and brings people into the open financial community where transactions can be monitored more easily. Opponents argue that the cards are not secure and are needed only by aliens who are illegally present in the United States and serve to undermine U.S. immigration policy.

In the area of foreign policy, supporters maintain that U.S. acceptance of the cards has improved bilateral relations with an important neighboring country. They argue that the cards help U.S. officials to notify consulates of the detention of foreign nationals and improve the likelihood that U.S. citizens will have the benefit of consular notification. Opponents contend that regulation of the cards is necessary to reinforce immigration policy and to defend against terrorism.

On February 10, 2005, the House passed H.R. 418, the REAL ID Act of 2005 (Sensenbrenner), that would, among other things, establish identity card standards for federal recognition and the issuance of drivers' licenses that would seem to preclude the use of consular ID cards for those purposes. The bill includes provisions that require a determination that the applicant is lawfully present in the United States and that specify that an official passport is the only acceptable foreign identity document. This measure was attached by the House to the Emergency Supplemental Appropriations for FY2005 (H.R. 1268) as Division B on March 16, 2005.

Last year, in November 2004, Congress passed the Transportation-Treasury Appropriations for FY2005 in the Consolidated Appropriations Act for FY2005 (H.R. 4818/P.L. 108-447), after restoring funding for Treasury Department implementation of regulations permitting financial institutions to accept consular ID cards as identity documents for banking purposes. In December 2004, Congress also passed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845/P.L. 108-458), with requirements that the Secretary of Homeland Security propose minimum standards for identification documents to be used by airline passengers and minimal standards for the issuance of drivers' licenses. This report will be updated as legislative developments occur.

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Consular Identification Cards: Domestic and Foreign Policy Implications, the Mexican Case, and Related Legislation

Introduction

It is fairly common practice for the embassies and consulates of foreign states, including the United States, to encourage their citizens abroad to register with the consulates so that they can receive standard consular services, be notified if necessary, and be located upon inquiry by relatives and authorities. Consular registration has been widely recognized and protected under international law for many years, most recently by the Vienna Convention on Consular Relations of 1963.

The current debate about consular identification cards in the United States has centered around the *matrícula consular*, the consular card issued by the Mexican government to its citizens in the United States when they register with a consulate. As a result, this report focuses mainly on the Mexican identification card, although Guatemala, Ecuador, and Brazil also issue such cards, and other nations, including El Salvador, Honduras, Peru, and Poland, are reportedly considering similar programs. Legislation introduced in the 108th and 109th Congresses, discussed below, would generally apply to consular identification cards from any country.

Evolution of the *Matrícula Consular*

According to Mexican officials, Mexico has been issuing consular identification cards since 1871, but demand for the cards has grown dramatically in recent years. The number of cards issued has increased significantly under the administration of Mexican President Vicente Fox (2000-2006), who has emphasized service to citizens abroad, and since the terrorist attacks of September 2001, when identity documents became increasingly necessary in the United States.

Following the terrorist attacks in the United States, Mexico redesigned and added new features to the *matrícula consular* to make it a more useful and secure document. The new version of the card, which the Mexican government calls the “high security consular registration” (*matrícula consular de alta seguridad*, MCAS, in Spanish), first became available in the United States in March 2002.¹ Each of the new cards has the photograph, name, signature, date and place of birth, and U.S. address of the bearer, as well as a serial number, date of issue and expiration, and the

¹ See Government of Mexico, *Most Frequently Asked Questions Regarding the Matrícula Consular (MCAS)*, July 19, 2004.

name of the issuing consulate. The cards have a number of security features that are designed to make the cards tamper-proof and non-duplicable.²

According to Mexican officials, to obtain a *matrícula consular* card, an applicant must appear in person and must present the following documentation: (1) a birth certificate or other document demonstrating Mexican citizenship; (2) a document with a picture demonstrating identity, such as a voter identification or a driver's license; and (3) proof of a local address in the United States, such as a utility bill. The cards are issued for a five-year period upon payment of a \$26 fee. In response to past criticisms,³ a July 2004 document provided by the Mexican Embassy claims that Mexico has developed a national database of passport and consular data that can be used to prevent the issuance of duplicate and fraudulent cards. It also has the ability to check the persons identity against the large Mexican voter registration database and against a "stop list" of approximately 13,000 records of non-acceptable persons, including fugitives or people who have attempted to use fake documents in the past. According to Mexican officials, 2.2 million of the high security identification cards were issued from March 6, 2002, to July 18, 2004. They estimate that almost 4 million Mexicans in the United States have consular ID cards of the older and newer versions. They note that by March of 2007 all of the old cards will have expired and will have been replaced by the new high-security cards.

Acceptance of the *Matrícula Consular*

In recent years, Mexican consulates in the United States and other interested parties have sought, with some success, to gain acceptance of the *matrícula consular* as identification for a variety of purposes. According to the July 2004 white paper provided by the Mexican Embassy, the *matrícula consular* is accepted as valid identification in 377 cities, 163 counties, and 33 states, as well as 178 financial institutions and 1,180 police departments in the United States. Additionally, 12 states recognize the card as one of the acceptable proofs of identity to obtain a driver's license. It is also accepted by numerous telephone and utility companies, hospitals, and video stores, among other establishments.

Some entities, however, have decided against accepting the cards. Citing security concerns, the New York City Police Department has declined to recognize

² The security features include that the plastic laminated cards are printed on special green paper with the official Mexican seal, and have a one-of-a-kind Advantage Seal hologram of the Foreign Affairs Ministry (SRE) that appears over the holder's picture. Two additional security features may be viewed under fluorescent light, while eight additional features are visible only with special decoder equipment that has been distributed to local law enforcement authorities.

³ See the statement of Steve McCraw, Office of Intelligence, Federal Bureau of Investigation, who testified on June 26, 2003, before the Subcommittee on Immigration, Border Security and Claims of the House Judiciary Committee that the *matrícula consular* was not a reliable form of identification because the Mexican government had no centralized database to prevent the issuance of duplicate cards, and that Mexican birth certificates and other required documents were easily forged.

the matrícula consular. The New York State Department of Motor Vehicles has also refused requests to add the matrícula consular to its list of acceptable identity documents for obtaining a driver's license. In Colorado, a recently enacted law states that public entities can accept only identification documents that are issued by a state or federal jurisdiction or that are recognized by the U.S. government.

At the federal level, the Treasury Department, along with other agencies, issued final regulations on May 9, 2003, setting forth the identifying information that banks had to obtain, at a minimum, from a customer prior to opening an account.⁴ Section 326 of the USA PATRIOT ACT (P.L. 107-56) directed the Treasury Department to prescribe such regulations. Under the May 2003 regulations, the required customer information includes an identification number. For non-U.S. persons, this identification number can be one or more of four specified numbers, one being the “number and country of issuance of [a] government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.”⁵ The rule became effective on June 9, 2003, and banks had to be in compliance by October 1, 2003. In an October 2002 report to Congress also mandated by Section 326 of the Patriot Act, which referenced the regulations in proposed form, the Treasury Department specifically addressed the matrícula consular. A footnote in the report stated: “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.”⁶

Following publication of the final rule in May 2003, the Treasury Department re-opened the question of accepting certain forms of foreign government-issued identification to verify customer identity. On July 1, 2003, it published a notice of inquiry in the *Federal Register* requesting additional input on this issue and recordkeeping provisions.⁷ In the notice, it posed a series of questions about whether the regulations should preclude financial institutions from accepting certain forms of foreign government-issued identification. The notice further indicated that after the comments had been considered a determination would be made about whether to

⁴ U.S. Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration. Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks. *Federal Register*, vol. 68, no. 90, May 9, 2003, pp. 25089-25113. For additional information on this subject, see CRS Report RS21547, *Financial Institution Customer Identification Programs Mandated by the USA PATRIOT Act*, by M. Maureen Murphy.

⁵ *Ibid.*, p. 25109. According to the section-by-section analysis of the rule: “Treasury and the Agencies emphasize that the final rule neither endorses nor prohibits bank acceptance of information from particular types of identification documents issued by foreign governments. A bank must decide for itself ... whether the information presented by the customer is reliable.” *Ibid.*, p. 25098.

⁶ U.S. Department of the Treasury, *A Report to Congress in Accordance with §326(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT)*, Oct. 21, 2002. p. 16 (footnote 17).

⁷ U.S. Department of the Treasury, “Customer Identification Programs for Financial Institutions,” *Federal Register*, vol. 68, no. 126, July 1, 2003. pp. 39039-39041.

propose amendments to the May 2003 regulations. On September 18, 2003, the Treasury Department announced that after reviewing over 34,000 comments, it had decided not to recommend any changes to the rules.⁸

Further developments relating to the acceptance or non-acceptance of consular identification cards are expected. A federal interagency working group chaired by the Department of Homeland Security, with representatives from various executive branch agencies, has been developing recommendations for a federal policy on these cards, and the 9/11 Commission recommended that the United States set standards for the issuance of birth certificates and sources of identification, such as driver's licenses. The Intelligence Reform and Terrorism Prevention Act of 2004, approved in December 2004 in response to the 9/11 Commission recommendations, requires the Secretary of Homeland Security to propose, subject to congressional approval, minimum standards for identification documents to be used by airline passengers (and, after a report, for entry to designated federal facilities) and establishes strict default standards in the event of congressional disapproval. On February 10, 2005, the House passed H.R. 418, the REAL ID Act of 2005 (Sensenbrenner), that would establish identity card standards for federal recognition and the issuance of drivers' licenses that would seem to preclude the use of consular ID cards for those purposes.

Domestic Policy Implications

The acceptance of the matrícula consular for various purposes by the Treasury Department and by local governments and other public and private entities in the United States has raised a number of questions for U.S. policy. The possible domestic policy implications — as well as foreign policy implications — were initially discussed at two June 2003 oversight hearings on consular identification cards held by the House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims.⁹ Subsequently, these implications have been discussed in the context of the Treasury Department July 2003 reopening of the question of accepting certain forms of foreign government-issued identification to verify customer identity, and in the context of the consideration of the various legislative

⁸ U.S. Department of the Treasury, Office of Public Affairs, *Treasury Announces Results of PATRIOT ACT Section 326 Notice of Inquiry*, Sept. 18, 2003. Available at [<http://www.ustreas.gov/press/releases/js743.htm>], visited Sept. 23, 2003. On the question of accepting foreign government-issued identification documents, the press release stated: "Treasury concluded that the risk-based approach taken by the final rules, combined with the ability to notify financial institutions if concerns arise with specific identification documents, provide an ample mechanism to address any security concerns."

⁹ U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, oversight hearing on *The Issuance, Acceptance, and Reliability of Consular Identification Cards*, June 19, 2003 (hereafter cited as House Judiciary, *Issuance, Acceptance, and Reliability of Consular Identification Cards*.); U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims, oversight hearing on *The Federal Government's Response to the Issuance and Acceptance in the U.S. of Consular Identification Cards*, June 26, 2003. (Hereafter cited as House Judiciary, *The Federal Government's Response*.)

proposals mentioned below. Domestic policy questions about acceptance of the matrícula consular fall mainly in the overlapping areas of immigration, public safety and law enforcement, and homeland security.

Immigration

In important respects, the debate over the matrícula consular is a debate about how to address the issue of unauthorized immigration to the United States. Those who support domestic acceptance of the matrícula consular emphasize that the card is issued solely for identification purposes and does not confer any type of legal immigration status on the bearer. They maintain that acceptance of the card is necessary in a post-September 11, 2001 America in which photo identification is required to conduct daily business and that such acceptance is beneficial not only for the holders but for the banks and other institutions as well. Some supporters address the unauthorized immigration issue more directly, arguing that it is time to acknowledge that there are millions of unauthorized aliens living and working in the United States and to take steps to more fully integrate them into society. They argue that it is better for these individuals to have an identity and to participate openly in the financial institutions where their transactions can be monitored, rather than to engage in surreptitious actions that encourages the acquisition of fraudulent documents.

Opponents of domestic acceptance of the matrícula consular argue that the card is needed only by aliens who are illegally present in the United States and do not possess other acceptable identification documents. They maintain that the matrícula consular helps unauthorized Mexicans live and conduct business in the United States by, for example, enabling them to open bank accounts. In so aiding illegal aliens, opponents charge, the card effectively confers quasi-legal status on them in subversion of U.S. immigration law. They view efforts to gain widespread acceptance of the card as part of a larger strategy to legalize the status of unauthorized Mexicans in the United States. More broadly, opponents argue that acceptance of the matrícula consular has negative implications for the country's ability to set future immigration policy.

Public Safety and Law Enforcement

Public safety and law enforcement figure prominently in the debate surrounding domestic acceptance of the matrícula consular. Supporters argue that the card is a secure, fraud-resistant document that reliably identifies the bearer. Mexican officials maintain that the documents presented to obtain the card are properly authenticated. With respect to verifying birth certificates, the primary document used to obtain a matrícula consular, Mexican officials assert that consular staff work closely with document registries in Mexico when they have any doubts about the legitimacy of a birth certificate. These officials also argue that Mexico has developed a comprehensive database that would prevent the issuance of duplicate and fraudulent cards, and that it has the ability to check the applicant's identity against the large Mexican voter registration database and against a "stop list" of non-acceptable persons. They note that the matrícula consular cards are as secure as, if not more

secure than, many U.S. documents, including birth certificates and social security cards and some state's driver's licenses.

Supporters take the position that acceptance of the *matrícula consular* by law enforcement agencies improves public safety by, for example, helping police officers identify witnesses, victims, and suspects. If individuals do not possess acceptable identification, they explain, law enforcement agencies must expend time and resources to try to identify them. Supporters also maintain that aliens with identification are more likely to report crimes and cooperate in police investigations.

Supporters further argue that acceptance of the *matrícula consular* by entities other than law enforcement agencies has public safety benefits. As an example, they cite acceptance of the card by financial institutions to open bank accounts and participate in various economic activities, usually at a reduced cost. They maintain that individuals who are able to deposit their money in banks do not have to carry around large amounts of cash or keep large sums in their homes and, thus, are less likely to become crime victims.

Opponents of domestic acceptance of the *matrícula consular* challenge the assertion that the card is a secure document. They argue that despite its fraud-resistant features, the card is not secure because the underlying documentation used to obtain it is not properly authenticated. They express particular concern about the Mexican birth certificate, which, they say, is easily forged. Opponents of domestic acceptance of the *matrícula consular* assert that the authentication process relies on visual inspection of documents by Mexican consular personnel, which, they claim, is inadequate. They also argue that there are inadequate mechanisms to prevent the issuance of multiple cards to the same person. They cite cases in which a single individual has been found with multiple cards, each containing the individual's photograph but a different name.

Opponents argue that acceptance of the *matrícula consular* by law enforcement agencies threatens public safety. They maintain that in cases of minor infractions, police departments that recognize the card are not conducting background checks or taking fingerprints of card holders. Given this practice, opponents argue, the card helps conceal past criminal activity. They further speculate that the acceptance of the *matrícula consular* by the police will encourage drug traffickers and other criminals to obtain the cards.

The potential use of the *matrícula consular* to establish false identities is of great concern to opponents. They argue that cards issued to individuals under false names can be, and have been, used to obtain driver's licenses and other documents in those names to create multiple identities. According to opponents, individuals can use these false identities to facilitate criminal acts, such as money laundering and alien smuggling, and to avoid detection by authorities.

Homeland Security

Supporters of domestic acceptance of the *matrícula consular* argue that the card improves homeland security by enabling the authorities to easily and accurately identify Mexican nationals in the United States. They maintain that individuals who

are isolated and marginalized pose a greater potential security threat than those who are known. They emphasize that Mexico is not a terrorist-supporting country and that Mexicans come to the United States to work, not to commit terrorist acts.

Opponents argue that domestic acceptance of the card threatens homeland security. According to June 2003 congressional testimony by the Federal Bureau of Investigation (FBI), “the ability of foreign nationals to use the Matrícula Consular to create a well-documented, but fictitious, identity in the United States provides an opportunity for terrorists to move freely in the United States without triggering name-based watch lists.” The FBI also expressed concern about the possible use of false identities to transfer funds to support terrorist acts.¹⁰ In arguing against acceptance of the matrícula consular on security grounds, opponents state that the lax issuance procedures have enabled non-Mexicans, including at least one known individual of Middle Eastern descent, to obtain valid cards.¹¹ They further contend that accepting the Mexican consular card sets a dangerous precedent, since other less friendly countries may decide to issue consular identification cards to their nationals in the United States.

Foreign Policy Implications

The foreign policy implications of the matrícula consular may be viewed under three main headings: the U.S.-Mexico bilateral relationship, reciprocity of treatment of citizens abroad, and consular notification in law enforcement situations.

Bilateral Relations

During the 2000 Mexican presidential campaign, the major candidates discovered that the status of Mexican migrants in the United States was one of the top concerns among the Mexican people. A large portion of the population has a relative in the United States, and there is widespread concern about the plight of migrants who die enroute, or are exploited in some way in the United States.

As a result, when President Fox of the conservative National Action Party (PAN) was elected in July 2000 and inaugurated in December 2000, he began pressing proposals with the United States for legalizing undocumented Mexican workers in the United States through amnesty or guest worker arrangements, while offering improved relations in other areas, including trade, drug control, and foreign policy cooperation. At two major presidential meetings in 2001, the two Presidents launched cabinet-level negotiations to address migration and labor issues between the countries. However, following the September 2001 terrorist attacks, the migration

¹⁰ See House Judiciary, *The Federal Government's Response*, hearing testimony of Steven McCraw, Assistant Director of the FBI's Office of Intelligence.

¹¹ In his testimony, Steven McCraw mentioned the arrest of an Iranian man attempting to enter the United States from Mexico who was carrying a matrícula consular card identifying him as a Mexican citizen.

talks stalled and no legislation was enacted, despite several legislative initiatives and an immigration proposal by President Bush in January 2004.

During the 2004 presidential campaign, both major candidates called for immigration reform, and since President Bush's re-election in November 2004 and his re-inauguration in January 2005, he has asserted that immigration reform will be a priority in his second term. He called again for immigration reform that would provide temporary legal status for foreign guest workers in his State of the Union address on February 2, 2005.¹²

Given the lack of progress so far on the bilateral migration talks, some observers have argued that the Mexican government's campaign to issue consular identification cards was a way to provide limited benefits to the migrant population in the United States, giving them access to banking services, permitting them to transfer money to Mexico at cheaper rates through established institutions, and permitting them to have more normal access to regular activities in the United States. Supporters of the *matrícula consular* argue that by improving the lives of Mexican citizens the card has improved the relationship between the United States and Mexico, despite falling short of the desired migration agreement. They cite improved bilateral cooperation in many areas, most notably in enhanced Mexican efforts to control drug trafficking activities, to cooperate on border control plans, and to deploy soldiers to secure access points to the United States during the war in Iraq, although Mexico favored a more multilateral approach to that problem. These supporters argue that restricting the issuance and acceptance of the identity cards might have an adverse effect on the bilateral relationship between the countries.

Opponents of the *matrícula consular* may acknowledge that the card has improved bilateral relations to some extent, but they argue that regulations covering issuance and acceptance are necessary to achieve the more important U.S. goals of control of immigration policy and defense against a possible threat of terrorism. They argue that Mexican officials have been inappropriately involved in the domestic affairs of the United States when they have promoted acceptance of the cards.

Reciprocal Treatment

As indicated above, it is traditional practice for consulates abroad, including U.S. consulates, to register and maintain some record of their nationals abroad for the purpose of notifying and protecting them. This practice is recognized and protected under international law through the Vienna Convention on Consular Relations of 1963, which provides that states will accord this right to each other on a reciprocal

¹² For more information on the broader bilateral relationship, see CRS Report RL32724, *Mexico-U.S. Relations: Issues for the 109th Congress*, by K. Larry Storrs. For more specific information on the bilateral dialogue on migration issues, see CRS Report RL32735, *Mexico-United States Dialogue on Migration and Border Issues, 2001-2005*, by K. Larry Storrs. For more information on the President's January 2004 immigration proposal and the congressional initiatives in the 108th Congress, see CRS Report RL32044, *Immigration: Policy Considerations Related To Guest Worker Programs*, by Andorra Bruno.

basis.¹³ In addition, it is traditional practice for many institutions in one country to accept the official documents of another country for a variety of transactions, such as accepting a U.S. driver's license for driving automobiles in Mexico.

According to Roberta Jacobson, the Acting Deputy Assistant Secretary of State for Western Hemisphere Affairs, in testimony at a June 2003 House Immigration Subcommittee hearing on consular identification cards, the Department of State "issues documentation other than a passport for U.S. citizens abroad and at times occasionally issues similar identity cards or travel documents." "Should a foreign country decide to limit acceptance of such documentation or other traditional documentation such as state-issued identifications or driver's licenses," she counseled, "the actions of American citizens abroad could be seriously restricted."¹⁴

Proponents of the *matrícula consular* argue that the United States should accept the cards, so that the U.S. government will receive reciprocal treatment in the issuance of identification cards abroad, and Mexico and any other foreign state will recognize the documents of U.S. citizens for a variety of activities. Critics of the *matrícula consular* rarely comment on this aspect, but may argue that U.S. documents would continue to be recognized by foreign states, even if U.S. acceptance of the *matrícula consular* were to be restricted, because they facilitate tourism and the transaction of highly-desired business.

Consular Notification

In her June 2003 testimony, State Department official Jacobson mentioned another benefit of consular identification cards, namely that they facilitate the notification by U.S. law enforcement officers of foreign consulates when foreign nationals are detained for suspected illegal activity. The Vienna Convention on Consular Relations provides that foreign nationals who are arrested or detained have a right to protection and assistance from their own consulates. It establishes that the detaining state is required to inform the detainee of his or her right to request that the relevant consular officials be notified of the detention without delay. Consular notification is relatively easy when the detainee is carrying a card that identifies him as a national of another state, but it is difficult, and not always achieved, when the detainee lacks any documentation, and his identity, relatives, and nationality are unknown and often withheld out of fear. According to Ms. Jacobson, consular notification is a very serious issue for the Department of State, and it is "working assiduously to ensure U.S. compliance," in part so that U.S. consulates will be informed when U.S. citizens are detained abroad.

Consular notification is a major issue for the Mexican government. For years, Mexican officials have been complaining about Mexican citizens who they claim

¹³ For further information on this subject, see CRS Report RS21627, *Implications of the Vienna Convention on Consular Relations upon the Regulation of Consular Identification Cards*, by Michael John Garcia.

¹⁴ See House Judiciary, *The Federal Government's Response*, hearing testimony of Roberta S. Jacobson, Acting Deputy Assistant Secretary of State for the Bureau of Western Hemisphere Affairs.

were executed for crimes or who are awaiting execution in the United States without the benefit of consular assistance and adequate defense because the consulates were never notified. In mid-August 2002, President Fox was reported to have cancelled his August 26-28 trip to Texas and his meeting with President Bush in Crawford to protest the execution by Texas authorities of convicted police killer Javier Suarez Medina despite Mexican claims that he had not been afforded consular assistance.

In January 2003, Mexico brought a case against the United States in the International Court of Justice on behalf of Mexican citizens sentenced to death in the United States, charging that U.S. officials have violated the Vienna Convention on Consular Relations by systematically failing to inform Mexicans of their right to consular assistance under the treaty. After several preliminary decisions, on March 31, 2004, the International Court found that the United States had breached its obligations under the Vienna Convention by failing to notify and enable Mexican consular officials to assist 51 Mexican suspects who are now on death row, and it ordered the United States to review the convictions and sentences of the Mexican nationals.¹⁵ On February 28, 2005, President Bush directed state courts to review the cases of the Mexicans in order to comply with the ICJ decision, but on March 7, 2005, the United States withdrew from the Optional Protocol that gives the International Court of Justice jurisdiction over these disputes. On March 28, 2005, the U.S. Supreme Court heard argument in the case of a Mexican inmate on Texas' death row who claims that the state violated international law by failing to notify Mexican consular officials before his trial for murder.

Proponents of the *matrícula consular* argue that consular identification cards make it easier for U.S. law enforcement officials to notify consulates of the detention of foreign nationals, and thereby improve the likelihood that U.S. citizens under arrest abroad will have the benefit of consular notification and protection. In the case of Mexico, achieving a better record on consular notification would remove a major irritant in the bilateral relationship. Opponents of consular identification cards would argue that there should be other means and other indications of identity that would permit law enforcement officials to adhere to the consular notification obligations, without establishing a system, which, in their view, provides non-legislated immigration benefits.

Legislation in the 108th Congress

Legislation related to consular identification cards was considered by the 108th Congress. One set of measures related to acceptance of the cards for banking purposes. The major measure in that area was the Transportation-Treasury Appropriations for FY2005, incorporated into the Consolidated Appropriations Act for FY2005 (H.R. 4818/P.L. 108-447) approved in November and December 2004. As enacted, the measure restored funding, without the previously passed prohibitions, for Treasury Department implementation of regulations permitting financial institutions to accept the *matrícula consular* cards as identity documents for banking

¹⁵ International Court of Justice, Press Release 2004/16, *Avena and Other Mexican Nationals (Mexico v. United States of America)*, March 31, 2004.

purposes. A second set of measures attempted to set conditions on the issuance of consular cards by foreign missions. The Foreign Relations Authorization Act for FY2004-FY2005 (H.R. 1950), with conditions on foreign missions' issuance of these cards, was passed by the House in July 2003, but the Senate never took similar action. A third set of measures related to acceptance of consular identification cards by U.S. federal government entities, and the major legislation in that area was the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845/P.L. 108-458), approved in December 2004, that requires the Secretary of Homeland Security to propose, subject to congressional approval, minimum standards for identification documents to be used by airline passengers (and, after a report, for entry to designated federal facilities). A fourth set of measures would have made possession by an alien of a consular identification card prima facie evidence that the alien is deportable.

Measures on Acceptance of Consular Cards as Identity Documents for Banking Purposes

Four measures related to acceptance of consular identification cards as identity documents for banking purposes. The first measure would have amended existing provisions of the U.S. Code to clearly authorize financial institutions to accept matrícula consular cards as a valid form of identification. The second measure would have disapproved Treasury Department regulations issued in May 2003 that permit the use of the matrícula consular card for the purpose of opening a bank account. The third measure would have amended the existing provisions to prohibit the use of identification issued by foreign governments, other than passports, for opening financial accounts. The fourth measure, Transportation-Treasury appropriations, was passed in final form without the previously passed prohibitions on funding, with the final result that the Treasury Department could continue to implement regulations permitting financial institutions to accept the matrícula consular cards.

H.R. 773. Introduced on February 13, 2003, by Representative Ruben Hinojosa, H.R. 773 would have amended the Section 5318 provisions relating to customer identification enacted in the USA PATRIOT Act to clearly authorize financial institutions to accept a matrícula consular issued by the Mexican government as a valid form of identification for opening a bank account. Among the findings in the bill was the following: "Accepting matrícula consular as a form of identification allows Mexican immigrants to enter the financial mainstream and provides banks and other financial institutions with a new, fast-growing market." H.R. 773 was referred to the House Financial Services Committee and its Subcommittee on Financial Institutions and Consumer Credit.

H.J.Res. 58. Introduced on May 22, 2003, by Representative Thomas Tancredo, H.J.Res. 58 would have disapproved the Treasury Department regulations issued on May 9, 2003 (discussed above) relating to customer identification requirements in Section 5318 of the U.S. Code.¹⁶ One "whereas" clause stated that

¹⁶ H.J.Res. 58 references final rules issued by the Treasury Department on Apr. 30, 2003. In a telephone conversation on Aug. 20, 2003, however, Representative Tancredo's office (continued...)

the Treasury Department rules “permit financial institutions to accept certain unverifiable forms of identification from ‘non-United States persons’ in direct violation of the clear intent of Congress ... [in] the USA PATRIOT Act.” Another stated that “there is abundant evidence of the non-verifiable and unreliable nature of identification documents issued by foreign governments to foreign nationals residing within the United States, including the ‘Matricula Consular’ card.” H.J.Res. 58 was referred to the House Financial Services Committee and its Subcommittee on Financial Institutions and Consumer Credit, but no action was taken within the normal 60-day period for resolutions of disapproval to take effect.

H.R. 3674. Introduced on December 8, 2003, by Representative Scott Garrett, H.R. 3674 would have amended Section 5318 to prohibit the use of identification issued by foreign governments, other than passports, for purposes of verifying the identity of a person opening an account at a financial institution, including a matrícula consular card. H.R. 3674 was referred to the House Financial Services Committee and its Subcommittee on Financial Institutions and Consumer Credit.

H.R. 4818/P.L. 108-447. Consolidated Appropriations Act for FY2005, which included the Transportation-Treasury Appropriations for FY2005 as Division H, restored funding for Treasury Department implementation of regulations permitting financial institutions to accept the matrícula consular cards.

The House Transportation-Treasury Appropriations Subcommittee voted 9-7, on July 15, 2004, to approve an amendment by Representative John Culberson to H.R. 5025, Transportation-Treasury Appropriations for FY2005, to prohibit the use of funds by the Secretary of the Treasury “to publish, implement, administer, or enforce regulations that permit financial institutions to accept the matrícula consular identification card as a form of identification.” Representative Culberson claimed that his amendment had the support of the Department of Homeland Security, the FBI, the Justice Department, and a U.S. Attorney in Texas. He argued that the amendment was aimed at ending the use of a totally unreliable form of identification that could be obtained by criminals and terrorists. Those opposing the amendment argued that the consular cards were safe and that the Subcommittee was acting precipitously and without adequate information.¹⁷

The full Appropriations Committee approved the overall measure on July 22, 2004, after voting 25-26 to defeat an amendment by Representative Ed Pastor that would have stricken the language of the Culberson amendment described above. This action left intact the previously approved prohibition on Treasury funding for implementation of regulations permitting financial institutions to accept the matrícula consular cards. Representative Culberson argued that the cards are unreliable and could be used by terrorists to falsify their identities. Representative Pastor and others argued that the cards were reliable and that the Department of Homeland Security

¹⁶ (...continued)
confirmed that the date should read “May 9, 2003.”

¹⁷ See “House Subcommittee Targets Elimination of Mexican ‘Matricula’ ID Cards,” *CQ Today*, July 15, 2004; and Appropriations: As House Subcommittee Trims Amtrak, IRS, Enforcement, *Congress Daily*, July 15, 2004.

could write regulations to deal with their concerns, without blocking the use of the cards for financial transactions.¹⁸

When the House considered the Transportation-Treasury Appropriations for FY2005 (H.R. 5025) on September 14, 2004, Representatives Oxley and Frank, Chairman and Ranking Member of the House Committee on Financial Services, offered an amendment that was approved 222-177 to strike the Culberson amendment described above, thereby restoring funding for the Treasury Department so that it could continue to implement regulations on identity cards for banking services in effect since May 2003. The sponsors of the amendment argued that the existing regulations were working effectively and that they had the support of the Administration. Opponents of the amendment argued that the Treasury regulations were too lax in that they permitted the use of documents that are easily forged, that might be used by terrorists, and that are largely used by persons who are illegally in the United States. After consideration of other amendments, the overall measure was passed by the House on September 22, 2004, thereby restoring previous authorities with respect to consular ID cards. Since the Senate never completed action on the separate appropriation measure, the act was incorporated into the Consolidated Appropriations Act for FY2005 (H.R. 4818) that was approved by both houses of Congress on November 20, 2004, and, after passage of a corrective measure, was signed into law (P.L. 108-447) on December 8, 2004.

Measure to Set Conditions on Foreign Mission Issuance of Consular Identification Cards

On July 15, 2003, the House approved an amendment sponsored by Representatives John Hostettler, Elton Gallegly, and Thomas Tancredo to restrict and set conditions on the issuance of consular identification cards by foreign missions in the United States, but the Senate did not take any similar action during the 108th Congress. In the mentioned House floor action on the Foreign Relations Authorization Act for FY2004-2005 (H.R. 1950), the lower house voted, 226 to 198, to accept House Amendment No. 246, which was added to the bill as Section 232. The amendment would establish a series of restrictions on the issuance of consular identification cards by foreign missions. It would direct the Secretary of State to issue regulations requiring foreign missions to: (1) notify the Secretary of each consular identification card issued in the United States, including the name and address of each recipient; (2) issue cards only to bona fide nationals of the country; (3) maintain complete and accurate records of all cards issued and do so in an automated system that can be accessed to prevent duplicate or fraudulent issuance; (4) require card recipients to notify the mission of any change of address; and (5) make available the records of all cards issued for audit and review at the request of the Secretary. If the Secretary of State determined that a foreign mission had violated these regulations and that such violation threatened national security or facilitated fraudulent or criminal acts, the Secretary would notify the relevant government that the mission must suspend issuance of consular identification cards until it was in compliance. If the foreign mission failed to suspend issuance of the cards, the State

¹⁸ See "Transportation-Treasury Appropriations: Mexican Identity Card Provision Complicates Debate on Bill," *CQ Today*, July 22, 2004.

Department would cease issuance of immigrant or non-immigrant visas, or both, to nationals of that country until the mission was in compliance with the regulations.¹⁹

Supporters of these proposed restrictions argued that foreign governments have been issuing consular identification cards in the United States for purposes other than those intended by the Vienna Convention on Consular Relations, namely to circumvent U.S. immigration law, and that the issuance of the cards should be subject to U.S. regulation. They argued that the cards are not a reliable form of identification because the Mexican government has no automated and secure system to assure that the cards are not forged or shared, or issued to more than one individual or to individuals relying on fraudulent documents. They further argued that the cards are susceptible to being used to establish false identities that may facilitate money-laundering, alien smuggling, and terrorist activity.

Opponents of the proposed restrictions argued that the restrictions are directed against consular identification cards in general, the Mexican *matrícula consular* in particular, and persons of Hispanic heritage. They argued that the requirements, especially the requirements that the records be given to the United States and be subject to audit by the United States, pose unreasonable restrictions on a foreign government's right under the Vienna Convention to register and monitor its nationals abroad. They further argued that the penalties for non-compliance were extremely onerous. To the extent that the issuance of the *matrícula consular* has been viewed as improving Mexico-U.S. bilateral relations, the House-passed restrictions would likely be seen as harming the bilateral relationship. The restrictions would also be viewed by opponents as making consular notification more difficult, and raising the possibility that reciprocal action by other nations might harm the U.S. government's ability to register and monitor U.S. nationals abroad.

Measures on Acceptance of Consular Cards as Identity Documents by U.S. Federal Entities

Three bills would have restricted acceptance of consular identification cards by federal entities. The first measure, the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845/P.L. 108-458), was among measures to reform the intelligence services and to implement the 9/11 Commission recommendations and it may restrict the use of the consular ID cards. The legislation requires the Secretary of Homeland Security to propose, subject to congressional approval, minimum standards for identification documents to be used by airline passengers (and, after a report, for entry to designated federal facilities), and it requires the establishment of minimal standards for the issuance of drivers' licenses. Another measure would have prohibited the acceptance of documents for providing federal benefits unless the documents were issued by federal or state authorities. Still another measure would have prohibited federal employees from accepting identification documents issued by foreign governments.

¹⁹ For more detail on the provisions, and for the arguments of the supporters and opponents of the provisions, see the debate in the *Congressional Record* on July 15, 2003.

S. 2845/P.L. 108-458. S. 2845, as originally passed by the House on October 16, 2004, contained a number of related provisions. Section 3006 would have provided that for the purpose of establishing identity to any federal employee, an alien in the United States could present (1) any document issued by the U.S. Attorney General or the Secretary of Homeland Security under the authority of an immigration law, (2) a domestically issued document that the Secretary of Homeland Security had designated as reliable and that could not be issued to an alien unlawfully present in the United States, or (3) any unexpired, lawfully issued foreign passport as determined by the Secretary of State. This provision would likely have precluded the presentation of the Mexican consular ID as an identity document to federal officials. Section 3052 would have barred Federal agencies three years after enactment from accepting drivers licenses or other identification unless such licenses satisfied standards set by the Secretary of Homeland Security, including verification of the authenticity of the documents and proof that the person possesses or is ineligible for a social security account. It would also have prohibited states from issuing drivers licenses to individuals who could not prove legal residency in the United States. S. 2845 and H.R. 10 were among the measures to reform the intelligence services and to implement the 9/11 Commission recommendations that received expedited treatment in late September and October 2004. S. 2845 was passed, amended, by the Senate on October 6, 2004. H.R. 10 was approved, amended, by the House on October 8, 2004, after which the text was incorporated into S. 2845 and was considered passed by the House on October 16, 2004. Proponents of the specified immigration provisions argued that they were necessary to prevent the acquisition by possible terrorists of identity documents that would permit entry to airplanes and federal buildings where they could cause harm. Opponents argued mostly that the measures were not central to the main purpose of the legislation, namely reform of the intelligence services, and that the measures had not been adequately considered.

Some of the mentioned provisions were among the most difficult to resolve in conference, however. Eventually, after lengthy negotiations and an agreement to consider the left out matters early in the 109th Congress, the conferees agreed upon a report and bill (H.Rept. 108-796) that was filed on December 7, 2004.²⁰ The conference report was approved by the House and the Senate on December 7 and 8, respectively, and was signed into law (P.L. 108-458) as the Intelligence Reform and Terrorism Prevention Act of 2004 by the President on December 17, 2004. Section 7220 of the enacted legislation requires the Secretary of Homeland Security to propose, subject to congressional approval, minimum standards for identification documents to be used by airline passengers (and, after a report, for entry to designated federal facilities), and establishes strict default standards in the event of congressional disapproval. Section 7212 requires the establishment of minimal standards for the issuance of drivers' licenses.

H.R. 502. Introduced by Representative Tancredo, H.R. 502 would prohibit entities of the federal government, in providing federal public benefits or services that require the recipient to produce identification, from accepting any identification document, unless the document was issued by a federal or state authority and subject

²⁰ See Cleared Intelligence Rewrite is Big Finish for the 108th, *CQ Weekly*, Dec. 11, 2004, p. 2937.

to verification by the federal government. H.R. 502 was referred to the House Committee on Government Reform and its Subcommittee on Criminal Justice, Drug Policy and Human Resources, to the Committee on House Administration, and to the Committee on the Judiciary and its Subcommittee on Crime, Terrorism, and Homeland Security.

H.R. 687. Introduced by Representative Gallegly, H.R. 687 would prohibit federal employees from accepting, for purposes of establishing identity, forms of identification issued by foreign governments. The bill would exempt passports from the prohibition if federal law authorized passports to be used for a specific purpose on the date of enactment. H.R. 687 was referred to the House Committee on Government Reform and its Subcommittee on Criminal Justice, Drug Policy and Human Resources, to the Committee on House Administration, and to the Committee on the Judiciary and its Subcommittee on Immigration, Border Security, and Claims.

Measure to Make Possession of a Consular Identification Card Prima Facie Evidence that the Alien is Deportable

H.R. 4440. Introduced on May 20, 2004, by Representative Gallegly, H.R. 4440 would amend the Immigration and Nationality Act to make possession by an alien of a consular identification card issued by a foreign mission prima facie evidence that the alien is deportable, and make any illegal alien who presented a consular ID card for federal identification-related purposes inadmissible for entry for 10 years. H.R. 4440 was referred to the House Judiciary Committee and its Subcommittee on Immigration, Border Security, and Claims.

Legislation in the 109th Congress

Legislation related to the acceptance of consular identification cards as identity documents by government and banking institutions is being considered in the 109th Congress. The REAL ID Act of 2005 (H.R. 418) that would establish identity card standards was passed by the House on February 10, 2005, and this measure was attached by the House to the Emergency Supplemental Appropriations for FY2005 (H.R. 1268) as Division B on March 16, 2005.

Measures on Acceptance of Consular Cards as Identity Documents by Federal and State Entities

Three measures have been introduced that deal with the acceptance of consular ID cards by federal and state entities, including one (H.R. 418) that has passed in the House, and has been attached to the Emergency Supplemental Appropriations for FY2005 (H.R. 1268) as Division B. As introduced, two related measures, H.R. 368, which deals solely with drivers' license standards, and H.R. 418, which contains additional provisions, would establish identity card standards for federal recognition and the issuance of drivers' licenses that would seem to preclude the use of consular ID cards for those purposes. As passed by the House, H.R. 418 includes provisions that require a determination that the applicant is lawfully present in the United States, and that specify that an official passport is the only acceptable foreign identity

document. A third measure (H.R. 925) would prohibit a Federal agency from accepting a form of individual identification issued by a foreign government, except for a passport authorized for certain uses by existing legislation.

H.R. 368, Drivers' License Security and Modernization Act. This bill was introduced on January 26, 2005, by Representative Tom Davis of Virginia, and referred to the House Committees on Government Reform and the Judiciary. H.R. 368 would establish identity card standards for federal recognition and the issuance of drivers' licenses. The provisions are similar to Title II — Improved Security for Drivers' Licenses and Personal Identification Cards, Sections 201-207, in H.R. 418 (see below).²¹

H.R. 418, the REAL ID Act of 2005/H.R. 1268, Emergency Supplemental Appropriations for FY2005. H.R. 418 was introduced on January 26, 2005, by Representative Sensenbrenner, as a holdover from consideration of the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845/P.L. 108-458) in December 2004 (see above under Legislation in 108th Congress). The bill was referred to the House Committees on the Judiciary, Homeland Security, and Government Reform, but no formal consideration was undertaken. It would, among other things, establish identity card standards for federal recognition and the issuance of drivers' licenses that would seem to preclude the use of consular ID cards for those purposes. It was considered on February 9-10, 2005, under a structured rule, and was approved, with amendments, by a 261-161 vote on February 10, 2005.²² The bill was attached to the Emergency Supplemental Appropriations for FY2005 (H.R. 1268) as Division B, on March 16, 2005.

As passed by the House, Subsection 202(a) of H.R. 418 provides that beginning three years after the date of enactment, a federal agency may not accept, for any official purpose, a driver's license or identification card issued by a state to any person unless the state is meeting the specified standards. In addition to proof of identity, birth, and principal residence, the minimum issuance standards in Subsection 202(c) include (1) proof of the person's social security number or verification that the person is not eligible; and (2) evidence of lawful status in the country in one of several specified categories, with issuance of easily recognizable temporary drivers' licenses for those with temporary authorized stays. Subsection 202(c)(3) under the heading of verification of documents requires that the state shall not accept any foreign document, other than an official passport, to meet the minimum standards, and it requires that not later than September 11, 2005, the state shall agree to use the national automated system known as Systematic Alien Verification Entitlements to verify the legal presence of non-U.S. citizens in the country. Subsection 202(d)(5) provides that in the event that a presented social security account number is already registered to another person, "the state shall

²¹ For more detail on current state policy regarding the issuance of drivers' licenses to aliens, see CRS Report RL32127, *Summary of State Laws on the Issuance of Drivers' Licenses to Undocumented Aliens*, by Alison M. Smith.

²² For more detail on this measure, see CRS Report RL32754, *Immigration: Analysis of the Major Provisions of H.R. 418, the REAL ID Act of 2005*, by Michael John Garcia, Margaret Mikyung Lee and Todd Tatelman.

resolve the discrepancy and take appropriate action.” Section 203 requires that for a state to be eligible for financial assistance it must participate in the interstate compact regarding the sharing of drivers’ license data, known as the Driver License Agreement.

H.R. 925, Identification Integrity Act of 2005. Introduced on February 17, 2005, by Representative Gallegly, this bill would prohibit a Federal agency from accepting a form of individual identification issued by a foreign government, except for a passport if it is authorized for certain uses by federal law at the date of enactment of this legislation. H.R. 925 was referred to the House Government Reform, Judiciary, House Administration and Armed Services Committees.

Measures on Acceptance of Consular Cards as Identity Documents for Banking Purposes

One measure (H.R. 815) has been introduced to prohibit the use of any identification documents issued by foreign governments other than passports for opening banking accounts. This would seem to preclude the use of consular ID cards for such purposes..

H.R. 815, Financial Customer Identification Verification Improvement Act. Introduced on February 15, 2005, by Representative Garrett, this bill would amend Section 5318(1) of title 31, United States Code (relating to identification and verification of account holders) to prohibit the use of any identification documents issued by foreign governments other than official passports for the purpose of opening accounts with financial institutions. H.R. 815 was referred to the House Committee on Financial Services.