

from
Was Grandpa Really a Moron?
Critical Inquiries for a New American Century
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Your Papers, Please...



I recently became aware of a brash new governmental attempt to evade the law: USA passport applications now include a request for a Social Security number. The request suggests, on its face, that the furnishing of a number is required. However, those behind this little scheme include language proposing a legal rationale for the request on the application form itself-- conscious, no doubt, that it would be illegal to pose such a request as though it is an unambiguous requirement when it really isn't. The presence of the rationale serves to alert the wary that they are simply being invited to accept its reasoning, rather than being commanded to do so. A brief analysis reveals that rationale to be an amusingly bold and creative version of the old "lifting yourself off the ground by standing in a bucket and tugging mightily on its handle" routine.

Here's how the scam works: First, the application (which seeks to justify this 'demand' by laying out its reasoning) cites 26 USC 6039E, which provides that,

a) General rule

Notwithstanding any other provision of law, any

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individual who—

- (1) applies for a United States passport (or a renewal thereof), or*
 - (2) applies to be lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws,*
- shall include with any such application a statement which includes the information described in subsection (b).*

(b) Information to be provided

Information required under subsection (a) shall include—

- (1) the taxpayer's TIN (if any),*
- (2) in the case of a passport applicant, any foreign country in which such individual is residing,*
- (3) in the case of an individual seeking permanent residence, information with respect to whether such individual is required to file a return of the tax imposed by chapter 1 for such individual's most recent 3 taxable years, and*
- (4) such other information as the Secretary may prescribe. [No such prescriptions exist at the time of this writing]*

From this it can be seen that while *"in the case of a passport applicant,"* nothing more than the identification of any foreign country in which the applicant is residing is required, in the case of a "taxpayer"-- perhaps when applying for *either* a passport or permanent residence in the United States, depending on how this statute is construed-- a "TIN" (if any) is demanded. OK, fair enough. Those who are "taxpayers" (anyone "subject to any internal revenue law"-- 26 USC 7701(a)(14)) must furnish a number-- all the rest of us just have to identify any foreign country in which we might be living.

However, this liberty-friendly distinction doesn't suit the interests of the ambitious state. So, the bureaucrats behind the passport application invite us to take a mind-numbing trip through the looking-glass world. Toward this end, they next

cite 31 USC 7701, and trot out a little tiny portion of its language by which we are reminded (with context omitted) that those who "do business" with the federal government are, therefore, "taxpayers", and must furnish a TIN to the agency with whom they do that business. Then they close the circle by announcing that, *because an applicant for a passport pays a processing fee to the Department of State, he or she could be 'considered' (their word) to be "doing business" with a federal agency-- and therefore to be "taxpayers" and required (under a possible construction of 26 USC 6039E) to furnish a TIN (in the form of a Social Security number)! You'd think that it would be easier just to reform 6039E to say directly that anyone applying for a passport has to furnish a TIN, wouldn't you? Well, no, actually. At least, not by virtue of THIS "argument".*

Needless to say, the actual provisions in the law related to "doing business with the government" under which any requirements to furnish an ID number arise address only those involved in a profitable relationship with the government, who thus incur a related tax liability in regard to which the government has a legitimate interest in identifying the recipient. 31 USC 7701 is no exception:

(b) The head of an agency administering an included Federal loan program shall require a person applying for a loan under the program to provide that person's taxpayer identifying number.

(c)

(1) The head of each Federal agency shall require each person doing business with that agency to furnish to that agency such person's taxpayer identifying number.

(2) For purposes of this subsection, a person shall be considered to be doing business with a Federal agency if the person is—

(A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

(B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit

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payment administered by the agency or insurance administered by the agency;

(C) a contractor of the agency;

(D) assessed a fine, fee, royalty or penalty by the agency; and

(E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.

Obviously, this section of law has nothing to do with a passport application, or its associated fee; and the imaginative legal construct in which it is deployed does not add up to a legitimate governmental authority to demand Social Security numbers from all passport applicants. Still, though this is mere filthy and corrupt tyranny on the march, you've got to admire the creativity being put to work in this inspired 'Orwellian' effort to track the movements of Americans, to secure from them potentially debilitating legal declarations, and to train them to the idea that the law is elastic, and means whatever the government wants it to mean at any given time.