

E-VERIFY: PRESERVING JOBS FOR AMERICAN WORKERS

HEARING BEFORE THE SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS FIRST SESSION

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E-VERIFY: PRESERVING JOBS FOR AMERICAN WORKERS

THURSDAY, FEBRUARY 10, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION
POLICY AND ENFORCEMENT,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in room 2141, Rayburn Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, Gohmert, Poe, Ross, Lofgren, Conyers, and Pierluisi.

Staff present: (Majority) Andrea Loving, Counsel; Marian White, Staff Assistant; and Tom Jawetz, Minority Counsel.

Mr. GALLEGLY. Good morning. I call the Subcommittee to order.

I have an opening statement. Then I will defer to our colleagues and get our hearing going.

Most folks on this Committee know that I have long said that the way to solve the problem of illegal immigration is not all that complicated. First, we must enforce our laws, and second, we must discourage illegal immigration. And finally, we must remove the benefits that make it easy for illegals to stay in this country.

With nearly 14 million unemployed Americans, removing the magnets is more important now than ever.

The biggest magnet for illegal immigrants is jobs. So we owe it to the American people to do whatever we can to reduce the number of American jobs going to illegal immigrants. The E-Verify program helps to do just that. E-Verify allows employers to check the work eligibility of new hires by running the employee's Social Security number or alien identification number against Department of Homeland Security and Social Security Administration records.

In 1995, I chaired a congressional task force on immigration reform. We published a 200-page report with more than 80 specific recommendations. One of those was for an electronic employment eligibility verification system which was included in Chairman Smith's 1996 immigration reform bill. That system is now known as E-Verify.

It is currently a voluntary program for most of the almost 250,000 employers who use it. It is free, Internet-based, and very, very easy to use. And the employers who use it all agree.

In an October 2010 USCIS customer satisfaction survey, E-Verify received 82 out of 100 on the American Customer Satisfaction

Index scale. The 82 scored by E-Verify is much higher than the Federal Government's satisfaction index of 69.

And 76 percent of the National Federation of Independent Business members said it would be a minimal or no burden if there was one telephone number or a single Internet web site where we could check a new employee's eligibility to work. And that is exactly what E-Verify is.

But I also want to acknowledge that there are two very important components that must exist to help ensure that U.S. jobs go to Americans and legal residents.

First, the Federal Government must put in place enough enforcement resources to ensure proper use of E-Verify. Employers must have to know if they misuse the system, for instance, by ignoring the fact that the photo in the E-Verify does not match the photo on the identity document provided by employee, they will be investigated and held accountable. Right now, there is nowhere near the level of enforcement needed for E-Verify or really, for that matter, anything having to do with illegal immigration.

Second, the SSA must work in conjunction with DHS to use Social Security no-match letters. If the same Social Security number is being queried by employers in several different States at around the same time, the likelihood of fraud is very high.

These steps will help E-Verify's continued success.

And I look forward to the testimony of our witnesses today.

And at this point, I would yield to my good friend from California, the Ranking Member, Ms. Lofgren.

[The prepared statement of Mr. Gallegly follows:]

**Statement of Chairman Elton Gallegly
Subcommittee on Immigration Policy and Enforcement
Hearing on E-Verify – Preserving Jobs for American Workers
Thursday, February 10, 2011**

Good morning. I have long said that the way to solve the problem of illegal immigration is fairly simple. First, we must enforce our laws and secure the border. Second, we must remove the magnets that encourage illegal immigration. And finally, we must remove the benefits that make it easy for them to stay.

With nearly 14 million unemployed Americans, removing the magnets is more important than ever.

The biggest magnet for illegal immigration is jobs. So we owe it to the American people to do whatever we can to reduce the number of American jobs going to illegal immigrants. The E-Verify program helps do just that.

E-Verify allows employers to check the work eligibility of new hires by running the employee's Social Security number or alien identification number against Department of Homeland Security and Social Security Administration records.

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First, the federal government must put in place enough enforcement resources to ensure proper use of E-Verify. Employers have to know that if they misuse the system, for instance by ignoring the fact that the photo in E-Verify does not match the photo on the identity document provided by the employee, they will be investigated and held accountable. Right now there is nowhere near the level of enforcement needed for E-Verify.

Second, the SSA must work in conjunction with DHS to issue Social Security no-match letters. If the same Social Security number is being queried by employers in several different states at around the same time, the likelihood of fraud is high.

These steps will help E-Verify's continued success.

I look forward to the testimony from our witnesses today.

Ms. LOFGREN. Thank you, Mr. Chairman.

Today's hearing on E-Verify continues the conversation we began at the Subcommittee's first hearing on ICE worksite enforcement. The situation we face is clear to everyone. Our immigration system is broken and it doesn't meet the needs of our country. As we dis-

cussed before, simply continuing to enforce our broken immigration laws is not a serious job proposal. Pressing harder on the gas without fixing the vehicle will only endanger our recovering economy, hurt American workers, and leave our immigration system as broken as when we started.

Being from Silicon Valley, I am a big advocate for technological solutions to problems, and I support a carefully designed electronic employment eligibility verification system that works and contains sufficient safeguards. In fact, since 2005, every serious proposal to fix our broken immigration system has tackled the challenge of verifying the employment eligibility of our workforce.

But we need to take into account the complex realities of our economy. There are those who argue that making E-Verify mandatory for all employers will destroy the jobs magnet by preventing unauthorized workers from getting new jobs. They want employers to use E-Verify not only for new hires, but for existing employees as well. They believe this issue boils down to simple math, that every time we remove an undocumented worker from a job or from the country, we open that job for a native-born worker. But this simple math is just bad math. The truth is that mandating E-Verify alone would not destroy the jobs magnet. It would actually encourage businesses and workers to enter the underground economy by working off the books.

When the Congressional Budget Office analyzed the SAVE Act in 2008, it concluded that mandating E-Verify without reforming our broken immigration laws would suck \$17.3 billion out of the tax system. Driving millions of workers further into the shadows would not only cost this country \$17.3 billion in lost revenue, it would depress wages and working conditions for all workers, including United States workers, as unscrupulous employers would be better able to undercut those that play by the rules.

It gets worse. In some industries, like agriculture, mandating the use of E-Verify would actually reverse the polarity of the magnet, shipping millions of jobs overseas. In agriculture where 75 percent of the jobs are filled by undocumented immigrants, E-Verify would decimate the agricultural economy, and as we have learned over the years, the increase in wages necessary to get U.S. workers to go to the fields as migrant workers would hike production costs so high that U.S. food products would no longer be competitive with imported products. The end result would be the closure of America's farms, a less secure America, and the mass offshoring of millions and millions of U.S. jobs, including all the upstream and downstream jobs that are created and supported by our agriculture industry.

The jobs magnet that draws people to this country, a sign of economic prosperity and opportunity, would be reversed, repelling businesses and entrepreneurs from investing in our country and contributing to our economic recovery.

I am pleased to have these witnesses before us today because I expect that we will hear about ongoing efforts to improve the accuracy of E-Verify. I also expect, however, that we will hear about serious challenges that remain.

One issue of great concern during this period of economic recovery and high unemployment is the E-Verify error rate, which has

directly led to tens of thousands of U.S. citizens and employed authorized noncitizens to improperly lose their jobs. Based on an analysis of USCIS data, the National Immigration Law Center estimates in their submitted testimony that mandating E-Verify for all employers would jeopardize the jobs of about 1.2 million American citizens and work-authorized nonimmigrants. I would ask unanimous consent, Mr. Chairman, to enter that statement into the record.

Mr. GALLEGLY. Without objection.

[The information referred to follows:]

**Written Statement of Tyler Moran
Policy Director, National Immigration Law Center**

**House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement**

Hearing on: "E-Verify- Preserving Jobs for American Workers"

February 10, 2011

The National Immigration Law Center (NILC) is a nonpartisan national legal advocacy organization that works to advance and promote the rights of low-income immigrants and their family members. Since its inception in 1979, NILC has earned a national reputation as a leading expert on the intersection of immigration law and the employment rights of low-income immigrants. NILC's extensive knowledge of the complex interplay between immigrants' legal status and their rights under U.S. employment laws is an important resource for immigrant rights coalitions and community groups, as well as national advocacy groups, policymakers, attorneys and legal aid groups, workers' rights advocates, labor unions, government agencies, and the media. NILC has analyzed and advocated for improvements of E-Verify since it was first implemented in 1997 as the Basic Pilot program, and has extensive experience assisting immigrant advocates, attorneys, unions and other worker advocates in responding to problems with the program as it affects workers – immigrants and U.S.-born alike.

Overview

Making E-Verify mandatory without broader reform to our immigration system will drive down the wages and working conditions of *all* workers. Expanding the program is not the key to ending the employment of unauthorized workers. E-Verify—and any immigration enforcement-only policy—will not address the economic incentive that employers have to hire undocumented workers. Expanding E-Verify will also have severe repercussions for our economy and workforce.

Mandatory E-Verify has been part of every immigration reform bill since 2005, and NILC has worked on a bi-partisan basis to craft proposals that ensure due process and privacy protections for all workers.¹ The key to every effort, however, has been to pair E-Verify with a path to legal status for undocumented immigrants. Mandatory E-Verify without creating a fully legal labor force will set the program up for failure and exacerbate our current economic challenges. The unintended consequences of implementing the program will be grave, sending more workers and jobs into the underground economy, while other jobs go overseas. States, localities, and the federal government will lose out on tax revenue, and unscrupulous employers will have *more tools* to coerce and control workers. Instead of layering this program on top of a broken immigration system, we need to fix the system and ensure that *all* workers are protected.

NILC believes the key to good jobs for all workers is (1) reforming our immigration laws in a comprehensive and realistic way, that also includes strengthening our labor, employment, and civil rights laws, and (2) vigorously enforcing these laws. Protecting the rights of all workers in this way will strengthen our economy. Mandatory E-Verify will do the opposite.

¹ See, for example, Electronic Employment Verification Systems and Comprehensive Immigration Reform Legislative Priorities (NILC, April 2007), http://www.nilc.org/immsemplymnt/cir/eevs_legpriorities_2007-04-01.pdf.

E-Verify will not change the fact that undocumented workers are a core part of the U.S. economy

There are currently 8 million undocumented workers in the country representing 5.2 percent of the U.S. labor force.² Our economy is highly dependent upon low-wage, low-skill labor provided by undocumented workers and our country would face significant economic consequences if undocumented workers were to suddenly leave the workforce. For example, California, Texas and New Jersey account for approximately 25 percent of U.S. Gross Domestic Product. In those states, undocumented immigrants account for about 9 percent of the work force. Removing undocumented workers from these states—virtually overnight—from the above ground workforce would “deal a staggering blow” to one quarter of the U.S. economy.³

U.S. workers in certain industries would be particularly affected. Between 50 and 75 percent of the U.S. agricultural labor force is comprised of unauthorized workers.⁴ If these workers left the industry, it would increase production costs and prices and result in the mass off-shoring of millions of U.S. jobs. The U.S. Department of Agriculture reports that for every on-farm job there are about 3.1 “upstream” and “downstream” jobs in America—jobs that support and are created by the growing of agricultural products.⁵ The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country. In other words, for each undocumented farm worker we deport, we are essentially deporting the jobs of three American workers.

Throughout American history, immigrants have been scapegoated in tough economic times as taking jobs away from American workers. And while it’s popular—even easy—to blame immigrants, the facts indicate a different reality. With unemployment hovering at 9 percent, and industries like construction facing a 20 percent unemployment rate,⁶ people are frustrated and are looking for someone to blame. But there is no statistically significant relationship between unemployment and recent immigration.⁷ In fact, unemployment rates among native-born workers are actually lower in areas with higher levels of immigration, because spending by immigrants stimulates the economy and creates additional jobs.

Policymakers have asserted that if we deport all undocumented workers that we can simply move Americans into those jobs.⁸ But this oversimplification fails to grasp a general understanding of the labor market. Immigrants and native-born workers with similar educational attainment and experience possess unique skills that lead them to specialize in different occupations. Bottom line – immigrant workers and native-born workers are “imperfect substitutes.”⁹

² Jeffrey Passell and D’Vera Cohn, *Unauthorized Immigrant Population: National and State Trends*, 2010 (Pew Hispanic Center, Feb. 1, 2011), <http://pewhispanic.org/files/reports/133.pdf>, pp. 17.

³ Lee Hockstader, “Illegal Immigrants: Here to Stay,” *The Washington Post*, Feb. 1, 2011, <http://voices.washingtonpost.com/postpartisan/2011/02/illegal-immigrants-here-to-stay.html>.

⁴ Dan Zak, “Stephen Colbert, in GOP Pundit Character, Testifies on Immigration in D.C.,” *The Washington Post*, Sept. 25, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/09/24/AR2010092402734.html.

⁵ Dan Griswold, *ICE Worksite Enforcement – Up to the Job?: Testimony Before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, U.S. House of Representatives* (Cato Institute, Jan. 26, 2011), www.cato.org/pub_display.php?pub_id=12730.

⁶ *The Construction Industry in 2011* (Aronson Blogs, Jan. 11, 2011), <http://www.aronsonblogs.com/cisg/?p=76>.

⁷ *Immigration and Native-Born Unemployment Across Racial/Ethnic Groups: Untying the Knot, Part II of II*

(Immigration Policy Center, Rob Paral and Associates, May 2009),

www.immigrationpolicy.org/sites/default/files/docs/Part%202%20-%20Unemployment%20Race%20Disconnect%2005-19-09.pdf, pp. 3–5.

⁸ Letter to U.S. House of Representatives Democratic colleagues from Lamar Smith, Feb. 4, 2010.

⁹ Giovanni Peri and Chad Sparber, *Task Specialization, Immigration and Wages* (University of California, Davis and NBER and Colgate University, Jan. 2009), http://www.econ.ucdavis.edu/faculty/gperi/publications/peri_sparber_main_appendix_final.pdf, p. 2.

Making E-Verify mandatory will have a devastating impact on our economy.

Undocumented workers are not going to leave the country simply because Congress makes it harder for them to work here. It is clear that undocumented immigrants fill a niche in our economy and are here to stay, despite imposition of a verification system. And because these workers are a central part of our economy, employers will use any means necessary to keep them, including moving into the underground economy, misclassifying workers as independent contractors, and simply not participating in any employment verification system.¹⁰ In analyzing a 2008 bill that would have made E-Verify mandatory (without also providing a way for unauthorized workers to become work-authorized) the Congressional Budget Office (CBO) found that it would decrease federal revenue by more than \$17.3 billion over ten years—because it would increase the number of employers and workers who resort to the black market, outside of the tax system.¹¹

Arizona, the first state to make E-Verify mandatory for all employers in 2008, provides a window into the economic consequences of implementing the program with undocumented workers in the labor force. In 2008, the first year the law was in effect, income tax collection dropped 13 percent from the year before. Sales taxes, however, only dropped by 2.5 percent for food and 6.8 percent for clothing. The conclusion was that workers weren't paying income taxes, but were still earning money to spend—meaning that the underground economy was growing.¹² This loss in tax revenue was happening at a time when the state was facing a \$3 billion budget gap.

Employers who don't move into the underground economy may simply not use or misuse the system because they want to keep their workforce. Though Arizona employers made 1.3 million new hires in the fiscal year that ended in September 2009 and were required by state law to check all of them via E-Verify, they actually checked only 730,000 of them—or slightly more than half.¹³ U.S. Immigration and Customs Enforcement (ICE) officials also report that unscrupulous employers in Arizona have learned that E-Verify's photo-matching tool (which is used to confirm workers' identities through a photo comparison) accepts only two documents, and therefore they ask employees whom they suspect are not work-authorized to provide some other identity document that the photo-matching tool does not accept.¹⁴

Mandatory E-Verify will lower wages and working conditions for all workers

E-Verify will not create jobs for American workers. In fact, without creating a fully legal workforce, it will simply force undocumented workers into the underground economy because the economic incentive for businesses to keep immigrant workers far exceeds the cost of complying with immigration, labor, or

¹⁰ See Jim McTague, "The Underground Economy: Illegal Immigrants and Others Working Off the Books Cost the U.S. Hundreds of Billions of Dollars in Unpaid Taxes," *The Wall Street Journal Classroom Edition*, April 2005, http://wsjclassroom.com/archive/05apr/econ_underground.htm; Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation* (Yale Law Journal, 103 Yale L.J. 2179, May 1994), www.wiego.org/papers/FoolImmigrantWorkers.pdf.

¹¹ Letter to Rep. John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

¹² Daniel Gonzalez, "Illegal Workers Manage to Skirt Arizona Employer-Sanctions Law: Borrowed Identities, Cash Pay Fuel an Underground Economy," *The Arizona Republic*, Nov. 30, 2008.

¹³ Jalma Berry, "Most Arizona Employers Aren't Using E-Verify," *The Arizona Republic*, July 28, 2010, www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html.

¹⁴ Richard M. Stana, *Report to the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives: Employment Verification, Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Dec. 2010, GAO-11-146), www.gao.gov/new.items/d11146.pdf, p. 22.

employment laws.¹⁵

Sometimes, fact mirrors fiction. For workers in the underground economy, the working conditions are abysmal and akin to those in the early 20th century novel *The Jungle*. By moving underground, lawbreaking flourishes and there is a parallel labor system created where there is no overtime, no breaks, underpayment of wages, and unsafe working conditions. And when workers are off the books, they are stripped of the “entire package of social insurance programs that helped lay the basis for a broad middle class in the country,” including workers’ compensation, Social Security, minimum wage, and paid time off.¹⁶

As history has shown, a large underground economy hurts the above-ground workforces as well. American workers have to compete against easily-exploited undocumented workers who are forced to accept lower wages and substandard working conditions in order to remain employed. When some workers are easy to exploit, the conditions of all workers suffer because of “race to the bottom” competition and because opportunities for collective action by workers are undermined.¹⁷

E-Verify error rates will cause American workers to lose their jobs

While the much-discussed E-Verify error rates have improved since the program was implemented in 1997, there is still significant cause for concern. In its current form, 97.4 percent of workers are immediately confirmed as work authorized.¹⁸ As a statistic, this may sound accurate, but the actual numbers of workers affected is concerning—particularly when national unemployment hovers at 9 percent and so many Americans are looking for work. We can’t afford to have one person denied employment because of government error.

Using Westat’s statistical model, approximately 0.8 percent of tentative nonconfirmations – or TNCs – are issued in error.¹⁹ Since there were 16 million E-Verify queries by employers in fiscal year 2010, 128,000 workers had to go to a government agency to fix a database error or lose their jobs.²⁰ Of the 0.8

¹⁵ See, for example, Jenny Schulz, *Grappling with a Meaty Issue: IIRIRA’s Effect on Immigrants in the Meatpacking Industry* (Gender Race & Just. 137, 145-46, 1998) and Stephanie E. Tanger, *Enforcing Corporate Responsibility for Violations of Workplace Immigration Laws: The Case of Meatpacking* (Harvard Latino Law Review, Vol. 9, 2006), <http://www.law.harvard.edu/students/orgs/ltr/vol9/tanger.pdf>.

¹⁶ James A. Parrot, *Testimony Before the New York State Senate Standing Committee on Labor: Public Hearing on Employee Misclassification in New York’s Underground Economy* (Fiscal Policy Institutes, Jan. 13, 2010), http://www.fiscalpolicy.org/FPI_Testimony_MisclassificationStateSenate.pdf.

¹⁷ See, for example, Amy M. Traub, *Principles for an Immigration Policy to Strengthen & Expand the American Middle Class: 2007 Edition* (Drum Major Institute for Public Policy, 2007), available at <http://drummajorinstitute.org/immigration/>; Jennifer Gordon, *Testimony before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, U.S. House of Representatives* (Fordham University School of Law, June 21, 2005).

¹⁸ See Stana, *supra* note 14.

¹⁹ Employers receive a “tentative nonconfirmation” notice-or TNC-from either SSA or DHS when the agencies are unable to automatically confirm a worker’s employment eligibility. A “tentative nonconfirmation” notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency. For erroneous TNC rate, see *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 117.

²⁰ There were approximately 16 million E-Verify queries in fiscal year 2010. See *E-Verify Gets High Marks from Employers in Customer Satisfaction Survey* (U.S. Citizenship and Immigration Services, Jan. 18, 2011), www.uscis.gov/portal/site/uscis/menuitem.5a19bb95919135e66f614176543f6d1a/?vgnextoid=af6adb46adba9d210VgnVCM100000082ca60aRCRD&vgnextchannel=a2dd6d26d17df110VgnVCM10000004718190aRCRD. Approximately 0.8 percent of work-authorized individuals receive a TNC in error. See Westat, *supra* note 19. The 128,000 figure was arrived at by multiplying these two numbers.

percent of workers who received a TNC in error, 0.3 percent²¹ were able to correct the issue and keep their job—meaning 0.5 percent of all workers receive a *final* nonconfirmation in error. A final nonconfirmation obligates the employer to fire the worker or risk being liable for immigration violations.²² This means that in fiscal year 2010 approximately 80,000 workers likely received erroneous findings from the system and may have lost their jobs as a result.²³

For example –

- *A U.S. citizen born in Florida was hired for a good-paying telecommunications position in October 2010. After hire, she was run through E-Verify and received a TNC. Her employer did not sit down with her to explain to her what a TNC means, nor to explain any of her rights. The worker went to her local SSA office and to try and resolve the situation, but due to agency paperwork errors, she could not resolve the issues. She tried to communicate this to the employer, but she ultimately received an FNC and was fired. After her termination, she has gone to great lengths to try and correct this error, but has been unable to do so. She was unemployed for over 3 months, including over the Christmas holiday, but recently accepted a new lower-paid position.*²⁴
- *A U.S. citizen and former captain in the U.S. Navy with 34 years of service and a history of having maintained high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy.*²⁵
- *A U.S. citizen applied for a position with a temporary agency in California, only to be turned away because E-Verify was unable to confirm her work authorization. The employer did not advise her of her right to contest the finding and violated the law by asking her to show additional documents. She was unemployed for over four months without health insurance and was diagnosed with a serious illness during that time.*²⁶

If use of E-Verify were to become mandatory, using Westat's statistical model, about 1.2 million workers would have to contact a government agency or risk losing their jobs²⁷ and about 770,000

²¹ *Statistics and Reports* (U.S. Citizenship and Immigration Services, Feb. 4, 2011), <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b2ac89243c6a7543f6d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD>.

²² 8 USC §1324a note.

²³ There were approximately 16 million E-Verify queries in fiscal year 2010. See U.S. Citizenship and Immigration Services *supra* note 20. Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. (0.8 percent receive an *erroneous* TNC, and 0.3 percent are able to correct their TNC. This results in 0.5 percent of individuals receiving an erroneous TNC that could not be corrected and therefore became an erroneous final nonconfirmation.) The 80,000 figure was arrived at by multiplying these two numbers.

²⁴ Jessica St. Fleur, *Written Statement for the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement: Hearing on E-Verify: Preserving Jobs for American Workers*, Feb. 10, 2011.

²⁵ Account related at a Jan. 24, 2009, town hall meeting in Ashtabula, OH, sponsored by Building Unity in the Community and billed as "Why We Need Comprehensive Immigration Reform."

²⁶ Summary of charge filed with the Dept. of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices in 2008.

²⁷ About 0.8 percent of workers receive an *erroneous* tentative nonconfirmation, or "TNC." Westat, *supra* note 19, p. 117. There are currently about 154,287,000 million workers in the U.S. The 1.2 million figure was arrived at by multiplying these two numbers.

workers would likely lose their jobs.²⁸ These numbers, however, are likely underestimates. As discussed above, Westat uses a statistical model to determine error rates versus actual experiences of employers. Employers that audit their own E-Verify data report higher error rates than federal government estimates. For example, when Los Angeles County audited its use of E-Verify for county workers, it found that 2.0 to 2.7 percent of its E-Verify findings from the Social Security Administration (SSA) were erroneous in 2008-09.²⁹

Mandatory E-Verify for all workers: estimated error rates

Source of estimate	Erroneous TNC rate	# of workers affected
2009 Westat report	0.8%	1.2 million
2008 Intel corporation data ³⁰	12%	18.5 million
2008-2009 LA County data	2.0%-2.7%	3 million – 4.1 million

The error rates affect all workers, but Westat found that they have a discriminatory impact on lawful foreign-born workers. Westat's 2009 report found the erroneous TNC rate for foreign-born workers was 20 times higher than that of U.S.-born workers.³¹ As described in the section below, receipt of an erroneous TNC puts an enormous burden on the worker and can result in loss of wages to challenge the error, adverse action by employers, and loss of employment. The impact of having to fix government database errors is significant. In fact, GAO called it "formidable."³²

When workers receive a TNC notice, they often have to take unpaid time off from work to follow up with SSA, which may take more than one trip. In fiscal year 2009, 22 percent of workers spent more than \$50 to correct database errors and 13 percent spent more than \$100.³³ Challenging a TNC at a local SSA office may take more than one trip, and in 2009, the waiting times for SSA office visits were 61 percent longer than they were in 2002. During the period March 1, 2009 through April 30, 2010, about 3.1 million visitors waited more than 1 hour for service, and of those visitors, over 330,000 waited more than 2 hours. Further, in fiscal year 2009, about 3.3 million visitors left a field office without receiving service.³⁴ American Council on International Personnel members report that corrections at SSA usually take in excess of 90 days, and that employees must wait four or more hours per trip, with repeated trips to SSA frequently required to get their records corrected.³⁵

²⁸ Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. See note 23, *supra*. There are currently 154,287,000 million workers in the U.S. The 771,435 figure was arrived at by multiplying 154,287,000 million by the 0.5 erroneous final nonconfirmation rate.

²⁹ Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), <http://www.migrationpolicy.org/pubs/E-Verify-Insight.pdf>.

³⁰ Intel Corporation, "Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended)," Aug. 8, 2008.

³¹ Westat *supra* note 19, p. xxxv.

³² Stana, *supra* note 14, p. 34.

³³ Westat *supra* note 19, pp. 203-204.

³⁴ *Customer Waiting Times in the Social Security Administration's Field Offices* (Social Security Administration Office of the Inspector General, Oct. 2010), <http://www.socialsecurity.gov/oig/ADOBEPDF/A-04-10-11034.pdf>, p. 3.

³⁵ American Council on International Personnel, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," August 11, 2008.

E-Verify will undermine businesses ability to create new jobs

Federal Reserve officials stated in December 2010 that progress toward cutting unemployment remained “disappointingly slow”³⁶ and that “it would take four to five more years for the job market to normalize fully.”³⁷ According to Tom Donohue, president and CEO of the U.S. Chamber of Commerce, government regulation is a primary barrier to businesses ability to grow jobs and businesses are already struggling with a “tsunami” of regulations that are “depriving our economic system of the needed oxygen to grow and expand.”³⁸ Businesses need to hire U.S. workers to grow the economy. If businesses are forced to divert scarce resources to implementing and maintaining E-Verify, it will take away from their ability to create new jobs and revenue.

The biggest impact of making E-Verify mandatory will be on small businesses that employ over 50 percent of the U.S. workforce and have generated 64 percent of net new jobs over the last 15 years.³⁹ Most small businesses in the country are not enrolled in E-Verify and current users are predominately large corporations.⁴⁰ In a survey of employers who currently do not use E-Verify, 25 percent of small employers said that they were not enrolled due to lack of resources and 10 percent said that they lacked a computer with an Internet connection or had a slow connection.⁴¹ The fiscal impact on small businesses using E-Verify is significant. According to data compiled by Bloomberg, if use of E-Verify were mandatory in fiscal year 2010, it would have cost small businesses \$2.6 billion.⁴² These costs handicap their ability to hire new workers.

The following quotes from small business owners highlight the concerns with mandatory use of E-Verify:

- *Arizona small business owner Mike Castillo states that “the program isn’t user-friendly for small-business owners.” He recently tried to hire a part-time worker, but a technical glitch that took days to fix made it difficult. “If you don’t have the luxury of a human-resources staff, E-Verify takes time away from your core business,” he said.*⁴³
- *One small business in Maryland has estimated that it would cost approximately \$27,000 for the company to use E-Verify for one year,⁴⁴ thereby handicapping the owner’s ability to hire new workers.*
- *One employer in a national focus group noted, “There are many small employers that still exist without any type of computers in use—forcing them to purchase a computer and pay for monthly Internet charges could be a hardship.”*⁴⁵

³⁶ Courtney Schlisserman, “Employers in 2010 Announced Fewest U.S. Job Cuts in 13 Years,” *Bloomberg*, Jan. 5, 2011, www.bloomberg.com/news/2011-01-05/employers-in-2010-announced-fewest-u-s-job-cuts-in-13-years.html.

³⁷ Scott Lanman, “Bernanke Sees Slow Drop in Unemployment Amid Recovery,” *Bloomberg*, Jan. 7, 2011, www.bloomberg.com/news/2011-01-07/bernanke-sees-slow-drop-in-joblessness-even-with-growth-pickup.html, emphasis added.

³⁸ Thomas Donohue, *The Regulatory Tsunami: How a Tidal Wave of Regulations Is Drowning America* (U.S. Chamber of Commerce, Oct. 7, 2010), www.uschamber.com/press/speeches/2010/regulatory-tsunami-how-tidal-wave-regulations-drowning-america, emphasis added.

³⁹ *How Important are Small Businesses to the U.S. Economy?* (U.S. Small Business Association, Office of Advocacy), <http://www.sba.gov/advocacy/7495/8420>.

⁴⁰ Although 89 percent of businesses in the U.S. are small employers (with 2-14 employees), only 8 percent of E-Verify users are small businesses. See *The Practices and Opinions of Employers Who Do Not Participate in E-Verify* (Westat, Dec. 2010), <http://www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf>, p. 29.

⁴¹ *Id.* p. 25.

⁴² Jason Arvello, “‘Free’ E-Verify May Cost Small Businesses \$2.6 billion: Insight,” *Bloomberg*, Jan. 28, 2011.

⁴³ See Berry, *supra* note 13.

⁴⁴ *Chamber of Commerce of the USA v. Chertoff*, No. 08-CV-3444-AW (D.Md.).

⁴⁵ See Westat *supra* note 40, p. 40.

- In commenting on a Florida bill to require all employers to use E-Verify, Rick Roth, owner of Roth Farms, said that the policy would “bankrupt farmers.”⁴⁶

Small businesses create two out of every three new jobs each year.⁴⁷ At a time when we need these businesses to grow and hire new workers, it is critical that they are not mandated with additional requirements like E-Verify that divert resources.

Employer misuse will increase if E-Verify is made mandatory

Employer non-compliance with E-Verify rules directly impacts job stability and job quality. Employer noncompliance with the program’s rules is extremely high. For example, over 66 percent of employers took adverse actions against workers receiving a TNC.⁴⁸ Actions include prohibiting workers for whom they had received a TNC from working; restricting such workers’ work assignments; and delaying job training for such workers.⁴⁹ And, at least 57 percent of employers using E-Verify violate the program’s rules by using it to prescreen workers.⁵⁰ When workers are prescreened and not offered a job, it took them at least three weeks to find other employment.⁵¹

Although required by law to do so, employers do not always notify workers of a TNC. Workers who do not contest database errors lose their jobs. In fiscal year 2009, 42 percent of workers report that they were not informed by their employer of a TNC, resulting in the denial of their right to contest the finding.⁵² A survey of 376 immigrant workers in Arizona found that 33.5 percent had been fired, apparently after receiving an E-Verify TNC, but that *none* had been notified by employers that they had received a TNC or given information to appeal the finding.⁵³

It is anticipated that employer misuse will only increase in a mandatory system. Current E-Verify users are disproportionately large businesses and federal contractors, and most users that have enrolled in the system have chosen to do so on a voluntary basis — all factors that make them *more likely* than a “typical” U.S. employer to approve of the system and use it successfully. Noncompliance with program rules would almost certainly increase if all employers were required to use the system. In Arizona, the first state to make E-Verify mandatory, employers are less compliant with E-Verify procedures than other E-Verify employers.⁵⁴ The likely reason is that, unlike most E-Verify users, most Arizona employers did not volunteer to use the program.

The real solution to improving our economy and strengthening American jobs

Making E-Verify mandatory for all employers will not create jobs and will result in poorer working conditions and the loss of jobs for American workers. At minimum, for expansion of E-Verify to be considered, the following steps must be taken –

⁴⁶ John Lantigua, “Big foes await gun, E-Verify bills,” *The Palm Beach Post*, Jan. 22, 2011, <http://www.palmbeachpost.com/news/big-foes-await-gun-e-verify-bills-1203265.html>

⁴⁷ See Small Business Association, *supra* note 39.

⁴⁸ Westat *supra* note 19, p. 157. Thirty-seven percent of employers self-reported that they took adverse actions against workers receiving a TNC, and workers reported that an additional 29 percent of employers took adverse action against them, with a total of over 66 percent of employers take adverse action.

⁴⁹ Westat, *supra* note 19, pp. 157, 204.

⁵⁰ *Id.* at 149

⁵¹ *Id.* at 140

⁵² *Id.* at pp. 154, 199

⁵³ Caroline Isaacs, *Sanctioning Arizona: The Hidden Impacts of Arizona’s Employer Sanctions Law* (Washington, DC: American Friends Service Committee, 2009), www.afsc.org/tucson/ht/a/GetDocumentAction/i/74700.

⁵⁴ Westat, *supra* note 19, p. 237.

1. **Reform our immigration system to provide a path to citizenship for the current undocumented population.** Any mandatory E-Verify proposal should only be considered in the context of a broader reform of our immigration system. According to the AFL-CIO, legalization is an important worker protection and that legalizing immigrants “benefits all workers.”⁵⁵ Not only will it benefit workers, but it will give a much-needed boost to our economy. Immigration reform that includes a legalization program would increase U.S. GDP by at least 0.84 percent, which translates into \$1.5 trillion to the nation’s economy over ten years. This is compared to a deportation-only policy which would result in the loss of \$2.6 trillion over 10 years.⁵⁶
2. **Prevent unscrupulous employers from using immigration law to avoid their obligations under labor law.** Under current law, employers seek out and hire undocumented workers to exploit them for their labor, and then threaten them with deportation when they exercise their labor rights. The employer pays no penalty for the labor violations. Holding employers liable for these labor law violations, and preventing them from using immigration law to “deport their problem” will reduce the economic incentive to seek out these vulnerable workers. It will also prevent the churning of the workforce that undermines U.S. jobs. Legislation like the POWER Act (S. 3207) does just that. It lessens the incentives for employers to use threats of immigration enforcement as a means to avoid compliance with labor laws and helps create safe workplaces for all workers.

Conclusion

Making E-Verify mandatory outside of broader reform of our immigration system undermines American jobs and will ultimately impose new burdens on our economy, workers and businesses. We have been trying an “immigration enforcement-only approach” for at least two decades now, and it has not worked. We need enforcement of labor, employment and civil rights laws, not the current churning of the workforce, where undocumented workers are preferred over documented workers because they are easier to hire and fire. That only results in further downward pressure on wages and working conditions of all U.S. workers.

⁵⁵*Responsible Reform of Immigration Laws Must Protect All Workers in the U.S.* (AFL-CIO, March. 1, 2006), <http://www.aflcio.org/aboutus/thisiswhatwearefor/ccouncil/cc02272006c.cfm>.

⁵⁶*The Economic Benefits of Comprehensive Immigration Reform* (Center for American Progress, Jan. 14, 2010), http://www.americanprogress.org/issues/2010/01/pdf/cir_factsheet.pdf.

Ms. LOFGREN. Today’s hearing is E-Verify: Preserving Jobs for American Workers. But until the problems are fixed and until we fix our broken immigration system more generally, the statement is simply untrue.

Mr. Chairman, I thank you for recognizing me for my opening statement and yield back.

Mr. GALLEGLY. Thanks to the gentlelady.

At this time, I would yield to the Chairman of the full Committee, my good friend, Lamar Smith.

Mr. SMITH. Thank you, Mr. Chairman.

With unemployment over 9 percent now for 21 months, jobs are scarce and families are worried. According to the Pew Hispanic Center, 7 million people are working in the U.S. illegally. These jobs should go to legal workers.

One effective program to help ensure jobs are reserved for citizens and legal workers is E-Verify. It is an electronic employment eligibility verification system run by U.S. Citizenship and Immigration Services in conjunction with the Social Security Administration. Through E-Verify, the Social Security numbers and alien identification numbers of new hires are checked against Social Security Administration and Department of Homeland Security databases in order to help employers determine who is eligible to work in the U.S.

I have used the program, frankly, repeatedly to ensure that all staff members in my office are eligible to work in the U.S., as all Members of Congress are required to do. It is free, quick, and easy to use.

I am aware of criticisms of E-Verify, some legitimate and most not. But the fact remains that E-Verify is a very effective tool for employers who want to hire legal workers.

Perhaps the most valid criticism of E-Verify is the identity theft loophole. Specifically, if an employee provides an employer with a stolen Social Security number and matching identification information, E-Verify will determine that the Social Security number is one that is work-eligible.

USCIS has taken steps to help close the ID theft loophole. For instance, they have instituted the photo-matching tool. This allows an employer to view a picture of the employee from a green card and employment authorization document or a passport to determine that the employee is in fact the person to whom the Social Security number or alien identification number was issued. I am interested in hearing what USCIS has to say today about further improvements for the identity theft loophole and expansion of the photo-match tool.

Also, it is critical that DHS and SSA work together to investigate any suspicious overuse of Social Security numbers through E-Verify.

One issue regarding the identity theft loophole that I hope Ms. Bertucci will address was noted by a 2009 Westat study on E-Verify. The study stated that 3.3 percent of all E-Verify queries are for unauthorized workers and just over half of those are actually found to be work-authorized. Now, this figure is often cited by opponents to the program. However, it is important that Westat says they estimated this percentage based on their assumptions of the number of illegal immigrants in the workforce. It was not based on the discovery of any illegal immigrant individuals actually in the workforce. So I would caution against using this number.

Studies by Westat and USCIS show that E-Verify's work eligibility confirmation rates continue to improve as the system is upgraded. Last year's USCIS data shows that 98.3 percent of employ-

ees were confirmed as work-authorized within 24 hours. And a 2009 Westat report found that those eligible to work are immediately confirmed 99.5 percent of the time.

Nearly 250,000 businesses now use E-Verify and over 1,300 more sign up for it each week.

I supported the previous Administration's attempts to expand the number of employers using E-Verify, and they did so through outreach to businesses, but they also did so by mandating certain Federal contractors and others use E-Verify.

Today I hope to hear how the current Administration plans to expand those requirements. With 26 million Americans unemployed or underemployed, expanding E-Verify would help open up jobs that they need.

Thank you, Mr. Chairman, and I will yield back the balance of my time.

Mr. GALLEGLY. I would yield to the Ranking Member of the full Committee, my good friend, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gallegly. I wasn't at the first Subcommittee meeting hearing, and so I didn't have a chance to put in my congratulations to your Chairmanship.

We are here faced with a very curious problem. In a way it is simple, but then in a way there are some problems and complexities here.

Now, we meet in the midst of record deportations from the United States for the last 2 years. Those numbers have been going up. And there is no one that I know of that would argue that we should stop enforcing our immigration laws. But enforcement without reform will promote a race to the bottom that can only hurt the American worker in the end.

And that is why I ask unanimous consent to put in the labor movement framework for comprehensive immigration reform by two large unions, AFL-CIO and Change to Win. These two unions represent over 16 million workers, more than 60 unions, and have opposed an enforcement-only approach and have called for real solutions that can fix our broken immigration system.

[The information referred to follows:]

The Labor Movement's Framework for Comprehensive Immigration Reform

AFL-CIO and Change to Win

APRIL 2009

IMMIGRATION REFORM is a component of a shared prosperity agenda that focuses on improving productivity and quality; limiting wage competition; strengthening labor standards, especially the freedom of workers to form unions and bargain collectively; and providing social safety nets and high-quality lifelong education and training for workers and their families. To achieve this goal, immigration reform must fully protect U.S. workers, reduce the exploitation of immigrant workers and reduce employers' incentive to hire undocumented workers rather than U.S. workers. The most effective way to do that is for all workers—immigrant and native-born—to have full and complete access to the protection of labor, health and safety and other laws. Comprehensive immigration reform must complement a strong, well-resourced and effective labor standards enforcement initiative that prioritizes workers' rights and workplace protections. This approach will ensure that immigration does not depress wages and working conditions or encourage marginal low-wage industries that depend heavily on substandard wages, benefits and working conditions.

This approach to immigration reform has five major interconnected pieces:

1. An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need;
2. A secure and effective worker authorization mechanism;
3. Rational operational control of the border;
4. Adjustment of status for the current undocumented population; and
5. Improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

Family reunification is an important goal of immigration policy and it is in the national interest for it to remain that way. First, families strongly influence individual and national welfare. Families historically have facilitated the assimilation of immigrants into American life. Second, the failure to allow family reunification creates strong pressures for unauthorized immigration, as happened with the IRCA's amnesty provisions. Third, families are the most basic learning institutions, teaching children values as well as skills to succeed in school, society and at work. Finally, families are important economic units that provide valuable sources of entrepreneurship, job training, support for members who are unemployed and information and networking for better labor market information.

The long-term solution to uncontrolled immigration is to stop promoting failed globalization policies and encourage just and humane economic integration, which will eliminate the enormous social and economic inequalities at both national and international levels. U.S. immigration policy should consider the effects of immigration reforms on immigrant source countries, especially Mexico. It is in our national interest for Mexico to be a prosperous and democratic country able to provide good jobs for most of its adult population, thereby ameliorating strong pressures for emigration. Much of the emigration from Mexico in recent years resulted from the disruption caused by NAFTA, which displaced millions of Mexicans from subsistence agriculture and enterprises that could not compete in a global market. Thus, an essential component of the long-term solution is a fair trade and globalization model that uplifts all workers, promotes the creation of free trade unions around the world, ensures the enforcement of labor rights and guarantees core labor protections for all workers.

Future Flow

One of the great failures of our current employment-based immigration system is that the level of legal work-based immigration is set arbitrarily by Congress as a product of political compromise—without regard to real labor market needs—and it is rarely updated to reflect changing circumstances or conditions. This failure has allowed unscrupulous employers to manipulate the system to the detriment of workers and reputable employers alike. The system for allocating employment visas—both temporary and permanent—should be depoliticized and placed in the hands of an independent commission that can assess labor market needs on an ongoing basis and—based on a methodology approved by Congress—determine the number of foreign workers to be admitted for employment purposes, based on labor market needs. In designing the new system, and establishing the methodology to be used for assessing labor shortages, the commission will be required to examine the impact of immigration on the economy, wages, the workforce and business.

Worker Authorization Mechanism

The current system of regulating the employment of unauthorized workers is defunct, ineffective and has failed to curtail illegal immigration. A secure and effective worker authorization mechanism is one that determines employment authorization accurately while providing maximum protection for workers, contains sufficient due process and privacy protections and prevents discrimination. The verification process must be taken out of the hands of employers, and the mechanism must rely on secure identification methodology. Employers that fail to use the system properly must face strict liability, including significant fines and penalties regardless of the immigration status of their workers.

Rational Operational Control of Borders

A new immigration system must include rational control of our borders. Border security is clearly very important, but not sufficient, since 40 to 45 percent of unauthorized immigrants did not cross the border unlawfully but overstayed visas. Border controls, therefore, must be supplemented by effective work authorization and other components of this framework. An “enforcement-only” policy will not work. Practical border controls balance border enforcement with the other components of this framework and with the

reality that more than 30 million valid visitors cross our borders each year. Enforcement, therefore, should respect the dignity and rights of our visitors, as well as residents in border communities. In addition, enforcement authorities must understand that they need cooperation from communities along the border. Border enforcement is likely to be most effective when it focuses on criminal elements and engages immigrants and border community residents in the enforcement effort. Similarly, border enforcement is most effective when it is left to trained professional border patrol agents and not vigilantes or local law enforcement officials—who require cooperation from immigrants to enforce state and local laws.

Adjustment of Status for the Current Undocumented Population

Immigration reform must include adjustment of status for the current undocumented population. Rounding up and deporting the 12 million or more immigrants who are unlawfully present in the United States may make for a good sound bite, but it is not a realistic solution. And if these immigrants are not given adequate incentive to “come out of the shadows” to adjust their status, we will continue to have a large pool of unauthorized workers whom employers will continue to exploit to drive down wages and other standards to the detriment of *all* workers. Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents, and in which employers often misclassify workers as independent contractors, thus evading payroll taxes and depriving federal, state and local governments of additional revenue. An inclusive, practical and swift adjustment-of-status program will raise labor standards for all workers. The adjustment process must be rational, reasonable and accessible, and it must be designed to ensure it will not encourage future illegal immigration.

Improvement, Not Expansion, of Temporary Worker Programs

The United States must improve the administration of existing temporary worker programs, but should not adopt a new “indentured” or “guest worker” initiative. Our country has long recognized that it is not good policy for a democracy to admit large numbers of workers with limited civil and employment rights.

Mr. CONYERS. So I hope that the discussion this morning in Judiciary turns around the two twin methods that many are recommending. Enforcement, yes, but that we have got to also talk about the real solutions of reform. Enforcement and reform is what I am going to be looking for in our discussion this morning.

You see, more and more are beginning to recognize that an enforcement-only approach does not diminish the demand for willing workers. They could care less about enforcement. They all know

they could be busted. And you know, as I travel across the country, Ranking Member Lofgren, every hotel I go in, there are people that if you wanted to bet whether they had legal status in this country or not, I would be willing to take that bet because I suspect not. And so we have a certain, sometimes, hypocrisy going on. Some of the very people that want tough enforcement are the ones that are benefitting from this workforce that is here knowing that if they get turned in or turned over to law enforcement or ICE, they are on the way out.

And so I just want us to think about what are we thinking about and what are we talking about when we raise the issue of reform because enforcement only will not diminish the demand for willing workers, but merely push the undocumented further into the shadows which then makes them more susceptible to abuse and exploitation which drives down wages and working conditions for other workers, citizen and noncitizen alike. That is why the unions want us to look more at the reform part of this immigration challenge.

That is one of the many dangers of an over-rush to E-Verify mandatory for all workers because without fixing our immigration system, the problem is going to still continue. We know the Congressional Budget Office estimates that E-Verify, without broader immigration reform, will suck \$17.3 billion annually out of our Federal tax revenues because millions of workers are currently on the books and paying payroll taxes, and what will they do? They will simply go off the books and into the underground economy which empowers bad employers and endangers everyone else.

We take notice of the fact that immigrants often fill critical gaps in our own workforce. Can we be candid here this morning? There are too many jobs that Americans are unwilling to take. Period. They do not want the work. It is a lousy job and it doesn't pay on top of it. And there is where the market for illegal immigrant labor comes in.

In the 111th Congress, we found out at a hearing on agricultural workers that experts on all sides of the debate agreed that Americans are not returning to the fields to work. Who doesn't know that? Nobody wants that stoop labor out on farms under tough conditions.

We learned that the increase in wages needed to get our workers to perform seasonal agricultural work would put American farmers out of business. We can't afford them. And a story told by one of our Republicans' own witness demonstrated that economic harm that would be done if we followed their enforcement-only approach.

A grower who established a program to attract American workers to plant and harvest sweet potatoes had to close the program down because it just wouldn't be profitable. Imagine the damage we would cause if our entire agriculture industry, millions of jobs were offshored because it could no longer compete with international growers. That is a possibility if we make E-Verify mandatory for all employers, including those in the agriculture industry. It would be everybody. Who has got an answer for that? I hope that is raised in this discussion.

And I will put the rest of my statement in the record, Mr. Chairman, and thank you for your indulgence.

Mr. GALLEGLY. Without objection, the statement will be put into the record in its entirety.

[The information referred to follows:]

Statement of Congressman John Conyers, Jr.
Hearing on “E-Verify – Preserving Jobs for American Workers”
Subcommittee on Immigration Policy and Enforcement
February 10, 2011 at 10:00am
2141 Rayburn

I was unable to attend the first hearing that was held by this Subcommittee, so I would like to begin by congratulating Mr. Gallegly for his new role as Chairman of the Immigration Subcommittee and to recognize Ranking Member Lofgren for her thoughtful and steadfast leadership as Chair of this subcommittee during the last two congresses.

Before we hear from our witnesses today, I would like to make two brief points.

First, no one argues that we should stop enforcing our immigration laws. But enforcement without reform will promote a race to the bottom that only hurts the American worker. That is why AFL-CIO and Change to Win, representing over 16 million workers and more than 60 unions, have opposed an enforcement-only approach and have called for real solutions that fix our broken immigration system.

These organizations recognize that an enforcement-only approach does not diminish the demand for willing workers. Rather, it simply pushes undocumented workers further into the shadows. This makes them more susceptible to abuse and exploitation, which drives down wages and working conditions for all workers — citizen and non-citizen alike.

That is one of the many dangers for American workers if we rush to make E-Verify mandatory for all employers, without also fixing our immigration system. We know that the Congressional Budget Office estimates that doing E-Verify without broader immigration reform will suck \$17.3 billion out of our federal tax revenues. That is because millions of workers who are currently on-the-books and paying payroll taxes will simply go off-the-books into the underground economy, which empowers bad employers and endangers everyone.

Second, I would note that immigrants often fill critical gaps in our own workforce. Even in this difficult economy, there are some instances in which there are simply no Americans willing to take some of these jobs.

Last Congress, we learned at a hearing on agricultural workers that experts on all sides of the debate agree that Americans are not returning to the fields to work. We learned that the increase in wages needed to get American workers to perform seasonal agricultural work would put American farmers out of business—a story told by the Republicans’ own witness demonstrated the economic harm that would be done if we followed their enforcement-only approach.

A grower who established a program to attract American workers to plant and harvest sweet potatoes had to close down the program because it just could not be profitable. Imagine the damage we would cause if our entire agricultural industry — and the millions of jobs held by American workers that are sustained by that industry — was off-shored because it could no longer compete with international growers.

That is a real possibility if we make E-Verify mandatory for all employers, including those in the agriculture industry. If our goal is to preserve jobs for American workers, rather than shutting down industries and shipping jobs overseas, doing E-Verify alone is not the answer.

As we confront the complex issues facing our broken immigration system, we need to look at the issues facing all workers in the United States and to consider how ignoring the systemic problems will affect our economy and our communities.

I thank the witnesses for their attendance today and look forward to your testimony.

Mr. GALLEGLY. I appreciate the gentleman's comments.

And I want to welcome our two very distinguished witnesses today. And for the record, our witnesses' written statements will be entered into the record in its entirety.

Our first witness, Theresa Bertucci, currently serves as the Associate Director of the Enterprise Services Directorate for the U.S. Citizenship and Immigration Services, known as USCIS. Welcome, Ms. Bertucci, and we will hear your testimony at this point.

TESTIMONY OF THERESA C. BERTUCCI, ASSOCIATE DIRECTOR, ENTERPRISE SERVICES DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Ms. BERTUCCI. Thank you. Chairman Smith, Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee.

Mr. GALLEGLY. Ms. Bertucci, can we just hit that button please? Thank you.

Ms. BERTUCCI. It is on. I am sorry. Can you hear me now? Okay. Sorry.

Chairman Smith, Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee, I am grateful for the opportunity to discuss our shared goal of effective employment eligibility verification through the E-Verify program.

I am pleased to report that the E-Verify program continues to grow at a steady pace. As of today, more than 246,000 employers are enrolled, representing more than 850,000 worksites, or 11 percent of employers. This 11 percent figure compares the 850,000 worksites to the 7.7 million business establishments from the U.S. Economic Census in 2007. More than 1,300 new employers enroll each week. During fiscal year 2010, 16.4 million queries were run with more than 5.3 million new queries this fiscal year.

E-Verify's accuracy rate is improving. Overall data mismatches have been reduced by 5.4 percent since 2007 due to enhancements to the system.

We appreciate the work undertaken by GAO in addressing the success of the program and the challenges confronting E-Verify. We are actively working to implement its important recommendations to improve the system.

Strengthening the integrity of the system is one of our primary goals. While E-Verify alone cannot detect all instances of identity fraud, we are working to improve the ability to detect fraud and significant steps have been taken. E-Verify expanded photographic verification to include U.S. passports and passport cards, employment authorization documents, and permanent resident cards. Of the 400,000 matches of DHS photo documents, the system has detected 4,000 mismatches.

Since June 2010, E-Verify has used a commercial database to validate the legitimacy of employers using the system.

The program has also increased monitoring and compliance of employer transactions. In fiscal year 2010, we issued 16,125 compliance actions with over 9,600 actions to date this fiscal year.

USCIS also remains dedicated to protecting employees' rights. E-Verify implemented an employee hotline that offers information and assistance on the program, and callers can also use the hotline

to lodge complaints about possible misuse or discrimination. The hotline handled over 15,000 calls last year.

USCIS and DHS Civil Rights/Civil Liberties have produced educational training videos that provide information to employees and employers about their rights and their responsibilities.

In the spring of 2011, we plan to pilot the E-Verify Self Check feature. Self Check will be a free web-based service that allows workers to verify their Government records before they are hired, which serves to both empower employees with information and to help further reduce data mismatches. Self Check will have identity assurance protections built into the system.

USCIS is dedicated to and fully engaged in the improvement of E-Verify so its use can increase. To achieve that goal on an ever-broadening scale, additional challenges remain. For example, the E-Verify system is predicated on an employer's Internet access. The ability of some sectors of the market to access the system will need to be addressed. As use increases, Federal agencies involved in the program will need to expand their capacity to administer the daily results of the query process, including the process of providing assistance to employees who assert system error.

The increased use of E-Verify will also require USCIS to improve its information technology infrastructure and analytical tools allowing for increased monitoring and compliance. The program has made great strides in becoming a fast, easy-to-use, and more accurate tool that helps employers maintain a legal workforce and comply with our Nation's immigration laws.

We are poised to meet the challenge that accompanies the growth of E-Verify and the needs of our customers, both businesses and employees. On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, we appreciate the Congress' continued strong support of the program.

Thank you for the opportunity to testify before the Subcommittee. I look forward to your questions.

[The prepared statement of Ms. Bertucci follows:]

PREPARED STATEMENT OF THERESA C. BERTUCCI



U.S. Citizenship and Immigration Services

WRITTEN TESTIMONY

OF

THERESA C. BERTUCCI
ASSOCIATE DIRECTOR
ENTERPRISE SERVICES DIRECTORATE
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

FOR A HEARING ON

E-VERIFY: PRESERVING JOBS FOR AMERICAN WORKERS

BEFORE

THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

February 10, 2011

10:00 a.m.

2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

INTRODUCTION

Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss our shared goals of protecting American workers and providing effective mechanisms for the vast majority of employers who want to play by the rules to verify employment eligibility. I am Theresa Bertucci, as the Associate Director for the Enterprise Services Directorate of U.S. Citizenship and Immigration Services (USCIS), I am responsible for overseeing the E-Verify program and I welcome this opportunity to explain how the program works, as well as USCIS's efforts to increase its accuracy and efficiency, maintain its integrity, and expand its use.

E-Verify operates on the foundation that United States law prohibits employers from knowingly hiring or employing unauthorized aliens. E-Verify is a smart, simple and effective tool that reflects our continued commitment to working with employers to maintain a legal workforce. The program, formerly known as "Basic Pilot" or the "Employment Eligibility Verification System," is a fast, free, and easy-to-use Internet-based system that allows employers to electronically verify employment eligibility. The program compares employee information taken from the Employment Eligibility Verification Form (Form I-9) with more than 455 million Social Security Administration (SSA) records, more than 122 million Department of State passport records, and more than 80 million Department of Homeland Security (DHS) immigration records. Under federal law the program is voluntary for employers except for participation by federal agencies and the legislative branch. Many federal contractors also participate in E-Verify as a condition of contracts. E-Verify is available in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

I am pleased to report that the E-Verify Program has grown at a steady pace over the past several years. As of today, more than 246,000 employers are enrolled, representing more than 850,000 locations. More than 1,300 new employers enroll each week and the number of employers enrolled in E-Verify has more than doubled each fiscal year since 2007.

The volume of queries per fiscal year has increased from 3.27 million in FY 2007 to 16.4 million in FY 2010. In FY 2011 to date, employers have run more than 5.3 million queries. As of January 2011, federal contractors who use E-Verify total more than 33,000; 21,360 contractors indicate that they are covered by the Federal Acquisition Regulation (FAR) clause in their contracts requiring them to use E-Verify.

Despite this significant growth, it is important to put these numbers into context. There are approximately 7.7 million employers operating throughout our country, and the percentage of these employers that use E-Verify is just 11%.

The E-Verify program continues to improve its accuracy and ensure customer satisfaction though we acknowledge that we must do more. In its December 2010 report, the Government Accountability Office (GAO) reported a 5.4 percent decrease in E-Verify

mismatches since FY 2007. FY 2010 statistics indicate 98.3 percent of employees were automatically confirmed as authorized to work either instantly or within 24 hours, requiring no employee or employer action. Similarly, in 2009 USCIS's independent evaluator published a study examining the overall accuracy of E-Verify in 2008 and found E-Verify was accurate 96 percent of the time, a significant improvement over earlier performance. The study also found that employers received from E-Verify a correct initial finding for authorized workers over 99 percent of the time.

Employers recently scored E-Verify 82 out of a possible 100 on the Customer Satisfaction Index in a 2010 American Customer Satisfaction Index Survey, well above the latest federal government satisfaction index of 69 percent. Fifty-nine percent of employers who responded self-identified as small business owners or employers. Other key findings of this survey revealed that the overwhelming majority of E-Verify users were likely to recommend E-Verify to other employers, were confident in the accuracy of E-Verify, and were likely to continue using the program.¹

Of paramount concern to USCIS is making improvements to E-Verify to ensure that American workers are also protected while more and more employers use the program. USCIS has launched three initiatives to improve our efforts to protect workers, including increased collaboration with offices within DHS and other federal partners as well as expanded access to information about E-Verify for employees whose employers use it.

The E-Verify program has made great strides in becoming a faster, easier to use, and a more accurate tool. USCIS appreciates the Committee's strong support of E-Verify, and hope that any changes sought to the program will be considered as a part of comprehensive reform to our immigration laws that restores responsibility and accountability to the immigration system.

HOW E-VERIFY WORKS

To use E-Verify, employers must sign a Memorandum of Understanding with DHS, take the E-Verify tutorial, and pass a mastery test. After registering with E-Verify, employers can verify the employment authorization and identity of all newly hired employees within three business days of hire. Employers are not permitted to screen job applicants or verify the employment eligibility of pre-existing employees. There is one exception: federal contractors that have the FAR E-Verify clause in their contracts may elect to verify only new hires and existing employees working on a federal contract or they may verify their entire workforce.

Participation in E-Verify requires employers to enter information from the Form I-9 (Employment Eligibility Verification form), including the employee name, date of birth,

¹ It is noteworthy that E-Verify is often deemed to have erred when a new hire receives a TNC and is subsequently determined to be work authorized. Yet, the TNC may have been caused by a variety of reasons independent of E-Verify's accuracy. For example, through no fault of E-Verify, various errors—from employer typos to employees incorrectly filling out the Form I-9—may lead to a TNC. In addition, an employee who neglected to update his or her SSA records upon changing his or her name after marriage could receive a TNC even though he or she is work authorized. More generally, although our goal is to minimize TNCs of work authorized employees, it bears noting that the E-Verify process was designed as a two-step one precisely so that initial TNC data mismatches would not result in inaccurate final verification.

Social Security number and citizenship status, and then submit a query. Within seconds, most employers receive a response regarding the work authorization status of the employee.

SSA Verification

For all new hires, E-Verify transmits, in a secure manner, the new hire's Social Security number, name, citizenship status, and date of birth to SSA, which compares the data to information contained in its NUMIDENT database. For those employees whose work authorization status can be verified automatically (i.e., employees whose information matches the SSA record and their citizenship status is confirmed), the process ends here with an "Employment Authorized" case result returned to the employer within seconds.

For the minority of cases when the SSA record does not match the data submitted by the employer, E-Verify issues a SSA TNC to the employer. When a SSA TNC is issued, the employer must notify the employee and give the employee the opportunity to contest the finding. The pre-populated Notice to Employee of Tentative Nonconfirmation provides the employee with important information and instructions related to the TNC and how to resolve it. This notice is available in English, Spanish and seven additional languages. To resolve the SSA TNC, the employee must visit an SSA field office, or in cases involving a citizenship information mismatch, may choose to call DHS as described further below.

If the employee chooses to contest the SSA TNC, he or she has eight federal government work days to visit an SSA field office to begin the process of resolving the TNC. When a discrepancy is resolved, SSA will update the information and E-Verify will issue an "employment authorized" response. Until the SSA TNC is resolved, the employee must be allowed to continue working and cannot be terminated or have any other adverse action taken against him or her because of the SSA TNC. If the employee fails to contact SSA within the eight-day period, E-Verify issues an "SSA Final Nonconfirmation." At this point, the employer may terminate the new employee. The employer must notify DHS if it continues to employ an employee after a final nonconfirmation. Currently, employees who believe the SSA Final Nonconfirmation was issued in error because they allege that they are work-authorized are directed to call the Verification Division's employee hotline. Employers of such employees may also call the Verification Division's customer service hotline in this instance.

DHS Verification

Certain cases for U.S. citizen² and non-citizen workers do require an additional data check with DHS. If the information does not match DHS records, it is automatically referred for further verification within DHS. DHS will respond to most cases within 24 hours but has up to three days to either verify work authorization or issue a DHS TNC.

In addition, a photograph matching step may be prompted if an employee has presented an employer with a U.S. Passport, an Employment Authorization Document, or a

² TNCs related to passport data require DHS action. TNCs based upon a citizenship mismatch at SSA may also be resolved by DHS.

Permanent Resident Card as proof of identity and employment authorization during the I-9 process. This step requires the employer to compare the electronic version of the photograph on the E-Verify screen with the photograph on the document the employee presented. If the photographs do not match – it must be the same photo, not just pictures of the same individual – the employer indicates “No” in E-Verify and the case will result in a DHS TNC. Although not part of the E-Verify system, Employers are also expected to compare the person presenting the document to the photo on the document when examining the document presented for the form I-9.

As with the SSA TNC process described above, if the employer receives a DHS TNC, the employer must notify the employee with the pre-populated Notice to Employee of Tentative Non-Confirmation and provide him or her with an opportunity to contest the finding. An employee has eight federal government work days to call a toll-free number (which provides support in ten different languages) to begin contesting a DHS TNC finding. Until the DHS TNC is resolved, the employer cannot take any adverse action against the employee, including termination or suspension, or a change in working conditions.

Once the necessary information from the employee has been received (typically through the employee’s submission of documentation), USCIS personnel work to resolve the case, typically within three business days of receipt, by issuing either an “Employment Authorized” case result or a “DHS Final Nonconfirmation” case result. If the employee receives a DHS Final Nonconfirmation, the employer may terminate the new employee.

For all employees that have received a Final Nonconfirmation, the employer must notify DHS if it continues to employ an employee. Should the employer fail to notify DHS of the continued employment, the employer would be subject to civil penalties. As with an SSA Final Nonconfirmation, employees who believe the DHS Final Nonconfirmation was issued in error because they allege that they are work-authorized are directed to call the Verification Division’s employee hotline. Employers of such employees may also call the Verification Division’s customer service hotline in this instance.

INCREASING E-VERIFY ACCURACY AND EFFICIENCY

USCIS Has Taken Steps to Increase the Accuracy and Efficiency of E-Verify

In its December 2010 report, GAO recognized the steps USCIS has taken to improve the accuracy of E-Verify, including expanding the number of databases queried through E-Verify and instituting quality control procedures.

In FY 2008, USCIS added naturalization data to E-Verify and reduced by 35 percent the number of mismatches for naturalized citizens. Furthermore, USCIS established a process for employees who receive SSA mismatches related to their citizenship status; these employees can call USCIS and contest the finding rather than visit SSA. Between October 2009 and August 2010, almost 94 percent of employees who received a SSA TNC for a citizenship mismatch chose to call USCIS, thus reducing walk-ins to SSA field offices.

In February 2009, USCIS began incorporating passport data in the E-Verify system to further reduce mismatches for naturalized and derivative U.S. citizens and to combat identify fraud as described below. Because of this enhancement, in FY 2010 more than 81,000 queries that previously would have received an incorrect mismatch were automatically verified as employment authorized.

USCIS has improved the integrity of E-Verify by verifying the legitimacy of employers using the system. To ensure that companies that enroll in E-Verify are legal and active corporate entities, in June 2010 USCIS began using an independent information provider with a database of 177 million business records evidencing corporate status. USCIS plans to expand the use of commercial data to verify the legitimacy of employers enrolled prior to June 2010.

To increase accuracy and efficiency, USCIS has made enhancements to the E-Verify web interface. In June 2010, E-Verify launched improved navigational tools to enhance ease-of-use, minimize errors, and bolster compliance with clear terms of use. The new web interface includes such important features as:

- Automated reminders for employers when Employment Authorization Documents (EADs) are expiring;
- Enhanced security features, such as masking Social Security numbers, to further protect privacy;
- Streamlined tutorials for employers; and,
- Improved text and instructions to help employers avoid data entry errors.

USCIS has taken several steps to address mismatches related to inaccurate or inconsistent personal information in government databases. USCIS has included language in *The Guide to Naturalization and the U.S. Citizenship Welcome Packet* to inform individuals of the importance of updating their Social Security record, including citizenship status and any name changes. On its web site and in USCIS-produced videos, USCIS provides information and instructions on how to resolve name-related mismatches.

E-Verify's Accuracy Will Continue to Increase

USCIS has achieved success in increasing the accuracy of E-Verify and is dedicated to further system improvements.

Consistent with the GAO's recommendations, USCIS is currently working with an independent research firm to study the impact of name and date-of-birth mismatches on TNCs. This study, "Evaluation of the Accuracy of E-Verify Findings," will be completed in the third quarter of FY 2011. USCIS plans to use the findings from the study to develop better name-matching algorithms and provide enhanced assistance to users.

In the spring of 2011, USCIS plans to pilot the E-Verify "Self Check" process to provide workers with the opportunity to verify and correct their records. Self Check will be a free, web-based service that will allow individuals to check their work authorization status before they are hired and facilitate correction of potential errors in federal databases that provide input into the E-Verify process. If a mismatch occurs, the user

will be notified of the mismatch and given directions on how to correct the issue (e.g., visit an SSA field office or contact DHS). To ensure that the correct person is accessing Self Check, users will be required to authenticate their identity by entering personal information and, subsequently, responding correctly to system-generated knowledge based questions. This identity assurance process is provided by a third party and is intended to prevent unauthorized access to an individual's records.

MAINTAINING THE INTEGRITY OF E-VERIFY

An effective electronic employment authorization verification program protects authorized workers and provides employers with a tool to ensure a lawful workforce. However, to be effective, the program must also include robust tools to detect and deter employer and employee fraud and misuse, including discriminatory use of E-Verify.

USCIS Will Continue to Combat Identity Fraud

E-Verify is one tool the government uses to combat identity fraud. While E-Verify alone cannot detect all instances of identity fraud, USCIS is working to improve the program's ability to detect identity fraud and significant improvements already have been implemented.

To help combat identity fraud, USCIS has continued to expand the type of documents for which E-Verify provides biometric (i.e., photographic) confirmation. In September 2010, USCIS added U.S. Passport and U.S. Passport Card photographs to the E-Verify database. As with other photographic matching documents in the E-Verify database (Employment Authorization Documents and Permanent Resident Cards), the addition of U.S. Passport photographs allows the employer to compare the photograph displayed in E-Verify with the photograph on the employee's U.S. Passport.

The E-Verify program monitors the use of multiple identities and social security numbers, and USCIS is exploring ways to identify and lock these identities in cases where fraud likely exists to prevent future use in E-Verify.

USCIS Monitors Misuse of E-Verify and Has Increased Staffing Levels to Strengthen its Monitoring and Compliance Program

In 2007, USCIS established the Monitoring and Compliance Branch in 2007 to monitor E-Verify use to ensure employers are using the system properly. Then in June 2009, USCIS launched the Compliance Tracking and Management IT System that provides a secure means of tracking and managing incidents of suspected E-Verify user abuse, fraud, misuse, and discrimination.

USCIS uses algorithms to detect patterns of potential program misuse and takes appropriate action when instances of potential misuse are detected. For example, USCIS monitors and commences compliance actions in response to the following behaviors: multiple uses of a Social Security number; aberrant non-use of E-Verify; failure to contest TNCs; failure to verify within three days of hire, and impermissible verification of existing employees.

Since the Monitoring and Compliance Branch was created, it has issued 16,125 compliance letters and follow-up phone calls in response to potential system misuse. We have recently stepped up our efforts and have issued 7,461 compliance letters and follow-up phone calls in the first quarter of FY 2011. These follow-up letters and calls could lead to termination of E-Verify accounts or referrals to Immigration and Customs Enforcement (ICE) or the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

USCIS has increased its staffing dedicated to E-Verify monitoring and compliance. In FY 2011, USCIS is dedicating 80 staff in Lincoln, Nebraska to this program responsibility, in addition to the current staff of 35 in Buffalo, New York. The Lincoln staff will include analysts, customer support personnel, and individuals dedicated to public outreach.

USCIS works with ICE to ensure that employers comply with E-Verify rules and procedures. In December 2008, USCIS and ICE signed an agreement for sharing E-Verify program information. Under the agreement, USCIS may refer to ICE significant cases that involve misuse, abuse, or fraudulent use of E-Verify at critical infrastructure sites; violations regarding the employment of unauthorized aliens; continued employment of workers who have received Final Nonconfirmations; failure to use E-Verify for all employees; and other possible criminal activity. Under the agreement, USCIS provides E-Verify transaction data to ICE to support ICE investigations and ICE also shares significant data with USCIS from information discovered during I-9 audits of E-Verify employers.

Improvements Have Been Made to Protect Employee Rights

USCIS is deeply committed to ensuring that employees' rights are protected. In order to fulfill that commitment, USCIS works closely with the Department of Justice (DOJ) Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) and DHS's Office for Civil Rights and Civil Liberties (DHS CRCL).

Although USCIS' independent evaluator found that E-Verify participation reduces discrimination against foreign-born workers in the hiring process, the evaluation also identified a number of challenges, particularly those facing employees whose employers use E-Verify. Some employers that use E-Verify do not always follow program rules designed to protect the rights of U.S. citizens and work authorized aliens. This can lead participating employers to terminate, fail to hire, or otherwise take wrongful action against lawful workers.

To address these challenges, in March 2010, USCIS unveiled three initiatives designed to protect employees' rights. First, USCIS entered into a new agreement with OSC to streamline the process for addressing potential cases of discrimination and E-Verify misuse. The new agreement establishes protocols between USCIS and OSC for referring matters that fall within the agencies' respective jurisdictions. To date, OSC has referred 88 instances of suspected employer misuse or abuse to USCIS, and we have followed up in each of those instances where applicable.

Second, USCIS implemented a hotline for employees in April 2010 to provide them with better customer service. The hotline offers employees information about E-Verify and assistance in completing the Form I-9. Callers can also use the hotline to issue complaints about E-Verify misuse or discrimination. The hotline is primarily available in English and Spanish, but it is also accessible in 32 additional languages through interpretation services. OSC has a long established hotline for employees and has experienced an increase in calls related to E-Verify in recent years from both employees and employers.

Third, USCIS and DHS CRCL produced two new, educational training videos. The Employee Rights and Responsibilities video available in English and Spanish, emphasizes the rights of employees when employers use E-Verify. The video describes an employee's right to contest an initial mismatch without suffering any adverse job action, such as loss of pay or training, or termination or suspension. The video also provides important contact information for employees to obtain assistance and to file complaints alleging unlawful discrimination. The video also highlights the employee's responsibility to timely contact DHS or SSA to contest a TNC. The Employer Responsibilities and Workers Rights video, aimed at employers, makes clear the employer's responsibility to use E-Verify properly and in a non-discriminatory manner. The video highlights areas where potential problems may arise, including the issuance and resolution of initial mismatches.

USCIS and its federal partners provide additional resources to ensure employees are well-informed of their rights. USCIS, DHS CRCL, and OSC have developed brochures and posters to help employees better understand their rights and guide employers on their responsibilities when using E-Verify. These materials are available in nine foreign languages. USCIS provides TNC notices and referrals in eight foreign languages. Employers who use E-Verify are required to display an OSC poster that advises workers of their rights and provides OSC contact information.

INCREASING THE USE OF E-VERIFY

The continued success of E-Verify, including the steady increase in its use, depends not only on enhancing its accuracy and efficiency as described above, but also on increasing public awareness of its significant benefits and ease of use.

Over the past two years USCIS has developed a robust customer service and outreach staff to ensure that the public's questions and issues are addressed quickly and professionally. In FY 2010, USCIS participated in more than 400 presentations, conferences, and live webinars about E-Verify. USCIS regularly places advertisements in English and Spanish about E-Verify in media markets across the country. USCIS works with the U.S. Small Business Administration (SBA) to improve outreach to small businesses by jointly conducting events, disseminating E-Verify materials to SBA stakeholders, and advertising in small business publications.

USCIS plans a more robust marketing and outreach effort in the coming months in order to increase the use of E-Verify.

GAO'S RECENT REPORT AND RECOMMENDATIONS

GAO's December 2010 Report

GAO reviewed the progress that USCIS and SSA have made in the administration of the E-Verify program since GAO testified on the subject in June 2008. GAO examined, among other system issues, E-Verify's accuracy and vulnerability to fraud; USCIS's actions to address E-Verify's ability to monitor and ensure employer compliance with the program's policies and procedures; concerns about privacy and discrimination; and steps USCIS and SSA have taken to prepare for the possible implementation of a mandatory E-Verify system.

GAO found that, among other things, USCIS has (1) taken several steps to improve the accuracy of the E-Verify system, including expanding the number of databases queried through E-Verify and instituting quality control procedures; (2) taken steps to minimize the risks associated with the processing through E-Verify of new employees' personal information; (3) improved its ability to monitor and ensure employer compliance with E-Verify policies and procedures; and (4) along with SSA, taken actions to prepare for the possible implementation of a mandatory E-Verify system.

In addition to citing USCIS's success in reducing mismatch rates, ensure employer compliance, and establish better safeguards for employees' personal information, GAO identified challenges confronting E-Verify and proposed important recommendations to improve the system.

Addressing the GAO Recommendations

USCIS is encouraged by the GAO's findings and is focused on implementing GAO's recommendations as quickly and efficiently as possible. Some examples follow:

Resolving Erroneous TNCs. To help reduce name-related TNCs, USCIS is already working with an independent research firm to determine the impact of name and date-of-birth mismatches on TNCs. USCIS plans to use this research to develop better name-matching algorithms and provide better assistance to users. USCIS expects the study to be completed in the third quarter of FY 2011. USCIS has included information on *The Guide to Naturalization and U.S. Citizenship Welcome Packet* about the importance of updating personal information, including names, with SSA. USCIS also has provided information to employers about how to enter hyphenated names and complex surnames in the E-Verify system. USCIS has produced a video that informs employees of the most frequent reasons why name-related mismatches occur and provides guidance to employees on how to resolve name-related mismatches.

Improving Compliance Efforts, Including Employer Education. To ensure the USCIS education efforts are targeted most effectively and improve employer compliance with the E-Verify program, USCIS has begun analyzing the results from the mastery test employers take when enrolling in E-Verify. This effort is designed to assess what questions may need to be revised and to determine what instructions and policies may

require greater explanation. This analysis will be an ongoing effort, and USCIS will continue to monitor reports to determine improvements in future releases.

Enhancing Efficiencies to Better Allow Employees to Resolve TNCs. As described above, to ensure that employees have the ability to access and correct inconsistencies in personal information within DHS databases, USCIS plans to launch E-Verify Self Check in March 2011. Self Check will allow individuals to check their own work authorization status against SSA and DHS databases. For USCIS system inconsistencies, USCIS is currently piloting an initiative that will allow employees to make an appointment with a local USCIS office to have their records reviewed and updated if appropriate.

Improving the Accuracy of Government Data. To improve the accuracy of E-Verify data sources, USCIS has created a Database Integrity Unit that is tasked with identifying and facilitating the correction of erroneous information contained in DHS component databases. USCIS will continue to work with internal and external stakeholders to improve quality assurance with respect to source data that USCIS uses to determine employment authorization. In addition, DHS will continue to work closely with its component agencies to ensure that accurate information is transmitted or made available to the E-Verify program and that any inaccuracies in the various systems are corrected.

Decreasing the Potential for Recurrent Mismatches. USCIS is currently in the process of re-engineering its Status Verification System, which is used to track and manage TNCs so that status verifiers can document the basis for their work authorization decisions. The re-engineering is planned to occur in FY 2013. In the meantime, USCIS will implement procedures to address this concern through the use of a comment box and will update standard operating procedures to require this documentation by the end of the second quarter of FY 2011.

Ensuring Future Capacity to Administer Increased Use of E-Verify. The E-Verify program is well-equipped to handle continued expansion. E-Verify currently has the capacity to receive at least 60 million electronic queries annually if all new hires were run through the E-Verify program. USCIS has invested in a dedicated information technology environment to transfer data from E-Verify to SSA to handle increased growth in query volume. To further help ensure continuous service in the future, USCIS expects to execute a service-level agreement with SSA in the near term. The service-level agreement will define the requirements for SSA to establish and maintain the capacity and availability of its system to support E-Verify.

Improving the Ability to Estimate E-Verify Cost and Resource Needs. To ensure that USCIS has a sound basis to make resource-related decisions about the E-Verify program, USCIS is in the final stages of completing a life cycle cost estimate that reflects the four characteristics that GAO identified as ensuring reliability and adherence to best practices, will be comprehensive, well-documented, accurate, and credible.

CONSIDERATIONS RELEVANT TO THE INCREASED USE OF E-VERIFY

As described above, USCIS is dedicated to and fully engaged in the improvement of E-Verify so that its use can increase further. To achieve that goal on an ever-broadening

scale, additional challenges must be met. For example, the E-Verify system is predicated on an employer's web browser access or, alternatively, an employer's ability to contract with a third-party provider who uses the E-Verify system for clients on a fee basis. The ability of some sectors of the market, such as some small businesses, to access the E-Verify system will need to be addressed.

As use of the E-Verify system increases and the status of more and more employees are verified, the federal agencies involved in the E-Verify program may need to expand their capacity to administer the daily query process to address allegations by new employees of errors or employer misuse. The increased use of E-Verify will also require USCIS to improve its information technology infrastructure.

CONCLUSION

USCIS is poised to meet the challenges that accompany the growth of E-Verify and the needs of the customers who use and will use the program to ensure the employment eligibility of their workforce.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, we appreciate Congress's continued strong support of the E-Verify program.

Mr. GALLEGLY. Thank you very much, Ms. Bertucci.

Our second witness is Richard Stana. Mr. Stana serves as Director of Homeland Security and Justice Issues at the GAO and has dedicated 35 years of service to the GAO and has served at headquarters, field, and overseas services and directed reviews on a wide variety of complex and military—both military and domestic. Mr. Stana, welcome.

TESTIMONY OF RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STANA. Thank you, Chairman Gallegly and Ms. Lofgren, for inviting me to testify at this important hearing.

As you know, immigration experts say that the single most important step that could be taken to manage lawful immigration and reduce illegal immigration is to develop an effective worksite enforcement and authorization system.

E-Verify does provide employers with a tool to help identify those who are authorized to work.

Our recent report found that SSA and USCIS have taken some important steps and have improved the program, and yet, significant challenges remain. In my statement this morning, I would like to just highlight three of those issues. And I know that you have my prepared statement and you probably have a copy of our full report. So let me go right into the three areas.

First, let's talk about the TNC's. USCIS has substantially reduced the number of TNC's. Just a few years ago, the TNC level, the tentative nonconfirmation level, stood at about 8 percent, and many of those turned out to be U.S. citizens who were improperly identified as not being work-authorized. That figure has gone down to about 2.6 percent and most recently below 2 percent, although that might be an anomaly. We will wait and see. That was just 1 month's worth of data.

USCIS did this by expanding the number of databases it queries and trying to refine the data through common error searches before they issue a TNC, and that has greatly reduced the number of TNC's.

Now, having said that, TNC's continue to occur for a number of reasons and mainly because the information in the data sets at USCIS, DHS, and SSA have not consistently recorded an individual's name. You might come to the United States with several surnames or be in the United States with several surnames, a hyphenated name, or a long name that was somehow shortened or anglicized. And when you enter data or have data entered into different data sets, the name may be recorded differently and thus create a mismatch and a TNC. There is no law that compels an individual to record information consistently among several data sets, and this is an issue.

So improving Government data sets, improving the information that employees have to help refine the data that they submit, and correcting inaccuracies or inconsistencies in agency data sets is really important to increasing the accuracy of E-Verify determinations. In the short run, it might increase the burden of the agencies, particularly at SSA, but in the long run, it will not only help

with the system, but with respect to SSA, when it comes time to retire and collect your earnings, your system name and earnings records will be ready to go.

The second issue I want to talk about is identity theft and employer misuse. Despite improvements to reduce document fraud, E-Verify still cannot detect the use of eligibility documents that are either someone else's who is work-authorized or somehow the employer may provide a document to the worker to use that is not their own. The exact magnitude of the problem is unknown, but Westat estimated that about 3.4 percent of the confirmations that were issued a few years ago were actually to people who were not work-authorized, but they either used phony documents themselves or were complicit with the employers in gaining work authorization.

USCIS has a photo-matching tool that Ms. Bertucci mentioned. It can currently query for three documents that have photos. But a person can seek and gain work authorization by using any number of 26 documents. So while that has helped, it is not a panacea.

Also, with respect to the photo-matching tool, there have been instances—and we learned about this during our field work in Arizona—where employers have coached workers not to use documents that are part of the photo-matching tool and thus evading that important check. Biometrics might help, but we all know biometrics can be costly to both the Government and to employers, and there are privacy concerns about how much information the Government ought to have in its files that will need to be resolved.

Turning to employer misuse, some employers have limited pay, restricted work assignments, or even terminated employees who received a TNC, and this is wrong. The magnitude is not known. It exists. USCIS cannot determine these things from its data sets, but it needs to be more vigilant. I think USCIS only scans about 2 percent of employers in its nets to try to figure out how much of this abuse is going on. It does not do a 100 percent check. It may be able to do more when this new data system comes up.

My final issue involves resources, and it is a subject that we have all talked about before at one time or another. An effective employment authorization system requires resources to ensure compliance with the system. That is true for E-Verify. It is true for the I-9 system. The resources are not there to do an effective job. USCIS must rely on ICE to investigate, sanction, and seek prosecution, but given ICE's existing priorities and resource constraints, it is limited in its ability to do so. The same limitations would exist if E-Verify were to be made mandatory.

Regarding the onsite checks of employer compliance with E-Verify rules, the so-called misuse or discrimination issue, to our knowledge, USCIS staff has made one site visit as of last August to one employer to check on those issues.

So policy decisions are going to have to be made about how to effect a credible worksite authorization and enforcement program using E-Verify to include the resources that are needed to make it successful, and these policy decisions have yet to be made.

Thank you very much.

[The statement Mr. Stana follows:]

PREPARED STATEMENT OF RICHARD M. STANA

GAO

United States Government Accountability Office

Testimony
Before the Subcommittee on Immigration
Policy and Enforcement, Committee on
the Judiciary, House of Representatives

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EMPLOYMENT VERIFICATION

Federal Agencies Have
Improved E-Verify, but
Significant Challenges
Remain

Statement of Richard M. Stana, Director
Homeland Security and Justice



GAO-11-330T

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to discuss the E-Verify program, which provides employers a tool for verifying an employee's authorization to work in the United States. The opportunity for employment is one of the most powerful magnets attracting immigrants to the United States. According to the Pew Hispanic Center, in early 2009 approximately 11 million unauthorized immigrants were living in the country, and an estimated 7.8 million of them, or about 70 percent, were in the labor force. Congress, the administration, and some states have taken various actions to better ensure that those who work here have appropriate work authorization and to safeguard jobs for authorized employees. Nonetheless, opportunities remain for unscrupulous employers to hire unauthorized workers and for unauthorized workers to fraudulently obtain employment by using borrowed or stolen documents. Immigration experts have noted that deterring illegal immigration requires, among other things, a more reliable employment eligibility verification process and a more robust worksite enforcement capacity.

E-Verify is a free, largely voluntary, Internet-based system operated by the Verification Division of the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) and the Social Security Administration (SSA). The goals of E-Verify are to (1) reduce the employment of individuals unauthorized to work, (2) reduce discrimination, (3) protect employee civil liberties and privacy, and (4) prevent undue burden on employers. Pursuant to a 2007 Office of Management Budget directive, all federal agencies are required to use E-Verify on their new hires and, as of September 2009, certain federal contractors and subcontractors are required to use E-Verify for newly hired employees working in the United States as well as existing employees working directly under the contract. A number of states have also mandated that some or all employers within the state use E-Verify on new hires. From October 2009 through August 2010, E-Verify processed approximately 14.9 million queries from nearly 222,000 employers.

In an August 2005 report and June 2008 testimony on E-Verify, we noted that USCIS faced challenges in detecting identity fraud and ensuring

employer compliance with the program's rules.¹ We highlighted some of the challenges USCIS and SSA faced in reducing instances of erroneous tentative nonconfirmations (TNC), or situations in which work-authorized employees are not automatically confirmed by E-Verify.² We also noted that mandatory implementation of E-Verify would place increased demands on USCIS's and SSA's resources. My comments today are based primarily on a report we issued in December 2010 and provide updates to the challenges we noted in our 2005 report and 2008 testimony.³ My statement, as requested, highlights findings from that report and discusses the extent to which (1) USCIS has reduced the incidence of TNCs and E-Verify's vulnerability to fraud, (2) USCIS has provided safeguards for employees' personal information, and (3) USCIS and SSA have taken steps to prepare for mandatory E-Verify implementation. Our December 2010 report also includes a discussion of the extent to which USCIS has improved its ability to monitor and ensure employer compliance with E-Verify program policies and procedures.

For our report, we analyzed data on the results of E-Verify cases for fiscal year 2009 and interviewed senior E-Verify program officials about their procedures for ensuring quality in the E-Verify transaction database. We determined that the data were sufficiently reliable for the purposes of our report. We reviewed documentation explaining how to resolve TNCs and assist employees with name and citizenship changes. We reviewed USCIS's privacy policy for E-Verify and conducted interviews with privacy officials at USCIS to determine what, if any, challenges exist in resolving TNCs. We assessed USCIS's and SSA's life-cycle cost estimates and SSA's workload estimates, and compared them to characteristics of a reliable cost estimate as defined in GAO's Cost Estimating and Assessment Guide.⁴ We selected

¹ GAO, Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts, GAO-05-513 (Washington, D.C.: Aug. 31, 2005) and GAO, Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System, GAO-08-595T (Washington, D.C.: June 10, 2008).

² We collectively refer to these situations—as well as those in which (1) employers inadvertently make errors in data entry when making E-Verify queries, (2) employees provide inconsistent personal information to government agencies, and (3) government databases contain errors unrelated to an employer's or employee's action—as erroneous TNCs.

³ GAO, Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain, GAO-11-146 (Washington, D.C.: Dec. 17, 2010).

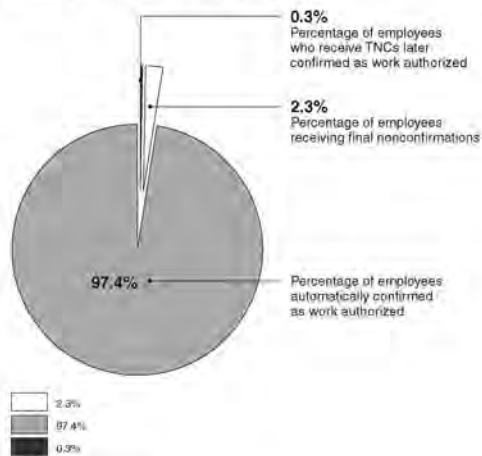
⁴ GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-35P (Washington, D.C.: March 2009), 8-13.

three states for site visits—Colorado, North Carolina, and Arizona—based on, among other reasons, the length of time each state's E-Verify law had been in effect. While the views provided are not generalizable, they provided us with additional perspectives on the benefits and challenges associated with the E-Verify program. More detailed information on our scope and methodology is contained in our December 2010 report. We conducted this work in accordance with generally accepted government auditing standards.

USCIS and SSA Have Reduced TNCs, but the Accuracy of E-Verify Continues to Be Limited by Both Inconsistent Recording of Employees' Names and Fraud

USCIS has reduced TNCs from 8 percent for the period June 2004 through March 2007 to almost 2.6 percent in fiscal year 2009. As shown in figure 1, in fiscal year 2009, about 2.6 percent or over 211,000 of newly hired employees received either a SSA or USCIS TNC, including about 0.3 percent who were determined to be work eligible after they contested a TNC and resolved errors or inaccuracies in their records, and about 2.3 percent, or about 189,000, who received a final nonconfirmation because their employment eligibility status remained unresolved. For the approximately 2.3 percent who received a final nonconfirmation, USCIS was unable to determine how many of these employees (1) were authorized employees who did not take action to resolve a TNC because they were not informed by their employers of their right to contest the TNC, (2) independently decided not to contest the TNC, or (3) were not eligible to work.

Figure 1: E-Verify Results for Fiscal Year 2009



USCIS has reduced TNCs and increased E-Verify accuracy by, among other things, expanding the number of databases that E-Verify can query and instituting quality control procedures to screen for data entry errors. However, erroneous TNCs continue to occur, in part, because of inaccuracies and inconsistencies in how personal information is recorded on employee documents, in government databases, or both. While some actions have been taken to address name-related TNCs, more could be done. Specifically, USCIS could better position employees to avoid an erroneous TNC by disseminating information to employees on the importance of providing consistent name information and how to record their names consistently. In our December 2010 report, we recommended that USCIS disseminate information to employees on the potential for name mismatches to result in erroneous TNCs and how to record their names consistently. USCIS concurred with our recommendation and outlined actions to address it. For example, USCIS commented that in

November 2010 it began to distribute the U.S. Citizenship Welcome Packet at all naturalization ceremonies to advise new citizens to update their records with SSA. USCIS also commented that it has commissioned a study, to be completed in the third quarter of fiscal year 2011, to determine how to enhance its name-matching algorithms. USCIS's actions for reducing the likelihood of name-related erroneous TNCs are useful steps, but they do not fully address the intent of the recommendation because they do not provide specific information to employees on how to prevent a name-related TNC. See our December 2010 report for more details.

In addition, identity fraud remains a challenge because employers may not be able to determine if employees are presenting genuine identity and employment eligibility documents that are borrowed or stolen.⁵ E-Verify also cannot detect cases in which an unscrupulous employer assists unauthorized employees. USCIS has taken actions to address fraud, most notably with the fiscal year 2007 implementation of the photo matching tool for permanent residency cards and employment authorization documents and the September 2010 addition to the matching tool of passport photographs. Although the photo tool has some limitations, it can help reduce some fraud associated with the use of genuine documents in which the original photograph is substituted for another.⁶ To help combat identity fraud, USCIS is also seeking to obtain driver's license data from states and planning to develop a program that would allow victims of identity theft to "lock" their Social Security numbers within E-Verify until they need them to obtain employment authorization.⁷ Combating identity fraud through the use of biometrics, such as through fingerprint or facial recognition, has been included in proposed legislation before Congress as

⁵ GAO has previously reported on the risks associated with the use of fraudulent documents and agencies actions to address them. See GAO, *Border Security: Better Usage of Electronic Passport Security Features Could Improve Fraud Detection*, GAO-10-96 (Washington, D.C.: Jan. 22, 2010), and *State Department: Undercover Tests Show Passport Issuance Process Remains Vulnerable to Fraud*, GAO-10-322T (Washington, D.C.: July 29, 2010).

⁶ According to USCIS, from October 2009 to August 2010, there were 393,574 cases that initiated E-Verify's photo matching tool. Of these cases, employers indicated that 1,569 employees' photos did not match, with one case resulting in a contested TNC. USCIS told us that it is unable to determine what percentage of the remaining 1,568 cases involved identity fraud because they do not have additional information on those cases.

⁷ According to USCIS, a locked Social Security number would halt any attempt by participating E-Verify employers to verify an employee's Social Security number through E-Verify if the employee notifies USCIS that his or her identity has been stolen and can provide supporting documentation to USCIS.

an element of comprehensive immigration reform, but implementing a biometric system has its own set of challenges, including those associated with cost and civil liberties. Resolving these issues will be important if this technology is to be effectively implemented in combating identity fraud in the employment verification process.

An effective employment authorization system requires a credible worksite enforcement program to ensure employer compliance with applicable immigration laws; however USCIS is challenged in ensuring employer compliance with E-Verify requirements for several reasons. For example, USCIS cannot monitor the extent to which employers follow program rules because USCIS does not have a presence in employers' workplaces.⁸ USCIS is further limited by its existing technology infrastructure, which provides limited ability to analyze patterns and trends in the data that could be indicative of employer misuse of E-Verify. USCIS has minimal avenue for recourse if employers do not respond or remedy noncompliant behavior after a contact from USCIS compliance staff because it has limited authority to investigate employer misuse and no authority to impose penalties against such employers, other than terminating those who knowingly use the system for an unauthorized purpose. For enforcement action for violations of immigration laws, USCIS relies on Immigration and Customs Enforcement (ICE) to investigate, sanction, and prosecute employers. However, ICE has reported that it has limited resources to investigate and sanction employers that knowingly hire unauthorized workers or those that knowingly violate E-Verify program rules.⁹ Instead, according to senior ICE officials, ICE agents seek to maximize limited resources by applying risk assessment principles to worksite enforcement cases and focusing on detecting and removing unauthorized workers from critical infrastructure sites.

⁸ Senior E-Verify program officials said they expect improved technology enabling automated analysis of E-Verify data to be implemented by fiscal year 2012.

⁹ In fiscal year 2009 ICE spent 5.2 percent of its 10.4 million agent-reported workload hours on worksite enforcement, issued 52 fines as the result of worksite audits, and made 444 criminal and 1,654 administrative worksite enforcement arrests. Of the 444 criminal arrests in fiscal year 2009, 114 were arrests of employers and management officials and 330 were arrests of workers. As of August 30, 2010, ICE had made 397 criminal arrests—165 of employers and management officials and 232 of workers—and obtained 270 indictments as a result of worksite enforcement-related investigations.

**DHS Has Instituted
Employee Privacy
Protections for E-Verify,
but Resolving Erroneous
TNCs Can Be Challenging**

USCIS has taken actions to institute safeguards for the privacy of personal information for employees who are processed through E-Verify, but has not established mechanisms for employees to identify and access personal information maintained by DHS that may lead to an erroneous TNC, or for E-Verify staff to correct such information. To safeguard the privacy of personal information for employees who are processed through E-Verify, USCIS has addressed the Fair Information Practice Principles, which are the basis for DHS's privacy policy.⁴⁶ For example, USCIS published privacy notices in 2009 and 2010 that defined parameters, including setting limits on DHS's collection and use of personal information for the E-Verify program.

Notwithstanding the efforts made by USCIS to address privacy concerns, employees are limited in their ability to identify and access personal information maintained by DHS that may lead to an erroneous TNC.⁴⁷ In our December 2010 report, we recommended that USCIS develop procedures to enable employees to access personal information and correct inaccuracies or inconsistencies in such information within DHS databases. USCIS concurred and identified steps that it is taking to address this issue, such as developing a pilot program to assist employees receiving TNCs to request a records update, referring individuals who receive a TNC to local USCIS or CBP offices and ports of entry to correct records when inconsistent or inaccurate information is identified, and developing a Self-Check program to allow individuals to check their own work authorization status against SSA and DHS databases prior to applying for a job. However, we do not believe that the steps underway fully address the intent of our recommendation because, among other things, USCIS does not have operating procedures in place for USCIS staff to explain to employees what personal information produced the TNC or what specific steps they should take to correct the information. We encourage USCIS to continue its efforts to develop procedures enabling

⁴⁶ The Fair Information Practice Principles adopted by DHS are a revision of principles, called the Fair Information Practices, first proposed by a U.S. government advisory committee. See Department of Health, Education, and Welfare, *Records, Computers and the Rights of Citizens: Report of the Secretary's Advisory Committee on Automated Personal Data Systems* (July 1973). These principles include Transparency, Individual Participation, Purpose Specification, Data Minimization, Use Limitation, Data Quality and Integrity, Security, and Accountability and Auditing.

⁴⁷ If an employee chooses to contest a TNC, the employer is required to provide the employee a referral letter that identifies which agency an employee needs to visit or call to resolve the TNC and close the case.

employees to access and correct inaccurate and inconsistent personal information in DHS databases.

USCIS and SSA Have Taken Actions to Prepare for Mandatory Implementation of E-Verify, but Face Challenges in Estimating Costs

USCIS and SSA have taken actions to prepare for possible mandatory implementation of E-Verify for all employers nationwide by addressing key practices for effectively managing E-Verify system capacity and availability and coordinating with each other in operating E-Verify. However, USCIS and SSA face challenges in accurately estimating E-Verify costs. Our analysis showed that USCIS's E-Verify estimates partially met three of four characteristics of a reliable cost estimate and minimally met one characteristic.¹³ As a result, we found that USCIS is at increased risk of not making informed investment decisions, understanding system affordability, and developing justifiable budget requests for future E-Verify use and potential mandatory implementation if it. To ensure that USCIS has a sound basis for making decisions about resource investments for E-Verify and securing sufficient resources, in our December 2010 report, we recommended that the Director of USCIS ensure that a life-cycle cost estimate for E-Verify is developed in a manner that reflects the four characteristics of a reliable estimate consistent with best practices. USCIS concurred and senior program officials told us that USCIS, among other things, has contracted with a federally funded research and development center to develop an independent cost estimate of the life-cycle costs of E-Verify to better comply with our cost-estimating guidance.

Our analysis showed that SSA's E-Verify estimates substantially met three of four characteristics of a reliable cost estimate. However, we found that SSA's cost estimates are partially credible because SSA may not be able to provide assurance to USCIS that it can provide the required level of support for E-Verify operations if it experiences cost overruns within any one fiscal year. In our December 2010 report, we recommended that the Commissioner of SSA assess the risk around SSA's E-Verify workload estimate, in accordance with best practices, to ensure that SSA can accurately project costs associated with its E-Verify workload and provide the required level of support to USCIS and E-Verify operations. SSA did not concur, and stated that it assesses the risk around its workload cost

¹³ Our research has determined that a reliable cost estimate should include four characteristics. Specifically, the estimate should be comprehensive, well-documented, accurate, and credible. GAO, *GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-38F (Washington, D.C.: March 2009), 8-13.

estimates and, if E-Verify were to become mandatory, SSA would adapt its budget models and recalculate estimated costs based on the new projected E-Verify workload volume. As discussed in our December 2010 report, SSA does not conduct a risk and uncertainty analysis that uses statistical models to quantitatively determine the extent of variability around its cost estimate or identify the limitations associated with the assumptions used to create the estimate. Thus, we continue to believe that SSA should adopt this best practice for estimating risks to help it reduce the potential for experiencing cost overruns for E-Verify.

Mr. Chairman, this concludes my statement. I will be pleased to respond to any questions you or other members of the subcommittee may have.

For further information regarding this testimony, please contact Richard M. Stana at (202) 612-8777 or stanar@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Evi Rezmovic, Assistant Director; Christine Hanson; Sara Margraf; and Linda Miller. Additionally, key contributors to our December 2010 report include Blake Ainsworth, David Alexander, Tonia Brown, Frances Cook, Marisol Cruz, John de Ferrari, Julian King, Danielle Pakdaman, David Plocher, Karen Richey, Robert Robinson, Douglas Sloane, Stacey Steele, Desiree Cunningham, Vanessa Taylor, Teresa Tucker, and Ashley Vaughan.

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Mr. GALLEGLY. Thank you very much, Mr. Stana.

At this point before we go to questions, I would like to take just a brief break and give the Deputy Chief of the Verification Division at USCIS an opportunity to provide us with a visual demonstration of how E-Verify works. Kathy Lotspeich is our Deputy Chief. Kathy, are you ready?

Ms. LOTSPEICH. I am ready.

So I am just going to run really quickly for you here two cases: one that goes through automatically and one that is issued a tentative nonconfirmation.

So here I am on our home page. I am going to click on “new case.” What the employer does is they enter information from the form I-9. So here on the form I-9, the example I am going to use is someone who attested to be a citizen of the United States.

And I click “continue.” And then it asks me which documents the individual presented, and that will help me then determine what I need to enter into the system. For the demo today, I am going to hit “list B and C documents,” which are typically a driver’s license and a Social Security card. Then I just enter a few data points from the form I-9. I actually do not need to put in their address or anything that is actually on the form I-9. I can just add, for this case, the name, date of birth. We have the citizenship status and the Social Security number. And then I go down and I enter the hire dates. And so for the hire date, I am going to enter today’s date which is February 10, 2011.

I click “continue.” And then here it comes up as employment authorized. And so what the employer does at this point is they can take this case verification number and put it on the form I-9 or they could also print out some of the case details. I am going to select “yes, the person continues to work.” And they could attach that to their form I-9.

And note here when the employer closes a case, they could also select that the case is invalid. So if there was some type of a mistake made—this isn’t a zero sum game—the employer can start the process over again.

I am going to go ahead and close this out.

And up here I could also print this out and attach it to the form I-9.

So now I am going to go ahead and just really quickly show for you another case where the individual gets a tentative nonconfirmation.

So I select “new case.” And again, I am going to attest as a citizen of the United States. “List B and C documents” and again just enter the information and then, as before, enter today’s date.

So now it is asking me to double check the information below. The system knows it is about ready to issue a tentative nonconfirmation but does want to give the employer a second chance at correcting any errors.

I am going to go ahead and select “continue.” And now the system is telling me that I have a tentative nonconfirmation with the Social Security Administration. It tells me that the information does not match, and it stresses that this does not mean that the employee is not authorized to work in the United States. However, there is some additional action required.

And at this point, the employer can give the employee a letter, which we have in Spanish and in English, giving a lot of the information about the employee, why the number did not match, what the employer needs to do, instructions for the employee why they received this notice, the opportunity to contest or not contest, and then information about their rights, and also a number they can call us at E-Verify or the Office of Special Counsel.

And then I will conclude our demonstration at this point. So basically the employee then takes this letter to the Social Security Administration or may call us at the Department of Homeland Security to resolve their case.

Thank you.

Mr. GALLEGLY. Thank you very much, Ms. Lotspeich.

At this point, I would like to ask Ms. Bertucci a couple questions. In your written testimony, you discuss the Monitoring and Compliance Branch which detects potential misuse with E-Verify by employers. I know you have issued 7,461, according to your statement, compliance letters, but what is the outcome of the issuance of these letters? And how many have been ignored? And what are the consequences of ignoring a compliance letter?

Ms. BERTUCCI. Thank you, sir.

The difference in letters issued between what I said in my oral testimony of 9,600 was updated today from the time we submitted my written statement. So that is the difference. First of all, I want to point that out. And that is this present fiscal year. Last year, the number was 16,121.

We really stood up the compliance group at full swing really, I would say, during 2010. We are about to hire even additional people out in our Nebraska office. So we are building up that compliance component.

We send out those letters as the first—we monitor various behaviors by employers—to include not using the system, signing up and not using the system. That is one thing we will monitor. We will monitor multiple uses of SSN's to determine prior to the fixes to the system that Kathy just demonstrated to ensure that it wasn't errors in—typos, frankly, or errors in entering the data. Those are some of the enhancements we did to the system related to that. But more importantly, in case it is something else going on, we will monitor those kinds of behaviors. And there are a number of other behaviors that we will monitor to include an employer running the system against a current employee, which is not allowed. It has to be upon hire and/or not responding to a high number of TNC's possibly that we are not seeing closed out. What is going on at that employee worksite?

So really in the end what we are doing is we are either calling them—so let me be clear that we are either calling them in that 16,000 or 9,600 number or we are sending them a written letter. We are then doing the active reach-back to those employers to see whether it is an education issue or anything else. We have not yet done it, and the end result would be we would terminate their MOU with us on monitoring and compliance. However, if we saw egregious conduct by the employer in any way, shape, or form that we believe is inappropriate, according to our MOU's with ICE and/or DOJ's Office of Special Counsel that has jurisdiction over possible discrimination, we work with those offices as well.

So that is the kind of compliance we are doing today, and our ability—I think Mr. Stana talked to it—is that one of the things we really are trying to do is stand up a better analytical tool to be able to do better monitoring and compliance. Right now, frankly, it is a little clumsy on the basic technology infrastructure that we have today. So we are working to improve that tool hopefully by

later this year. We are going to have a pilot running to do even more analysis of the data.

Mr. GALLEGLY. Have there been any employers prosecuted as a result of misuse?

Ms. BERTUCCI. First of all, we have not really referred anything yet to ICE. Under the MOU, we can. So ICE is out doing their jurisdictional responsibilities, and sometimes, frankly, we will come across or they may come across an employer who also uses the system. So the worksite enforcement and prosecution are on the ICE side of the house.

Mr. GALLEGLY. But we have over 9,000 of these letters that you have mentioned.

Ms. BERTUCCI. Yes.

Mr. GALLEGLY. And out of the 9,000-plus, there really hasn't been any consequence at all, has there?

Ms. BERTUCCI. The system is a voluntary system. To a great extent, we believe the majority of the employers that are using the system are trying to comply with the law and the requirements of our system. So what we are doing is the outreach to ensure is there a training issue, is there a data issue, is it those kinds of things? We do not have enforcement authority within USCIS certainly on a prosecution standpoint. But if there are egregious behaviors that we believe are worthy of referral, then we would refer those to ICE within their own set of priorities for follow-up and possible review.

Mr. GALLEGLY. Obviously, if the program was not voluntary and it was mandatory, the situation and the incentive on the part of the employer would be greatly different. In fact, this program was originally introduced as a mandatory. It was passed out of this Committee and the bill, mandatory. And then when it came back in conference, that is when it got downgraded to something less than what would be effective in my opinion.

My time has expired. I would yield to the gentlelady from California, Ranking Member, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman.

Before my questions, I would like to take care of a few house-keeping items.

First, Congresswoman Sheila Jackson Lee called to let me know that she is Ranking Member on a Subcommittee over at Homeland Security and hopes to get here if that hearing concludes and offers her apologies for the unavoidable absence.

I would also like to ask unanimous consent, Mr. Chairman, to submit statements from the Agricultural Coalition for Immigration Reform, the American Council on International Personnel, the Main Street Alliance for the National Leadership Council, statements from the faith community, including the Catholic Bishops Committee, the American Jewish Committee, Church World Service, Sisters of Mercy, the Unitarian Universalist Association of Congregations, the Friends Services, the Episcopal Diocese of California, the St. Norbert Abbey, the Evangelical Lutheran Church of America, Catholic Charities of Yakima, Washington, the Jesuits California Province, the Coalition of Episcopal Latinos, as well as statements from Illinois State representatives, Texas State representatives, Cook County commissioners, an additional Texas State representative, the National Immigration Law Center, the

National Immigration Forum, the American Civil Liberties Union, the Asian American Center for Advancing Justice, the American Immigration Lawyers Association, the Anti-Defamation League, CAUSA Oregon, Coalition for Human Immigrant Rights of Los Angeles, the Colorado Immigrant Rights Coalition, Farmworkers Justice, the Hispanic Association of Colleges & Universities, LULAC of Syracuse, the Muslim American Society Immigrant Justice Center, One America, Racine Dominicane, and the Wayne Action for Racial Equality.

Mr. GALLEGLY. Without objection, they will be made a part of the record of the hearing.

[The information referred to follows:]



Written Statement of the
American Civil Liberties Union

Laura W. Murphy
Director, Washington Legislative Office

Christopher Calabrese
Legislative Counsel

Before U.S. House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

February 10, 2011

E-Verify- Preserving Jobs for American Workers

Chairman Gallegly, ranking member Lofgren and members of the Committee - On behalf of the American Civil Liberties Union ("ACLU"), America's oldest and largest civil liberties organization, and its more than half a million members, countless additional supporters and activists, and 53 affiliates across the country, we write to oppose any legislative proposal that would expand E-Verify, a flawed and burdensome electronic employment eligibility verification screening system for America's workforce. The E-Verify system imposes unacceptable burdens on America's workers, businesses and society at large. The costs to legal workers, business and taxpayers associated with a mandatory program are significant while the benefits are speculative.

Electronic Employment Verification

The ACLU opposes a mandatory Electronic Employment Verification System (EEVS) for five reasons:

- (i) **it poses unacceptable threats to American workers' privacy rights by increasing the risk of data surveillance and identity theft;**
- (ii) **data errors in Social Security Administration ("SSA") and Department of Homeland Security ("DHS") files will wrongly delay or block the start of employment for lawful American workers and may lead to discrimination;**
- (iii) **it lacks sufficient due process procedures to protect workers injured by such data errors;**
- (iv) **neither SSA or DHS are able to implement such a system and SSA's ability to continue to fulfill its primary obligations to the nation's retirees and disabled individuals would deteriorate; and**
- (v) **it will lead to rampant employer misuse in both accidental and calculated ways.**

I. Mandating Electronic Employment Eligibility Verification Poses Unacceptable Threats to American Workers' Privacy Rights

A nationwide mandatory EEVS would be one of the largest and most widely accessible databases ever created in the U.S. Its size and openness would be an irresistible target for identity theft. Additionally, because the system would cover everyone (and be stored in a searchable format), it could lead to even greater surveillance of Americans by the intelligence community, law enforcement and private parties.

The current E-Verify system, implemented in a small fraction of the country's workplaces, contains an enormous amount of personal information including names, photos (in some cases), social security numbers, phone numbers, email addresses, workers' employer and

industry, and immigration information like country of birth. It contains links to other databases such as the Customs and Border Patrol TECS database (a vast repository of Americans' travel history) and the Citizen and Immigration Service BSS database (all immigration fingerprint information from US VISIT and other sources).¹

The data in E-Verify, especially if combined with other databases, would be a gold mine for intelligence agencies, law enforcement, licensing boards, and anyone who wanted to spy on American workers. Because of its scope, it could form the backbone for surveillance profiles of every American. It could be easily combined with other data such as travel, financial, or communication information. 'Undesirable' behaviors – from unpopular speech to gun ownership to paying for items with cash – could be tracked and investigated by the government. Some of these databases linked to E-Verify are already mined for data. For example, the TECS database uses the Automated Targeting System (ATS) to search for suspicious travel patterns. Such data mining would be even further enhanced by the inclusion of E-Verify information.

Without proper restrictions, American workers would be involuntarily signing up for never-ending digital surveillance every time they apply for a job. In order to protect Americans' privacy, we recommend that Congress must limit the retention period for queries to the E-Verify system to three to six months, unless it is retained as part of an ongoing compliance investigation or as part of an effort to cure a non-confirmation. This is a reasonable retention limitation for information necessary to verify employment. By comparison, information in the National Directory of New Hires, which is used on an ongoing basis to allow states to enforce child support obligations, is deleted after either 12 or 24 months.² The current retention period for E-Verify (set by regulation) is an astonishing 10 years. In other words, deadbeat dads have greater privacy protections than American workers.

We also recommend that the use of information in any employment verification system be strictly curtailed. It should only be used to verify employment or to monitor for employment-related fraud. There should be no other federal, state, or private purpose. However, as a recent Westat report commissioned by the USCIS points out, any employer who signs on to a memorandum of understanding (MOU) can access E-Verify and therefore the data in the system could be used for other purposes. For example, such data could provide information into whether a mortgage or credit applicant is likely to be a poor credit risk.³ Data should be bound by strict privacy rules, such as those that protect census data, which sharply limit both the disclosure and use of that information.⁴

Additionally, the system must guard against data breaches and attacks by identity thieves. Since the first data breach notification law went into effect in California at the beginning of 2004, more than 510 million records have been hacked, lost or disclosed improperly.⁵ In 2007, it was reported that the FBI investigated a technology firm with a \$1.7 billion DHS contract after it

¹ 73 Fed. Reg. 75449.

² The data retention limitation for the National Directory of New Hires is governed by 42 U.S.C. §653 (i).

³ Westat Report, p 201

⁴ Protections for census data can be found at 13 U.S.C. §9.

⁵ Privacy Rights Clearinghouse Chronology of Data Breaches, <http://www.privacyrights.org/ar/ChronDataBreaches.htm>.

failed to detect “cyber break-ins”.⁶ The December 2010 GAO Report on E-Verify repeatedly discusses the risk of identity theft associated with the system. In one example ICE found that 1,340 employees of a meat processing plant were not authorized to work even though each had been processed through E-Verify. Of the 1,340 unauthorized workers, 274 were charged with identity theft, including using valid Social Security numbers of others in order to work.⁷ The loss of this information contributes to identity theft and a constant erosion of Americans’ privacy and sense of security. An E-Verify database must not be subject to such threats.

II. Data Errors Will Injure Lawful Workers by Delaying Start Dates or Denying Employment Altogether and May Lead to Discrimination

Recent government reports acknowledge that huge numbers of SSA and DHS files contain erroneous data that would cause “tentative non-confirmation” of otherwise work-eligible employees and, in some cases, denial of their right to work altogether. The United States Customs and Immigration Service (USCIS) reported that 2.6% or over 211,000 workers received a tentative non-confirmation (TNC) and, according to the Westat report, about 0.8% of these TNCs are erroneous.⁸ Since only 0.3% of those mistaken TNCs were resolved that means that approximately 0.5% or **80,000 legal workers** were improperly denied the right to work due to faults in the system.⁹ In many of these cases workers simply don’t have the time or don’t know they have the right to contest their determinations and seek different employment. Finding another job is a difficult option for many unemployed Americans in this economy and certainly means countless hours of red tape and frustration.

In American cities and states where E-Verify has been implemented, the results have been disastrous. A survey of 376 immigrant workers in Arizona (where use of E-Verify is required) found that 33.5% were fired immediately after receiving a TNC and never given chance to correct errors in the system. Furthermore, not one of those workers was notified by the employer, as required in the MOU, that they had the right to appeal the E-Verify finding. When Los Angeles County audited its use of E-Verify for 2008-09 it found that 87% of its E-Verify findings were erroneous. Implementing a system this flawed nationwide would be a train wreck for American workers.

These error rates are caused by a variety of factors. First, women or men who changed their names at marriage, divorce or re-marriage may have inconsistent files or may never have informed either SSA or DHS of name changes. Second, simple key stroke or misspelling errors contribute to the volume of erroneous data. Third, individuals with naming conventions that differ from those in the Western world may have had their names anglicized, transcribed improperly or inverted. The GAO predicted that if E-Verify were made mandatory for new hires nationwide, approximately 164,000 citizens per year would receive a TNC just for name change

⁶ Ellen Nakashima and Brian Krebs, *Contractor Blamed in DHS Data Breaches*, WASHINGTON POST, Sept. 24, 2007.

⁷ GAO, *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain*, p. 24

⁸ Westat Report, *Findings of the E-Verify Program Evaluation*, can be found at: http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf

⁹ GAO, *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain*, p.19.

related issues.¹⁰ It would be even more damaging if applied to existing workers not just new hires.

The high number of error rates occurring among certain cultural groups can lead to an appearance of discrimination in the employment process. The GAO reported that 5 out of 25 employers in their site visits acknowledged that TNCs were more likely to occur where Hispanic employees have hyphenated or multiple surnames.¹¹ Additionally the TNC rate of employees who were eventually authorized to work was approximately 20 times higher for foreign-born employees than for U.S. born employees from April through June of 2008.¹² These factors lead to striking disparities and could easily lead employees to believe they were being judged on more than just their credentials. Moreover, employers may shy away from hiring non-native born individuals or those with foreign names because of a fear they would be harder to clear through the system.

III. Pending Legislative Proposals Lack Meaningful Due Process Protections for Lawful Workers Injured by Data Errors

Workers injured by data errors will need a means of quickly and permanently resolving data errors so they do not become presumptively unemployable. Workers face two distinct challenges. The first is to learn that there are errors in their record and the second is the lack of fundamental due process protections in resolving those errors.

Self-Check

We commend the USCIS for beginning the process of creating a self-check system that allows workers to check on their E-Verify data. It is a fundamental privacy principle that individuals should have access to information about them in order to assure that information is complete and correct. However it is important to note that this self-check process is still in its infancy and not currently accessible to workers.

We also have some specific concerns about how the self-check program will be implemented. First of all, self check cannot be used as a pre-screening tool. If employers were to impose a self-check requirement – effectively serving as an E-Verify pre-screening tool – they would shift the cost from the employer to the employee. This would undermine the anti-discrimination provisions built into the system to ensure that authorized workers are able to contest TNCs and document their eligibility to work.

Second, it is essential to protect the privacy of both employers and employees. Considering high rates of identity fraud associated with the E-Verify system, it is no surprise that individuals are very concerned about their personal information being kept in a database to which more and more people are gaining access. There must be clearly defined limits in regard to potential sharing of personal information. Third, there must be an option for self-check access to people without credit histories. If self-check relies on background check information, then it

¹⁰ *Id.* p. 19.

¹¹ *Id.* p. 20.

¹² *Id.* p. 40.

will be unavailable to populations of foreign nationals who have only recently arrived in the U.S. and have not yet developed a credit history. This would include some of those with the most complicated immigration situations such as refugees, asylum seekers, and people with temporary protected status.¹³

Due Process Protections

Senior officials in the DHS Privacy Office have said that individuals face formidable challenges in correcting inaccurate or inconsistent information. The Office of Special Counsel for Immigration-Related Unfair Employment Practices and DHS Office of Civil Rights and Civil Liberties have both said that employees have expressed difficulty in understanding the TNC notification letters and the process by which they have to correct errors. Moreover, as of 2009 the average response time for these Privacy Act requests was a staggering 104 days.¹⁴ This is time that an employee would be unable to work if E-Verify were made mandatory. Congress must prevent the creation of a new employment blacklist – a “No-Work List” – that will consist of would-be employees who are blocked from working because of data errors and government red tape.

Under current law there are no due process protections for those who lose their jobs due to government or employer errors. The best current model for substantive due process protections can be found in Title II of the “Comprehensive Immigration Reform for America’s Security and Prosperity Act of 2009, H.R. 4321 from the 111th Congress. This provision creates worker protections for both tentative and final non-confirmations, allows workers to recover lost wages when a government error costs them their job, limits retention of personal information, and creates accuracy requirements for the system.

IV. Government Agencies are Unprepared to Implement a Mandatory Employment Eligibility Prescreening System

As government reports evaluating E-Verify have repeatedly made clear, both SSA and DHS are woefully unprepared to implement a mandatory employment eligibility pre-screening system. The most recent GAO report expresses concerns over how USCIS has estimated the cost of E-Verify. They found that their estimates do not reliably depict current E-Verify cost and resource needs for mandatory implementation and that they fail to fully assess the extent to which their workload costs could increase in the future.¹⁵ In order to implement such a system, both agencies would need to hire hundreds of new, full-time employees and train staff at every SSA field office. DHS has an enormous backlog of unanswered Freedom of Information Act (FOIA) requests from lawful immigrants seeking their immigration files. Those files, many of which are decades old, are the original source of numerous data errors. If DHS cannot respond to pending information requests in a timely fashion now, how much worse will the problem be when lawful immigrants, including naturalized citizens, lawful permanent residents, and visa

¹³ The American Immigration Lawyers Association, *E-Verify Self Check Program*, November 29, 2010

¹⁴ Department of Homeland Security, 2009 Annual Freedom of Information Act Report to the Attorney General of the United States

¹⁵ Peck, Amy, *Latest Report on E-Verify: the Good, the Bad, and the Unresolved*, January 20, 2011

holders need the documents immediately to start their next jobs? Consequently, DHS must hire hundreds more employees to respond to these FOIAs.

Businesses seeking to comply with any newly imposed system will also put additional strain on these government agencies. Problems can be anticipated in attempting to respond to employers' requests and in establishing connectivity for businesses located in remote regions or that do not have ready access to phones or the internet. These agency deficiencies will surely wreak havoc on independent contractors and the spot labor market for short-term employment.

If history is our guide, agency officials will be unable to scale up the existing software platform for E-Verify to respond to the enormous task of verifying the entire national workforce and all the nation's employers. It makes little sense to adopt a system that is pre-destined to cause chaos within these agencies, not to mention the lives of the thousands of Americans wrongfully impacted.

V. USCIS has Not Been Able to Achieve a Sufficient Degree of Employer Compliance in Order to Protect Worker's Rights

Despite the fact that USCIS has more than doubled the number of staff tasked with monitoring employer's use of E-Verify since 2008 they still do not have the means to effectively identify and address employer misuse or abuse of the system. In fact a recent report from the SSA Office of the Inspector General found that the Social Security Administration itself had failed to comply with many of regulations that are put in place to protect employees. They failed to confirm the employment of 19% of the 9,311 new employees hired for fiscal year 2008 through March 31, 2009 and, of those that were processed, they did not comply with the 3-day time requirement for verifying eligibility. The OIG also found that SSA verified the employment eligibility of 26 employees who were not new hires but had sought new positions within the agency, 31 volunteers who were not federal employees and 18 job applicants who SSA did not hire.¹⁶ If the government is unable to maintain compliance within its own agencies, we cannot expect private businesses to follow the regulations put in place to protect workers.

Employers misuse has resulted in discrimination and anti-worker behavior in the past and there is no reason to suggest that pattern will change with a new verification system in place. From the inception of E-Verify, the U.S. Government Accountability Office and DHS studies have repeatedly documented various types of misuse. The USCIS's Westat report also confirmed the fact that many employers were engaging in prohibited activity. Of the employers they contacted they found that 17.1% admitted to restricting work assignments until authorization was confirmed; 15.4% reported delaying training until employment authorization was confirmed; and 2.4% reported reducing pay during the verification process.

If Congress imposes a mandatory system, it will need to create effective enforcement mechanisms that prevent the system from being a tool for discrimination in hiring. Such discriminatory actions will be difficult to prevent and even more difficult to correct. Congress

¹⁶ Social Security Administration, Office of the Inspector General, *The Social Security Administration's Implementation of the E-Verify Program for New Hires*, A-03-09-29154, January 6, 2010.

should ask: how will the government educate employers and prevent misuse of E-Verify or any similar system?

VI. Conclusion: Congress Must Not Enact a Mandatory Employment Eligibility Pre-Screening System

The goal of E-Verify is to reduce the number of unauthorized workers in the United States. Unfortunately, its success rate is extremely low. According to the USCIS's Westat report the inaccuracy rate for unauthorized workers is approximately 54 percent.¹⁷ According to the government's own reports, **E-Verify is fulfilling its intended purpose less than half the time.** In addition, experience in Arizona shows that many employers are failing to comply in spite of it being a state mandate. Therefore, while E-Verify continues to burden employers, cost the government billions of taxpayer dollars, and deny Americans' their right to work—all the while potentially subjecting them to discrimination—it is not even adequately performing its core function.

The ACLU urges the Subcommittee on Immigration, Refugees, and Border Security to reject imposition of a mandatory electronic employment eligibility pre-screening system. Such a system would cause great harm to employers across the country and to lawful workers and their families while doing little to dissuade undocumented workers. The likelihood for harm is great and the prospect for gain has so far proved illusory.

¹⁷ 2009 Westat Report at 118.

The Latino Commission and The Migration and Immigration Task Force

Diocese of California
The Episcopal Church

The Rev. John Rawlinson, President
Latino Commission, Episcopal Diocese of California
1540 12th Ave.
Oakland, CA 94606

The Rev. Anna Lange-Soto, Chair
The Migration and Immigration Task Force, Episcopal Diocese of California
178 Clinton St.
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February 7, 2011

To: The Immigration Subcommittee, U.S. House of Representatives
From: The Latino Commission, Episcopal Diocese of California
RE: Pending hearings on E-Verify

We understand that the Immigration Subcommittee is holding hearings related to E-Verify. It appears that this will occupy a great deal of your time and effort, and leave untouched the larger issue of the whole immigration system. Instead of investing a great amount of time in a small piece of the immigration problem, the United States needs your concentrated efforts on the whole immigration system which is commonly regarded as “broken.” – This broken quality is ruining the lives of citizens, permanent residents, and undocumented immigrants alike.

Approximately 5 million American CITIZENS live in families with an undocumented family member, - often the main bread winner. Clearly, these millions of people, and other millions who depend on them as customers and renters, and patients need - you to empower undocumented workers to find and keep good work in order to support both their families and also to pay taxes for the benefit of the country as a whole. At this time, they and their families are peaceful contributors to our country. The fact is that they are here, and we cannot afford the costs of deportation and the attendant costs of providing social services for their abandoned and unsupported children; that would be the ultimate budget breaker! Only comprehensive immigration reform will foster the well being of the U.S. citizens whose lives have become bound with the lives of undocumented immigrants.

We need you to work for the good of all of the people who are here legally in this country, and you can do that only by enacting comprehensive immigration reform. We are not naïve, we understand the political risk of doing the moral thing. However, we need you to be the leaders of our society—teaching and guiding us to do those difficult things which are morally right—to provide for the well-being of millions of individuals and families who are “connected” to one or another undocumented persons. To use E-Verify to further penalize families which have a member who is undocumented is merely cruel and in the end punishes the entire community. And risks budget-breaking actions on the law enforcement side of our government.

In addition, E-Verify needlessly penalizes those U.S. citizens and permanent residents who are unfortunate enough to get caught in the system, through no fault of their own. There are MANY legitimate and accurate stories of data-entry errors resulting in great suffering because of those errors.

This country does NOT need E-Verify, rather it needs compassion and your hard work toward crafting laws which lead to comprehensive immigration reform.



GENERAL ASSEMBLY
STATE OF ILLINOIS
HOUSE OF REPRESENTATIVES

Dear Immigration Subcommittee,

As elected Illinois state representatives, we would like to voice our position regarding the mandatory E-Verify Program that is being considered in the U.S. Congress.

If Congress makes E-Verify mandatory without fixing the immigration system, we will send more workers and jobs into the underground economy, while other jobs go overseas. Instead of layering this program on top of a broken immigration system, we need to fix the system. That will ensure that workers are legal and hiring is legal. It will also isolate bad employers who continue to go around the system, undercut the good employers who are trying to do what is right and add billions more in revenue to reduce the deficit.

According to the Congressional Budget Office, implementation of a mandatory program without legalizing the current undocumented population would increase the number of employers and workers who resort to the black market outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years, while the taxes generated from the added \$1.5 trillion of economic activity that is projected from legalizing undocumented workers would be a boon to deficit reduction efforts.

Should you like to discuss this very important matter further, please contact our constituent service offices: Rep. Berrios at (773) 235-3939 or Rep. Hernandez at (708) 222-5240.

Thank you for your consideration.

Sincerely,

Maria A. Berrios

Maria A. "Toni" Berrios
State Representative- 39th District

Elizabeth "Lisa" Hernandez

Elizabeth "Lisa" Hernandez
State Representative- 24th District



TESTIMONY OF MOST REVEREND JOSÉ H. GOMEZ

Coadjutor Archbishop of Los Angeles, California

Chair, U.S. Conference of Catholic Bishops' Committee on Migration

On

**The National Employer Electronic Verification System
(E-VERIFY)**

Before

The House Judiciary Subcommittee on Immigration Policy and Enforcement

February 10, 2011

I am José H. Gomez, Coadjutor Archbishop of Los Angeles and Chairman of the U.S. Conference of Catholic Bishops' (USCCB or the Conference) Committee on Migration. I testify before you today on behalf of the USCCB Committee on Migration.

Before I begin, I would like to thank Subcommittee Chairman Elton Gallegly (R-CA) and Ranking Member Zoe Lofgren (D-CA) for permitting me to submit testimony before the Subcommittee on this important matter.

While today's hearing is on the question of whether the E-Verify system preserves jobs for American workers, my testimony before the Subcommittee will outline the Conference's position on proposals that some have promoted that would require the mandatory use of the National Employer Electronic Verification System (E-Verify).

In my testimony, I will recommend that prior to expanding implementation of E-Verify, Congress and/or the Administration should:

1. Prioritize and pursue comprehensive immigration reform – which includes, among other elements, the legalization of the unauthorized currently in the United States and the expansion of legal avenues for low-skilled workers to enter lawfully – in lieu of enforcement-only measures, including E-Verify, to address the issues of unauthorized immigration in the United States;
2. Significantly reduce error rates in Government databases that the system relies upon;
3. Curb opportunities for employer misuse of the system; and
4. Provide workers with a fair and meaningful opportunity to correct false positives.

The Role of the U.S. Catholic Bishops in the Immigration Policy Debate

Mr. Chairman, the issue of immigration is complex and elicits strong opinions and emotions from all sides of the public debate. It touches upon our national economic, social, and cultural interests and has been analyzed and dissected predominately in those terms. From the perspective of the U.S. Catholic Bishops, immigration is ultimately a humanitarian issue because it impacts the basic human rights and dignity of the human person.

The U.S. Catholic Church has a long history of involvement in immigration. The U.S. Catholic Church has a rich tradition of welcoming and assimilating waves of immigrants and refugees who have helped build our nation throughout her history. And, in 1988 USCCB established a legal services subsidiary corporation which currently includes 196 diocesan and other affiliated immigration programs with 290 field offices in 47 states. Collectively, these programs serve some 600,000 low-income immigrants annually.

The U.S. Catholic Bishops acknowledge the right of the sovereign to enforce its immigration laws. In the pastoral letter, *Strangers No Longer: Together on the Journey of Hope*, USCCB recognized the right of the sovereign to control and protect its borders, stating: “we accept the

legitimate role of the U.S. . . . government in intercepting undocumented migrants who attempt to travel through or cross into [the country].” The U.S. Bishops emphasized, however, that “. . . [w]e do not accept . . . some of the policies and tactics that our government has employed to meet this . . . responsibility.”¹

In *Strangers No Longer*, the U.S. Bishops made clear that despite the sovereign’s right to control its borders and engage in enforcement of immigration laws, the “human dignity and human rights of undocumented migrants should be respected.” We declared that “[r]egardless of their legal status, migrants, like all persons, possess inherent human dignity that should be respected Government policies that respect the basic human rights of the undocumented are necessary.”²

USCCB’s Call for Comprehensive Immigration Reform in Lieu of an Enforcement-Only Approach

According to the Pew Hispanic Center, there are currently 11.2 million unauthorized persons residing in the United States.³ Of these, approximately 8 million – or 70 percent -- are in the U.S. labor force.⁴ Each year, between 300,000 and 500,000 more unauthorized migrants enter the country.⁵ In large part, these migrants feel compelled to enter the United States because of either the explicit or implicit promise of employment in the U.S. agriculture, construction, and service industries, among others. Most of this unauthorized flow comes from Mexico, a nation struggling with severe poverty, where it is often impossible for many to earn a living wage and meet the basic needs of their families.

Survival has thus become the primary impetus for unauthorized migration flows into the United States. Today’s unauthorized migrants are largely low-skilled workers who come to the United States for work to support their families. They work in the agricultural, meatpacking, landscaping, services, and construction industries in the United States. They fill the ranks of U.S. businesses, large and small, throughout the country.

Over the past several decades, the demand by U.S. businesses for low-skilled workers has grown exponentially, while the supply of available workers willing to perform these *low-skilled* jobs in the United States has diminished.⁶ Yet, there are only 5,000 green cards available annually for low-skilled workers to enter the United States lawfully to reside and work.⁷ This number stands

¹ *Strangers No Longer: Together on a Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States*, January 23, 2003, No. 78 [hereinafter, *Strangers No Longer*].

² *Strangers No Longer*, at No. 38.

³ Jeffrey S. Passel and D’Vera Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010* (Washington, DC: Pew Hispanic Center, 2011), 1, <http://pewhispanic.org/reports/report.php?ReportID=133>.

⁴ Passel and Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010*, at 1. See also Rakesh Kochhar, C. Soledad Espinoza, and Rebecca Hinze-Pifer, *After the Great Recession: Foreign Born Gain Jobs; Native Born Lose Jobs* (Washington, D.C.: Pew Hispanic Center, 2010), 4-5, <http://pewhispanic.org/files/reports/129.pdf>.

⁵ Jeffrey S. Passel and D’Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), 1, <http://pewhispanic.org/files/reports/126.pdf>.

⁶ See, e.g., Gordon H. Hanson, *The Economics and Policy of Illegal Immigration in the United States*, Migration Policy Institute (December 2009).

⁷ Hanson, *The Economics and Policy of Illegal Immigration in the United States*, at 6.

in stark contrast to the estimated 300,000-500,000 migrants who enter the United States without authorization each year, most of whom are looking for work.⁸ The only alternative to this is a temporary work visa through the H-2A (seasonal agricultural) or H2B (seasonal non-agricultural) visa programs, which provide temporary status to low-skilled workers seeking to enter the country lawfully. While H-2A visas are not numerically capped, agricultural employers have reported great difficulty in making use of them. H-2B visas are capped at 66,000 annually. Both only provide temporary status to work for a U.S. employer for one year.⁹ At their current numbers, these are woefully insufficient to provide legal means for the foreign-born to enter the United States to live and work, and thereby meet our demand for foreign-born labor.

In the past decade alone, Congress has spent \$117 billion of taxpayer dollars on immigration enforcement initiatives, yet the number of unauthorized in the country has grown and the demand for foreign-born, low-skilled labor has continued on pace with the ebbs and flows of the U.S. economy. It is clear that another approach is necessary.

Mr. Chairman, the U.S. Catholic Bishops do not believe that “enforcement only” immigration policies will humanely resolve the policy dilemma created by an increasing number of unauthorized immigrants in the United States. Rather, we support comprehensive immigration reform to fix what has become a broken system. Such reform would include: an earned legalization program for foreign nationals of good moral character; the reform of the family-based immigration system; a revamped temporary worker regime that protects both the workers who would come to the United States and U.S. citizen workers; the restoration of immigrants’ due process rights; and an effort to meaningfully address the root causes of migration, such as under-development and poverty in sending countries.

Moreover, Mr. Chairman, such reform would include the targeted, proportional, and humane enforcement of immigration laws. The U.S. Catholic Bishops accept the legitimate role of the U.S. government in intercepting unauthorized migrants who attempt to travel to the United States. The U.S. Bishops also believe that by increasing lawful means for migrants to enter, live, and work in the United States, law enforcement will be better able to focus upon those who truly threaten public safety such as drug and human traffickers, smugglers, and would-be terrorists. It is our view that comprehensive immigration reform would help restore the rule of law by replacing unauthorized migration flows with meaningful and adequate legal avenues for migration, compatible with both our future labor needs and our ongoing prioritization of family reunification.

USCCB’s Position on the Mandatory Expansion of E-Verify

Mr. Chairman, as you know, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 mandated legacy U.S. Immigration and Naturalization Service (INS) to create a pilot National Employer Electronic Verification System, which has become known as the E-Verify System, with the purpose of providing employers who volunteer to be a part of the program with

⁸ Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, iii.

⁹ Hanson, *The Economics and Policy of Illegal Immigration in the United States*, at 6.

a tool for uncovering fraudulent identity documents.¹⁰ The goals of E-Verify are to reduce the employment of unauthorized individuals; reduce discrimination; protect the civil liberties and privacy of employees; and prevent undue burden on employers.¹¹ As you are aware, Mr. Chairman, the U.S. Citizenship and Immigration Service (USCIS) and the Social Security Administration (SSA) jointly administer E-Verify.¹² According to the Government Accountability Office (GAO), between October 2009 and August 2010, E-Verify handled approximately 14.9 million queries from some 222,000 participating employers.¹³

Mr. Chairman, the use of E-Verify by employers is, for the most part, voluntary. However, over the past few years, there has been a move to make its use mandatory by certain, if not all, employers. The Office of Management Budget (OMB) in 2007 directed all federal agencies to use E-Verify on new hires. Select federal contractors and subcontractors, similarly, have been required since September 2009 to use E-Verify for both newly-hired and current employees working on a contract.¹⁴ And, some states have required that employers use E-Verify for new hires, as well. For other employers, however, the use of E-Verify is presently voluntary.

Now, Mr. Chairman, some members of Congress are calling for the mandatory use of E-Verify by all employers across the country. Many seek to do so, however, in a vacuum – without addressing holistically the systemic problems confronting U.S. immigration laws and their enforcement and without addressing some core weaknesses in the current E-Verify program.

The U.S. Conference of Catholic Bishops believes that the overarching goals of E-Verify are meritorious but believes that mandatory expansion of the system should only take place if: (1) it is undertaken in the context of comprehensive immigration reform; (2) error rates in Government databases are reduced significantly; (3) opportunities for employer misuse of the program are curbed; and (4) workers are provided with a fair and meaningful opportunity to correct false positives. Put another way, Mr. Chairman, unless and until all of these criteria are met, the U.S. Catholic Bishops would oppose the mandatory expansion of E-Verify.

Mr. Chairman, I will now address each of these criteria in turn.

First, and foremost, we urge lawmakers to not consider mandating the expanded use of E-Verify unless they do so as part of a comprehensive immigration reform bill. As I have stated previously, the U.S. Catholic Bishops believe that comprehensive reform, including a broad legalization program and the expansion of legal avenues for low-skilled workers to enter the

¹⁰ Illegal Immigration Reform and Immigrant Responsibility Act, as amended, Pub. L. No. 104-208, div. C, §§ 401-404, 110 Stat. 3009-546, 3009-655 to -665 (1996).

¹¹ See, e.g., U.S. Government Accountability Office, *Employment Verification: Federal Agencies have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (December 2010) [hereinafter, GAO: Employment Verification], at 1-2.

¹² GAO: *Employment Verification* at 1-2.

¹³ GAO: *Employment Verification* at 2.

¹⁴ GAO: *Employment Verification* at 2. On August 11, 2008, USCCB submitted comments to the Civilian Agency Acquisition Council and the Defense Acquisition Relations Council on the then-proposed rule (FAR Case 2007-13, Employment Eligibility Verification, 73 Federal Register 33374 (June 12, 2008)) that required certain federal contractors to utilize the E-Verify program for employment eligibility verification purposes. At that time, USCCB stated that from a policy standpoint, it had “significant doubts whether the use of E-Verify should be used to confirm the employment status of workers” given the system’s flaws, which persist today.

United States lawfully, is a moral, economic, and policy imperative. More practically, unless Congress legalizes a broad section of unauthorized immigrants in the United States, any mandatory employment verification system will begin with a handicap of some 8 million unauthorized workers.¹⁵ Should E-Verify be expanded or made mandatory without legalizing these millions of unauthorized presently in the United States and expanding the legal avenues for new flows of low-skilled workers to enter the United States lawfully to live and work, many of these workers inevitably would be driven into the underground economy by unscrupulous employers¹⁶ seeking to go around the system.¹⁷ Other jobs would likely move overseas looking for employees willing to take lower wages. Either way, this would hurt both the U.S. economy and American workers and their families, decreasing federal tax revenue by more than \$17.3 billion over ten years,¹⁸ creating an unequal workplace, and lowering labor standards for all workers.

Second, the U.S. Catholic Bishops maintain that prior to considering expanding or imposing the mandatory use of E-Verify for the approximately six million employers in the United States, the Administration must achieve greater reductions in the error rates in Government databases. As you know, Mr. Chairman, the E-Verify system relies on Government databases that continue to exhibit high error rates for workers' names, dates of birth, and status. While USCIS and the SSA have undertaken various steps to improve the accuracy of the system, such errors persist. For instance, according to the GAO, despite the expansion of the number of databases queried by E-Verify and the incorporation of additional quality control procedures in the system, there remain significant weaknesses in the system.¹⁹ Indeed, in fiscal year 2009, of the 22,512 tentative nonconfirmations (TNC) issued as a result of a name mismatch, some 76 percent – 17,098 – were for U.S. Citizens. According to the GAO, were E-Verify made mandatory for new hires across the country, based on this error rate, over 100,000 U.S. Citizens would receive a name-related TNC annually – a number that would be even greater were E-Verify made mandatory not only for new hires but also for all existing employees.²⁰ And, the number of erroneous nonconfirmations as a portion of all TNCs issued remains, according to Migration Policy Institute, “alarmingly high.”²¹ Moreover, USCIS remains unable to determine the number of employees improperly confirmed by E-Verify as authorized workers; data shows that an estimated three percent of workers confirmed by E-Verify as authorized to work in the United

¹⁵ Passel and Cohn, *Unauthorized Immigrant Population, National and State Trends, 2010*, at 1.

¹⁶ See, e.g., Marc R. Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* Migration Policy Institute, 8 (February 2011) (“Employers who move their operations off the books also may be more likely to violate minimum wage, health and safety, and other worker protections. Thus, unauthorized employment in jurisdictions that require employers to use E-Verify may result in worse exploitation of unauthorized workers than in jurisdictions without E-Verify.”).

¹⁷ Indeed, despite the use of employer sanctions and the legalization of a broad swath of the unauthorized in the United States in 1986, the number of unauthorized workers in the United States burgeoned in the subsequent two decades. Without coupling enforcement with the legalization of those currently unauthorized and the expansion of the legal avenues for unskilled workers to enter the United States to live and work, any one measure will fail to meaningfully address the issue.

¹⁸ See Congressional Budget Office and the Joint Committee on Taxation, Letter to the Honorable John Conyers, Jr. (April 4, 2008), available at <http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf> (last visited, February 4, 2011) [hereinafter, CBO and Joint Committee on Taxation, Conyers Letter].

¹⁹ GAO, *Employment Verification* at 17-20.

²⁰ GAO, *Employment Verification* at 19.

²¹ Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, 7-8.

States are actually unauthorized – signaling possible employer fraud and/or identity theft.²² These weaknesses, in turn, further lend the system vulnerable to identity theft and employer fraud.²³

Third, Mr. Chairman, it is our position that Congress must insist that mechanisms be put into place to meaningfully curb employer misuse of E-Verify before it considers expanding it or making its use mandatory. As you are aware, some employers have illegally misused the system by verifying the employment status of only “foreign-looking” job applicants prior to hiring them, in direct contravention of federal immigration and antidiscrimination laws. Furthermore, some employers have reduced the pay or even fired employees who challenge the SSA’s finding that they are working illegally. These abuses could be corrected by enacting tough civil and criminal penalties for employers who misuse the program; by undertaking, monitoring, and evaluating outreach and education of employers on the proper use of the program²⁴; and by more frequent enforcement of labor laws.

Fourth, and finally, Mr. Chairman, the U.S. Catholic Bishops believe that prior to the expansion or mandatory implementation of E-Verify, the Administration must ensure that workers have a fair opportunity to correct false positives. Under the current system, many workers receive notification that they are not authorized to work, when in fact they are. Workers should have effective and efficient means by which they can challenge negative findings.

In a recent report, the GAO noted that where an unauthorized employee’s name is recorded differently on authorizing documents, the system will issue a TNC for the employee. According to the GAO, because these TNCs are more likely to affect foreign-born employees with more “complicated” names, “they can lead to an appearance of discrimination.”²⁵ This is concerning. Employees must be educated about the need to be consistent in recording their names on employer documentation to avoid such errors. For the system to be accurate, USCIS needs to undertake employee outreach and education. Accordingly, the U.S. Bishops believe that any nationwide verification should be phased-in at a reasonable rate with objective benchmarks regarding database accuracy and employee education.

Similarly, Mr. Chairman, in the system’s current iteration, employees are not able to readily identify and correct any errors that may have led to the generation of an inaccurate TNC. To first identify the source of the incorrect information, employees must file Privacy Act requests, which according to the GAO, took an average of 104 days to process in fiscal year 2009.²⁶

²² GAO, *Employment Verification* at 22.

²³ GAO, *Employment Verification* at 16. See also Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform*, 5-6; Daniel Gonzalez, “Migrants Trick E-Verify,” *The Arizona Republic* (February 8, 2011), available at <http://www.azcentral.com/arizonarepublic/news/articles/2010/02/26/20100226everify0226.html> (last visited February 8, 2011).

²⁴ See GAO, *Employment Verification* at 27 (according to the GAO, USCIS has undertaken outreach and education of employers regarding use of E-Verify, yet has “not fully assessed the effectiveness of its efforts and therefore is not in the position to know whether they have achieved their intended purpose”).

²⁵ GAO, *Employment Verification* at 16-20.

²⁶ GAO, *Employment Verification* at 34.

The implementation of a mandatory E-Verify system would impact some 60 million employees in the United States annually.²⁷ Before undertaking such a task, USCIS and SSA should develop procedures to ensure that employees can efficiently and effectively identify and correct inaccurate information that may have led to an erroneous TNC. Moreover, Mr. Chairman, we believe that employees should be provided an adequate administrative and judicial review process that provides for remedies such as back pay and attorney's fees if a worker was fired due to an SSA or USCIS error. And, employers should be required to provide workers with compensated time off of work to visit an SSA field office and challenge a finding that the worker is unauthorized.

Mr. Chairman, in its current form, E-Verify is not ready to be implemented nationally by all U.S. employers. Moreover, Mr. Chairman, imposing the mandatory use of E-Verify in the absence of other, meaningful, and comprehensive reforms to our immigration laws, would result in significant negative impacts on workers in the United States, their families, and our economy.

The U.S. Catholic Bishops urge lawmakers to take a measured, holistic approach to the challenges presented by unauthorized migration into the United States in lieu of an enforcement-only effort that operates in a vacuum to target and penalize either (or both) unauthorized workers and their employers.

²⁷ GAO: *Employment Verification* at 19.

Conclusion

Mr. Chairman, I would like to thank you for permitting me to submit testimony before the Subcommittee today.

The U.S. Catholic Bishops believe that immigrants should come to the United States lawfully, but we also understand that the current immigration legal framework does not adequately reunify families and is non-responsive to our country's need for labor.

The U.S. Catholic Bishops believe that it would be morally and politically irresponsible to expand or make mandatory the use of E-Verify without first engaging in comprehensive immigration reform; significantly reducing error rates in Government databases upon which the system relies; curbing opportunities for employer misuse of the program; and providing workers with a fair and meaningful opportunity to correct false positives. Accordingly, the U.S. Bishops oppose the mandatory expansion of E-Verify without first addressing these issues.

We urge Congress to resist engaging in a piecemeal and enforcement-only approach to the complex issue of unauthorized immigration, and instead pass immigration reform laws which ensure the rule of law in the United States, while simultaneously ensuring that the laws that rule are rooted in the reunification of family, responsive to our economy's demand for labor, and respectful of the humanity of the immigrants in our midst.

Thank you for your consideration of our views.



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February 5, 2011

Dear Mr. President and Members of Congress:

We, the undersigned, support the call by the Catholic Bishops and the Provincials of the Society of Jesus (Jesuits) in the United States for comprehensive immigration reform. In our schools, at our parishes, and through our social ministries, we have experienced the failures of our current system with tragic consequences for individuals, families and communities. This is not the America we desire. We can and must do better.

As a community of faith, we stand with our Bishops and the Jesuit Provincials calling for the following essential principles of comprehensive immigration reform:

- **A path to legalization that ensures that undocumented immigrants have access to full rights.** It is time to allow undocumented workers to leave the shadows and enjoy the daylight they have earned, through their contributions to our economy, by normalizing their immigration status. The DREAM Act would create such a path for students, though more is needed for workers and others.
- **A legal employment structure for future workers that protects both migrants and United States workers.** We need to create legal pathways that respond to labor-market realities in the United States to ensure that there is a safe and economically sustainable migration flow to satisfy the needs of the U.S. economy for both skilled and unskilled workers.
- **Expedited family reunification and emphasis on family unity for all immigrants.** Keeping families intact is essential to human fulfillment and social stability. The current visa backlogs must be addressed and sufficient visas should be made available across the socio-economic spectrum to ensure an orderly and timely reunification of family members.
- **The need for due process and humane enforcement of our immigration laws.** Those migrating in search of work to sustain themselves and their families have a right to be treated justly and humanely. We seek uniform national standards for all detention facilities, the timely and fair adjudication of cases, and enforcement efforts that respect human dignity and aim to keep families and communities intact. Those detained should be kept in reasonable proximity to family and attorneys.
- **Development assistance and fair competition with developing countries.** To reduce the number of persons forced to migrate due to a lack of economic opportunities in their home countries, we must adopt international development and trade policies that will foster sustainable economic development in the countries from which migrant flows are the greatest.

These principles provide the framework for a comprehensive immigration reform that is fair, just and humane. The time has come to reform our immigration laws so that our nation will once again shine as a beacon of hope, tolerance, and welcome to our world.

Respectfully,

Ad Maiorem Dei Gloriam

Collected Statements: “E-Verify: Preserving Jobs for American Workers”

Before the house Committee on the Judiciary
Subcommittee on Immigration Policy & Enforcement

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Today, the Immigration Subcommittee in the U.S. House of Representatives will hold a hearing on the E-Verify electronic employment authorization system. On behalf of the Asian American Center for Advancing Justice, we would like to express our deep concern and opposition to implementing a mandatory E-Verify program nationwide. Imposing mandatory E-Verify will have a destructive impact on workers, employers, and ultimately our economy.

E-Verify will have a particularly devastating impact on Asian American and Pacific Islander (AAPI) workers and small business owners. A Westat 2009 report found the error rate for foreign-born workers was 20 times higher than that of U.S.-born workers. For our community, this is particularly troublesome because more than 8 million of AAPIs are foreign born. If E-Verify is made mandatory, a disproportionate number of AAPIs will be wrongly identified and have their jobs jeopardized. E-Verify will also increase the regulatory burden on employers, particularly small business owners, and siphon off already scarce governmental and financial resources.

E-Verify promotes discrimination against AAPIs, as under-trained employers may assume a worker is undocumented and unduly fire the worker or simply not hire them at all. Many AAPIs, both citizens and non-citizens, may experience tentative nonconfirmations (TNCs) simply because of name mismatches if employers are confused by complex names or name order. According to USCIS, 22,512 TNCs (76% of which were for citizens) resulted from name mismatches in 2009. Other TNCs can arise when government files are not updated, like in the case of Fane:

Fane is a Tongan woman, and a naturalized U.S. citizen since 1993. When Fane started a new position at a security company, her employer told her that there was a problem with her I-9 work authorization where she received a company letter asking her to verify her eligibility to work. Fane went immediately to the Social Security Administration (SSA), where she received written verification that her social security number matched her identity. But despite showing her company the SSA verification, her U.S. passport and her Certificate of Naturalization, her company informed her that she was not allowed to return to work because her name was flagged as still having problems. As a result, Fane lost her job. This has caused extreme hardship for her, as she is a single mother. Fane was flagged simply because when she naturalized the Department of Homeland Security (DHS) did not tell SSA that she had become a U.S. citizen. This is

a problem that many AAPI immigrants face, as they do not know to inform SSA of their change in citizenship status themselves.

The program is of particular concern for the Limited English Proficient members of our community. The already confusing E-Verify program will be impossible to navigate for the nearly 60% of our community who face language barriers – where citizen and legal resident workers alike will be unduly burdened by constant misidentifications in the system.

Furthermore, a U.S. Department of Homeland Security study found that employer noncompliance with the E-Verify pilot program's rules was "substantial," where: 1) employers engaged in prohibited practices such as pre-employment screening, 2) took adverse employment actions based on tentative non-confirmation notices, and 3) failed to inform employees of their rights. A recent report by the U.S. General Accountability Office also indicates that USCIS remains limited in its ability to identify and prevent employer misuse of the E-Verify program, with no authority to impose penalties against employers misusing the system. Therefore, the GAO report states that resolving tentative and false non-confirmations, as well as combating discrimination, remains challenging for employees. Making E-Verify mandatory now will give an advantage to unscrupulous employers, who will find ways around the system.

E-Verify would also require all employers to spend money on compliance training, employee verification, and capable infrastructure for electronic submission and verification. These compliance costs will disproportionately affect small businesses, which have fewer resources to spare. Throughout the U.S., AAPIs own more than 1.1 million small businesses, the majority of which have small workforces and cannot afford to lose any employees actually qualified to work. According to the U.S. Census Bureau, these businesses have provided jobs to 2.2 million employees, had receipts of \$326.4 billion, and generated payroll of \$56 billion. With the flagging economy, we cannot afford to burden AAPI businesses any further.

Lastly, the U.S. cannot afford to divert scarce governmental and financial resources towards funding this deeply flawed program. According to the U.S. Congressional Budget Office (CBO), implementation of a mandatory program (without legalizing the current undocumented population) would increase the number of employers and workers who resort to the black market, outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years. By contrast, legalization would generate a projected additional \$1.5 trillion in tax revenue. Making E-Verify mandatory will worsen our deficit in the long run.

Therefore, the Asian American Center for Advancing Justice urges the Subcommittee to prioritize its work towards fixing the nation's fundamentally broken immigration system with realistic and comprehensive solutions. The Subcommittee's focus must go beyond enforcement of our broken, outdated immigration laws. We need fair and practical comprehensive reform would get undocumented workers and their employers onto the tax rolls, restore the rule of law, and end undocumented immigration.

The Asian American Center for Advancing Justice (www.advancingjustice.org) is comprised of the Asian American Justice Center in Washington, DC (www.advancingequality.org), the Asian American Institute in Chicago (www.aaichicago.org), the Asian Law Caucus (www.asianlawcaucus.org) in San Francisco and the Asian Pacific American Legal Center (www.apalc.org) in Los Angeles. The mission of the Asian American Center for Advancing Justice is to promote a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders and other underserved communities.

FOR IMMEDIATE RELEASE:
Wednesday, February 9, 2011

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E-VERIFY NOT THE RIGHT SOLUTION FOR AMERICAN ECONOMY

Expanding E-Verify Will Not Preserve Jobs for American Workers

WASHINGTON, DC – As the House Immigration Subcommittee prepares for its hearing, “E-Verify- Preserving Jobs for American Workers,” the American Immigration Lawyers Association (AILA) calls upon Congress to tell Americans the full story of the flawed electronic employment verification system. Any expansion of this system will burden U.S. employers, waste time and taxpayer resources, and slow the nation’s economic recovery. The Congressional Budget Office reported that implementing mandatory E-Verify would cost American taxpayers as much as \$3 billion over five years.

AILA President David Leopold said, “The new Congress should be focused on America’s economic recovery. Expanding mandatory E-Verify would threaten the jobs of thousands of U.S. citizens and saddle U.S. businesses with additional costs—all at a time when we need to stimulate our economy. Expanding E-Verify now would be in direct contradiction to the goal of creating jobs.”

AILA supports American workers and the integrity of our workforce. Executive Director Crystal Williams asserted, “But E-Verify alone does not make workers legal. Only a viable immigration system does that.”

“Once again, Congress is missing the point. We can’t enforce our way out of a broken immigration system. What we need are solutions. Congress should consider a broad approach to immigration. Smart immigration policies that include a pathway to compliance for the millions of undocumented immigrants currently living and working in the U.S. would add billions of dollars to the economy and raise the wages of all American workers,” said Leopold.

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The American Immigration Lawyers Association is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.



House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
United States House of Representatives
Washington, DC 20515

In advance of the February 10 House Judiciary Subcommittee on Immigration Policy and Enforcement hearings, we are writing to provide the views of the Anti-Defamation League on E-Verify.

We recognize the challenge posed by the need to both enforce the law while preventing racial and ethnic discrimination. Yet the shortcomings and misuse of the Electronic Employment Eligibility Verification system (E-Verify) risk fomenting discrimination by prospective employers.

ADL is committed to Congressional action to remedy the significant flaws and breakdowns inherent in the current U.S. immigration system, including prevention of the hiring of unauthorized workers. However, E-Verify, a system that has been problematic and has been plagued by a multitude of problems since its inception in 1997, fails to offer a workable solution. It is known to be error-ridden and has wrongly identify naturalized U.S. citizens as undocumented and ineligible to work. While a December 2010 GAO report on E-Verify reflects that the system's accuracy has improved, the report concluded that errors persist. Specifically, Tentative Non-Confirmations (TNCs) are "more likely to affect foreign-born employees" and such TNCs "... can lead to the appearance of discrimination." Indeed, the report found that unauthorized workers who are foreign-born are up to twenty (20) times more likely than U.S.-born workers to be incorrectly tagged as unauthorized to work.

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Rate of New Tenure
2011-12: 10.4%
2012-13: 11.5%
2013-14: 12.4%

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Submitted by: Bryan Rescham, Director of Catholic Charities Housing Services
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Catholic Charities Housing Services (CCHS) - Diocese of Yakima opposes a mandatory E-Verify electronic employment authorization system. A stand-alone E-verify system reflects an "enforcement-only" approach to solving our nation's pressing immigration problem. Such a limited approach is neither effective nor productive and should only be considered in the broader context of comprehensive immigration reform.

CCHS develops, owns and manages affordable housing throughout the Catholic Diocese of Yakima. We provide affordable, senior-enriched rental housing to low- and very low-income working, farmworker and senior/elderly individuals and families. In addition, we provide first-time homebuyer opportunities to low income families throughout the Diocese of Yakima. The majority of the population we serve are farmworkers, many of whom are immigrants, who work in the agricultural industry of Central Washington. While CCHS supports the enforcement of immigration law, personal "enforcement-only" strategies, such as the mandatory E-Verify system, are neither effective nor sustainable without associated comprehensive changes to immigration law.

A mandatory E-Verify Electronic employment authorization system would cause profoundly negative effects on Yakima Valley's economy and agricultural workforce. C3SS's work with immigrant populations has revealed the lack of willing and able U.S. workers to fill the farm jobs in our state. Thus, many of those who do fill the agricultural jobs are undocumented workers. The legal status of many of the region's (and the nation's) agricultural workers would be questioned, resulting in a decreased agricultural labor force. The agricultural industry contributes over \$6.4 billion annually to Washington's economy and employs over 250,000 people; the E-Verify system would overwhelmingly damage Washington's economy and the agricultural industry of the nation. Employers in the region are under immense pressure to produce (to eat) the apples (60%), hops, wine grapes and other crops; a mandatory E-Verify system will force employers to spend their time learning the system and policing their workforces instead of training and strengthening their workforces. Imposing a mandatory E-Verify system will negatively impact laborers and employers alike.

For the above mentioned reasons, Catholic Charities Housing Services remains resolved to seek comprehensive immigration reform that reflects the complex realities facing this nation and remains distinctly opposed to a narrowly focused mandatory E-Verify electronic employment authorization system which is emblematic of an "enforcement-only" approach.



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Statement from CAUSA Oregon in Opposition to Mandatory E-Verify

CAUSA is Oregon's statewide immigrant rights coalition, the largest Latino and Latina civil and human rights advocacy organization in the Pacific Northwest.

CAUSA opposes any such enforcement-only measures like the flawed E-Verify system being made "mandatory" without passage of Comprehensive Immigration Reform. We need real workable solutions for our broken immigration system, not more attempts to prop up flawed programs and failed enforcement-only measures.

Making E-Verify mandatory would place unnecessary burdens on all businesses, but especially small ones -- the only real hope for economic recovery. At a time when the United States is focused on stimulating the economy, it is important that policies aren't enacted that will increase unemployment and jeopardize job security.

E-Verify doesn't protect "American jobs" but instead causes problems for Americans wishing to work. With the E-Verify system still being riddled with errors leading to unjust firings, failure to hire qualified workers, delayed employment, and lost productivity-- the E-Verify system has a long way to go before it should be made "mandatory" and "permanent."□□

We urge you to support Comprehensive Immigration Reform legislation already introduced (HR4321) that will secure our borders, protect and respect workers, help with economic recovery, create a pathway to earned legalization, respect and protect families through family unity and protect the due process rights of all.



Coalition for Humane Immigrant Rights of Los Angeles

February 7, 2011

House of Representatives
Immigration Subcommittee

RE: E-Verify Program Hearings

On behalf of millions of families and immigrant workers who live in the shadows as a result of our broken immigration laws, the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) would like to formally express our deep concerns regarding any attempt to make the E-Verify program mandatory for employers nationwide. Based on our extensive experience with workers, businesses, and employers here in Los Angeles, E-Verify is unreliable and error-prone, will hurt American workers, and without a legalization worker program its enforcement will cripple more than one sector of our economy. E-Verify is neither ready for primetime nor it should not serve as a smokescreen for inaction on comprehensive immigration reform.

- A mandatory E-verify program, without reform that includes a legalized workforce, is a recipe for failure: Without fixing the immigration system, it is certain that more workers and jobs will merge into the underground economy, while other jobs go overseas. Instead of piling up a program that may sound good on paper on top of a broken immigration system, Congress needs to find a practical and humane solution to fix the system.
- Here in Los Angeles, only a few localities have adopted E-Verify for all or some workers. Conversely, the County of Los Angeles declined to use it for its contractors and sub-contractors when their own research found serious issues with the program. As this case confirms, it is crucial for E-Verify to remain voluntary until the multitude of problems, identified most recently in the January 2011 GAO Report, have been addressed.
- Mandating E-verify will hurt American worker giving "illegal" employers the opportunity to go around the system and lead to further exploitation of unauthorized workers. A legalization program, on the other hand, levels the playing field and improves labor standards for all.
- Allowing unscrupulous employers to gain an upper hand will undoubtedly hurt those employers who play by the rules and want the best for their workers and the economy.
- Industries such as agriculture, construction, service, tourism, and food and restaurants will be badly crippled by a mandatory E-verify program. At a time when our economy stands on the abyss, it would be suicidal for Congress to impose one burden on these major industries without the benefit of a legalization program for those workers.
- Legalizing unauthorized immigrant workers would add an estimated \$1.5 trillion of economic activity. A congress concerned with deficit reduction should clearly note the loss of \$17.3 billion of lost revenue over ten years should this workforce be forced out of a job.

We have clamored for more than a decade for Congress to find a comprehensive solution to our broken immigration system. The enforcement-only approach has been tried exclusively for many years and it is not working. It is time for Congress to step up and tackle a creative, fair, and practical approach. Tough, fair, and practical comprehensive reform would get undocumented workers and their employers onto the tax rolls, restore the rule of law, and end undocumented immigration.

We look forward to the Committee's deliberations and recommendations.

Sincerely,

Angelica Salas
Executive Director

2533 W. Third Street, Ste 101, Los Angeles, CA 90057 • Tel. 213.353.1333 • Fax 213.353.1344 • www.chirla.org

CEL

Coalition of Episcopal Latinos

Trinity Cathedral
100 W Roosevelt Street
Phoenix, Arizona 85003

The Rev. Carmen Guerrero
President

February 8, 2011

To: The Immigration Subcommittee, U.S. House of Representatives
From: The Coalition of Episcopal Latinos

RE: Pending hearings on E-Verify

The Coalition of Episcopal Latinos, among other things, seeks to provide information about the needs and opinions of our membership: Latinos/Hispanics in the Episcopal Church and those who support our efforts to spread the Gospel.

As the Immigration Subcommittee looks toward providing immigration law that supports the best interests of the United States, we ask that you give the highest priority toward enacting comprehensive immigration reform.

Instead, you hold hearings on enforcement-only measures, in this case E-Verify. The E-Verify program, without comprehensive immigration reform, will cripple U.S. business, e.g. agriculture. Approximately 50-75% of farm workers are undocumented. We already see U.S. farmers moving their businesses to other countries so that they can hire an adequate work force. Without workers, the harvest rots rather than granting its revenue and taxes for the well being of this country and its people.

Similarly, other businesses will suffer because of the lack of workers at all levels. Currently, we are just starting to come out of a deep recession; but don't be shortsighted. We already see what might be the light at the end of the tunnel, and we will need those people who you are trying to eliminate from the work force. As the economy recovers, the current immigration system deports trusted and trained workers who can move the country forward – farm workers, service workers, tech and medical workers, and engineers, among others. In the long term, the United States birth rate does not replace the generation that is retiring and dying. Again, we are deporting young families who give us financial strength at this time and will continue to provide it for generations to come.

Compassion for the families and communities affected dictates that you place your major emphasis on comprehensive immigration reform rather than on E-Verify and other enforcement-only measures. Comprehensive immigration reform must be your highest priority.



Colorado Immigrant Rights Coalition

Statement of Opposition to Mandatory E-Verify

The Colorado Immigrant Rights Coalition strongly opposes mandatory E-verify because it requires employers to use a deeply flawed and inaccurate database, imposes difficult economic and administrative burdens on small businesses, and raises the potential for employer misuse.

Why mandatory E-verify is harmful?

Failures in Information Accuracy, Reliability and Safety

- It is well documented by numerous government agencies, and three different federal House committees in five separate hearings, that E-Verify is deeply flawed and inaccurate, resulting in unjust firings, failure to hire qualified workers, delayed employment, and lost productivity.
- The Social Security Administration (SSA) estimates that if E-Verify were to become mandatory and its databases are not improved, the SSA database errors alone could result in 3.6 million workers a year being misidentified as unauthorized for employment.¹
- Foreign-born workers who are authorized for employment have encountered a disproportionate E-Verify error rate of nearly 10%.¹
- Mandatory E-Verify runs the risk of hurting U.S. workers by compromising workers' right to privacy, and adversely affecting employee civil rights and employment and labor protections.

Economic and Administrative Burdens

- According to the American Council on International Personnel, the reason 99% of employers have not enrolled in E-Verify is not because they are hiring undocumented workers or shirking their employment verification responsibilities, but rather because E-Verify enrollment is inefficient and difficult to use.²
- Colorado's 2006 law that required the mandatory use of E-Verify for all state departments cost \$2.03 million and failed to identify a single undocumented worker.
- Small businesses employ approximately half of the entire U.S. workforce and generated 60-80% of net new jobs annually over the last decade.² These businesses, already struggling in the current economy, will face additional burdens if required to use E-Verify.
- Many small businesses, such as family farms and ranches, lack the personnel, technology requirements, internet access and other resources required to implement the E-verify system.

¹ American Council on International Personnel, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," Aug. 11, 2008.

² *Frequently Asked Questions* (Small Business Association Office of Advocacy, Sept. 2008).



FOR IMMEDIATE RELEASE
February 8, 2011

Contact: Jessica Felix-Romero, Farmworker Justice
571-275-1249, jromero@farmworkerjustice.org

**STATEMENT OF FARMWORKER JUSTICE
ON THE HOUSE IMMIGRATION SUBCOMMITTEE'S HEARING ON E-VERIFY
"E-Verify: Preserving Jobs for American Workers"**

The Immigration Subcommittee in the House of Representatives will continue its focus on enforcement by holding a hearing addressing the E-Verify program. Farmworker Justice strongly believes that we must fix our broken immigration system. The status quo for farmworkers and agricultural businesses is untenable and must be reformed. Over 50% of farmworkers are undocumented. The lack of immigration status contributes to the significant problems in agricultural workplaces and communities: low wages, poor working conditions, pesticide poisoning, and substandard housing. While some argue that these problems will be solved by increased use of enforcement measures, enforcement alone will not solve the challenges farmworkers face nor provide employers with the stable, productive workforce they need. Our nation's broken immigration system needs a lasting solution, which must include a path to immigration status.

Farmworker Justice is a national advocacy organization for migrant and seasonal farmworkers with thirty years of experience on immigration and labor policy.

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February 10, 2011

House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement
Hearing on E-Verify program

Statement by Antonio R. Flores, President and CEO, Hispanic Association of Colleges and Universities (HACU)

Today the Immigration Subcommittee of the House of Representatives takes up the issue of E-Verify in its second hearing on immigration for the 112th Congress. While we recognize the need for improving the way in which immigrants are hired in the workforce, we also note that the E-Verify system will not solve the immigration work system issue. Instead of making short-term, piecemeal fixes, we ask that you take legislative action to fix the whole immigration system.

At HACU we use the E-Verify system for our employees and the HACU interns who work at federal agencies. The program is quite costly. While it may be a useful system, we believe that E-Verify does not solve the issue of immigration reform. The E-Verify system does little to address the major issue of the numerous undocumented residents that have been added to the nation's economy and will continue to do so.

We ask that you consider the ramifications of making E-Verify mandatory without reforming the immigration system in a way that includes a legalization process for undocumented workers. Failing that reform, the current ineffective system, including E-Verify, will send more workers and jobs into the underground economy and other jobs overseas. Instead of isolating employers who operate illegally by going around the system and abusing workers, E-Verify alone may result in undercutting good employers who are trying to hire employees legally.

We thank you for the opportunity to express our views and for your attention and time. We look forward to continuing to take part in conversations with Congress to help fix the nation's immigration system.



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FOR IMMEDIATE RELEASE
February 7, 2011

CONTACT: Nicholas D. Reed
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512.463.0620

Representative Jessica Farrar: Statement on Mandatory Use of E-Verify
Compulsory verification carries harmful consequences

AUSTIN, TX – In anticipation of a hearing before a committee of the U.S. House of Representatives, State Representative Jessica Farrar (D-Houston) released the following statement regarding a Federal proposal to mandate the use of E-Verify for employers:

The U.S. Congress should not mandate the use of E-Verify at this time. Like many residents of border states, I am extraordinarily disappointed that our representatives in the nation's capital have repeatedly failed to address immigration-related problems in a meaningful way. Given this failure, policy-makers at the state and Federal levels are understandably tempted to seek some measure of relief in narrow, stopgap proposals. Such temptations must be avoided: forcing private businesses and local communities to shoulder the burdens of a broken system is no substitute for thoughtful, comprehensive reform.

The United States maintains unreasonably low caps on the number of visas issued, and our guest worker programs are inadequate to meet demand. These limitations have caused several important industries—including the critical agricultural sector—to become increasingly dependent upon undocumented workers. Without action by the Congress to align other aspects of immigration law with economic realities, the mandatory use of E-Verify could harm these industries, with severe consequences for a U.S. economy that is still in recovery.

Further, an E-Verify mandate which stands apart from comprehensive reform will invite unscrupulous employers to retreat further into the underground, cash-only economy. In Texas, lawmakers are currently hard at work trying to curtail this "gray market" that exploits workers, decreases tax revenues, and creates unfair competition for those who conduct business honestly.

E-Verify is a welcome innovation that will likely play an important role in a modernized immigration regime. To encourage the use of E-Verify, I support limiting civil and criminal liability for employers who voluntarily participate. I do not support a mandate—independent of further reforms—which will stifle our economy, incentivize non-compliance with the laws, and sap the already-scarce political will for broader solutions.

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LARRY SUFFREDIN
COMMISSIONER - 13TH DISTRICT
COOK COUNTY BOARD OF COMMISSIONERS
February 8, 2011

Chair
Legislation, Policy,
Employment,
Maintenance Commission

Member
Education Commission
Board of Commissioners
Legislation Sub-Committee
Fire Services
Public Works
Department of Corrections
Sub-Committee
Zoning and Building
Commission
Health and Hospital
Road & Bridges

To: *U.S. House of Representatives Immigration Policy and Enforcement Subcommittee*

Re: *E-verify-Preserving Jobs for American Workers*

From: *Lawrence J. Suffredin, Jr.
Cook County Commissioner*

Mr. Chairman and Members of the Subcommittee:

I am Larry Suffredin, Cook County, Illinois Commissioner for the 13th District. I represent 320,000 people. **I am opposed to the E-Verify program.**

A mandatory e-verify program, without reform that includes a legalized workforce, is a recipe for failure: If we make E-Verify mandatory without fixing the immigration system, we will send more workers and jobs into the underground economy, while other jobs go overseas. Instead of layering this program on top of a broken immigration system, we need to fix the system. That will ensure that workers are legal and hiring is legal. It will isolate the bad employers who continue to go around the system, undercut the good employers who are trying to do what's right and add billions more in taxes to reduce the deficit.

Without a legalized workforce, E-Verify will hurt American workers: Making E-Verify mandatory now will give an advantage to unscrupulous employers, who will find ways around the system - for example, by moving "off the books" into the underground cash economy. This would hurt American workers, who would have to compete against easily-exploited undocumented workers. That is why both the AFL-CIO and Change to Win labor federations support fixing our immigration system. It levels the playing field in the workplace and improves labor standards for all.

Without a legalized workforce, E-Verify will undermine businesses that play by the rules: When workers and employers go into the underground economy, it creates unfair competition for employers who follow the law. They are forced to compete against employers who keep costs down by employing and exploiting undocumented workers. That is why the major business groups all support fixing our immigration.

Larry Suffredin

The 13th District includes the following communities:
49th & 50th Wards of the City of Chicago, the City of Evanston and the Villages of Glenview, Glenview, Kildeer, Lincolnwood, Morton Grove, Niles, Northbrook, Skokie, Winnetka, Wilmette





Date: February 8, 2011

Dear Members of the Immigration Subcommittee:

LULAC-Syracuse chapter want to let our Members of Congress know that we are watching each step, each meeting, and each proposal because we expect Congress to focus on solutions to the real problem, the broken immigration system. We need real solutions that uphold our nation values and help us to move forward into the future.

Central New York is a pivotal area in the farm industry. Without legalizing its workforce, the agricultural industry will be crippled. Up to 75 percent of the U.S. agricultural labor force is comprised of undocumented workers. Mandating E-verify without legalizing the existing workforce would decimate the agricultural industry. The result would be the closure of many more American farms and the off-shoring of millions of U.S. jobs. These are not just jobs in the field; for every on-farm job there are more than 3.1 "upstream" and "downstream" jobs in America jobs that support, and are created by, the growing of agricultural products. The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country. In other words, for each undocumented farm worker we deport, we are essentially deporting the jobs of 3 American workers.

A mandatory e-verify program, without reform that includes a legalized workforce, is a recipe for failure for many reasons. If we make E-Verify mandatory without fixing the immigration system, we will send more workers and jobs into the underground economy, while other jobs go overseas. Instead of layering this program on top of a broken immigration system, we need to fix the system. That will ensure that workers are legal and hiring is legal. It will isolate the bad employers who continue to go around the system, undercut the good employers who

700 Oswego Street, Syracuse, NY 13204
Phone: (315) 475-6152 - Fax: (315) 474-5767

Muslim American Society Immigrant Justice Center
901 Jones Franklin Road, Raleigh, North Carolina 27606

Subcommittee on Immigration Policy and Enforcement
United States House of Representatives
Washington, DC



Dear Chairman:

MAS Immigrant Justice Center considers immigration to be a national matter and we call on Congress to reject Electronic programs to verify employment eligibility and pass comprehensive immigration reform. State and local governments must not be allowed to pass their own immigration-related laws and impose their own penalties. We submit that our country should have one federal immigration law that applies in all 50 states; one that is enforced by the federal government and is applied the same way. Under our constitution, federal immigration law preempts state or local laws.

After careful evaluation of the proposed bill, we conclude that E-Verify is another legislative and administrative immigration control initiative that will negatively impact not just non-citizens, but citizens as well. Our analysis includes the report by the SSA's Office of Inspector General that found that there are 17.8 million discrepancies in the SSA's records relating to lawful American workers. This report also found that 70 percent or 12.7 million of those inconsistencies belong to native-born U.S. citizens.

Since there are no checks against government error or abuse against citizens in the programs ostensibly targeting those here illegally, MAS Immigrant Justice Center is concerned that E-Verify will lead to a monitoring system extended to housing, financial services, and other essentials to discourage illegal immigration.

Immigration reform has become unfinished business, so we urge President Obama to keep his promise to reform the broken system, in-concert with Congressional leaders. Reform will take commitment and hard work from America's leaders. We support the progressive vision needed to fix the problem and silence some of the irresponsible voices driving the immigration debate. The immigrant community should not be left to wonder if President Obama and Congressional leaders are serious about keeping their promise. They deserve a responsible, fair, and practical solution that has been delayed by the irresponsible demagoguery and demonization of immigrants.

We look forward to working with the President and Congressional leaders on bipartisan solutions to our badly broken immigration system.

Respectfully,

Muslim American Society (MAS) - Immigrant Justice Center



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We were disappointed to learn that the Subcommittee on Immigration will be conducting a hearing on the E-verify program this week. A mandatory e-verify system without comprehensive immigration reform would be bad for business, bad for workers, and disastrous to our economy. Without fixing the immigration system, we will send more workers and jobs into the underground economy, while other jobs go overseas. We must fix the system to ensure that workers and hiring are legal and that businesses have the labor they need to thrive and keep jobs here. Reforming the immigration system will punish the bad employers who undercut the good employers who are trying to do what's right. Right now, it's hard to weed out unscrupulous employers from employers who have little choice—for example, some years in Washington we are left with rotting fruit in the fields because there is simply not enough labor.

Mandating e-verify without comprehensive immigration reform would hinder economic recovery at a time when we must take every step possible to get the economy back on track. The agricultural industry, which is estimated to have a workforce that is up to 75% undocumented, would be crippled and America would lose out on its substantial contributions to our GDP. In 2008, WA State ranked 4th in its agricultural sector's contributions to the U.S. GDP, contributing \$7 billion dollars or 4.5 % of the agricultural output of the United States. Our state's agriculture is robust and we produce a wide variety of fruits and vegetables. But we are best known for our Washington apples, supplying about 58% of the US's apples and selling apples around the world including to Mexico, China, and Dubai. However, mandatory e-verify would move our state and America away from its goal of being a top competitor in the global marketplace.

Mandatory E-verify would hurt American workers and families. Without legalization, unscrupulous employers will continue to hire workers off the books. Undocumented workers will still be able to secure jobs where they face unsafe labor standards, exploitation, and sub-standard wages. American workers just can't compete on this kind of playing field. Additionally, mandatory E-verify would result in the closure of many more American farms and the off-shoring of millions of U.S. jobs. These are not just jobs picking; for every on-farm job there are more than 3.1 "upstream" and "downstream" jobs in America—jobs that support, and are created by, the growing of agricultural products. The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country. In other words, for each undocumented farm worker we deport, we are essentially deporting the jobs of 3 American workers.

It's clear that enforcement-only solutions aren't working and aren't a practical approach to our country's future. We sincerely hope that Congress elects to restore order to our broken immigration system and help move forward economic recovery.

Advancing Immigrant,
Civil & Human
Rights

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CHANGING THE FUTURE OF IMMIGRATION

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February 7, 2011

We endorse the Catholic Bishops' call for humane, comprehensive immigration reform that also protects our citizens. We urge Congress to address the broad, systemic issues of immigration reform, rather than focus totally on enforcement. These issues include family reunion, a fair path to citizenship, and a guest worker program that meets the needs of U.S. employers as well as migrants.

Politics Focus Group of the Racine Dominican Justice and Rights Council



February 7, 2011

Members
U.S. House of Representatives Immigration Policy
and Enforcement Subcommittee of the
Judiciary Committee
Washington, DC

RE: Public Hearing on "E-Verify-Preserving Jobs for American Workers."

Dear Members of the Subcommittee:

As you get ready for your public hearing to discuss the all-important issue of imposing a mandatory E-Verify system on employers without first fixing the broken immigration system, I would like to go on record to express my concerns why I think the proposal will not work. The bottom line is that it will be bad for workers, employers, and our economy at large.

As Chairman of the *International Relations, Trade & Immigration Task Force* of the National Hispanic Caucus of State Legislators (NHCSL), I am proud to join the growing list of policymakers across the country - local, county, state and federal levels alike - who appeal to you in not proposing any more Arizona-like anti-immigration legislation that will only lead to more disenfranchisement, discrimination, and racial profiling against our Hispanic community in general and our immigrant population specifically, put simply. Not only do I find this measure to be outright illegal and a wasteful use of government resources, but I also think it is in direct violation of our American values and our US Constitution alike. In short, it is simply a poorly-motivated attempt that will easily lead to racial and ethnic profiling, and other similar abuses of the law. Moreover, I firmly believe there are so many other important and pressing issues we should be addressing, and a mandatory E-Verify system is not on top of that list.

Similar E-Verify and other anti-immigration measures have been attempted repeatedly in the Texas legislature and in several local communities, and none of them have gone anywhere. In fact, most of them have been soundly defeated by lawmakers or our court system.

Instead of blaming immigrants for all of our Nation's woes and other societal ills, we need to continue to remind our elected leaders that they should instead focus their time and energy in highlighting the many positive contributions that our immigrant population makes to our Nation's economy at large, and individual states in particular including Texas, whether it is in the labor market, our public schools, our local communities, or our tax system. Furthermore, instead of blaming immigrants for our state's and Nation's failing public school finance system, our high health care costs, our overcrowded jails, and our high unemployment rates, we need to remind our colleagues that they should instead focus their time and energy in highlighting the worse conditions that states like Texas and Arizona and the U.S. as a whole could be in if it were not for our immigrant population and their many contributions. Finally, we must continue to remind our colleagues that we could be worse off without our immigrants, and that there is an overabundance of research studies and reliable government and scholarly, professional reports to refute their anti-immigration positions.

There are a number of reasons I think failure would be the result if imposing a mandatory E-Verify system on employers without first fixing the broken immigration system, were to happen in the US. I have heard many of them, but jmt to paraphrase some of the most common ones, I would like to share with you the following:

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WAYNE ACTION FOR RACIAL EQUALITY



To whom it may concern:

This letter is sent to express our concern with the lack of the modernization of the immigration system to allow adequate labor in the farm markets. Without legalizing the farm labor workforce, the cost to our food supply will be damaged.

By ignoring the contributions of the presently undocumented workforce, we are in the process of destroying the temporary supply of labor required to harvest the many crops across this country. It is disingenuous to state that Americans are losing jobs in the agricultural sector to the undocumented farm laborer, as I have witnessed first hand the lack of Americans willing to do this type of labor.

Wayne Action for Racial Equality stands firm in its support of a pathway to legalization of those farmworkers and their families who work to provide the food on our tables. We also support an improvement in immigration policy which would allow farmworkers to more easily and safely find temporary work in this country.

E-verify alone would not mitigate the dangers to our food supply if we did not have the size of the present migrant workforce.

John L. Gertner, MD
Wayne Action for Racial Equality
6035 Robinson Rd.
Sodus, NY 14551



**AGRICULTURE COALITION FOR IMMIGRATION REFORM
MEMBERS AND SUPPORTERS
January, 2011**

AGRI-MARK INC
 AGRI-PLACEMENT SERVICES
 ALLIED FEDERATED CO-OPS, INC.
 ALLIED GRAPE GROWERS
 ALMOND HULLERS AND PROCESSORS
 AMERICAN AGRI-WOMEN
 AMERICAN FROZEN FOODS INSTITUTE
 AMERICAN HORSE COUNCIL
 AMERICAN MUSHROOM INSTITUTE
 AMERICAN NURSERY & LANDSCAPE ASSOCIATION
 AMERICAN SHEEP INDUSTRY ASSOCIATION
 COBANK
 COUNCIL OF NORTHEAST FARMER COOPERATIVES
 DAIRY FARMERS OF AMERICA
 DAIRYLEA COOPERATIVE, INCORPORATED
 FARM CREDIT EAST
 FARWEST EQUIPMENT DEALERS ASSOCIATION
 FEDERATION OF EMPLOYERS AND WORKERS OF AMERICA
 GULF CITRUS GROWERS ASSOCIATION
 IRRIGATION ASSOCIATION
 LAND O' LAKES
 NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
 NATIONAL CATTLEMENS' BEEF ASSOCIATION
 NATIONAL CHRISTMAS TREE ASSOCIATION
 NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
 NATIONAL COUNCIL OF FARMER COOPERATIVES
 NATIONAL FARMERS UNION
 NATIONAL GREENHOUSE MANUFACTURERS ASSOCIATION
 NATIONAL MILK PRODUCERS FEDERATION
 NATIONAL POTATO COUNCIL
 NEW ENGLAND APPLE COUNCIL
 NISLI FARMERS LEAGUE
 NORTH AMERICAN HORTICULTURAL SUPPLY ASSOCIATION
 NORTHEAST DAIRY PRODUCERS
 NORTHERN CHRISTMAS TREE GROWERS
 NORTHWEST FARM CREDIT SERVICES
 NORTHWEST HORTICULTURAL COUNCIL

OFA – AN ASSOCIATION OF FLORICULTURE PROFESSIONALS
 PACIFIC NORTHWEST CHRISTMAS TREE ASSOCIATION
 PACIFIC TOMATO GROWERS
 PERENNIAL PLANT ASSOCIATION
 PRODUCE MARKETING ASSOCIATION
 PRO-FAC COOPERATIVE
 RAISIN BARGAINING ASSOCIATION
 ROCKY MOUNTAIN FARMERS UNION
 SENSENY SOUTH CORPORATION
 SNAKE RIVER FARMERS ASSOCIATION
 SOCIETY OF AMERICAN FLORISTS
 SOUTHEAST COTTON GINNERS ASSOCIATION, INC.
 SOUTHEAST DAIRY FARMERS ASSOCIATION
 SOUTHERN CHRISTMAS TREE ASSOCIATION
 SOUTHERN COTTON GINNERS ASSOCIATION
 SOUTHERN NURSERY ASSOCIATION
 TURFGRASS PRODUCERS INTERNATIONAL
 UNITED AGRIBUSINESS LEAGUE
 UNITED EGG ASSOCIATION
 UNITED EGG PRODUCERS
 UNITED FRESH PRODUCE ASSOCIATION
 U.S. APPLE ASSOCIATION
 U.S. CUSTOM HARVESTERS ASSOCIATION
 WESTERN GROWERS
 WESTERN PLANT HEALTH ASSOCIATION
 WESTERN RANGE ASSOCIATION
 WESTERN UNITED DAIRYMEN
 WINEAMERICA
 WINE GRAPE GROWERS OF AMERICA
 WINE INSTITUTE
 AGRICULTURAL AFFILIATES (NEW YORK)
 AGRICULTURAL COUNCIL OF CALIFORNIA
 ALABAMA NURSERY & LANDSCAPE ASSOCIATION
 ALABAMA WATERMELON ASSOCIATION
 ARIZONA NURSERY ASSOCIATION
 ARKANSAS GREEN INDUSTRY ASSOCIATION
 BLUE DIAMOND GROWERS
 CALIFORNIA APPLE COMMISSION
 CALIFORNIA-ARIZONA WATERMELON ASSOCIATION
 CALIFORNIA AVOCADO COMMISSION
 CALIFORNIA ASSOCIATION OF NURSERIES AND GARDEN CENTERS
 CALIFORNIA ASSOCIATION OF WINE GRAPE GROWERS
 CALIFORNIA CANNING PEACH ASSOCIATION
 CALIFORNIA CITRUS MUTUAL
 CALIFORNIA DAIRIES INC.
 CALIFORNIA DRIED PLUM BOARD

CALIFORNIA FARM BUREAU FEDERATION
 CALIFORNIA FIG INSTITUTE
 CALIFORNIA FLORAL COUNCIL
 CALIFORNIA GRAIN AND FEED ASSOCIATION
 CALIFORNIA GRAPE AND TREE FRUIT LEAGUE
 CALIFORNIA LEAGUE OF FOOD PROCESSORS
 CALIFORNIA PEAR GROWERS ASSOCIATION
 CALIFORNIA SEED ASSOCIATION
 CALIFORNIA STRAWBERRY COMMISSION
 CALIFORNIA STRAWBERRY NURSERYMENS' ASSOCIATION
 CALIFORNIA WALNUT COMMISSION
 CALIFORNIA WOMEN FOR AGRICULTURE
 NURSERY GROWERS ASSOCIATION (CA)
 OLIVE GROWER COUNCIL OF CALIFORNIA
 PACIFIC EGG AND POULTRY ASSOCIATION
 SUNMAID GROWERS OF CALIFORNIA
 SUNSWEET GROWERS INC.
 VALLEY FIG
 VENTURA COUNTY AGRICULTURAL ASSOCIATION
 ASSOCIATED LANDSCAPE CONTRACTORS OF COLORADO
 COLORADO NURSERY & GREENHOUSE ASSOCIATION
 COLORADO POTATO ADMINISTRATIVE COMMITTEE
 COLORADO SUGARBET GROWERS ASSOCIATION
 COLORADO WINE INDUSTRY DEVELOPMENT BOARD
 CONNECTICUT NURSERY & LANDSCAPE ASSOCIATION
 FLORIDA CITRUS MUTUAL
 FLORIDA CITRUS PACKERS
 FLORIDA FRUIT AND VEGETABLE ASSOCIATION
 FLORIDA NURSERY, GROWERS & LANDSCAPE ASSOCIATION
 FLORIDA THOROUGHbred BREEDERS AND OWNERS ASSOCIATION
 FLORIDA WATERMELON ASSOCIATION
 GEORGIA GREEN INDUSTRY ASSOCIATION
 GEORGIA MILK PRODUCERS
 GEORGIA WATERMELON ASSOCIATION
 WINEGROWERS ASSOCIATION OF GEORGIA
 IDAHO APPLE COMMISSION
 IDAHO DAIRYMEN'S ASSOCIATION
 IDAHO DAIRY PRODUCERS ASSN.
 IDAHO GROWER SHIPPERS ASSOCIATION
 IDAHO NURSERY & LANDSCAPE ASSOCIATION
 IDAHO-OREGON FRUIT AND VEGETABLE ASSOCIATION
 POTATO GROWERS OF IDAHO
 ILLINOIS GRAPE GROWERS AND VINTNERS ASSOCIATION
 ILLINOIS LANDSCAPE CONTRACTORS ASSOCIATION
 ILLINOIS NURSERYMEN'S ASSOCIATION
 ILLINOIS SPECIALTY GROWERS ASSOCIATION
 INDIANA-ILLINOIS WATERMELON ASSOCIATION
 INDIANA NURSERY & LANDSCAPE ASSOCIATION
 IOWA NURSERY AND LANDSCAPE ASSOCIATION
 KANSAS NURSERY AND LANDSCAPE ASSOCIATION

KENTUCKY NURSERY & LANDSCAPE ASSOCIATION
 FARM CREDIT OF MAINE
 MAINE NURSERY & LANDSCAPE ASSOCIATION
 MARYLAND-DELAWARE WATERMELON ASSOCIATION
 MARYLAND NURSERY & LANDSCAPE ASSOCIATION
 ASSOCIATED LANDSCAPE CONTRACTORS OF MASSACHUSETTS
 MASSACHUSETTS NURSERY & LANDSCAPE ASSOCIATION
 MICHIGAN APPLE COMMITTEE
 MICHIGAN BLUEBERRY GROWERS
 MICHIGAN CHRISTMAS TREE ASSOCIATION
 MICHIGAN GREEN INDUSTRY ASSOCIATION
 MICHIGAN HORTICULTURAL SOCIETY
 MICHIGAN NURSERY AND LANDSCAPE ASSOCIATION
 MICHIGAN VEGETABLE COUNCIL
 WINE MICHIGAN
 MINNESOTA NURSERY & LANDSCAPE ASSOCIATION
 MISSISSIPPI NURSERY ASSOCIATION
 MISSOURI-ARKANSAS WATERMELON ASSOCIATION
 MISSOURI LANDSCAPE & NURSERY ASSOCIATION
 MONTANA NURSERY & LANDSCAPE ASSOCIATION
 NEBRASKA NURSERY & LANDSCAPE ASSOCIATION
 NEW ENGLAND NURSERY ASSOCIATION
 NEW JERSEY NURSERY & LANDSCAPE ASSOCIATION
 DAIRY PRODUCERS OF NEW MEXICO
 CAYUGA MARKETING
 FARM CREDIT OF WESTERN NEW YORK
 FIRST PIONEER FARM CREDIT
 NEW YORK APPLE ASSOCIATION
 NEW YORK HORTICULTURE SOCIETY
 NEW YORK STATE NURSERY & LANDSCAPE ASSOCIATION
 NEW YORK STATE VEGETABLE GROWERS ASSOCIATION
 PROFAC COOPERATIVE
 YANKEE FARM CREDIT
 NORTH CAROLINA ASSOCIATION OF NURSERYMEN
 NORTH CAROLINA CHRISTMAS TREE ASSOCIATION
 NORTH CAROLINA COMMERCIAL FLOWER GROWERS ASSOCIATION
 NORTH CAROLINA FARM BUREAU FEDERATION
 NORTH CAROLINA GREENHOUSE VEGETABLE GROWERS ASSOCIATION
 NORTH CAROLINA GREEN INDUSTRY ASSOCIATION
 NORTH CAROLINA POTATO ASSOCIATION
 NORTH CAROLINA STRAWBERRY ASSOCIATION
 NORTH CAROLINA WATERMELON ASSOCIATION
 NORTH CAROLINA WINE & GRAPE COUNCIL
 NORTHERN CALIFORNIA GROWERS ASSOCIATION
 NORTH DAKOTA NURSERY & GREENHOUSE ASSOCIATION
 NORTHERN OHIO GROWERS ASSOCIATION
 NURSERY GROWERS OF LAKE COUNTY OHIO, INC.
 OHIO FRUIT GROWERS SOCIETY

OHIO NURSERY & LANDSCAPE ASSOCIATION
 OHIO VEGETABLE & POTATO GROWERS ASSOCIATION
 OKLAHOMA GREENHOUSE GROWERS ASSOCIATION
 OKLAHOMA STATE NURSERY & LANDSCAPE ASSOCIATION
 HOOD RIVER GROWER-SHIPPER ASSOCIATION
 OREGON ASSOCIATION OF NURSERIES
 OREGON WINE BOARD
 PENNSYLVANIA LANDSCAPE & NURSERY ASSOCIATION
 STATE HORTICULTURAL ASSOCIATION OF PENNSYLVANIA
 RAISIN BARGAINING ASSOCIATION
 RHODE ISLAND NURSERY AND LANDSCAPE ASSOCIATION
 SNAKE RIVER FARMERS ASSOCIATION
 SOUTH CAROLINA GREENHOUSE GROWERS ASSOCIATION
 SOUTH CAROLINA NURSERY & LANDSCAPE ASSOCIATION
 SOUTH CAROLINA WATERMELON ASSOCIATION
 SOUTH DAKOTA NURSERY & LANDSCAPE ASSOCIATION
 TENNESSEE NURSERY & LANDSCAPE ASSOCIATION
 LONESTAR MILK PRODUCERS
 PLAINS COTTON GROWERS
 SELECT MILK PRODUCERS (TX)
 SOUTHWESTERN CATTLE RAISERS
 SOUTH TEXAS COTTON AND GRAIN ASSOCIATION
 TEXAS AGRICULTURAL COOPERATIVE COUNCIL
 TEXAS AGRIWOMEN
 TEXAS ASSOCIATION OF DAIRYMEN
 TEXAS CITRUS MUTUAL
 TEXAS COTTON GINNERS ASSOCIATION
 TEXAS GRAIN SORGHUM PRODUCERS ASSOCIATION
 TEXAS NURSERY & LANDSCAPE ASSOCIATION
 TEXAS-OKLAHOMA WATERMELON ASSOCIATION
 TEXAS POULTRY FEDERATION
 TEXAS PRODUCE EXPORT ASSOCIATION
 TEXAS & SOUTHWESTERN CATTLE RAISERS
 TEXAS PRODUCE ASSOCIATION
 TEXAS TURF PRODUCERS ASSOCIATION
 TEXAS VEGETABLE ASSOCIATION
 WESTERN PEANUT GROWERS
 UTAH DAIRYMEN'S ASSOCIATION
 UTAH NURSERY & LANDSCAPE ASSOCIATION
 VERMONT APPLE MARKETING BOARD
 VERMONT ASSOCIATION OF PROFESSIONAL HORTICULTURISTS
 FREDERICK COUNTY FRUIT GROWERS' ASSOCIATION (VIRGINIA)
 NORTHERN VIRGINIA NURSERY & LANDSCAPE ASSOCIATION
 SOUTHWEST VIRGINIA NURSERY & LANDSCAPE ASSOCIATION
 VIRGINIA APPLE GROWERS ASSOCIATION
 VIRGINIA CHRISTMAS TREE GROWERS ASSOCIATION
 VIRGINIA NURSERY AND LANDSCAPE ASSOCIATION

WASCO COUNTY FRUIT & PRODUCE LEAGUE
WASHINGTON ASSOCIATION OF WINE GRAPE GROWERS
WASHINGTON GROWERS CLEARING HOUSE ASSOCIATION
WASHINGTON GROWERS LEAGUE
WASHINGTON POTATO & ONION ASSOCIATION
WASHINGTON STATE POTATO COMMISSION
WASHINGTON STATE NURSERY & LANDSCAPE ASSOCIATION
WASHINGTON WINE INSTITUTE
WEST VIRGINIA NURSERY AND LANDSCAPE ASSOCIATION
WISCONSIN CHRISTMAS TREE GROWERS ASSOCIATION
WISCONSIN NURSERY ASSOCIATION
WISCONSIN LANDSCAPE FEDERATION
WISCONSIN SOD PRODUCERS ASSOCIATION

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February 10, 2011

The Honorable Elton Gallegly, Chairman
The Honorable Zoe Lofgren, Ranking Member
House Judiciary Subcommittee on Immigration Policy
and Enforcement
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gallegly and Ranking Member Lofgren:

We respectfully submit the following statement to be added to the official record for today's hearing on the E-Verify program, a matter of enormous significance in your districts, your state, and the nation. We have also attached a list of our coalition members. We look forward to working with you, and welcome the opportunity to provide further information and insights.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig J. Regelbrugge".

Craig J. Regelbrugge, ACIR Co-Chair, DC
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cregelbrugge@anla.org

A handwritten signature in black ink, appearing to read "Luawanna Hallstrom".

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760/497-5579 cell
collaborativecommunicationslh@gmail.com

A handwritten signature in black ink, appearing to read "John Young".

John Young, ACIR Co-Chair, NH
603-497-2132
Neac1@aol.com



**Agriculture Coalition for Immigration Reform
Statement on
House Judiciary Subcommittee on Immigration Policy and Enforcement
Hearing on the E-Verify Program
February 10, 2011**

As the House Judiciary Subcommittee on Immigration considers worksite immigration enforcement including mandatory use of the E-Verify program, the Agriculture Coalition for Immigration Reform (ACIR) respectfully urges members of the Subcommittee to carefully consider the unique challenges confronting the agricultural sector. If done piecemeal, stepped-up worksite enforcement, including mandatory E-Verify, will bring about unintended and likely irreversible structural changes to American agricultural sectors that require significant labor. These sectors include fruit and vegetable, dairy and meat, nursery and greenhouse, and Christmas tree production. Implications include diminished production of high-value but labor-intensive crops and products, reduced farm employment, loss of potentially millions of off-farm but farm-dependent jobs, increased reliance on foreign food imports, economic damage especially to rural communities, and reduced food security.

Agricultural Employers are Committed to Reforming a Broken System

The agricultural sector does not wish to defend nor perpetuate the status quo. To the contrary, agricultural leaders have actively sought a legislative solution since 1996. Since the beginning, agriculture has been open to doing what is reasonable and necessary to verify employment eligibility, so long as workable legal channels are part of the package. We seek a system that is simple and certain. Since 2000, our legislative efforts have been broad-based and bipartisan. Landmark legislation supported by ACIR and farm worker advocates was first introduced in the House and Senate in September, 2003, and has been refined and reintroduced with diverse bipartisan support in each successive Congress. The reforms we support reforms passed in the Senate in 2006, and passed out of a key Senate committee in 2008. However, since 2006, agricultural reforms have been linked to more comprehensive immigration legislation that has lacked sufficient political consensus to pass.

To reiterate, agricultural employers are willing to embrace improved immigration enforcement, so long as legal channels are sufficiently improved at the same time. We are not running away from E-Verify. As an industry we are leaning into it, working to learn about it. In June, 2010, ACIR along with local and regional participating associations hosted a tour and roundtable discussion with Department of Homeland Security (DHS) program staff responsible for the E-Verify program. DHS staff visited diverse agricultural operations in California's San Joaquin

Valley, including nursery, dairy, wine grape, and tree fruit farms, as well as a typical farm labor contractor remote hiring site. The tour and meeting established a robust and ongoing dialogue on how E-Verify can be adapted to and implemented in the agricultural sector. The staff saw and heard first-hand the unique challenges and limitations confronting the agricultural sector. These challenges and limitations include seasonality, perishability, migrancy, extremely high seasonal peak hiring needs, high turnover, a dearth of dedicated human resources staff, and limited technology access. These challenges are inherent to agricultural production, and must be accommodated if a solution is to work in the real world.

Farm Workforce Challenges that Any Meaningful and Workable Reform Must Address

The majority of farm workers in the U.S. are foreign-born and unauthorized. According to the National Agricultural Worker Survey (NAWS), over half of farm workers lack proper immigration status. Experts believe this estimate is low, however, because it is based on self-reporting. Many believe that upwards of 75% of hired farm workers lack proper immigration status, though they show documents that appear genuine. These numbers are corroborated by the results of I-9 audits and other enforcement targeting the agricultural sector. The demographic reality of the farm labor force described above is quite consistent nationwide, from New England to Florida to California and the Pacific Northwest.

Stated simply, aggressive worksite enforcement without broader reform would deprive agriculture of most of its workforce. Without broader reform, there is no factual or rational basis for concluding that agriculture will be able to source a domestic workforce sufficient to ensure continued U.S. production of labor-intensive crops and products. Demographic trends mean fewer and fewer Americans seek the work, a trend underway since at least the World War II era. The American workforce has become older, better educated, and more urban. It has chosen lifestyle and employment options other than field work on farms.

In recent years, in good times and bad, the domestic labor market has been extensively tested through public/private, employer association, and organized labor outreach aimed at recruiting Americans to turn to a lifestyle few have ever known. All such efforts have failed miserably, clearly demonstrating time and again that there is not a domestic workforce sufficient to meet the need. A few examples:

- In the late 1990's, at the insistence of Sen. Dianne Feinstein, a multi-county welfare-to-farm-work program was launched in California's Central Valley. Regional unemployment ran nine to 12 percent; in some localities, unemployment exceeded 20%. State and county agencies and grower associations collaborated to identify cropping patterns, labor needs, training, transportation, and other impediments. Out of over 100,000 prospective "welfare to work" placements, three individuals were successfully placed. In the aftermath of the program, several employment agencies indicated – in writing – that they would no longer seek to place the unemployed in seasonal agricultural work, because it was not a fit for these individuals.

- In 2006, in Washington State, a tight labor supply for the cherry harvest was a warning sign of a looming outright labor shortage for the much larger apple harvest. Again, state and local agencies teamed up with grower associations to conduct an advertising blitz and provide special training on how to safely pick apples without harming their market value or damaging the trees' future productivity. In that program, over 1700 workers were sought; roughly 40 were successfully placed.
- In 2007, the North Carolina Farm Bureau Federation set up a statewide hotline for job seekers, and advertised it in print and on radio. North Carolina needs roughly 60,000 crop and livestock workers each season. Two calls were received; one was from a grandmother who felt that farm work would do her grandson good.
- In 2010, the nation's largest farm worker union, the United Farm Workers, an organization which has long sought to defend the rights of domestic farm workers, launched the "Take Our Jobs" program. A media blitz included national coverage on the Stephen Colbert show. As of mid October, which generally marked the end of the growing season and the campaign, 10,021 people had inquired about jobs in the fields, yet only nine people had taken jobs in the fields. Most of them quit after a few days or weeks.

Some suggest that the existing H-2A agricultural worker program can fill the breach. Yet, H-2A has historically provided only about two percent of agriculture's labor needs. At its peak in 2009, it had crept up toward five percent of total workforce. The program has long needed extensive reform; it is now in virtual collapse under the administration of new rules that took effect March 15, 2010. The case of one of New York State's largest apple growers illustrates. In 2010, delays in processing meant 100 H-2A visa holders failed to arrive on time for the harvest. His apples were harvested, but quality had deteriorated by the time the workers arrived, and those quality losses are now showing as the apples have not stored well and have lost market value. The grower is now seriously thinking of pushing out trees and leasing the land to others who grow lower value but mechanized grain crops. The instability of the H-2A program is not worth the gamble on growing apples. In addition to loss of payroll, taxes, and other local impacts, 18 full time American jobs and a 300,000 bushel apple crop are at stake.

Yet even if H-2A could be substantially improved, reform of that program cannot alone stabilize the farm labor situation. Extensive reform and capacity building on farms and in American consulates abroad would be needed for H-2A to provide a meaningful percentage of needed farm labor.

Labor Instability Will Increase Reliance on Imports and U.S. Vulnerability to Global Food Volatility

Imposing enforcement without solutions to ensure a legal agricultural workforce would constitute a reckless and especially ill-timed roll of the dice, in view of the recent United Nations Food and Agriculture Organization (FAO) report on global food inflation. That report

noted the following:

*The F.A.O. price index, which tracks 55 food commodities for export, rose 3.4 percent in January (2011), hitting its highest level since tracking began in 1990. **Countries not dependent on food imports are less affected by global volatility.** Still, food prices are expected to rise 2 percent to 3 percent in the United States this year. [Emphasis added]*

Indeed, the United States is well on the road to reliance on food imports, especially in the fruit and vegetable sectors. According to a 2008 Congressional Research Service report:

Over the last decade, there has been a growing U.S. trade deficit in fresh and processed fruits and vegetables. Although U.S. fruit and vegetable exports totaled nearly \$9 billion in 2007, U.S. imports of fruits and vegetables were more than \$16 billion, resulting in a gap between imports and exports of more than \$7 billion. This trade deficit has widened over time — despite the fact that U.S. fruit and vegetable exports have continued to rise each year — because growth in imports has greatly outpaced export growth. As a result, the United States has gone from being a net exporter of fresh and processed fruits and vegetables in the early 1970s to being a net importer of fruits and vegetables today. ("The U.S. Trade Situation for Fruit and Vegetable Products", Renée Johnson, Congressional Research Service, October 15, 2008)

The following table captures U.S. fruit and vegetable import trends over a 10 year period. Note that the second-largest percentage increase in imports involves China, a nation where food and product contamination that leads to illness and death is a frequent feature in our news.

Country Suppliers of U.S. Fruit and Vegetable Imports, 1997 and 2007

Country	1997 (\$ Millions)	2007 (\$ Millions)	% change
Mexico	2,089	5,353	156.2%
Canada	681	2,192	221.9%
Chile	501	1,358	171.1%
China	196	1,285	555.6%
Costa Rica	505	917	81.6%
Guatemala	201	543	170.1%
Brazil	142	515	262.7%
Ecuador	313	406	29.7%
Argentina	198	368	85.9%
Peru	43	341	693.0%
Subtotal:	4,869	13,277	172.7%
All Other:	2,205	2,777	25.9%
Total	7,074	16,054	126.9%

“Enforcement-only” Will Have Far-reaching Negative Job and Economic Consequences

Labor instability is already a factor in the trends unfolding in labor-intensive agriculture, and especially the fruit and vegetable sector. Application of mandatory E-Verify to agricultural employers, without measures to ensure an adequate legal labor force, will deprive agriculture of a majority of its workforce. As a matter of national policy, Congress must understand that mandating enforcement without reform is to accept that other countries will control the very food supply that the latest dietary guidelines suggest should occupy half of our dinner plates.

The importance of improved legal channels is upheld by policy experts working in this arena, as evidenced by the following paragraphs from a report on implementation of the North American Free Trade Agreement. Note that the author relies on the official NAWs estimate that roughly one-half of the U.S. hired farm labor force is unauthorized; because this estimate is based on self-reporting, subject matter experts believe the actual percentage is closer to 75%.

Farm labor is a third area where efforts toward further integration could pay substantial dividends for agriculture. Certain labor-intensive sectors of U.S. agriculture ...rely heavily on foreign-born workers. In 2006, the number of hired laborers employed by U.S. agriculture ranged from 614,000 in January to 876,000 in July, according to quarterly estimates from USDA's National Agricultural Statistics Service. Roughly half of the hired labor force in crop agriculture is believed to be undocumented. Changes that would broaden opportunities for foreign-born workers to work legally in U.S. agriculture would help to assure the continued availability of labor for the sector while eliminating the tremendous dangers associated with entering the United States illegally.

("NAFTA at 13: Implementation Nears Completion", Steven Zahniser, Outlook Report from the Economic Research Service, March, 2007, <http://www.ers.usda.gov/publications/wrs0701/wrs0701.pdf>)

Finally, a 2006 USDA report on the fruit and vegetable sector underscored the importance of immigration reform to the continued economic vitality and contributions offered by the sector. Though the report was narrow in its focus, the implications are equally true for other agricultural sectors including dairy, nursery and greenhouse, and even ranching.

The U.S. fruit and vegetable sector is at a crossroads. As an increasingly important component of U.S. agriculture, with nearly a third of U.S. crop cash receipts and a fifth of U.S. agricultural exports, the industry is becoming recognized by policymakers as pivotal to the health and well-being of consumers and to the economy of rural America. The various challenges facing the sector come from both domestic and international trade arenas. Key issues include labor cost and availability (including immigration reform and access to an affordable labor pool), strategies to enhance domestic demand, increased access and competition in foreign markets, and environmental issues. Confronting these

challenges is vital for the U.S. fruit and vegetable industry to continue into the future as a healthy and vibrant sector of the U.S. economy.

USDA "Fruit and Vegetable Backgrounder" (Electronic Outlook Report from the Economic Research Service, Gary Lucier, Susan Pollack, Mir Ali, and Agnes Perez, April, 2006).

In short, we stand for solutions that work to improve enforcement while providing an adequate means to ensure a labor force. It must be understood, though, that even if Congress proceeds wisely by pairing any E-Verify mandate with legal channels for agricultural employment, the E-Verify program needs other improvements as well. The most glaring deficiency is the program's routine failure to detect identity theft, and use of forged documents such as Social Security

cards that contain, for instance, a legitimate name and number. The law of unintended consequences suggests that mandating E-Verify without fixing these limitations will have the unintended effect of spurring massive identity theft, driving workers and employers underground and off the tax rolls, or both.

In conclusion, the facts are stark. A regimen of worksite enforcement alone, or mandating the use of E-Verify, without broader reforms that ensure a stable, properly authorized, and affordable labor force, will deprive labor-intensive agriculture of its workforce. Such an approach will devastate the sector and accelerate changes already underway that are not in the national interest. These changes include loss of production, loss of farm income, loss of on-farm and farm-dependent jobs, diminished economic activity especially in rural communities, and an increasing reliance on foreign nations to feed the American people.

We look forward to working with you to achieve improved immigration enforcement without the untenable and irreversible consequences that will be especially acute in the agricultural sector if an enforcement-only regime is imposed. Thank you.

The Agriculture Coalition for Immigration Reform (ACIR) is the broad national coalition representing over 300 national, regional, and state organizations whose members produce fruit and vegetables, dairy, nursery and greenhouse crops, poultry, livestock, and Christmas trees.



American Council on International Personnel

Advancing Global Mobility

ACIP's "Solutions for Immigration" Series:

Concepts for Solving America's Employment-based Immigration Puzzle

Worksite Enforcement

WORKSITE ENFORCEMENT: CENTRAL TO REFORM BUT NEEDS IMPROVEMENT

Effective worksite enforcement is crucial to securing America's borders and our interior. Secretary Janet Napolitano, Senator Charles Schumer (D-NY) and Congressman Lamar Smith (R-TX) have all emphasized that employment eligibility verification is central to any bipartisan immigration reform. Congress must ensure that any mandatory employment verification system builds on E-Verify's success and is easy to use; accurate and reliable; deploy the latest technologies; be fully electronic; protect against identity theft; provide a safe harbor for employers against government error and subcontractor liability; and apply solely to new hires.

"...Because E-Verify remains a paper-based system, it is unable to detect many forms of document fraud and identity theft. This leaves all employers vulnerable to sanctions through no fault of their own. ... Simply stated, unauthorized workers are using stolen Social Security numbers, fake certificates and fraudulently-obtained photo IDs to bypass the system and gain employment."

*-Bruce Morrison,
Chairman,
U.S. House
Immigration
Subcommittee,
1989 - 1991*

THE E-VERIFY SYSTEM: RELIABLE, EXCEPT WHEN IT'S NOT...

E-Verify is the current federal employment verification system and has been reauthorized through 2012 (PL 11-083). It is an Internet-based system operated by the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS), in partnership with the Social Security Administration (SSA). While E-Verify enrollment is expected to continue to grow, only roughly three percent, or about 216,721 of the approximately 6.5 million employers nationwide currently use it.

Today, E-Verify operates alongside its paper-based predecessor, which requires all employers to complete a Form I-9 for a new hire. This information is then entered by employers into an online interface, which checks databases at DHS and SSA to verify if a worker is authorized for employment. While E-Verify can be effective in matching a name and a Social Security number to verify work authorization, the program cannot stop identity fraud, i.e., the unauthorized use of names and Social Security numbers of other work-authorized persons. Identity theft is the Achilles heel of the E-Verify system, and Congress must eliminate this problem in any reform measure so that employers are not vulnerable to sanctions through no fault of their own.

... AND VOLUNTARY, EXCEPT WHEN IT'S NOT...

Today, E-Verify remains mostly voluntary, except when mandated by federal or state law. As of September 8, 2009, E-Verify is required for certain employers awarded federal contracts. Additionally, a number of states, and even cities, have enacted laws that require employers to use E-Verify or complete additional verification requirements. These laws are being reviewed by the U.S. Supreme Court with a decision expected in 2011. Congress should preempt this patchwork of state laws with one reliable federal system so that employers have consistent requirements to follow.

CONCERNS TO ADDRESS BEFORE EXPANDING E-VERIFY

Employers must have confidence that any employment verification system accurately identifies those who are authorized, or unauthorized, to work, while reducing the redundancies that exist today.

While USCIS has been making improvements to the E-Verify system over the last few years, the following concerns must be addressed before any system is expanded:

- **Eliminate the Form I-9 requirement when other verification is used.** For instance, E-Verify requires the employer to complete Form I-9 and enter very similar information online, which is both unnecessary and duplicative.
- **Prevent identity theft with a biometric option.** Currently the E-Verify system is unable to always detect document fraud and identity theft. While a "photo tool" is available for some documents, it is not as reliable as a biometric option. Employers should have the choice to use either E-Verify or a more secure biometric system to complete verification. A poll of Americans found that 79 percent favor the use of biometric identifiers for employment verification.
- **Ensure safe harbor from liability for verification users.** Any verification system must protect employers from liability when they rely on government approvals of erroneous authorizations. A safe-harbor must also exist for employers who use subcontractors without knowing the subcontractors hire or employ unauthorized workers.
- **Apply verification only to new hires.** Re-verification is redundant, expensive and burdensome. In 2008, the Congressional Budget Office estimated that the re-verification provisions found in one bill would cost U.S. employers over \$136 million a year during at least one of the first five years if enacted.

We encourage Congress to include these provisions in bipartisan reform. To learn more about worksite enforcement, please visit www.acip.com or the HR Initiative for a Legal Workforce: <http://www.legal-workforce.org>.

"Many occupations already require biometric identification for employees, and consumers are regularly given the option of securing their identity through use of a biometric identifier. It only makes sense to use the best technologies that are available to guarantee a legal workforce."

*-Mike Altken,
Chair, The HR Initiative
for a Legal Workforce*

"An ACIP member that specializes in information technology and has 45,000 U.S. employees, almost all of whom have at least a bachelor's degree and are unlikely to be undocumented, anticipates spending \$35,000 per year to outsource E-Verify for all new hires."

*-ACIP submitted
comments,
Federal Acquisition
Regulation, August 2008*



National and Individual Faith Statements
Hearing: "E-Verify- Preserving Jobs for American Workers"
House Judiciary Subcommittee on Immigration Policy and Enforcement
February 10, 2011

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**Statement of
Richard T. Foltin, Esq.
Director of National and Legislative Affairs
Office of Government and International Affairs
American Jewish Committee**

**Submitted on behalf of the American Jewish Committee to
The House Judiciary Subcommittee
on Immigration Policy and Enforcement**

**Hearing on
E-Verify, the Electronic Employment Eligibility Verification System**

February 10, 2011

**T: (202) 785-5463, F: (202) 659-9896
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From its founding in 1906, the American Jewish Committee (AJC) has been a strong voice in support of fair and generous treatment of immigrants, participating actively in many of the major immigration debates of our time: opposing reductions in the flow of legal immigrants; supporting increased "family unification" immigration; supporting efforts to reduce the flow of illegal immigration and enforce immigration laws within the context of due process and humane treatment; supporting policies that assure that the U.S. fulfill its role as a haven for refugees fleeing persecution; supporting access to public benefits for legal immigrants on the same basis as citizens; and supporting programs designed to educate and integrate new citizens.

In advocating for these policies, AJC acts in accord with the American Jewish community's longstanding interest in, and commitment to, a United States immigration and refugee policy that represents our nation's best traditions. According to Jewish tradition, "strangers" are to be welcomed and valued, as we were once "strangers in the land of Egypt." The Torah tells us: "The strangers who sojourn with you shall be to you as the natives among you, and you shall love them as yourself, for you were strangers in the land of Egypt" (Leviticus 19:33-34). Further, we recall how our parents and grandparents made their way to this country seeking a better life, often fleeing persecution, and know that we have prospered because of all that this country has offered us. That same opportunity should be available for others as well.

AJC continues to reaffirm its commitment to fair and generous immigration policies, as fundamentally good for the United States and consistent with Jewish values. Even today, Jewish immigrants, refugees and asylum seekers immigrate to the United States from all corners of the world, including such places as the former Soviet Union, Yemen, Iran, and Central and South America. But our commitment to appropriate immigration policies is not only about the Jewish community, which today constitutes only a small portion of the immigration flow. It is fundamentally about what we see as in the best interests of our country overall, as well as assuring that our nation acts in accord with its highest values. At the same time, we recognize the urgent need for reform of our visa, border and admissions systems, in order to keep out those who wish to do us harm. American immigration policies must be consistent with safeguarding our national security through maintaining control over our nation's borders and enforcing the nation's immigration laws in a fashion consistent with due process and humane treatment. In that same vein, AJC supports measures to strengthen worksite enforcement programs, so long as the proposed enforcement measures are enacted as a component of larger comprehensive immigration reform package, and on condition that those measures are fair, humane, and include adequate safeguards to prevent abuse, protect sensitive biometric information, and provide for a reasonable appeals process. We are also committed to measures that better incorporate newcomers into American society and culture.

We call for immigration reform because each day in our congregations, service programs, healthcare facilities, and schools we witness the human consequences of a broken and outdated system. We see the exploitation of undocumented workers and the plight of separated families, as well as the escalation of community fear due to enforcement measures that are neither smart nor humane. Comprehensive immigration reform would help put an end to this suffering, opening the door to a better life for those who desire to work hard and contribute in a positive way to American society but for now must live in the shadows, a situation that offends the dignity of all human beings.

History has demonstrated that immigrants enrich this nation economically and culturally, and immigration remains a central ingredient to retaining America's economic strength and its proud tradition of democratic pluralism. According to a CATO Institute report, legalization of immigrants would yield significant income gains for American workers and households.¹ The study found that legalization of low-skilled immigrant workers would result in an income gain of 1.27 percent of GDP or \$180 billion for U.S. households. Furthermore, legalization would allow immigrants to have higher productivity and create more openings for Americans in higher skilled occupations. As such, a fair and generous immigration policy not only reflects our highest values of freedom, opportunity, and family cohesion, but would also benefit our nation materially.

Comprehensive immigration reform must provide a holistic approach to reforming our immigration system. As discussed in more detail in AJC's statement submitted for the record of the House Judiciary Immigration and Enforcement Subcommittee hearing on worksite enforcement on January 26, 2011, such reform should include: changes to family immigration laws and adjusting quotas for future flows of immigrants, including high and low-skilled worker visas; a path to legalization for immigrants already in the United States; facilitation and support for immigrant integration; smart and humane enforcement measures that bolster our national security; reform of detention policies and enhanced due process protections; and special protection for asylum seekers, refugees and vulnerable populations.

The enforcement policies to be instituted as part of that larger comprehensive immigration reform package must be consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the United States to implement its immigration laws and identify and prevent the entry of criminals, and of persons who wish to do us harm or otherwise pose a risk to our national security. To the extent Congress considers, as part of that package, creating or reforming worksite enforcement measures, those measures should be accompanied by the creation of and investment in an effective, modern, and accurate employment document verification system that includes adequate safeguards to protect workers from discrimination in the workplace. Those safeguards should provide assurances that worker biometric information is used for employer verification only, and that no national database of biometric information is created. Also, safeguards should include the creation of an easily accessible and expeditious appeals process, and a meaningful attempt to create universal employer access to the necessary biometric identification technology.

AJC has adopted policy opposing mandatory use of the E-Verify enforcement system because the system fails to provide adequate safeguards for workers. While some have asserted that the system has been improved since that policy was adopted, we believe that this concern must be further addressed before E-Verify becomes mandatory. If and when this concern has been resolved, AJC would be open to supporting a comprehensive immigration reform package that includes measures to strengthen and reform worksite enforcement and improve employment verification tools.

In sum, AJC calls upon our elected officials to enact legislation that includes the following: An opportunity for hard-working immigrants who are already contributing to this country to come out of the shadows, regularize their status upon satisfaction of reasonable criteria and, over time, pursue an option to become lawful permanent residents and eventually United States citizens; reforms in our family-based immigration system to significantly reduce waiting times for separated families who currently wait many years to be reunited; the creation of legal avenues for workers and their families who wish to migrate to the U.S. to enter our country and work in a safe, legal, and orderly manner with their rights

fully protected; reduce the use of detention for immigrants, especially vulnerable groups and those seeking asylum; a worksite enforcement programs that is humane and includes appropriate safeguards; and border protection policies that are consistent with humanitarian values and with the need to treat all individuals with respect, while allowing the authorities to carry out the critical task of identifying and preventing entry of terrorists and dangerous criminals, thereby bolstering our national security as well as pursuing the legitimate task of implementing American immigration policy.

AJC urges our elected officials to conduct the immigration reform debate in a civil and respectful manner, mindful not to blame immigrants for our social and economic ills or for the atrocities committed by the few who have carried out acts of terrorism. A polarized process lacking in civility hinders deliberative discourse and fails to serve our nation's best interests.

As a faith-based organization, we call attention to the moral dimensions of public policy and pursue policies that uphold the human dignity of each person, all of whom are made *b'tzelem elohim*, in the image of G-d. We engage the immigration issue with the goal of fashioning an immigration system that facilitates legal status and family unity in the interest of serving the God-given dignity and rights of every individual, even as it enhances our national security and promotes respect for the rule of law. It is our collective prayer that the legislative process will produce a just immigration system of which our nation of immigrants can be proud.

AJC appreciates the opportunity to submit this statement and welcomes your questions and comments.

¹ Peter B. Dixon and Maureen T. Rimmer, *Restriction or Legalization? Measuring the Economic Benefits of Immigration Reform*, Center for Trade Policy Studies, CATO Institute, No. 40, August 13, 2009, P.1.



CHURCH WORLD SERVICE

**Statement from Church World Service, for submission to the Congressional Record,
pertaining to the House Judiciary Committee Hearing on Employment Verification,
Thursday, February 10th, 2011**

As a network of 37 member communions and 94 refugee resettlement affiliates and local offices across the United States, Church World Service expresses its concern regarding recent proposals to mandate the broad use of employment verification systems to identify and remove undocumented immigrants.

Mandatory implementation of the E-Verify system would have a devastating impact on children and families of workers fired. While tensions are high in regard to immigration, the reality of children separated from their detained or deported parents calls all of us to work for more reasonable and humane policies.

Rather than mandating that all employers implement E-Verify, which is a broad, expensive and risky proposal, Church World Service calls on all members of Congress to instead provide a pathway by which undocumented immigrants can earn their legal status, increase visas for both family-based and employment-based immigration, and focus enforcement efforts on perpetrators of human trafficking, violent criminals, and bad-actor employers who lure and exploit immigrant workers.

Once undocumented immigrants are provided an opportunity by which they can legalize their status, E-Verify may play a role in helping employers comply with both immigration and labor laws. Until such an opportunity is provided, however, Church World Service will oppose enforcement-only provisions such as mandating the use of E-Verify.

These limited proposals will not do anything to fix the broken U.S. immigration system, but instead unnecessarily burden employers, increase job losses, and penalize immigrant families. We call for immigration reform first and foremost, rather than for such limited efforts, and ask all members of Congress to focus instead on real reforms that will move the United States forward in repairing our immigration system, keeping families together, and improving conditions and wages for all employees.

Currently, the E-Verify system can be utilized by any employer seeking to validate the immigration status of new hires. While we recognize the utility such a tool can bring to a business, the E-Verify system can also be misused by employers to engage in unfair hiring and firing practices, and can have negative consequences for those caught in the system, either due to error or standard practice.

Rather than protecting American workers, a mandatory E-Verify program could jeopardize an estimated 770,000 jobs and cause paperwork complications for more than 1.2 million U.S. workers¹. In 2009 alone, an estimated 80,000 workers were erroneously caught up in the E-Verify system, a staggering number that would undoubtedly increase substantially should E-Verify be mandated for all employers². Mandating that all businesses in the United States implement E-Verify would pose a high burden for employers, especially small businesses that don't have large Human Resources departments to deal with the many quirks still in the E-Verify system.

Some argue that the E-Verify program would open up jobs for U.S.-born workers. However, unemployment rates are actually lower in places with larger immigrant populations, showing that immigrants actually increase job opportunities for U.S.-born workers by stimulating local economies³. In addition, jobs held by undocumented immigrants, particularly those in agriculture, construction, manufacturing and various service industries, are not jobs that U.S.-born workers are seeking. Removing immigrants from jobs through E-Verify would only result in closed factories, unpicked crops, and businesses going under, which would affect U.S.-born workers just as much as immigrant workers.

¹ "Findings of the E-Verify Program Evaluation," Weetzel, Rockville, MD, Dec 2009, p. 117. <http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf>. About 0.8 percent of workers receive an erroneous tentative non-confirmation, and approximately 0.5 percent of work authorized individuals receive a final non-confirmation in error, multiplied by about 154,287,000 million workers in the U.S. for the 1.2 million and 771,435 figures respectively.

² Moran, Tyler, "Expanding E-Verify will Undermine Job Growth and Cripple Small Businesses," Jan. 2011.

<<http://www.nffc.org/images/stories/images/open/e-verify-facts.2011-01-26.pdf>>.

³ Ibid.

Immigration and Refugee Program

475 Riverside Drive, Suite 700 - New York, NY 10115 - (212) 870-3300
www.churchworldservice.org



Sisters of Mercy of the Americas
 Hermanas de la Misericordia de las Américas

Sisters of Mercy of the Americas' Statement on E-Verify

House Judiciary Subcommittee on Immigration Policy and Enforcement on Feb. 10, 2011 Hearing: E-Verify, The Electronic Employment Eligibility Verification System

The Sisters of Mercy are moved by the Gospel and by our heritage to stand with and assist those who are forced to move from their homelands and seek economic and physical survival elsewhere. In our spirit of welcome and hospitality, we have always ministered to immigrant persons and to those most vulnerable.

We – 4,000 Catholic sisters and more than 3,000 associates, several Companions in Mercy, over 500 Mercy Volunteer Corps alumni and hundreds of co-workers in Mercy-sponsored programs and institutions – have for the past several years consistently called on the government of the United States to pass compassionate U.S. immigration policy which includes a pathway to lawful permanent residence and citizenship, meets immigrants' basic needs, and encourages family unity/reunification.

We believe that effective enforcement of our immigration laws can only be accomplished as part of comprehensive immigration reform. The E-Verify program was first implemented in 1997 as a central component to the administration's workplace enforcement strategy to confirm the eligibility of all newly hired employees. At this time, it is not a mandatory program for all employers; however there is a movement in Congress to make it mandatory.

We do not support making the E-Verify program mandatory at this time for the following reasons:

- Making the E-Verify program mandatory without a process for legalizing the current undocumented workforce would undermine the goals and success of the program.

The Congressional Budget Office has estimated that a mandatory E-Verify program without such a process would decrease federal revenue by more than \$17.3 billion over ten years, primarily because workers and employers would take their taxes off the books.

Keeping undocumented workers "off the books" would hurt American workers who have to compete against easily-exploited undocumented workers who are forced to accept lower wages and substandard working conditions in order to remain employed. This also would create unfair competition for businesses that follow the law who have to compete with businesses that do not.

- While we see the benefits an accurate and efficient employment verification program would have for all workers, the present E-verify program is not completely accurate or efficient. The Government Accountability Office (GAO) recently released a report, (December 2010), *Employment Verification: Federal Agencies Have Taken Step to Improve E-Verify, but Significant Challenges Remain*, which points out that challenges remain to ensure the accuracy of the electronic employment verification system. They found that persistent E-Verify errors can create problems for thousands of workers who are eligible to work in the United States yet are identified falsely by the system as ineligible.

Like many Americans, the Sisters of Mercy of the Americas came to this country as immigrant women. Since 1943 we have ministered to the needs of immigrant persons as part of our commitment to serve the most vulnerable and in response to the Gospel's call to welcome the stranger and to live in communion with others. Today we can do no less. The Gospel and the directives of our religious congregation call us to act and speak on behalf of our sisters and brothers who have been silenced. We welcome the invitation to be true to the call.

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The Sisters of Mercy of the Americas are an international community of women religious vowed to serve people who suffer from poverty, sickness and lack of education, with a special concern for women and children. In innovative and traditional ways, Sisters of Mercy address human needs through collaborative efforts in education, health care, housing, and pastoral and social services. The Institute includes 4,000 sisters who serve in North, South and Central America, the Caribbean, Guam and the Philippines. More than 3,000 associates, several Companions in Mercy, over 600 Mercy Volunteer Corps alumni, and hundreds of co-workers in Mercy-sponsored programs and institutions also share in our mission, following the example of Mercy foundress, Catherine McAuley. For more information or how to join us in standing in solidarity with immigrants, go to <http://www.sistersofmercy.org/justice/immigration>.

February 5, 2011

To the Members of the Subcommittee on Immigration Policy and Enforcement of the House Judiciary Committee:

I have chaired the Justice and Peace Ministry of St. Norbert Abbey, De Pere, Wisconsin for over nine years and directed the Social Concerns Office of the Catholic Diocese of Green Bay for over six years. Since serving in these ministries for the Catholic Church, U.S. immigration reform has been the most significant public policy issue in which I have been involved.

I understand that you are meeting to discuss the use of E-Verify by U.S. employers at an upcoming hearing. I hold the E-Verify includes many weaknesses and that its increased use by U.S. employers should be held back until these problems are corrected. A 2009 report prepared for the Department of Homeland Security (see http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf) revealed that 54 of unauthorized workers were cleared through E-Verify as being authorized and research by the American Friends Service Committee demonstrated that 33.5 percent of Arizona immigrant workers had no recourse when E-Verify mistakenly indicated that they were not authorized to work in the U.S. We cannot force the cost of E-Verify on U.S. businesses when the process is known to be faulty.

Sincerely,

Br. Steve Herro, O. Praem.

Chairman, St. Norbert Abbey Justice and Peace Committee and Social Concerns Director, Catholic Diocese of Green Bay (WI)

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Stay abreast in the latest in Catholic social action and parish social ministry! See <http://sites.google.com/site/cdghpsm>



Central States Synod
Evangelical Lutheran Church in America
 God's work. Our hands.

**Statement of the Rev. Gerald Mansholt, Bishop of the Central States
 Synod of the Evangelical Lutheran Church in America**

**House Judiciary Subcommittee on Immigration Policy and
 Enforcement**

**February 10, 2011 Hearing: "E-Verify – Preserving Jobs for American
 Workers"**

As bishop of the Central States Synod (Kansas and Missouri) of the Evangelical Lutheran Church in America, and a member of the Conference of Bishops' immigration task force, I have seen the increasingly important role that immigrants play in the U.S. economy, revitalizing communities, increasing tax revenues, and filling jobs that many Americans are unwilling to perform. Between 2000 and 2008, immigrants in the workforce grew by more than 50% in both Kansas and Missouri.ⁱ Foreign-born workers now represent 7.8% of the Kansas labor force and 4.3% of the Missouri labor force.ⁱⁱ

Some people suggest that a simple solution to reduce the current unemployment rates is to force undocumented workers out of their jobs by requiring all U.S. businesses to use E-Verify, an online employment verification program. The United States needs a functional employment verification system to ensure U.S. employers hire legal workers, to identify unscrupulous employers and to protect all workers. While the government should continue to improve employer verification programs to reducing their impact on U.S. citizen and legal workers, we must keep in mind that there are more than 11 million unauthorized immigrants in the country, some of whom live in Kansas and Missouri. Trying to expel millions of workers from their jobs would have a devastating impact on our communities and economy. It would drive undocumented workers "off the books," decrease tax revenues in a time of crippling state budget crises, and result in the likely growth of a large underground economy. Furthermore, doing so would weaken protections for all workers and leave them open to exploitation by employers operating outside of the law.





Central States Synod
Evangelical Lutheran Church in America
 God's work. Our hands.

Moreover, the E-Verify program is currently being used by only a small fraction of the nearly 7 million employers in the United States.ⁱⁱⁱ Requiring all businesses to use E-Verify program would be very costly for the over 180,000 small businesses in Kansas and Missouri to implement, particularly when many companies are already struggling.^{iv}

In 2008, several Missouri business groups expressed concern about the E-Verify system, which is now required by all public employers.^v In other states like Arizona, where E-Verify is mandatory, work-authorized individuals are often misclassified by the system, a mistake that can result in job loss for even U.S. citizen workers.^{vi}

The success of a mandatory employment program depends on full participation by workers and employers as well as a legal workforce. To ensure full participation, Congress must fix the broken U.S. immigration system by including a pathway to earned legal status for undocumented workers, protecting families and workers, and ensuring the humane enforcement of immigration laws. Absent an immigration overhaul, Congress and the Administration should pursue smart policies that protect and create jobs and identify new ways to leverage the contributions of all workers in the United States.

ⁱ "2009 American Community Survey and Census Data on the Foreign Born by State," Migration Policy Institute Data Hub, 2009, <http://www.migrationinformation.org/datahub/acscensus.cfm>

ⁱⁱ "2008 American Community Survey," U.S. Census Bureau, 2008,

http://factfinder.census.gov/servlet/STTable?_bm=y&-context=st&-qr_name=ACS_2008_1YR_G00_S0501&-ds_name=ACS_2008_1YR_G00_-&-CONTEXT=st&-tree_id=307&-redoLog=false&-geo_id=04000US20&-format=&-lang=en

ⁱⁱⁱ "What is E-Verify," U.S. Citizenship and Immigration Services, 2010,

<http://www.uscis.gov/portal/site/uscis/menitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=e94888e60a405110VgnVCM1000004718190aRCRD&vgnextchannel=c94888e60a405110VgnVCM1000004718190aRCRD>

^{iv} "2009 Small Business Profiles for the States and Territories," Small Business Administration, 2009, <http://www.sba.gov/advocacy/848/12387>

^v "Mo. Biz groups fret over E-Verify bills," AFX News Limited, March 4, 2008,

<http://www.forbes.com/feeds/afx/2008/03/04/afx4728794.html>

^{vi} "Observations on the E-Verify Experience in Arizona and Recommended Customer Service Enhancements," Department of Homeland Security Office of the Citizenship and Immigration Services Ombudsman, December 22, 2008, www.dhs.gov/xlibrary/assets/cisomb_everify_recommendation_2008-12-22.pdf





**American Friends
Service Committee**

AFSC National Office
1501 Cherry Street
Philadelphia, PA 19102
619-233-4114

February 9, 2011

Statement of the American Friends Service Committee
Submitted to the House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement
For the Thursday, February 10 Hearing on
“E-Verify – Preserving Jobs for American Workers”

The American Friends Service Committee (AFSC) is a faith-based organization grounded in Quaker beliefs respecting the dignity and worth of every person. Since 1917, AFSC has worked with war refugees, immigrants and displaced persons, carried out service, development, social justice, and peace programs throughout the world. The organization's mission and achievements won worldwide recognition in 1947 when it accepted the Nobel Peace Prize with the British Friends Service Council on behalf of all Quakers.

Through *Project Voice*, AFSC's nationwide human rights initiative, community organizers work with immigrant and refugee communities throughout the United States. We directly support immigrant and refugee communities to organize themselves, to find and give voice to their aspirations and needs, and to continue to make contributions to our nation.

Our government's strategy of imposing unfair economic treaties in the Global South, militarizing our shared border with Mexico, conducting indiscriminate raids in immigrant and refugee communities, criminalizing, detaining and deporting undocumented workers has resulted in the separation of many families and an untold number of human rights violations.

Policies and actions that expose workers to abuse and exploitation, such as the proposed expansion of the E-Verify system, will significantly undermine the dignity and rights of tens of thousands of workers in the United States.

All people regardless of immigration status have a right to work with dignity. Immigration raids that terrorize workers and separate families have no economic benefit and violate basic human rights standards. Employers, workers and consumers are adversely affected by the disruption of production and service delivery, while the economies of entire communities are weakened.

The expansion of E-Verify has been found to contain significant errors and bureaucratic mistakes. This has deprived workers of their right to work, organize, receive legal wages and conditions and the equal treatment received by the workers around them.



**American Friends
Service Committee**

AFSC National Office
1501 Cherry Street
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619-233-4114

The solution is real reform of our immigration system that includes a fair mechanism for undocumented workers to gain permanent residence status in a fair and orderly fashion. Furthermore, U.S. immigration policy must be coupled with economic policies that encourage and fund sustainable development, permit working people to earn a living wage in their home countries, foster authentic commitment to demilitarization and peaceful resolution of internal and international conflicts. Not only would that solution create an even playing field for all workers, protect jobs but will restore the standing of our country before the eyes of the international community.

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Statement for the Record

House Subcommittee on Immigration Policy and Enforcement

"E-Verify-Preserving Jobs for American Workers"

February 10, 2011

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

We are submitting our views about the subject of this hearing, the electronic worker verification system known as E-Verify.

The National Immigration Forum is opposed to the mandatory use of E-Verify absent the reform of our immigration laws that include a realistic way of dealing with undocumented workers now living and working in the U.S. Without immigration reform, we believe E-Verify cannot succeed.

The success of an electronic work authorization verification system will depend on the full participation of every one of the estimated 7.7 million employers and at least 154 million U.S. born and foreign-born workers in the United States. If it is used in an attempt to enforce a broken system, it will not have the cooperation it will need to succeed.

With such a large percentage of our workforce without legal status—five percent overall and substantially more in some industries—the imposition of E-Verify would lead to employers and workers finding a way around the system, such as working off the books. In some industries that are very dependent on undocumented workers, such as agricultural, the imposition of E-Verify would likely lead to many farmers going out of business or moving operations to other countries.

Whether employers move their workers off the books or off shore, the effect on American workers would not be positive. American workers would either have to compete in a workforce that would be largely underground, or they would be put out of a job as their employer moved operations outside of the U.S. In agriculture, which is very dependent on an undocumented workforce, for every job lost in farming, three jobs are lost in related support industries.

According to the Congressional Budget Office, the imposition of E-Verify absent immigration reform would result in a loss of more than \$17 billion in revenue for the government over a period of ten years, due to the increase in workers who would be working off the books. In contrast, comprehensive reform that included a legalization of the undocumented workforce would generate an estimated \$1.5 trillion to the economy as a whole over the next ten years.

We hope the Subcommittee turns its attention to comprehensively fixing the immigration system. Simply trying to enforce the rules of a broken system is expensive and ineffective. We thank you for your attention to this matter and look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Martinez", with a stylized flourish underneath.

Grisella M. Martinez
Director of Policy & Legislative Affairs
National Immigration Forum

February 17, 2011

The Honorable Elton Gallegly
The Honorable Zoe Lofgren
United States House of Representatives
Washington, DC 20515

Dear Chairman Gallegly and Ranking Member Lofgren:

As the Subcommittee on Immigration Policy and Enforcement begins to consider E-Verify in the hearing this week, the undersigned organizations write to express our opposition to any expansion of the program. Without broader reform of our immigration system, such expansion will not only set E-Verify up for failure, but will weaken our already fragile economy.

Making E-Verify mandatory without providing a path to legalization for the 8 million unauthorized workers in our labor force will merely send both workers and the businesses that need their labor into the underground economy, resulting in the loss of \$17 billion in crucial tax revenue. It also will force 1.2 million workers into a choice between visiting a government agency to correct database errors or losing their jobs. Industries such as agriculture will be decimated, and American jobs will be sent overseas.

Instead of layering E-Verify on top of a broken immigration system, we need to fix the system. That will ensure that *all* workers and jobs are protected. An enforcement-only approach simply will not work. That is essentially the strategy our government has been pursuing for the last twenty years. Divorced from how real facts unfold from day to day, this tactic has failed to stem the tide of undocumented immigration but has severely undermined lawful immigrant and native-born workers.

The solution is broad reform of our immigration system that includes a path to legal status for unauthorized immigrants. This would result in a large economic benefit—a cumulative \$1.5 trillion in added U.S. gross domestic product over 10 years.

Respectfully,

National Organizations

America's Voice
American Federation of State, County and Municipal Employees (AFSCME)
American Friends Service Committee (AFSC)
American Immigration Council
American Immigration Lawyers Association (AILA)
Asian American Justice Center, a Member of the Asian American Center for Advancing Justice
Asian American Legal Defense and Education Fund (AALDEF)
Center for Community Change (CCC)
Center for New Community
Coalition of Advocates for Student Opportunities (CASO)
Council of Mexican American Federations (COFEM)
Defending Dissent Foundation
Dignity Campaign
Fellowship of Reconciliation USA
Interfaith Worker Justice (IWJ)
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)

National Council of La Raza (NCLR)
 National Day Laborer Organizing Network (NDLON)
 National Employment Law Project (NELP)
 National Immigration Forum
 National Immigration Law Center (NILC)
 Real Cost of Prisons Project
 Secular Franciscan Order
 Service Employees International Union (SEIU)
 Student Action with Farmworkers
 Workers Interfaith Network (WIN)
 The United Church of Christ
 United Electrical Workers (UE)
 United Food and Commercial Workers (UFCW)
 United Mine Workers of America
 Workplace Fairness

State Organizations

AIDS Care Ocean State
 Albuquerque South Valley Small Business Development Center
 Arizona Dream Act Coalition
 Bay Area Immigration Taskforce/JFON
 Blauvelt Dominican Sisters Immigration Committee
 California Church IMPACT
 CAUSA, Oregon's Immigrant Rights Coalition
 Center for Independent Living of South Florida, Inc.
 Central Illinois Organizing Project
 Centro de Orientacion Del Inmigrante (CODI)
 Centro de Trabajadores Unidos
 CEO Pipe Organs/Golden Ponds Farm
 Chicago Community and Workers' Rights
 Chicago Media Watch
 Chicago Workers Collaborative
 CITA
 Claire Heurcuse Community Center, Inc
 Coalition for the American Dream
 Coalition to Abolish Slavery and Trafficking (CAST LA)
 Coloradans For Immigrant Rights
 Community Coalition for Healthcare Access
 Community of Friends in Action, Inc.
 Derilus Promotions
 Direct Action for Rights and Equality (DARE)
 Dominican Development Center
 Emmaus Mission Center--El Puente Office
 Friends of Farmworkers
 Fuerza Laboral
 Gamaliel of Lansing MI, CRI
 Gloria Dei Lutheran Church
 Greater Boston Legal Services
 Guatemala Solidarity Committee Boston
 Hispanic American Association
 Hispanic Community Dialogue

Ideal Realities
 Illinois Coalition for Immigrant and Refugee Rights (ICIRR)
 Illinois Hunger Coalition
 Improving Dreams, Equality, Access and Success (IDEAS)
 Inland Empire Dream Team
 IRATE & First Friends
 Jewish Community Action
 La Casa del Ecuatoriano Foundation
 La Fuente, a Tri – State Worker & Community Fund, Inc.
 La Plaza de Encuentro Gathering Place
 Las Americas Immigrant Advocacy Center
 Latin America Taskforce Network River Road Unitarian Universalist Congregation
 Law Offices of Halch Mansouri
 Long Island Immigrant Alliance
 LULAC-Syracuse Chapter
 Lutheran Church of the Reformation
 Massachusetts Immigrant and Refugee Advocacy Coalition
 Massachusetts Law Reform Institute
 MDinteractive
 MEChA of San Bernardino
 Missouri Immigrant and Refugee Advocates
 Nebraska Appleseed Center for Law in the Public Interest
 New Hampshire Alliance for Immigrants and Refugees
 New York Immigration Coalition
 North Carolina Council of Churches
 Oakland Tenants Union
 Orange County Dream Team
 Pax Christi Austin
 PCUN Oregon's Farmworker Union
 Providence City Council
 Public Justice Center, MD
 Rancho Mosquito
 Resource Center of the Americas
 Rights Jessoré
 Rhode Island Jobs with Justice
 Rhode Island Latin Educators Association Inc. (ADELARI)
 Rockland Immigration Coalition
 School of the Americas Watch L. A. chapter
 Si Se Puede Latino Democratic Caucus
 SIREN, Services, Immigrant Rights, and Education Network
 Sisters of Charity of Nazareth Central Leadership
 Sisters of St. Joseph of Rochester
 Sisters of the Most Precious Blood
 Social Responsibilities Council of Unitarian Society of Ridgewood
 Southeast Regional Economic Justice Network
 Texas Environmental Justice Advocacy Services (TEJAS)
 Thermal Insulation
 Thomas Esparza, Jr. A Professional Corporation
 UNIRR, Chicago
 Violence Intervention Program
 Voces de la Frontera

WeCount!
Westchester Hispanic Coalition
Women Watch Africa, Inc.
Workers' Right Center
Yakima Valley Citizens for Progress

cc: Chairman Lamar Smith
Ranking Member John Conyers, Jr.

Bloomberg GOVERNMENT

Thursday, January 27, 2011

Continued on B3, B9-B10, B12, B14, B16

'Free' E-Verify May Cost Small Business \$2.6 Billion: Insight

By Jason Aronson | January 27, 2011 12:01 AM ET

(Bloomberg) — A proposal to require every U.S. employer to use free federal databases to confirm the legal status of a new hire would cost employers billions of dollars in associated expenses, according to data compiled by Bloomberg.

Businesses with fewer than 500 workers would bear the greatest burden, according to the data, spending about \$2.6 billion a year to use the government's web-based verification system, E-Verify, compared with less than \$100 million for the 4 percent that used it in 2010.

U.S. employers voluntarily use E-Verify, which validates the employment eligibility of new hires using federal databases. Though E-Verify does not charge for the use of its database, employers' costs included training and certifying staff or hiring vendors to conduct the searches.

If mandated for all employers, E-Verify would have cost \$2.7 billion in fiscal 2010, according to data compiled by Bloomberg. Small businesses, which account for 59.7 percent of employers, would have paid \$2.6 billion of that, according to the data.

Employers spent about \$43 million in the fiscal year ending Sept. 30, 2006, to interact with the site, according to data compiled by Bloomberg based on a survey commissioned by the government. The survey results were released in December 2009, and Bloomberg has adjusted the figures for inflation and increased usage.

If E-Verify costs remained constant, and usage of the system is adjusted for growth, the employers spent an estimated \$95 million in fiscal 2010 on E-Verify.

Small Business Costs

Several states now mandate the use of E-Verify for private and public employers. Support has grown for making it mandatory nationwide. Last year, Democratic senators Robert Menendez of New Jersey and Patrick Leahy of Vermont introduced an immigration bill calling for all employers to adopt some form of E-Verify within five years.

A House resolution supporting the mandatory use of E-Verify attracted 53 Republican and 10 Democratic co-sponsors.

The Department of Homeland Security's web-based E-Verify is, as the agency says on its website, "easy to use, fast, and best of all — free." To the extent E-Verify keeps employers from hiring illegal workers, it saves them the cost of fines.

That doesn't mean the use of E-Verify is without cost. It cost the government \$247 million to run E-Verify, data compiled by Bloomberg showed. The government has published an 82-page user manual and offers training seminars to become acquainted with E-Verify.

Employers have to spend money on training or staff time. Some use private firms, such as Levlogix, Fragomen and other immigration-law firms, which specialize in employment eligibility.

States Mandating E-Verify, 2010

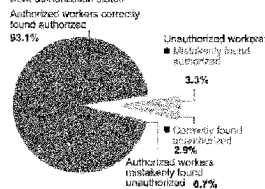
E-Verify checks self-reported employment eligibility information against federal records. Marked as a time government service, E-Verify can in fact cost employers thousands of dollars each year.

■ All employers ■ State employers and/or contractors



E-Verify Accuracy

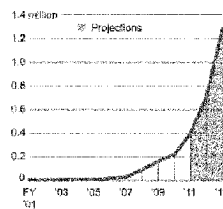
Consistency between initial E-Verify finding and true work authorization status



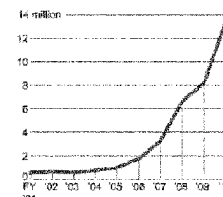
Source: Department of Homeland Security, U.S. Department of Justice, Immigration and Customs Enforcement

Enlarge

Participating employers



E-Verify queries



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Small businesses estimated they spent a total of \$36 million on E-Verify in fiscal 2008, according to the survey. That equates to \$81 million in fiscal 2010, adjusting for inflation and usage that more than doubled in those two years.

Training Costs

A survey of employers, conducted for Homeland Security by the research firm Westat Inc., found that most employers reported no costs to use E-Verify. The system relies on citizenship data that employers must collect anyway for an I-9 employment form.

Westat classified costs as either set-up or maintenance. Set-up costs include any training or equipment necessary for E-Verify implementation. Maintenance costs are any re-trainings and equipment purchases required to sustain the program thereafter.

More than 73 percent of employers reported no direct set-up costs, and slightly more reported no maintenance costs, according to the survey.

Businesses with fewer than 500 workers bear the greatest burden because the fixed costs are spread over fewer hires. It cost small businesses that had just enrolled in E-Verify in 2009 an average of \$127 to run a new hire query, compared with \$103 for all firms. In 2010, those figures would be \$147 and \$73, respectively, according to data compiled by Bloomberg.

Large firms are able to spread the set-up and maintenance costs across a larger number of queries, tapping into the program's economies of scale.

High Satisfaction

Homeland Security says the system has been improved since the survey to make it less burdensome, but no further research has been conducted to determine the costs of using it.

Employers, including those that were legally obliged to enroll, rate the system highly on satisfaction surveys, according to the 2009 Westat Inc. study.

There are potential savings, too, for employers using E-Verify. Certifying a new hire with the program doesn't automatically shield a company from fines if an employee is found to be working illegally but passed an E-Verify check. It does provide the company a good faith, "refutable presumption" that it has not knowingly hired an unauthorized alien in the event civil or criminal suits are brought against an employer, according to Homeland Security.

Investigators can drop charges if, for example, they feel the employer didn't intentionally hire an illegal worker or has taken steps to ensure it won't happen again.

If E-Verify is mandated for all employers, Homeland Security anticipated it would spend \$765 million from fiscal 2009 to fiscal 2012, while the Social Security Administration expected to spend \$261 million from 2009 to 2013, for additional staff, technological components, and overhead.

(Jason Arvelo is a labor analyst. The views expressed are his own.)

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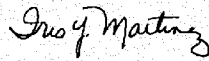
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A mandatory, and flawed e-verify program will cripple certain vital segments of our economy. Up to 75 percent of the U.S. agricultural labor force is comprised of undocumented workers. Mandating E-verify without also creating a path to legalization for the existing workforce would decimate the agricultural industry. The result would be the closure of many more American farms and the off-shoring of millions of U.S. jobs. It is possible that for each undocumented farm worker we deport, we are essentially deporting the jobs of 3 American workers. The cost to business from poor implementation also will harm the economy.

Comprehensive immigration reform is the solution and is good for America. Tough, fair, and practical comprehensive reform would get undocumented workers and their employers onto the tax rolls, strengthen the rule of law, and end undocumented immigration. Unfortunately, the enforcement-only approach has not worked to date and it is distressing to see the same tried-and-failed tactics reemerge in Congress without a serious discussion that includes a comprehensive approach.

We would like Members of Congress to know that state and local elected officials around the country are fully aware and engaged in this important dialogue. We hope that Congress will focus on real solutions to the broken immigration system during this session.

Thank you,



Senator Iris Y. Martinez
NHCSL President



CITY OF CARSON

February 9, 2011

FROM THE OFFICE OF
COUNCILMEMBER JULIE RUIZ-RABER

Dear Members of Congress:

I'm writing to express my views on a mandatory E-verify program. I disagree with implementing a mandatory e-verify program without reform and a legalized workforce. Making E-Verify mandatory now will give an advantage to unscrupulous employers, who may try to find ways around the system and into the underground cash economy. When workers and employers go into the underground economy, it creates unfair competition for employers who follow the law. They are forced to compete against employers who keep costs down by employing and exploiting undocumented workers.

Without legalizing the workforce, employers and workers will find ways around the system and this will worsen the deficit. For too long, Congress has worked under the theory that if we only enforce our laws harder, we can restore control and order to the broken immigration system. The theory hasn't worked. Tough, fair, and practical comprehensive reform would get undocumented workers and their employers onto the tax rolls, restore the rule of law, and end undocumented immigration.

Sincerely,

Julie Ruiz-Raber
Councilmember

A non-profit organization dedicated to protecting and promoting the basic human rights of immigrants of all nationalities

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February 8, 2011

United States House of Representatives
Immigration Subcommittee
Washington, DC 20515

RE: Mandatory E-Verify Process

Dear Immigration Subcommittee Members,

The Florida Immigrant Advocacy Center (FIAC) is a not-for-profit legal assistance organization dedicated to protecting and promoting the basic human rights of immigrants of all nationalities. The Workplace Justice Project's objective is to bring the experiences of low-wage, immigrant women -- particularly nannies, housekeepers, and homecare workers -- to the center of policy debates so that real, workable solutions may be fashioned. We firmly believe that imposing a mandatory E-Verify system on employers will hurt workers, employers, and the economy as a whole. We respectfully ask that Congress focus on fixing the broken immigration system, not simply mandating the use of an ineffective, unjust enforcement mechanism.

Enforcing mandatory E-Verify for all new hires will devastate the economy and will result in the job loss of thousands of documented, American workers. Devious employers will have yet another motive to move to an underground, cash economy. Thus, harming all documented employees who cannot compete with the low wages and lack of benefits that undocumented workers will receive. By mandating the E-verify process, unscrupulous employers will have more leverage than ever before on undocumented workers, perpetuating "race to the bottom" cycle.

By not focusing on comprehensive immigration reform to legalize workers, honest, law-abiding companies will be forced out of business. It is impossible for them to compete with companies that refuse to abide by immigration laws and who pursue every opportunity to exploit undocumented workers. Mandating E-verify will promote unfair competition among American companies, which will ultimately lead to substantial job loss and a significant decrease in federal income tax revenue. According to the Congressional Budget Office, implementation of E-Verify will decrease federal revenue by \$17.3 billion over the next ten years due to the drastic shift towards an underground economy.

Thank you for taking time to consider our statement on this extremely important issue. For the reasons listed above, we encourage Congress to focus on comprehensive immigration reform in order to legalize the current workforce and end undocumented immigration. By doing so, the playing field will be leveled creating more incentive for everyone to strive for the American dream. Currently, employers are finding loopholes to avoid the enforcement methods in place. The only way to create opportunity for all

Page 2

to avoid the enforcement methods in place. The only way to create opportunity for all workers and foster growth in the economy is by focusing on comprehensive reform instead of imposing stricter regulations.

Sincerely,

Jennifer Hill SB

Jennifer Hill,
Workplace Justice Project
Florida Immigrant Advocacy Center

AFRICAN MUTUAL ASSISTANCE ASSOCIATION OF MISSOURI (AMAAM)
 3664 Arsenal Street • St. Louis, MO 63118 • (314) 776-8885 • FAX (314) 776-0401 • Website: www.amaamus.org

February 8, 2011

Members of Congress
 Missouri Delegation

Re: Statement on making E-Verify mandatory.

The African Mutual Assistance Association of Missouri (AMAAM) the largest and oldest African refugee and immigrant service provider believes that E-verify can do very limited and inconsequential effect regarding the huge immigration reform that must be embarked in our nation of immigrants for meaningful change, impact, fairness and economic growth.

- 1) Without comprehensive immigration reform that is far reaching, E-Verify will encourage undocumented workers to go underground and encourage unscrupulous employers to pay slavery wages and increase underground human trafficking for cheap labor.
- 2) Such underground economy brings forth hidden cash payment affecting tax revenue at the Federal and State level
- 3) Without legalization E-Verify will create unfair competition between employers who hire workers by the book and employers who break the law to exploit cheap labor.
- 4) 75% of our agricultural work force comprises of undocumented agricultural workers. Without comprehensive immigration reform E-Verify will destroy our agriculture economy choking our food security.

A single law, whether boarder enforcement or E-verify by itself cannot solve the broader immigration problem. This is why COMPREHENSIVE IMMIGRATION REFORM is the only solution.

We at AMAAM ask you to look into broader legislation of legalization that takes into account comprehensive immigration reform instead of a singular solution like E-verify. While E-Verify works in a very limited case it is like "draining a swimming pool with a spoon". I sincerely appreciate your deliberation that takes many factors into account when you debate on E-Verify.

Sincerely,

 Gedlu B. Metaferia
 Executive Director
www.AMAAMUS.ORG
 Tele: (314)776-8885
 Fax: (314)776-0401

AMAAM is a (501) (C) (3) organization that provides educational and social adjustment services to refugees and other categories of legal immigrants. It also educates the public through forums on immigrant issues to promote tolerance and understanding.

Mr. GALLEGLY. And with that, I would yield to the gentlelady for her questions.

Ms. LOFGREN. Thank you very much, Mr. Chairman.

I have many questions. And first, let me just say that I think it is helpful to have this hearing, but there are a variety of studies, analyses available to us. And one that has just been released within the last few weeks is an analysis by Bloomberg Government, and this is the conclusion that the Bloomberg analysis made. Although E-Verify is free to the employer, it does cost employers to become ready to use the system. And one of the estimates from Bloomberg is that most of the burden would go to small businesses. In fact, they estimate that if the E-Verify had been mandatory for all employers last year, it would have cost businesses \$2.7 billion on their end and that most of that cost would be for small businesses. In fact, Bloomberg estimates \$2.6 billion that would be borne by small businesses for a variety of reasons. They may not have an Internet connection. They would have to get one, training employees, and the like.

Has USCIS involved the small business community in the analysis of what you are doing, and what have they told you?

Ms. BERTUCCI. In today's environment 73 percent of our companies or our employers are employers of under 100 people. So I realize there are various definitions of small businesses, and certainly a small shop is—so 73 percent of our members or our participants are small business. We have actively engaged in outreach. We understand the concerns. We believe we understand the concerns of small business. We are working very closely with the Small Business Association to do a lot of outreach with that community. But so far, I would not say we have done that kind of analysis.

Ms. LOFGREN. Okay.

Turning to Mr. Stana—and thank you for your years of service at GAO, one of our favorite orgs because you call it as you see it whether we like it or not.

We have heard that the E-Verify error rate is going down, and that is good. However, if there are wrong decisions made through whatever error, it has real consequences for people. And looking to your December 2010 report, I mean, you indicated that American citizens could lose jobs over misspellings and the like. We had an occasion to meet a young woman, Jessica St. Pierre, who was a former telecommunications worker in south Florida, born and raised in the United States. She lost a good-paying job because of an E-Verify error, and she tried for months to discover the error, to fix the problem, and she was unemployed, I mean, that whole time. The problem still hasn't been resolved and she had to accept a lower-paying job because of this mistake.

I would ask unanimous consent to enter her statement into the record.

[The information referred to follows:]

**Written Statement of Jessica St. Pierre
U.S. Citizen, Negatively Impacted by E-Verify**

**House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement**

Hearing on: "E-Verify- Preserving Jobs for American Workers"

February 10, 2011

My name is Jessica St. Pierre and I am a U.S. citizen, born and raised in Florida. Due to an error in the employment verification system called E-Verify, I was wrongly identified as not having employment authorization. I was fired and then remained unemployed for months. This is my story.

It was November 09, 2010 the day my life changed forever. This was the day that I was fired due to an error in the system called E-Verify. Despite providing supporting documents and explaining over and over again to my employer that I was work authorized, I was fired. Unable to speak and still in the state of shock, I drove home to my family and it was there that I broke down in tears and told them what happened. My dad told me don't cry and he said that we were going to fix this tomorrow at the Social Security Administration (SSA) office. We went to my local SSA office and they told us everything was correct in their system. They indicated that my name and date of birth matched what was in the system.

After visiting SSA, I called up the employer and they said "Well that's not what it says in our system." When I inquired, my employer told me that they were using E-Verify and that the program indicated that there was an error.

As the days and weeks passed, I tried to correct this error, in vain, in numerous ways. For example, the following week, I went down to a legal services organization and they referred me to the Equal Employment Opportunity Commission (EEOC). When I talked with my local EEOC office, they told me that I didn't really have case but advised me to call E-Verify and find out what was going on. I took the advice and immediately researched the number to E-Verify.

I called the hotline and waited almost an hour just to hear that the representative say that after running my name in the system that everything is okay. I felt relieved and I asked if she could send that documentation in the mail so that I could take it back to my employer. She said that she could not send me this information, but could contact my employer. I said okay and asked her to do so. Again, I could not receive any information confirming E-Verify's error. Despite the call from the E-Verify program, my employer still could not straighten out this mess. I thought a call from E-Verify to my employer would get my job back, but I contacted the employer and was told there was nothing I could do to get my job back.

Angry and frustrated, I thought knew this wasn't right. I have done everything right, including going to all the proper agencies to get this situation resolved. What else is a worker supposed to do? I was hurt and because I felt helpless and like there was nothing that I could do even though I followed all the right steps. I had decided to just give up but then decided to Google exactly what I got fired for " failure to provide employment eligibility". I was shocked to find an article on what I was going through and with that article were other story of people who are US citizens going through the exact same thing! was not alone and now I knew there was a number that I could call to share my story and I did.

In the month of December I contacted the National Immigration Law Center and they were ready to help free of charge. They did everything in their power to get me the answer that I was looking for. As it turns out, the employer had placed two spaces after my last name which prompted and SSA tentative nonconfirmation (TNC). The employer had given me the TNC instead of the referral notice to take back to the SSA. SSA, seeing that I had brought the TNC, immediately thought that this was a case of employment identity theft and pointed me in the direction of the credit bureau. I then contacted the company that was monitoring my credit and they did an extensive investigation which came of nothing. Of course it came up nothing because the problem was at the employer and nowhere else.

Four months later in February 2011, I met with the employer and they claimed I could come back to my position. However, after being out of work over 3 months, I have since moved on to another company. Though my current position has significantly lower pay, I realized that the money wasn't what motivates me. This employer didn't put me through the E-Verify rollercoaster ride, so I decided to stay with my new job. I would like to take this time out to thank the NILC for all of their time, patience, and hard work. For I know without them I probably would have never known that there was an answer to my problem.

Ms. LOFGREN. But I would note that your report in December indicates that Privacy Act requests take an average of 104 days for a response to determine inaccuracies. Can you talk about the challenges that workers like Jessica face and what procedures are in place when an American citizen loses her job, is fired because of a mistake?

Mr. STANA. Yes. That is sort of a story behind the numbers, if you will. If you look at the gross statistics, 98 percent are work-authorized. There is no problem. Of the ones who are not work-au-

thorized, another maybe .3 percent, say a third of a percent, eventually are work-authorized through their queries. But there are some. Either the employer doesn't tell them that they have a TNC, or they have a TNC and somehow they can't get it resolved in 10 days or they can't get to an office in 10 days, and they receive a final notification through the system and they don't get a chance to. Oftentimes an employee does not know where the source of the discrepancy is, whether it is in the SSA data set or if it is in a DHS database. That is where the 104 days comes in.

I also would note that when a final nonconfirmation comes in, there is no right of appeal, and that is what may have happened in that particular instance.

So there are issues that would have to be worked out if this were to be made mandatory or somehow had broader application. That doesn't mean that the system doesn't work for most people. It is just trying to make sure that these kinds of cases can be resolved to a satisfactory outcome.

Ms. LOFGREN. Well, if you think about—just extrapolating, if we were to make this mandatory across the entire American workforce, let's say we are successful in getting it down to 1 percent. We are not there yet. That is a million Americans that could be fired or not get a job because of an error rate.

Mr. STANA. And that is why, we recommended—and as Ms. Bertucci said, they accepted that recommendation—that USCIS find a way to make it easier to find the source of the error so that you identify those who are work-authorized, whether they are legal permanent residents with an EAD or they are U.S. citizens, to make sure that they can get a fair shake out of the system and that the system does what it is designed to do, check on work authorizations.

Ms. LOFGREN. I see my time has expired. Mr. Chairman, thank you for yielding to me.

Mr. GALLEGLY. I thank the gentlelady for being conscious of the light. She used to do that to me. [Laughter.]

At this time, I would yield to my friend from Texas, Louie Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

You know, one of the things that really has helped has been, as employers have signed on to use E-Verify—and obviously, you have talked about some of the strengths and weaknesses. But there seems to be a continuing lack of knowledge in the public sector about E-Verify, and it seems like awareness and outreach seem to be the Obama administration's approach to getting people to sign on. And I have concerns about that.

What plans specifically does this Administration have for pushing people to utilize E-Verify so that we can have people legally here in jobs that should be used by Americans without regard to race, creed, color, or national origin, any of that, but just that they are legally here? Hopefully there is more than just hoping people notice it on the news and decide, oh, that sounds like a good thing.

Ms. BERTUCCI. Sir, at this time, we are using outreach to get to E-Verify.

Mr. GOHMERT. And it is a lovely word, but what does that mean? "Outreach"? Somebody stuck out their arm over at the—

Ms. BERTUCCI. No. No, sir. We have had 400 different events that we—we do webinars. We reach out to the HR communities, the large associations, national conferences. With the Small Business Administration, we are going throughout the country in different regions. We have done a number of things in the State of Florida, for instance. But we are reaching out to the larger conglomerates or groups or organizations that represent various sectors to include even the agriculture sector of the economy. So we are doing that kind of outreach.

Having said that, we agree with you. We did have an evaluation, an independent evaluation, of the nonuse of the system trying to figure out what we could do better. And most of those people said they are not using it. It was 500 participants in that survey. Most of them did say they are not using it because they were never even aware of it. So we have invested in a marketing campaign to try to get certain segments of the economy in high population areas and so on. But that is the kind of outreach we are doing. We are, in fact, out there on the road and offering it in that way.

Mr. GOHMERT. And that sounds nice. And I know if you have got 400 of these seminars, webinars planned, that will be helpful, but from my perspective in the last 2 years, I have noticed that if it is things that are really important to this Administration, whether it is Obamacare, whether it is cap and trade, whatever it is, there seems to be a whole lot of other things this Administration does, whether it is carrots or sticks, some might say the Chicago way of approaching getting more people on board.

And I am just wondering if this is really that—I get the impression from your written testimony—I was here late, but from your written testimony, you see that is as a very effective tool. I do too. But it just seems like if the Administration itself were really on board, there would be some carrots and sticks to drive employers to this so that we have people legally here that are actually in those jobs in this time of high unemployment and it takes care of a lot of other problems we have from people illegally here taking jobs away from Americans, people that are supposed to be here.

Has there been any discussion with the White House about an approach that would provide real carrot and sticks instead of just the awareness program?

Ms. BERTUCCI. Not at this program level. The Secretary has said that she is absolutely supportive of this program and wants to build a culture of compliance with employers.

Mr. GOHMERT. But you understand.

Ms. BERTUCCI. I understand.

Mr. GOHMERT. I mean, I have been here 6 years and I have picked up on—unlike when I was on the bench, people said what they meant, a lot of times when people say, yes, we are having meetings about it, it means this is going nowhere. And so I would encourage you, as my time is running out, please push and insist for more than just awareness campaigns. I mean, the Bush campaign had awareness campaigns. The President was very vocal in supporting it. But still, we got too many employers that have never heard of it and are not driven to go there.

But I thank you for your time.

Ms. BERTUCCI. Thank you, sir.

Mr. GOHMERT. I yield back.

Mr. GALLEGLY. The gentleman, the full Committee Ranking Member, Mr. Conyers?

Mr. CONYERS. Thank you, Mr. Chairman.

I want to commend Ms. Bertucci for her candor in conceding that this is still in the developmental stage and that there are things we have got to fix.

And I wanted to commend Mr. Stana for talking about employer complicity in the immigrant labor getting around hiding the fact that they are immigrant labor. And I thank you for that part of our discussion.

With Judge Gohmert, I agree with you. I think that the Administration may not be as fully behind this as their press releases might say.

Mr. GOHMERT. Would the gentleman yield momentarily? And I am not meaning to pick on this Administration because it is following up E-Verify from the last one, and I would acknowledge that as well.

Mr. CONYERS. But let's face it. Out of the first hearing on this subject and even this one, would it be unfair for impartial witnesses to come to the conclusion that a number of us here on the Committee have that E-Verify just isn't right now ready for prime time? I mean, how on earth can we talk about the Administration making this mandatory on every employer in the United States of America and we haven't any evidence of how it is really working? That is what you have told us here, Ms. Bertucci, this morning.

Why don't we slow down a bit and get some actual working evidence or get some more rigorous proof that this is working?

I liked the slide show this morning. I couldn't see anything because I don't have my glasses on. But I guess it was very impressive. People were nodding and so forth.

But look, with all the things we have to do, what is the big rush? Now, between both you experts, nobody has talked about the reform that is necessary in addition to the enforcement. You keep talking enforcement, enforcement, enforcement.

Have you ever heard of the labor movement's comprehensive immigration reform package that they put out in April 2009? Can I send it down for you to take a look at it?

Ms. BERTUCCI. Sure.

Mr. CONYERS. Okay. Take it down.

And if you say you haven't, I won't be surprised and I won't hold it against you.

Neither of you mentioned anything about the reform part that I have been harping on all morning here. Don't you see that just enforcement alone, even if it were flawless—let's assume E-Verify worked. It still wouldn't change anything. So what is so complex about that? What do you have say about that, Stana?

Mr. STANA. Well, I would say this. The subject of our report was the E-Verify system, what is working, what is not. And I guess our answer would be there is some good news and there is some not-so-good news. This is a tool that employers can use, obviously, to determine whether the employer or the employee and they themselves, by extension, are in compliance with immigration law.

Now, the extent that you make that mandatory for all employees, or for certain sectors of the economy or a certain business size, that is a public policy decision. That is not really our decision to make. What we are trying to do, I think, is to give you some information and analysis that will help you make that decision.

Mr. CONYERS. And we are grateful for that, and I am glad that you didn't come here this morning to tell us that we ought to make it mandatory. I am glad to hear it.

Now, Chairman Gallegly himself, because of what happened with the other body, isn't that thrilled with—I mean, they didn't fix it in the right way. We have still got our work cut out for him, and I appreciate him pointing that out as well.

Well, my time is up. Thanks a lot.

Mr. GALLEGLY. I thank the gentleman.

Mr. Ross?

Mr. ROSS. Thank you, Mr. Chairman.

Ms. Bertucci, I am from Polk County, Florida which, growing up there, was known as the citrus capital of the world, and being very cognizant of that, I understand the labor needs that we have there. In fact, we have to rely significantly on immigrant labor. But we also find with some of our growers and our harvesters and other producers in that industry that Government programs like the H2A program with an adverse wage rate is a disincentive to hire through an H2A program or any other Government program.

And now, as we look at the E-Verify program—and you mentioned earlier that you had made some strides, I guess, in the State of Florida with E-Verify. Could you just tell me what you meant by that?

Ms. BERTUCCI. I was responding to outreach. We have gone into various States to outreach to those communities. That is what I was talking about.

Mr. ROSS. Have you seen an expansion of the use of E-Verify in the State of Florida?

Ms. BERTUCCI. Yes.

Mr. ROSS. Significantly?

Ms. BERTUCCI. I cannot—yes, we have but I don't know as significant as compared to other States.

Mr. ROSS. I am a strong proponent of E-Verify, and I think it is something that we ought to enhance, expand, and use more efficiently. But again, when I look back at my growers and my harvesters, I ask the question, what incentive—and I think this is what Judge Gohmert was talking about—what incentive is there for an employer? Is there a safe harbor that when they knowingly—or unknowingly hire somebody who is not appropriate, is there a safe harbor to prevent him from immunity?

Ms. BERTUCCI. Well, without getting into the criminal prosecution area because I am not a lawyer and I am not on the ICE side of the house, having said that, I believe as the statute is written, it allows some recognition of the fact that the employer is trying to do the right thing by participating in the program. You know, obviously, if there is a really bad actor or an egregious employer that for some reason is breaking the law, I would assume that a prosecution and/or investigator would look at that.

Having said that, the presumption is the employer is trying to do the right thing by participating in this program, and that is always our assumption going in on the voluntary program.

Mr. ROSS. And I think anything that we can do to incentivize their participation is going to be good.

Ms. BERTUCCI. Yes, and it's a tool. It is a tool for them to help comply with the law.

Mr. ROSS. Exactly.

Now, Mr. Stana, you commented in your report page 6 that there are limited resources being put toward enforcement of employer compliance. What additional resources would you say that DHS may need in order to accomplish the adequate enforcement?

Mr. STANA. You know, I don't have a figure for you. I know this has been a longstanding problem with the old I-9 process as well. I think prior immigration reform legislation put the increases to ICE in the thousands, not in the tens or hundreds.

I would like to make one comment on what Ms. Bertucci said about not being a safe harbor because I think it is an important point.

Mr. ROSS. Yes, sir.

Mr. STANA. Employers should not read participation in E-Verify as inoculating themselves.

Mr. ROSS. Right.

Mr. STANA. What E-Verify does is it creates a record that they submitted a name and they got a response. They had to look at a photo, through the matching tool and they said that the person was who was in front of them. So it creates a record. If there is any worksite action, you know, they may get some accommodation because they are a voluntary participant, but they are by no means inoculated if the record shows that this person had a good idea, by virtue of the information that E-Verify provided, that the person before them was work-authorized or not. And that gets to the point that I raised with Ranking Member Conyers that all too often employers have been found to be complicit in these things.

We went to Colorado, North Carolina, and Arizona and talked with workers and with business owners on their experience with this, and we heard the same thing, that it is a tool, it has some flaws, it had some really good things, and they liked it for various reasons. But there are definitely mixed views on it.

Mr. ROSS. Going back to the additional resources that you referenced in your report, have you made any requests on this Administration for those resources?

Mr. STANA. You mean, how many more it would take?

Mr. ROSS. Yes. How many more it would take or what additional resources? When you referenced that you have limited authority to impose penalties, that you would need additional resources in order to achieve the adequate enforcement, have you made any requests on the current Administration for additional resources, whatever those—

Mr. STANA. No. Being from GAO, that wouldn't be in our bailiwick. That would be up to ICE and, by extension, DHS to ask for those resources.

Mr. ROSS. Would you have any recommendation as to what those resources would be or should be to additionally allow them to do their enforcement?

Mr. STANA. You know, we would have to—actually that is the Administration's responsibility, to identify the resources they need, not us.

Mr. ROSS. But you acknowledge that they don't have adequate resources.

Mr. STANA. They don't have the resources now to enforce the—

Mr. ROSS. Fulfill their enforcement obligations.

Mr. STANA [continuing]. To enforce the I-9 system, let alone the E-Verify system.

Mr. ROSS. Thank you. I yield back.

Mr. GALLEGLY. Mr. Pierluisi?

Mr. PIERLUISI. Thank you, Mr. Chairman.

Sitting here today, I have to admit that I am troubled. I am troubled about the possibility of expanding or, even worse, making mandatory this E-Verify program, and I will explain why. It is simple.

I have two concerns. The first one, what are we doing with the 8 million estimated undocumented workers out there? Does anybody think that just by expanding this that these workers will disappear? All of them want to make a living and you cannot blame them for that. And they will find a way one way or the other. There is an underground economy, and we don't want to spur it or to encourage it more than it already is existing. And the problem with expanding E-Verify without also dealing with the immigration laws as a whole on a comprehensive basis is that this is like a band aid. It is one thing to have a voluntary program like this to allow employers to—to assist employers in verifying the documents of their workers. That is fine. But it is another to simply pretend that by making it mandatory, all of sudden 8 million people out there working will disappear as if this were magic.

I noticed that in the statement made by Director Bertucci, she says that she hopes that any changes to the E-Verify program—I quote—will be considered as a part of comprehensive reform to our immigration laws. So the first question I have is, do you agree with the premise of my concern that just dealing with this on its own is not going to solve the immigration issue our Nation faces?

Ms. BERTUCCI. Sir, I think that is the public policy decision that I would defer to the Department to respond to.

Mr. PIERLUISI. Is it your hope that we deal with this issue on a comprehensive basis?

Ms. BERTUCCI. I don't get to hope in this job. [Laughter.]

Mr. PIERLUISI. I see. But did I quote your statement correctly?

Ms. BERTUCCI. The Administration stands behind comprehensive immigration reform.

Mr. PIERLUISI. I like hearing that. Okay.

Another concern I have is that by your own admission there are errors. Errors are being made as this program is implemented. There has been misuse by the employers as this program happens. At one point today, I think you even said that you have been—not you personally, but the center has been clumsy in trying to monitor

the employers' compliance. And I even noticed that the Chairman is not happy with the compliance efforts on your part.

And let me add one that hasn't been talked about here which is discrimination. I saw that there is a 20 times higher chance to have an error when the individual involved is foreign-born. If somebody comes from abroad—and I got this figure from—let me tell you this figure because I see that your—Westat is my source for this. It has done a study and they determined that there is a 20 times higher chance that if you are born abroad, then there could be a problem. You could be legally in this country. You could be even documented. And the Ranking Member of this Subcommittee already pointed out to a particular case.

So that is my second question. What are you doing? Are you ready like our Ranking Member of the full Committee said? Are you ready to really expand this like some people are proposing?

Ms. BERTUCCI. Sir, first of all, the system can handle up to 60 million queries. We know that. We know today—during last year we handled 16 million, and our accuracy rate in that Westat study was 96 percent.

Having said that, it also acknowledges what GAO found, and we have undertaken a study. And what the name reference had to do with is the type of things that Mr. Stana talked about. In the systems that are controlled by DHS to a great extent if their records—not only DHS—well, other partners, but mostly DHS, I should say, CBP, us, and so on. It depends on how names are entered into records over a long period of time. That is when we may have possible problems with names.

Having said that, on contacting us, we are responding to those now. Through the improvements we have made, people aren't going and being pushed off to, say, the Social Security Administration where they have to show up. A great number of the people, if it is a DHS record mismatch, are coming to us. We are responding to those within 24 hours, and we are working with that person. No one—no one—one person being fired wrongly is one too many people. No one is being fired under those circumstances. We work with the people, and we will gather the information.

It is difficult. We are working with old systems. We acknowledge that, and those are some of the things we want to do to improve and make sure that we are building up our status verifiers. We have a group sitting in Buffalo. We are going to have another group in Nebraska. We have them in Los Angeles and New York. And their job is working everyday with people to ensure that the records match, you know, if there was that kind of a mismatch with names. And that is what is happening. And we have a study. Another study we will get by the end of this fiscal year on essentially those kinds of things, the difficulties with foreign names, foreign-born names, so that we can see what we can do to improve the system.

Mr. PIERLUISI. My time is up.

Mr. GALLEGLY. Thank you very much, Mr. Pierluisi. Ted Poe?

Mr. POE. Thank you, Mr. Chairman.

Thank you for being here, both of you.

I am a believer, based on my background as a judge and the rule of law, and America is the most generous Nation on earth as far as allowing people to come here. We have an immigration policy that is very liberal in coming here the right way. I believe basically, though, you come here legally or you don't come. We all know the reasons that people say why they come here. I do not believe everybody that comes into the United States illegally is coming here to do work Americans won't do. I think that is just a fiction. So if we are going to follow the rules and follow the law, then people who are here illegally need to understand, whatever the political correct term to call those folks, they are still here illegally, and they need to come the right way.

E-Verify is a way to make sure that employers are hiring folks that are legally here. It is a frustration for many employers to make sure that they want to hire people that are here legally. And I think the E-Verify is a way that helps out employers, but also follows the rule of law.

Ms. Bertucci, I was in Houston last week and talking to some of your ICE agents about some of the issues that they face with the tremendous influx of people and problems that they have, and I just want to thank you for the work they are doing. I admire the work that the agency and the division—district in the Houston area is doing a good job.

How long has E-Verify been around?

Ms. BERTUCCI. The pilot began in 1997. The pilot began way back as the basic pilot in 1997.

Mr. POE. 14 years. Is that right?

Ms. BERTUCCI. Yes.

Mr. POE. 11 percent of the businesses use E-Verify. After 14 years, we still only have 11 percent. Can you help me out why that is? Do you know? I mean, why are so few—I mean, that is 11 percent after so many years. It is going to take us—if we keep adding 10 percent in that length of time, it will be 150 years before we have 100 percent. So why have so many been reluctant to use it?

Ms. BERTUCCI. I believe that the program's growth has been in the most recent years. When the program began, there were obvious challenges on the information technology front. We are growing each and every year. We more than doubled during the last couple fiscal years, and the program is voluntary. So that is how the growth has been. But it has been a steady pace; on average 1,300 new employers sign MOU's with us every single week. So we keep on growing the program.

Mr. POE. How many false positives do you get a year?

Ms. BERTUCCI. False positives.

Mr. POE. In other words, the system checks out so and so, and it is not correct. And so this person may be an American citizen, as Mr. Pierluisi was talking about earlier.

Ms. BERTUCCI. This is an opportunity to discuss the most often talked about statistic in this program when people say we have a 54 percent error. That statistic came out of the Westat 2009 report. That same report said the system is overall correct, accurate 96 percent of the time. That report looked at a smaller segment of the population in the system. The Westat model found a 6.2 percent illegal or—I am sorry—unauthorized workforce in the country. It

was very extensive statistics. My husband is the math major, not me.

But having said that, they looked at that model and they applied that model and they said we should have found 6.2 percent people as unauthorized to work. We found 2.9 percent. That is where they believe—but they did not look at the actual records. They just assessed that figure based on a model.

Mr. POE. So your opinion—it is 2.9 percent—is a fair statement or not?

Ms. BERTUCCI. No. I don't know that we have a good number on false accurate. The record from Westat was that that error rate at that time related to a total of 4 percent run in 2009.

But since then, we have made improvements. And our most recent 2010 numbers—and as Mr. Stana said, it may be an anomaly because we have had the Federal contractors come on. But Mr. Stana has recognized 5.4 percent decrease in our tentative nonconfirmations, and we are now at a 1.7 percent initial mismatch. We then find .3 percent of those people resolved, authorized to work, and the other 1.4 percent found unauthorized.

Mr. POE. Last question, if I may, Mr. Chairman. Excuse me. I am running out of time.

Ms. BERTUCCI. Okay.

Mr. POE. You are a potential employee. You go to business and it comes up E-Verify is a false positive. It says you are here illegally. What are my options as that worker?

Ms. BERTUCCI. As the worker?

Mr. POE. Yes. It comes up a false positive saying that I am illegally in the country, and I am not.

Ms. BERTUCCI. I think Ms. Lotspeich—you may have not been here. So I apologize.

You have the right to contest that tentative nonconfirmation. At that point, that case is held in abeyance. Within 8 Federal work days you either visit the Social Security Administration or call us. We work with you and we will hold that case open, if we are working with you, until such time we resolve that data mismatch.

Ms. LOFGREN. Would the gentleman yield?

Mr. POE. Yes.

Ms. LOFGREN. Because the GAO report actually indicates theoretically that is what is supposed to happen, but there are plenty of times when the employee is never notified, in violation of what is supposed to happen. And they can't fix it and they get fired even though they are an American. Isn't that correct, Mr. Stana?

Mr. STANA. Yes. If I can straighten out the numbers a little bit because I think there are a lot of numbers floating around here.

Of the 100 percent of people who go through the system, let's say 97.5 percent, to round it out, are deemed work-authorized instantaneously. Of the ones who are not authorized instantaneously, about .3 percent of them get it resolved within 48 hours or so. So you are really dealing with maybe 2.3 to 2 percent of people who have this problem. It is a problem.

Now, getting to your earlier question, you asked how many false positives there are. These are false negatives that we are talking about, people who are inappropriately told that they are not au-

thorized to work and they may be. And that is the issue you are talking about.

The false positives are at about 3-3.5 percent according to Westat, which means an individual is not authorized to work but somehow the system, either through identity theft or employer compliance with the individual getting a job inappropriately, identifies the individual as authorized to work.

Now, when you throw around all these statistics, it is easy to get lost in the numbers. But when you start matching the number sets up—and it is hard to do because it is not exactly the same point in time and it is not exactly the same data set—but you start getting to the point where getting much further down on the false negatives is going to be very difficult to do. It is important to do it because you have people like you talked about, Ms. Lofgren, who are getting a bad shake out of the system. So you don't want to lose that intent, but it is getting tough because you were ratcheting this down into the below 2 percent range.

The false positives—I don't know if we are ever going to get totally on top of that without having a better way to address the resource and enforcement question. It is not a matter of when or how. That is your call in what conjunction you do it. But that is the landscape here.

Mr. GALLEGLY. I thank the witnesses today. This is going to be an issue that we are going to be dealing with a great deal in this Congress.

I would just like to close by trying to respond to my good friend—and he truly is my good friend and my neighbor for many years—the Ranking Member, Mr. Conyers, and his statement “why rush?”

I would just like to answer that by saying that this issue didn't start yesterday or day before yesterday. In fact, after IRCA in 1986, we thought this problem was going to be solved because we had a one-time amnesty—I guess that was the 1986 version of comprehensive immigration reform—and that this problem would go away because we would have an enforcement mechanism. We never enforced.

Then we fast forward to 1996. That is still 14 years ago, and that is when we came up with this new concept of e-verification. Now, 14 years have passed, and I have been working on it for 14 years. So I don't think that I have really been rushing to it. But if there was ever a need to do something quickly when we have 14 million Americans that aren't working today, I think that they deserve to be put at the front of the line.

And I hope we can all work together. John, you are my friend and I know we can work together and maybe differ without being personal about it. I respect your friendship.

And with that, we will adjourn the meeting. Thank you.

[Whereupon, at 11:30 a.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

LETTER FROM LYNN SHOTWELL, EXECUTIVE DIRECTOR,
AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL



American Council on International Personnel | Advancing Global Mobility

February 11, 2011

Hon. Elton Gallegly
Chairman, House Subcommittee on
Immigration Policy and Enforcement
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gallegly:

On behalf of the American Council on International Personnel (ACIP), I thank you for holding the hearing on February 10, 2011 entitled, "E-Verify – Preserving Jobs for American Workers," and for highlighting the need to improve E-Verify as an employment authorization tool. ACIP believes that a reliable, efficient and secure electronic employment eligibility verification system is central to bipartisan immigration reform.

ACIP is the leading trade association that advocates for sound business immigration policy. Our members consist of over 220 of America's largest companies, universities and non-profit research institutions. ACIP works directly with the in-house human resource and legal professionals responsible for establishing and maintaining compliant verification systems that cover millions of new hires per year. Our members support a strict but fair enforcement of immigration laws at the worksite, and expect an accurate and reliable verification system that we can trust to help us maintain a legal and productive workforce. ACIP has long supported modifications to the current process which make it easier for employers to comply, including electronic systems, secure identification and biometrics.

ACIP has closely followed E-Verify's evolution from the telephone-based Basic Pilot program to today's internet-based system. Many ACIP members have enrolled in E-Verify over the past several years and we applaud USCIS for its efforts to adapt E-Verify to many different hiring situations. We believe, however, that several significant issues must be resolved before Congress mandates universal participation in E-Verify.

First, we echo the concern raised by the U.S. Government Accountability Office (GAO) that E-Verify is vulnerable to identity theft. For this reason, ACIP supports an optional biometric pilot program that will provide more certainty to employers and not leave them vulnerable to sanctions or losing their workforce through no fault of their own. Such a system would provide an easy "yes/no" to whether a worker is who he claims to be and whether he is authorized to work. Further, by removing subjective scrutiny of documents from the process, discrimination becomes less of a concern.

Second, E-Verify is still not easily adaptable to all hiring situations and basic questions about how electronic verification should be handled in certain corporate mergers and

acquisitions remain unanswered. Attention to these and other details will be critical to successful expansion of E-Verify.

Third, employers should be offered a fully-electronic employment verification system. The current system, which requires both a paper-based Form I-9 and the online E-Verify check, is redundant, expensive and burdensome. This system also leaves good faith employers vulnerable to fines for paperwork errors even where they have no unauthorized workers.

Fourth, any expansion of E-Verify must be accompanied by federal preemption of the growing patchwork of state and local employment verification laws, as well as consistent enforcement of federal laws. Employers with multiple locations are increasingly confronted with inconsistent requirements and enforcement that makes it difficult to implement and maintain compliant systems. E-Verify participation should provide a safe harbor for good faith employers and not extend liability to the employees of subcontractors.

Finally, whether implementing a biometric-based pilot system, or simply expanding E-Verify, a qualified entity with the necessary expertise should set benchmarks for progress and evaluate the system's readiness before mandating universal participation. Congress must also address how to pay for such a mandate.

ACIP members work hard to comply with existing immigration laws and are prepared to be partners with the federal government in this process. Effective enforcement is only possible if it is based on trust, and built upon a system that provides employers with certainty. ACIP thanks the Subcommittee for holding this hearing and asks the Subcommittee to consider our recommendations to improve E-Verify.

Respectfully submitted,



Lynn Shotwell
Executive Director

cc: Hon. Zoe Lofgren



Insight

UNITED STATES IMMIGRATION POLICY PROGRAM

FEBRUARY 2011

SUMMARY

As comprehensive immigration reform has receded from the current debate, the question of whether the federal E-Verify employment verification program should be made mandatory for employers, either on its own or in combination with other more targeted immigration policy reforms, is receiving new attention in Congress and elsewhere. This Insight provides a short history of E-Verify, identifies its strengths, weaknesses, and main areas of concern, and makes recommendations about how it should be strengthened and expanded.

An effective electronic eligibility verification system is an essential component of the US immigration system and has been rightly at the center of recent immigration policy debates. However, notwithstanding important steps taken by US Citizenship and Immigration Services (USCIS) to increase the system's timeliness, accuracy rates, and oversight of employer compliance, E-Verify remains vulnerable to identity fraud and employer misuse, and offers no ability to detect off-the-books employment. The system also is costly for workers, employers, and taxpayers. These problems are likely to be exacerbated if vast new numbers of employers are required to use E-Verify. As a result, enactment of new E-Verify mandates without broader immigration reform may do more to harm the economy and US workers than to deter illegal immigration and to protect US jobs.

In the near term, the most important reforms to E-Verify are further measures to reduce fraud and to improve the system's performance for good-faith employers and legal workers. USCIS already is exploring a pair of pilot projects that may be important steps in this direction and which merit particular attention and evaluation: expanding photo screening and enabling a worker self-check system. Others have proposed adding a biometric feature to E-Verify, which also could be tested on a pilot basis, though a fully biometric E-Verify would raise additional concerns about the system and add substantially to program costs.

Any new E-Verify mandate runs a high risk of adverse unintended consequences, however, so changes should be phased in gradually and evaluated against concrete performance benchmarks. And the most promising strategy for successful expansion of E-Verify is to link new employment verification mandates to a targeted or comprehensive immigration reform effort. Only then would employers and current unauthorized workers have positive incentives to use the program and comply with its requirements.

E-Verify: Strengths, Weaknesses, and Proposals for Reform

By Marc R. Rosenblum

1. Introduction

As the 112th Congress gets underway with Republicans back in the majority in the House of Representatives, employer enforcement and E-Verify have emerged as the first topics for hearings and action by the House Judiciary Committee, which has jurisdiction over immigration matters.

E-Verify is the mostly voluntary system that allows employers to check work eligibility by verifying workers' names and identity data against federal databases. The verification system has been at the center of proposals for comprehensive immigration reform since 2006, and at least four different bills were offered in the 111th Congress to require all US employers to use it.¹

Creating an effective electronic eligibility verification system is a goal that unites the disparate sides of the US immigration debate because giving employers greater certainty about whether an employee is authorized to work in the United States is the only fair way to hold them accountable for having a legal workforce, and ultimately to lessen the jobs magnet that attracts most illegal immigration.

But after five years of dramatic growth in E-Verify enrollments and verifications, it is unclear how E-Verify affects hiring practices, especially in industries that rely more heavily on foreign workers. E-Verify has been criticized for high error rates and other adverse effects, and some

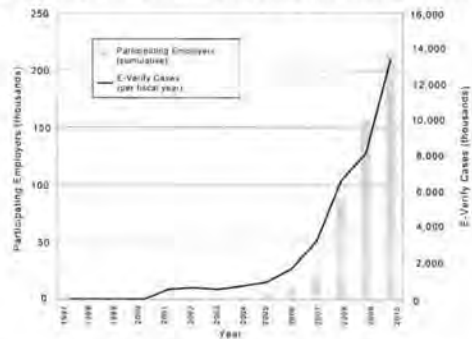
have argued that to be effective E-Verify should be linked to a new biometric identity system. This Insight summarizes the system's strengths and weaknesses, and evaluates proposals to expand E-Verify and to combine it with biometric screening.

II. Brief History of E-Verify

Congress in 1986 considered and rejected a proposal to create a call-in electronic verification system as part of enacting employer sanctions in the *Immigration Reform and Control Act* (IRCA). The origins of E-Verify came ten years later when the *Illegal Immigration Reform and Immigrant Responsibility Act* (IIRIRA),²

called for pilot programs to test three separate electronic screening systems. Of the three, the program known as the Basic Pilot — launched in 1997 — was the most viable. It was very small (fewer than 5,000 employers) until 2005, when the Bush administration undertook a series of reforms to strengthen and promote the program, including by expanding its Web-based services in 2006 and renaming the program E-Verify in 2007. Enrollment in E-Verify has surged since 2005, reaching 216,721 employers as of October 2010, with 13.4 million queries submitted to the system in fiscal year (FY) 2010 (see Figure 1).³ E-Verify now screens more than one in five new hires in the United States, though only about one in 25 businesses have enrolled in the system.

Figure 1. Employers Enrolled in Basic Pilot/E-Verify and Cases Verified, FY 1997-2010



Source: US Citizenship and Immigration Services (USCIS), "E-Verify History and Milestones." (Washington, DC: USCIS, 2010).

For most employers, enrollment in E-Verify is voluntary, but employers who have enrolled in E-Verify must use it for all new hires. Several groups of employers are required by law to use the program for new hires, including federal agencies and federal contractors and subcontractors and certain employers in 14 states (see Table 1).⁴ In the case of federal contractors, employers are

also required to verify certain existing employees. And state laws require all employers in Arizona, Mississippi, South Carolina, and Utah to use E-Verify, though Arizona's mandatory E-Verify law is the subject of a federal lawsuit that is presently before the US Supreme Court. The outcome could affect Arizona's requirement as well as other state E-Verify laws.

Table 1. E-Verify Users by State and State E-Verify Laws (as of January 22, 2011)

State	Employers Enrolled	States with Verification Mandates and Year of Enactment
Alabama	2,328	
Alaska	427	
Arizona	35,988	All employers (2008)
Arkansas	1,210	
California	20,800	
Colorado	6,775	Public contract recipients (2006)
Connecticut	1,661	
Delaware	510	
District of Columbia	1,521	
Florida	11,067	Public agencies (2011)
Georgia	18,186	Public contracts (2007); public agencies (2009)
Hawaii	722	
Idaho	934	Public agencies (2006)
Illinois	6,061	
Indiana	2,480	
Iowa	1,450	
Kansas	2,229	
Kentucky	1,545	
Louisiana	1,924	
Maine	427	
Maryland	4,296	
Massachusetts	3,708	
Michigan	3,178	
Minnesota	3,833	Public agencies and contracts (2009)
Mississippi	3,949	All employers (2009)



Missouri	22,061	Public agencies and contracts (2008)
Montana	464	
Nebraska	2,821	Public agencies and contracts (2008)
Nevada	1,817	
New Hampshire	619	
New Jersey	4,856	
New Mexico	1,139	
New York	6,886	
North Carolina	5,625	Public agencies (2007)
North Dakota	335	
Ohio	3,852	
Oklahoma	3,254	Public agencies (2007) and contracts (2008) ^a
Oregon	2,299	
Pennsylvania	4,858	
Rhode Island ^b	2,819	
South Carolina	7,247	Public agencies (2008); contracts (2009); all employers (2010)
South Dakota	371	
Tennessee	3,383	
Texas	13,419	
Utah	4,319	Public agencies and contracts (2009); all employers (2010)
Vermont	186	
Virginia	5,706	Public agencies (2012)
Washington	4,073	
West Virginia	399	
Wisconsin	2,268	
Wyoming	344	
Total	243,709	

Notes: ^a A 2010 federal appeals court ruling upheld Oklahoma's HB1804's E-Verify requirement for state contractors and public agencies but overturned a requirement that all employers use the system.

^b Rhode Island required state agencies and contractors to use E-Verify beginning in 2008, but the state's E-Verify mandate was rescinded by Governor Lincoln Chafee in January 2011.

Sources: E-Verify users from USCIS, *Employment Eligibility Verification Program Statistics* as of January 22, 2011; State E-Verify laws from National Immigration Law Center (NILC), *E-Verify State Laws, Executive Orders, and Local Ordinances* (Washington, DC: NILC, 2011), www.nilc.org/dc_conf/flashdrive09/Worker-Rightstate11_e-verify-laws-summary-chart-2009-11.pdf, and National Conference on State Legislatures (NCSL), "E-Verify: Frequently Asked Questions," www.ncsl.org/default.aspx?tabid=13127.

III. E-Verify Prevents Some Types of Document Fraud

E-Verify strengthens immigration enforcement because it detects the most common types of fake IDs. Without E-Verify, employers can comply with the requirements of US immigration law — i.e., by reviewing documents proving identity and work eligibility and by recording workers' names, dates of birth, social security numbers, and (for non-citizens) alien identification numbers on an I-9 form — but still hire an unauthorized worker because the worker (with or without the employer's knowledge) presents fraudulent documents. About three-quarters of unauthorized workers are believed to rely on fraudulent documents to obtain employment.⁵

E-Verify disrupts this model of unauthorized employment because most fraudulent documents cannot be matched to a valid record in the Social Security or Department of Homeland Security (DHS) databases.

Thus, E-Verify gives employers a tool to detect fake IDs and to avoid unknowingly employing an unauthorized immigrant. Even accounting for database errors (see below), E-Verify likely allowed employers to screen out about 166,000 unauthorized workers in FY 2009.⁶ The system's ability to successfully identify a large number of unauthorized immigrants strengthens employers' ability to ensure a legal workforce, and is a major step toward reducing the jobs magnet that motivates most illegal immigration.

IV. E-Verify Is Vulnerable to Identity Fraud and Employer Noncompliance

At the same time, E-Verify does not reliably prevent unauthorized employment because the system remains vulnerable to identity fraud and to nonuse of the system by registered employers. Identity fraud is a problem for E-Verify because while the system usually can confirm whether or not a name and social security or alien identification number exist in a federal database, the system cannot confirm whether a name and identifying number actually belong to the worker being hired.⁷ As a result, the system is vulnerable to an unauthorized worker using borrowed or stolen identity documents or fraudulent documents that contain borrowed or stolen data to be confirmed through E-Verify. Employers may be complicit in identity-fraud schemes, including by providing workers with someone else's identity data or by using the same identity data to verify multiple workers. E-Verify also cannot reliably detect when employers who are using E-Verify fail to screen some or all of the workers they hire.

The scope of these problems is difficult to pinpoint because identity-fraud cases resemble successful (accurate) confirmations; and nonuse of the system does not leave a paper trail or electronic footprint. One method for estimating the prevalence of illegal nonuse is to compare the total number of workers screened through E-Verify to the estimated number of workers hired by employers who are required to use the system. Using this methodology, the



Westat Corporation, in one of an ongoing series of evaluations it has conducted for DHS, estimated that two-thirds of new hires in Arizona (by 17,000 businesses) in June 2008 likely were not submitted to E-Verify, even though all employers in the state were required to use the system beginning in January 2008.⁸ And an audit by the Social Security Administration (SSA) Office of the Inspector General found that SSA — a federal agency required to use E-Verify for all new hires — failed to use the system for 19 percent (1,767) of its new hires in FY 2008 and 2009.⁹

More generally, the erroneous confirmation rate can be estimated by comparing the number of E-Verify nonconfirmations to the estimated number of unauthorized workers being screened through the system (i.e., to the number of cases that should be nonconfirmed). Using this methodology, Westat estimated in December 2009 that about 54 percent of unauthorized workers screened through E-Verify in April-June 2008 (56,000 people) were incorrectly confirmed by the system, usually because they used borrowed or stolen identity data.¹⁰ This means about 3.4 percent of E-Verify's confirmations during this period were mistakes.¹¹ As Westat observed, "this finding is not surprising, given that since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify."¹² Based on an analysis of FY 2009 data made available by USCIS and assuming that the ratio of unauthorized workers screened by the system to the overall unauthorized population is similar to Westat's 2008 estimate, it appears that the system continues to confirm unauthorized

workers at a similar or slightly higher rate,¹³ and that most unauthorized immigrants who seek employment with employers who use E-Verify are confirmed as work authorized.

V. Erroneous Nonconfirmations

In addition to these limitations to E-Verify's effectiveness, the program is controversial because it erroneously nonconfirms some legal workers and imposes additional costs on US workers and businesses.

Because of database and user errors, E-Verify does not always successfully confirm the eligibility of US citizens, lawful immigrants, and other legal workers.¹⁴ The rate of erroneous nonconfirmations is unknown because some legal workers fail to correct these mistakes or update their records, in which case they show up in the statistics as unauthorized workers. Westat used a statistical model to estimate that about 0.8 percent of all E-Verify queries in April-June 2008 resulted in erroneous tentative nonconfirmations.¹⁵ A survey by the Los Angeles County Human Resources Department found that a total of 2.7 percent of the county's E-Verify queries in 2008 and 2.0 percent in 2009 resulted in erroneous tentative nonconfirmations.¹⁶

An accuracy rate for legal workers of 98-99 percent, based on these findings, represents substantial improvement over the system's earlier performance.¹⁷ Overall, the proportion of cases receiving tentative nonconfirmations (TNCs) fell from 8 percent in 2004-07 to just

2.6 percent in FY 2009.¹⁸ The drop in the TNC rate and increase in system accuracy reflect a number of successful enhancements to the program implemented by USCIS over the last four years, including a system implemented in 2007 to require employers to double check for data entry errors; an automatic check against USCIS naturalization databases prior to issuing an SSA TNC based on a citizenship status mismatch (the so-called Naturalization Phase I enhancement) implemented in 2008; an automatic check against passport records implemented in 2009 for employees using passports to prove their identity; and also in 2009, improved recognition of European date formats and other clerical errors.¹⁹

Despite these improvements, however, the number of erroneous nonconfirmations as a share of all TNCs remains alarmingly high: 22 percent according to Westat's model-based estimate and 95 percent according to Los Angeles County's survey.²⁰ Erroneous nonconfirmations are problematic for four main reasons. First, employers do not always notify workers of these errors,²¹ and do not always provide workers with the information needed to correct them.²² In some cases, workers are not notified of tentative nonconfirmations because employers improperly use E-Verify as a filter to "prescreen" job applicants, and then fail to hire or notify applicants who are the subject of tentative nonconfirmations.²³ Thus, some employers fire legal workers (or avoid hiring them) because of E-Verify errors that workers are not given a chance to correct.

Second, even when workers are notified, the US Government Accountability

Office (GAO) reports that workers may face "formidable challenges" correcting them.²⁴ Of workers interviewed by Westat who successfully corrected nonconfirmations, 22 percent spent more than \$50 to do so and 13 percent spent more than \$100. Half of these workers had to take time off work to correct a nonconfirmation, including 14 percent who took off two or more days of work.²⁵ These findings understate the actual cost of correcting E-Verify errors because they exclude an unknown number of workers who were discouraged by the process and failed to correct erroneous nonconfirmations.

Third, erroneous nonconfirmations produce discriminatory outcomes, primarily affecting citizens with foreign names, naturalized citizens, and legal immigrants. Biased outcomes are partly a function of database errors, which are more common in DHS than SSA records,²⁶ and of errors related to misspelled names and name-order mistakes, which are more common with foreign names. Thus, among the subset of erroneous nonconfirmations that were corrected in 2008, error rates were at least 30 times higher for naturalized citizens and 50 times higher for legal nonimmigrants (temporary workers) than for native-born citizens.²⁷ These numbers understate the actual degree of discriminatory outcomes, however, because they do not account for prescreening and other biased implementation of E-Verify, described above. Such practices also are more likely to affect recent immigrants and other workers whom employers suspect of being unauthorized.

Finally, erroneous nonconfirmations are also costly to employers because they



add time and uncertainty to the hiring process. While 95 percent of E-Verify queries result in immediate confirmations and an additional 1 percent were resolved within three days,²⁸ tentative nonconfirmations required an average of 7.6 to 12.5 days to be resolved.²⁹ Employers are not permitted to suspend workers or delay training during this period even though 89 percent of TNCs eventually result in nonconfirmations (including some erroneous nonconfirmations).

These numbers mean that to be compliant, employers are required to invest valuable training resources in workers who eventually will be dismissed. Not surprisingly, employers' top priority for reforming E-Verify would be to permit them to screen job applicants prior to the start of employment to avoid this situation.³⁰ Also unsurprisingly, many employers seek to avoid these lost investments by suspending workers or taking other action against them, in violation of E-Verify rules, on the basis of a tentative nonconfirmation.³¹

VI. Additional Concerns

E-Verify is also controversial for at least three additional reasons:

- The growth of the E-Verify system exposes Americans to greater risk of identity theft because the system makes stolen identity data more valuable as a key to employment, and because the system gives a larger number of private actors and federal agents access to identity data through their interactions with E-Verify data-

bases. Westat found that about 32 percent of employers reported that they notified workers about TNCs in public settings or had one or more employees who reported being notified of a TNC in a non-private setting.³² The system also contributes to an already existing trend of increased aggregation of federal databases, as employment data and identity data — often now including photographs — are linked to DHS travel and immigration records. These linkages make the data stored within integrated databases still more valuable to data thieves.

- Employers may intentionally misuse E-Verify to obtain information about their workers and use the information during negotiations over wages or to block efforts by workers to organize unions or to exercise other labor rights.³³
- Employers who move their operations off the books also may be more likely to violate minimum wage, health and safety, and other worker protections. Thus, unauthorized employment in jurisdictions that require employers to use E-Verify may result in worse exploitation of unauthorized workers than in jurisdictions without E-Verify.

VII. Efforts to Prevent Identity Fraud and Employer-Misuse Have a Limited Impact

The limitations and adverse consequences of E-Verify — identity fraud,

employer nonuse, and employer misuse and abuse — are matters of longstanding concern, and the Bush and Obama administrations have taken a number of steps to address them, including by creating a photo-matching tool in E-Verify and a monitoring and compliance division within USCIS. Nonetheless, these efforts have had a limited impact, and fraud and various forms of employer misuse are likely to persist in the absence of major reforms to the overall immigration system.

A. Photo Matching

Since 2007, USCIS has incorporated a photo-matching feature to help prevent identity fraud. Under this enhancement, when workers use lawful permanent resident cards ("green cards"), US government-issued employment authorization documents, US passports, or US passport cards to prove their identity and work eligibility, employers automatically receive a copy of the photograph associated with the worker's document. As part of the E-Verify screening process in these cases, employers are required to confirm that the photograph on the document presented by the worker matches the photograph in the DHS or State Department database. The photo-matching tool is a logical extension of E-Verify and successfully prevents a particular form of identity fraud: cases in which workers use sophisticated fake IDs that contain identity data belonging to a legal worker, but change the picture on the document.

Photo matching has two important limitations, however. First, photo match-

ing is limited to the identity documents named above, whereas the overwhelming majority of workers in the United States use other documents to prove their identity, primarily driver's licenses. As a result, only 393,574 out of 14.9 million E-Verify cases (2.6 percent) were subject to photo matching between October 2009 and August 2010, resulting in 1,569 nonconfirmations (0.01 percent).³⁴ Photo matching could become more effective if it included state motor vehicle data, but the use of driver's license data in the photo-matching tool is subject to a number of technical and legal challenges.³⁵ Thus, current plans to expand photo matching to driver's license data are limited to a pilot agreement with a single state (Mississippi) set to begin next year, and data sharing initially will be limited to license data but will not include actual photographs.

Second, as with the current I-9 document-based system, the photo-matching tool relies on the good-faith compliance of employers who are required to compare the photograph in the worker's record to the document presented. Thus, while the system provides employers with a new tool to screen out certain fraudulent documents, it will not prevent or detect intentional noncompliance by employers who accept a card that does not belong to the person being hired or who report a photo match where one does not exist. Similarly, GAO reports that unscrupulous employers in Arizona have begun directing workers they believe to be unauthorized to provide identity documents other than green cards and employment authorization documents in order to avoid triggering the photo-screening tool.³⁶



B. USCIS Monitoring and Compliance Branch

USCIS created a Monitoring and Compliance Branch in 2007 to look for several different patterns that suggest identity fraud or employer misuse of E-Verify in cases in which:

- employers use the same social security number (SSN) across all E-Verify transactions, suggesting identity fraud;
- employers enroll in the system but fail to use it to verify any new hires, suggesting off-the-books employment;
- an employer terminates a worker on the basis of a tentative nonconfirmation, suggesting that the worker was prescreened and not given a chance to correct an erroneous nonconfirmation; or;
- workers are screened through E-Verify after the third day of employment, existing workers are reverified, or workers who were hired before 1986 are verified, all suggesting that the employer may be using the system to retaliate against workers for labor activism (excluding some federal contractors who are required by the Federal Acquisition Regulation to rescreen certain workers).³⁷

USCIS deserves credit for establishing the Monitoring and Compliance Branch — a direct response to earlier criticisms of E-Verify. The branch reports that it notified 16,125 employers about some form of noncompliance in FY 2010, representing slightly over 2 percent of

E-Verify worksites, and that about 80 percent of employers who were notified adjusted their behavior after being contacted.³⁸

GAO reports that Monitoring and Compliance Branch staffing increased from 21 in April 2008 to 52 in November 2009, and that 44 additional personnel were slated to be hired in FY 2010-11. Notwithstanding these gains, the Monitoring and Compliance Branch is unable to prevent identity fraud and employer misuse for three main reasons.³⁹

First, at least for now, the branch's monitoring activities rely on manual audits of E-Verify transactions, meaning that only a small sample of employer records is monitored.⁴⁰ E-Verify officials report that automated auditing will begin in FY 2012 for certain types of suspicious behaviors.

Second, even once automated auditing is in place, this type of remote oversight will be unable to detect many of the most common forms of identity fraud and employer misuse. In particular, audits will not detect cases of individualized identity fraud (i.e., where each worker at a worksite use different fraudulent identity data), cases in which employers only screen some of their workers, or cases in which employers selectively inform workers about E-Verify procedures because none of these illegal behaviors produce easily recognizable patterns.

Third, USCIS has no authority to enforce E-Verify requirements, and US Immigration and Customs Enforcement (ICE) devotes limited resources to enforcement of E-Verify-related violations.⁴¹

GAO reports that between December 2008 and August 2010, USCIS referred just three cases to ICE for investigation of worksite violations based on non-compliance with E-Verify rules, that ICE only opened an investigation into one of the three, and that ICE did not obtain a conviction in that case.⁴² Moreover, most forms of employer misuse — including prescreening of job applicants, use of E-Verify to retaliate against workers for labor activism, and discriminatory application of E-Verify rules — are prohibited under the E-Verify Memorandum of Agreement (MOA) between USCIS and ICE, but are not subject to any civil or criminal penalty. Thus, there is no record of an employer ever being sanctioned for misusing E-Verify in one of these ways.

VIII. Proposals to Expand E-Verify

Many lawmakers have proposed to require all US employers to use E-Verify for all new hires or for new and existing employees, either as a stand-alone enforcement measure or as part of a broader immigration reform bill. What are the likely costs and benefits of new E-Verify mandates?

The argument for expanding E-Verify is that a partial system is not an effective deterrent to illegal immigration and places compliant employers at a competitive disadvantage. Under the current system, if E-Verify identifies an unauthorized worker and causes the employer to terminate employment, the worker may be hired by another firm

that does not use E-Verify. Unauthorized immigrants still have employment opportunities, and employers who use E-Verify face the double penalty of added costs during the hiring process and competition from other firms that may save money by employing unauthorized workers. Thus, if all employers were required to use E-Verify, it would level the playing field and unauthorized immigrants would find it more difficult to find work in the United States, forcing some people to return to their countries of origin, and discouraging future unauthorized inflows.

While a universal version of E-Verify therefore clearly should be a priority, new E-Verify mandates also would substantially increase the costs and adverse consequences identified above; and the real-world downstream effects of increased worksite enforcement are difficult to predict.

First, the costs of E-Verify to US taxpayers would increase substantially if the program were made mandatory for all US employers, and even more so if employers were required to reverify existing workers. Current spending on E-Verify averages about \$100 million per year,⁴³ and USCIS projects that at the current rate of growth the program will require another \$508 million through fiscal year 2020, though the actual number may be considerably higher.⁴⁴ But USCIS previously estimated that a mandatory version of the program would cost four times as much, \$765 million over four years, and \$838 million if existing workers also were reconfirmed.⁴⁵ And these agency projections are much lower than estimates provided by the independent Congressional Bud-

get Office, which reported in 2007 that implementation of a mandatory electronic employer verification system would cost \$3 billion in fiscal years 2008-12 and \$6.1 billion in FY 2008-17.⁴⁶

In addition to these direct costs, a mandatory version of E-Verify without a workforce legalization program would reduce state and federal payroll tax revenues because many employers would move existing unauthorized workers off the books to avoid detection. Anecdotal evidence and preliminary research on tax payment patterns suggests off-the-books employment has increased in Arizona since E-Verify became mandatory there.⁴⁷ And the Congressional Budget Office estimated in 2008 that to require all employers to participate in E-Verify would result in lost federal tax revenues of \$17.3 billion over a ten-year period as a result of employers moving existing unauthorized workers from the formal to the informal economy.⁴⁸

Second, the number of erroneous nonconfirmations and other costs to US employers and workers also would increase under a mandatory system. Assuming no change in error rates, using E-Verify for all new hires would result in the erroneous nonconfirmation of about 600,000 US workers per year, resulting in lost wages or other adverse consequences for 60,000 to 280,000 of them.⁴⁹ Employers would face hiring delays about 1.6 million times per year, resulting in about 14 million work-days of lost productivity because of unauthorized immigrants who would be kept on employers' payrolls pending a final nonconfirmation.⁵⁰ At current rates, employers also would be expected to spend about \$150 million to set up E-Verify and \$600 million to maintain the system.⁵¹ Identity theft associated with E-Verify also

would increase, though employment verification currently accounts for a very small share of identity theft overall.⁵²

Yet the actual costs of a mandatory system would be much higher than those predicted by a simple extrapolation of current costs because the users under a mostly voluntary system are disproportionately large firms with sophisticated HR departments and/or federal contractors — a profile that differs in important ways from average US employers. While 89 percent of US businesses have fewer than 20 employees and 98 percent have fewer than 100, only 32 percent of E-Verify users have fewer than 20 employees and 68 percent have fewer than 100.⁵³ And a study of businesses not using E-Verify found that about one-quarter of them lacked staff with sufficient skills to begin using E-Verify, and that about one in ten small businesses did not have adequate computer or Internet connections to use the program.⁵⁴ Thus, employers who use E-Verify because they are required to do so by state or local law or by a client are significantly less satisfied with the program than employers who use it voluntarily; and employers in Arizona (including those who enrolled in the system in response to state law) are less likely than employers in other states to comply with E-Verify's required worker protections.⁵⁵ For these reasons, per capita costs likely would increase considerably under a mandatory E-Verify system, though rising costs may be partially offset by continued improvement in system accuracy and better oversight.

Most importantly, to require broader participation in E-Verify without creating legal opportunities for employers to hire immigrant workers is a risky strategy because the downstream

impact of enhanced worksite enforcement is impossible to predict. Indeed, after IRCA made it illegal to employ unauthorized immigrants, unauthorized employment remained widespread (because of the proliferation of false documents), but wages fell and discrimination against Latino workers increased, regardless of their legal status.⁵⁶ New E-Verify mandates may produce their desired effect and cause employers who now hire unauthorized immigrants to replace them with legal workers; but poorly crafted mandates could lead instead to more identity fraud and off-the-books employment, resulting in lost revenues and deteriorating working conditions. Alternatively, the higher cost of doing business and the difficulty of replacing unauthorized immigrants with legal workers could lead some employers to go out of business or to move their operations abroad, in which case new E-Verify mandates without broader immigration reforms would undermine the economic recovery.⁵⁷

IX. Proposals to Create a Biometric Verification System

In addition to expanding the program, some lawmakers propose to strengthen E-Verify by adding a biometric identifier, either through a secure ID card or by requiring employers to collect workers' fingerprints or other data.⁵⁸

In general, better ID cards or a biometric version of E-Verify would combat identity fraud and likely would be more successful at reducing unauthorized employment than the current version of E-Verify. But

biometric technology is imperfect, and fingerprints in particular may not be the best technology for reducing fraud, partly because many workers do not have usable fingerprints.⁵⁹

Implementing a national biometric ID system also would require the government to capture fingerprints (or some other biometric data) for 160 million US workers, and possibly to issue new cards at a cost of tens of billions of dollars and hundreds of thousands of agency work years.⁶⁰ Requiring employers to obtain card scanners would add to this expense, and mandating that employers recheck workers' fingerprints — the only way to link a biometric card to its owner — would add substantially to the cost of the system, while also leading to many more fingerprinting errors and erroneous non-confirmations. Thus, to add a biometric component to a mandatory E-Verify system would make the system prohibitively expensive from both fiscal and economic growth standpoints.

Perhaps the most important question about a biometric card is whether Americans are ready to be fingerprinted as a precondition for eligibility to work. Some people will fear that a biometric card eventually would be used for other purposes — just like today's Social Security number — and some will object to such a system as the ultimate big government intervention in private labor markets. These concerns are partly philosophical, but they would undermine the integrity of a new verification system if a substantial number of Americans refuse to comply with the law, or if these concerns cause a biometric system to be limited to immigrants.

X. Conclusions and Recommendations

In sum, while E-Verify gives employers a way to detect certain types of ineligibility to work, it is vulnerable to identity fraud and employer misuse, and so does not prevent unauthorized employment. The partial benefits of E-Verify come with a number of added costs: adverse consequences for workers and employers, including lost employment opportunities for some US workers, burdensome procedures to correct some database errors, discriminatory outcomes, lost productivity because of higher costs of hiring new workers, greater incidence of identity theft, downward pressure on wages and working conditions, and higher costs of doing business generally. Efforts to correct these problems have had a limited impact, and likely will confront continued challenges in the future.

To a large degree, the limited effectiveness and adverse effects of E-Verify reflect a misunderstanding of what should be expected of the program or of any employment eligibility verification system. E-Verify cannot force employers to hire legal workers; it can only give them a better tool to distinguish between legal and unauthorized workers. Bad-faith employers and employers who believe their businesses depend on unauthorized workers to survive — i.e. employers who currently hire unauthorized workers despite knowing or suspecting they may be unauthorized — likely will continue to do so even if they are required to use E-Verify.

Twenty-five years after IRCA's passage and after a generation of steadily increasing investments in immigration enforcement, the assumption that US

labor markets and immigration patterns can be reshaped through enforcement efforts alone seems dubious at best, when one considers the unauthorized population has grown to more than 11 million and return flows have been limited even in the face of the recent economic downturn. As long as the demand for unauthorized employment remains greater than the expected penalty for noncompliance, then the most likely effect of a new E-Verify mandate would be to push unauthorized employment deeper into the underground economy and increase the incentives for fraud. To make E-Verify mandatory without addressing these concerns sets the system up for a larger failure, undermining its credibility among a broader set of workers and employers.

Thus, the immediate policy priorities with respect to E-Verify should be to continue existing efforts to reduce identity fraud and improve system accuracy, and to expand and evaluate pilot programs testing additional improvements. Two such programs are already slated to begin this year and should be given a chance to succeed: an expansion of the photo-matching program to include state driver's license data, and a worker portal "self-check" system that will permit workers to "preverify" their eligibility prior to accepting new employment and to be notified if someone else attempts to use their number. Additional pilot programs could permit targeted data sharing between DHS and the Internal Revenue Service to give enforcement agents better tools to detect possible cases of identity fraud, and/or create an optional biometric system within a particular industry (possibly building on the Transportation Worker Identification Credential card) or region.⁶¹

Second, any new E-Verify mandates and/or biometric or other identification technology should be phased in gradually and should be evaluated on an ongoing basis against clearly articulated performance benchmarks. Time and again, the history of US immigration policy — and the history of worksite immigration enforcement in particular — finds that well-intentioned reforms may produce complex unintended consequences, often leaving stakeholders worse off than they were before. In the case of E-Verify, we have just early analyses of the effects of the dramatic growth that has occurred in the program since 2006. Moreover, much of that growth has occurred in the exceptional climate of low or negative employment growth, so little is known about how the program actually affects US labor markets.

Finally, the most promising strategy for expanding E-Verify is to link new mandates to a targeted or general legalization program for unauthorized workers and/or to employment-based visa reform. While a mandatory E-Verify requirement without such reforms would create incentives for employers and workers to look for work-arounds that undermine effective verification, linking E-Verify mandates to legalization

and visa reform would have the opposite effect: encouraging the most problematic workers and employers to opt in to the system and to scrupulously comply with its requirements as a condition for earning legal status (in the case of workers) and for access to employment-based visa programs (in the case of employers). Making legalization for certain workers a building block for E-Verify growth also would dovetail with tough identification requirements likely to be included in any legalization program, and so could be a testing ground for new biometric or other identification technology.

Undoubtedly, electronic work eligibility verification is and should be a key component of the US immigration system: employers must have an effective tool to confirm the eligibility of their workforce. E-Verify is a promising platform for developing such a system, but it remains a work in progress. Continued investment in the system is needed and its expansion should be supported, but better worksite enforcement is only part of the answer; and changes to E-Verify should be taken up as part of a broader reform effort to give them the greatest chance to succeed.

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Endnotes

1. *Border Sovereignty and Protection Act*, H.R. 2083, 111th Cong., (April 23, 2009); *Employee Verification Amendment Act of 2009*, H.R. 2028, 111th Cong., (January 23, 2009); *Employee Verification Amendment Act of 2009*, H.R. 662, 111th Cong., (January 23, 2009); *Secure America Through Verification and Enforcement (SAVE) Act of 2009*, H.R. 3308, 111th Cong., (July 23, 2009).
2. *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Public Law No. 104-208.
3. USCIS, "E-Verify History and Milestones," accessed February 4, 2011, www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3c5b9ac09243c6a7543f6d1a/?vgnextoid=84979589c0b76210VgnVCM1000000b92ca60aRCRD&vgnextchannel=84979589c0b76210VgnVCM1000000b92ca60aRCRD.
4. At least 25 counties and localities also had E-Verify ordinances on the books as of January 2011; see National Immigration Law Center (NILC), *E-Verify State Laws, Executive Orders, and Local Ordinances* (Washington, DC: NILC, 2011), www.nilc.org/dc.cfm?flashdrive09/Worker-Rights/jemp11_e-verify-laws-summary-chart-2009-11.pdf.
5. Eduardo Porter, "Illegal Immigrants Are Bolstering Social Security with Billions," *New York Times*, April 5, 2005, www.nytimes.com/2005/04/05/business/05immigration.html?_r=1.
6. Except where otherwise noted, assumptions about error rates in this report are based on the analysis of FY 2008 E-Verify data conducted for the Department of Homeland Security (DHS) by the Westat Corporation in December 2009; Westat Corporation, *Findings of the E-Verify Program Evaluation: Report Submitted to US Department of Homeland Security* (Rockville, MD: Westat Corporation, 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf. According to this analysis, 3.6 percent of all queries produced tentative nonconfirmations (TNCs), including 0.8 percent that were erroneous TNCs, meaning 22 percent of TNCs were for legal workers; and 78 percent were for unauthorized workers; see Westat, *Findings of the E-Verify Program Evaluation*: 50, 117. A total of about 213,000 cases received TNCs in FY 2009 (including 25,000 that were corrected); see, USCIS, "E-Verify Statistics and Reports," accessed February 4, 2011, www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3c5b9ac09243c6a7543f6d1a/?vgnextoid=7c579589c0b76210VgnVCM1000000b92ca60aRCRD&vgnextchannel=7c579589c0b76210VgnVCM1000000b92ca60aRCRD. Assuming the same proportion of TNCs were erroneous in 2009 as in 2008, about 166,000 (78 percent of 213,000) nonconfirmations were likely issued to unauthorized immigrants.
7. See Doris Meisner and Marc R. Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right*, (Washington, DC: Migration Policy Institute, 2009), www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.
8. An estimated 25,000 employers hired new workers in Arizona in June 2008, but only about 8,000 employers submitted cases to E-Verify; Westat, *Findings of the E-Verify Program Evaluation*: 67. As of January 2011, most employers in states with mandatory E-Verify systems had not registered to use the system, with Arizona having the highest registration rate at 31 percent, followed by South Carolina (9 percent), Mississippi (8 percent), and Utah (7 percent); figures based on Migration Policy Institute (MPI) calculations from USCIS, *Employment Eligibility Verification Program Statistics* as of January 22, 2011; and US Census, "Statistics of US Businesses" FY 2007, www2.census.gov/econ/susb/data/2007/us_state_totals_2007.xls.

- 9 Social Security Administration (SSA) Office of the Inspector General, *The Social Security Administration's Implementation of the E-Verify Program for New Hires* Audit Report (Washington, DC: SSA, Office of the Inspector General, 2010): 5-6, www.ssa.gov/oig/ADDERPDE/A-03-09-29154.pdf.
- 10 Westat's model produces a range of estimates between 37 percent and 64 percent; see Westat, *Findings of the E-Verify Program Evaluation*: 117. A total of 1.68 million cases were screened by E-Verify during this period, resulting in 1.62 million confirmations and 40,000 nonconfirmations. Westat estimates that 5.8 percent of workers screened through E-Verify during this period (96,000 people) were actually unauthorized; see Westat, *Findings of the E-Verify Program Evaluation*: 51-53 and B10-B12.
- 11 This figure reflects the percentage of cases estimated to be erroneous confirmations (3.3 percent) divided by the total percentage of confirmations (96.4 percent); Westat, *Findings of the E-Verify Program Evaluation*: 50, 115.
- 12 Westat, *Findings of the E-Verify Program Evaluation*: 31.
- 13 Westat estimated that 5.8 percent of workers screened through E-Verify in 2008 were unauthorized, compared to a national average of 5.4 percent of the US workforce at the time. The Pew Hispanic Center estimates that about 5.1 percent of the current US workforce is unauthorized; see Jeffrey S. Passel and D'Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), <http://pewhispanic.org/reports/report.php?ReportID=126>. And USCIS reports that 2.3 percent (189,230 out of 8,199,304) of E-Verify cases in FY 2009 resulted in nonconfirmations. Thus, if the distribution of legal and unauthorized workers being screened through E-Verify is similar to the national workforce, about 418,165 unauthorized workers (5.1 percent of 8.2 million) likely were submitted to the system, meaning that 228,935 workers were incorrectly confirmed (55 percent of all unauthorized workers submitted to the system and 2.7 percent of the 8 million E-Verify confirmations). This figure likely underestimates the true error rate since it does not account for erroneously nonconfirmed legal workers, meaning the actual number of unauthorized workers screened out by the system was less than 189,230. The true error rate also depends on the proportion of workers screened through E-Verify who are actually unauthorized, which may not equal 5.1 percent given numerous differences between the E-Verify population and the overall workforce. The actual proportion of unauthorized workers in the E-Verify sample may be larger than the proportion in the overall population, as Westat estimated was the case in 2008, because E-Verify users are disproportionately located in Arizona and other states with a higher-than-average share of unauthorized workers, because E-Verify users are concentrated in industries which employ a higher-than-average number of unauthorized immigrants, and because unauthorized immigrants have higher turnover rates than legal workers, and therefore are hired more often. In this case, the actual false confirmation rate is higher than 55 percent. On the other hand, the proportion of unauthorized workers screened through E-Verify may be smaller than the proportion in the overall population because some employers who knowingly hire unauthorized immigrants may avoid using E-Verify including by hiring workers off the books and because unauthorized workers may avoid applying for jobs where they know E-Verify is in use. In this case, the actual false confirmation rate is lower than 55 percent. Also see Westat, *Findings of the E-Verify Program Evaluation*, Appendix B.
- 14 See Meissner and Rosenbium, *The Next Generation of E-Verify: Getting Employment Verification Right*, for a longer discussion of the causes of erroneous TNCs.
- 15 Westat's model produces a range of estimates of between 0.6 percent and 1.0 percent; see Westat,

- 15 Westat's model produces a range of estimates of between 0.6 percent and 1.0 percent; see Westat, *Findings of the E-Verify Program Evaluation*: 117.
- 16 The county conducted a total of 9,958 E-Verify queries in 2008 and 4,397 in 2009, including in some cases multiple queries for the same employee. Of the 9,958 queries in 2008: 254 queries resulted in SSA tentative nonconfirmations, of which 227 were corrected, 20 resulted in final nonconfirmations that were overturned following a subsequent verification, and seven resulted in final nonconfirmations that were not overturned and led to termination of employment; and 33 queries resulted in DHS nonconfirmations, of which 25 were corrected and eight resulted in final nonconfirmations and terminations of employment. Of the 4,397 queries in 2009: 79 resulted in SSA tentative nonconfirmations, of which 72 were corrected, six resulted in final nonconfirmations that were overturned following a subsequent verification, and one resulted in a final nonconfirmation leading to termination of employment; and 12 queries resulted in DHS nonconfirmations, of which ten were corrected and two resulted in final nonconfirmations and terminations of employment. See Chief Executive Office, "Report on County's Use of E-Verify System," (Los Angeles: County of Los Angeles, 2010), http://file.lacounty.gov/bc/g1_2010/cms1_143429.pdf, with additional data provided by Los Angeles County.
- 17 Intel Corporation reported in 2008 that slightly over 12 percent of its workers received erroneous TNCs: see Intel Corporation, "Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12999 (as amended)," August 8, 2008. And the American Council on International Personnel (ACIP) describes a large firm with an erroneous TNC rate of 15 percent; see ACIP, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," August 11, 2008. And in an earlier Westat evaluation for DHS, a detailed case studies of five employers identified at least six workers out of 326 TNCs (1.8 percent) who received erroneous final nonconfirmations, and 31 out of 364 (8.5 percent) who were able to correct erroneous TNCs, for a total erroneous nonconfirmation rate of 10.3 percent; see Westat, *Findings of the Web-Based Basic Pilot Evaluation* Appendix E (Rockville, MD: Westat, 2007): 44-49, www.uscis.gov/files/article/WebBasicPilotBriSept2007.pdf.
- 18 Government Accountability Office (GAO), *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* GAO-11-146 (Washington, DC: GAO, 2010): 16, www.gao.gov/newitems/d11146.pdf.
- 19 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 17-19.
- 20 Calculations based on the data provided in footnotes 6 and 16.
- 21 According to Westat's study, while 96 percent to 98 percent of employers reported that they always notify workers of tentative nonconfirmations, only 58 percent of workers who were the subject of tentative nonconfirmations recalled being notified, and only 28 percent of personnel files Westat reviewed for workers who were the subject of TNCs included signed copies of the notification form. Westat, *Findings of the E-Verify Program Evaluation*: 104, 153-156. These and other statistics reported here are based on four different surveys conducted by Westat: an online survey of 2,320 E-Verify employers, an on-site survey of 109 E-Verify employers, a review of 1,246 personnel records at these worksites, and interviews with 424 employees from these worksites. Not all questions were asked of all respondents; and the sampling method and small sample size mean that reported percentages may not apply to the universe of all E-Verify users.
- 22 According to Westat's study, while 76 percent of employers interviewed claim always to explain the meaning of a TNC when workers receive them, 45 percent of these employers had at least one worker

- who received a TNC and did not recall receiving an explanation, and 54 percent of workers interviewed did not recall receiving explanations of their TNCs. Westat, *Findings of the E-Verify Program Evaluation*: 154-155. A 2008 survey of 376 immigrant workers (including an unknown number of unauthorized workers) in Arizona found that 126 had been fired, apparently after receiving an E-Verify TNC, but that none had been notified by employers that they had received a TNC or given information to appeal the finding; see Caroline Isaacs, *Sanctifying Arizona: The Hidden Impacts of Arizona's Employer Sanctions Law* (Washington, DC: American Friends Service Committee, 2009).
- 23 Westat found that between 4.5 percent and 14 percent of employers acknowledged prescreening job applicants, and that 49 percent of workers at firms using E-Verify believed they were screened prior to the first day of employment; Westat, *Findings of the E-Verify Program Evaluation*: 152-153. And the SSA OIG report found that 25 percent of SSA's new hires were screened prior to being hired; SSA OIG, *The Social Security Administration's Implementation of the E-Verify Program for New Hires*: 4.
- 24 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 34. Correcting erroneous nonconfirmations is especially difficult for the estimated 21 million US citizens who lack valid identity documents, and the 13 million who do not have access to passports, birth certificates, or naturalization papers needed to prove their citizenship; see Brennan Center for Justice, *Citizens without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (New York: New York University, 2006), www.brennancenter.org/page/-/download_file_39242.pdf. At least six out of 326 workers (1.2 percent) who received TNCs in 2006-07 Westat case studies were legal workers who were unable to contest the findings because they did not understand how to do so or who tried to do so but were unsuccessful; see Westat, *Findings of the Web-Based Basic Pilot Evaluation*: E-3, E-13.
- 25 Westat, *Findings of the E-Verify Program Evaluation*: 203-204.
- 26 SSA records for native-born citizens have relatively few errors because records are usually initiated by the hospital at birth, though many citizens fail to update their SSA records following a name change. DHS databases have more errors because records may be started in more diverse locations and because records must be updated more often as a function of changes in individuals' migration and citizenship status.
- 27 Among erroneous nonconfirmations that were corrected, error rates were 0.1 percent for native-born US citizens, 1.0 percent for lawful permanent residents, 3.2 percent for foreign-born citizens, and 5.3 percent for legal nonimmigrants (temporary workers and others noncitizens authorized to work); see Westat, *Findings of the E-Verify Program Evaluation*: 208-211.
- 28 Westat, *Findings of the E-Verify Program Evaluation*: 50. In FY 2009, 97.4 percent of cases were confirmed either immediately or within three days; USCIS, "E-Verify Statistics and Reports."
- 29 Westat, *Findings of the E-Verify Program Evaluation*: 91-94.
- 30 *Ibid.*, 181. This change was favored by 66 percent of survey respondents versus 17 percent who opposed it.
- 31 *Ibid.*, 157; 20 percent to 37 percent of employers whose workers received TNCs reported suspending workers, delaying training, or taking other adverse employment consequences against a worker based on a TNC; and 47 percent of employers who reported taking no adverse action had one or more employees who believed they had faced adverse employment consequences as a result of a TNC.
- 32 *Ibid.*, 202.



33 A 2008 survey of immigrant workers in Arizona found evidence of intentional employer misuse of E-Verify: 30 percent of workers were rescreened by employers after the three-day period during which screening is permitted, 16 percent were denied back wages, 10 percent were threatened with firing, 12 percent had their wages cut, 5 percent reported harassment on the job, and 7 percent reported that employers had threatened to call ICE. Isaacs, *Sanctioning Arizona*: 10.

34 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 22.

35 Rosenblum and Meisner, *The Next Generation of E-Verify*: 18-19.

36 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 22.

37 *Ibid.*, 25.

38 *Ibid.*, 26.

39 Also see *Ibid.*, 25-32, on limitations of the Monitoring and Compliance Branch.

40 USCIS also has a memorandum of understanding with the Department of Justice's Office of Special Counsel (OSC) for Unfair Immigration-Related Employment Practices to allow OSC to refer cases from their hotline calls to the Monitoring and Compliance Branch for further investigation when there is potential or proven adverse action taken against an employee.

41 US Immigration and Customs Enforcement (ICE) conducted more than 3,500 audits of employers' payrolls in FY 2009-10, up from just 503 in FY 2008; see Statement of Kumar Kibble, Deputy Director, US Immigration and Customs Enforcement, before the House Subcommittee on Immigration Policy and Enforcement, *Hearing on Worksite Enforcement*, 112th Cong., 1st sess., January 26, 2011, http://judiciary.house.gov/hearings/hear_01262011.html. ICE audits focus on enforcement of employment eligibility, not on enforcement of labor rights or anti-discrimination provisions. To the extent that employer audits successfully target employers who knowingly employ unauthorized immigrants, such audits may also discourage misuse and abuse of E-Verify.

42 GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 31.

43 DHS, *Budget in Brief FY 2009*, (Washington, DC: DHS, undated), www.dhs.gov/xlibrary/assets/budget/bib-fy2009.pdf; White House Office of Management and Budget (OMB), "Budget of the United States Government FY 2009-11," accessed February 4, 2011, www.gpoaccess.gov/susbudget/.

44 GAO described USCIS' budget estimate as "partially" comprehensive, documented, and accurate, and as "minimally" credible. GAO also reports that SSA projects \$66 million in E-Verify costs in FY 2010-15, an estimate described as "substantially" comprehensive, documented, and accurate, and as "partially" credible; see GAO, *Federal Agencies Have Taken Steps to Improve E-Verify*: 48-51.

45 In addition, SSA estimated that a mandatory E-Verify program would cost that agency \$281 million over four years and would require it to hire 700 new employees for a total of 2,325 additional workyears; see GAO, *Challenges Exist in Implementing a Mandatory Electronic Employment Verification System* GAO-08-895T, (Washington, DC: GAO): 4, www.gao.gov/new.items/d08895t.pdf.

46 CBO June 4, 2007, "Senate Amendment 1150 to S. 1348, the Comprehensive Immigration Reform Act of 2007," (Washington, DC: Congressional Budget Office): 31, www.cbo.gov/ftpdocs/81xx/doc8179/SA1150-June4.pdf.

47 Daniel González, "Illegal workers manage to skirt Arizona employer-sanctions law - Borrowed

identities, cash pay fuel an underground economy," *Arizona Republic*, November 30, 2008. www.azcentral.com/news/articles/2008/11/30/20081130underground1127.html.

- 48 Letter of Peter Orszag, Director, Congressional Budget Office, to Rep. John Conyers, Jr., Chairman of the US House Committee on the Judiciary, April 4, 2008. www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.
- 49 Calculations based on 63 million new hires per year, an overall erroneous nonconfirmation rate of 0.8 percent, and that workers encounter problems correcting such errors 10 percent to 47 percent of the time. See GAO, *Challenges Exist in Implementing a Mandatory Electronic Employment Verification System*; 10; and Westat, *Findings of the E-Verify Program Evaluation*: 117, 157.
- 50 Calculations based on FY 2009 USCIS statistics that E-Verify queries were resolved immediately or within three days 97.4 percent of the time and Westat finding (based on FY 2008 data) that it took an average of 7.6 to 12.5 days to resolve TNCs outside this window and that 89 percent of TNCs eventually result in final nonconfirmations. See USCIS, "E-Verify Statistics and Reports"; and Westat, *Findings of the E-Verify Program Evaluation*: 91-94 and 51-53.
- 51 Calculations based on 6 million US firms in FY 2007, and Westat's finding that one-quarter of firms reported direct costs of using E-Verify, including \$100 to set up the system and \$400 to maintain it; see US Census, "Statistics of US Businesses" FY 2007 and Westat, *Findings of the E-Verify Program Evaluation*: 183-184.
- 52 About 11.1 million Americans were victims of identity theft in 2009, according to the Javelin Research Group, which means that even under worst-case assumptions E-Verify accounts for a small proportion of identity-fraud cases presently; see Javelin Strategy and Research, "Javelin Study Finds Identity Fraud Reached New High in 2009, but Consumers are Fighting Back," (press release, February 10, 2010). www.javelinstrategy.com/news/831/92/Javelin-Study-Finds-Identity-Fraud-Reached-New-High-in-2009-but-Consumers-are-Fighting-Back/d.pressRoomDetail.
- 53 Calculations based on US Census, "Statistics of US Businesses," FY 2007 and USCIS, E-Verify List of Active Employers - Workforce 5. Data provided to author by USCIS.
- 54 Westat, *The Practices and Opinions of Employers Who Do Not Participate in E-Verify: Report Submitted to US Department of Homeland Security* (Rockville, MD: Westat Corporation, 2010): x. www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf.
- 55 Westat created standardized measures of employer satisfaction and employer compliance with means of 500 and standard deviations of 100. Employers who were required to participate by a state or local government had satisfaction scores of 463 and employers who were required to participate by a client had satisfaction scores of 462, and employers in Arizona had an average compliance score of 474, compared to 510 for employers in other states. See Westat, *Findings of the E-Verify Program Evaluation*: 186 and 162-3.
- 56 See, for example, Stephen Nafarz and Cynthia Bansak, "Immigration Reform and the Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination," *Industrial & Labor Relations Review* 54, 2 (2001): 275-295.
- 57 A 2008 study by the Perryman Group estimated that to eliminate the entire unauthorized workforce of 8.1 million people would result in a short-term drop of \$651 billion in US GDP, and a long-term loss of \$245 billion in GDP and the permanent loss of 2.8 million jobs; see the Perryman Group, *An Essential*



Resource: An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry (Waco, TX: The Perryman Group, 2008).

58 See, for example, Charles E. Schumer and Lindsey O. Graham, "The Right Way to Mend Immigration," *The Washington Post*, March 19, 2010, www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031703115.html.

59 The US Census Bureau recently attempted to fingerprint its canvassing staff and found that workers' prints were unreadable 22 percent of the time, and a second round of fingerprinting after additional training resulted in a projected fingerprint failure rate of 10 percent to 12 percent; Testimony of Robert Goldenkoff, Director, Strategic Issues, Government Accountability Office, "2010 Census: Key Enumeration Activities Are Moving Forward, But Information Technology Systems Remain a Concern" before the US Senate Homeland Security and Governmental Affairs Committee Subcommittee on Federal Financial Management, Government Information, Federal Services and International Security, 111th Cong. 1st sess., February 23, 2010: 12-13, www.gao.gov/new.items/d104306.pdf. Also see Meissner and Rosenblum, *The Next Generation of E-Verify*.

60 A previous MPI report estimated the cost of enrollment for a nonbiometric card to be about \$10 billion in agency costs plus \$11.8 billion in lost wages; the costs of a biometric enrollment may be substantially higher; see Meissner and Rosenblum, *The Next Generation of E-Verify*.

61 For a longer discussion of these recommendations see Meissner and Rosenblum, *The Next Generation of E-Verify*.

About the Author



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