

**DOCUMENT FRAUD IN EMPLOYMENT AUTHORIZATION:
HOW AN E-VERIFY REQUIREMENT CAN
HELP**

HEARING
BEFORE THE
SUBCOMMITTEE ON
IMMIGRATION POLICY AND ENFORCEMENT
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
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DOCUMENT FRAUD IN EMPLOYMENT AUTHORIZATION: HOW AN E-VERIFY REQUIREMENT CAN HELP

WEDNESDAY, APRIL 18, 2012

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

The Subcommittee met, pursuant to call, at 11:20 a.m., in room 2141, Rayburn House Office Building, the Honorable Elton Gallegly (Chairman of the Subcommittee) presiding.

Present: Representatives Gallegly, Smith, King, Gowdy, Lofgren, and Jackson Lee.

Staff Present: (Majority) Andrea Loving, Counsel; Marian White, Clerk; and (Minority) Gary Merson, Counsel.

Mr. GALLEGLY. Call the Subcommittee to order. Today's oversight hearing will examine the use of fraudulent documents by illegal immigrants who are seeking employment and how E-Verify can help to eliminate a problem that negatively affects millions of Americans and legal immigrants who are unemployed.

However, before discussing my views on this issue, I want to explain why one of the witnesses initially invited to the hearing will not be testifying this morning. When my staff contacted ICE over 2 weeks ago, we requested that an ICE official testify about the specific issue of how pervasive fraudulent documents are in the context of employment authorization. We asked that ICE provide an overview of the issue as well as relevant statistics and data. Unfortunately, the testimony ICE submitted was unresponsive to that request. Therefore, I disinvited ICE as a witness. I will leave to others to speculate as to why ICE's testimony was unresponsive.

Now I will move to the topic of today's hearing. If one types the words "fake identification documents" into an Internet search engine, you will be inundated with web sites that specialize in producing fake IDs. You will even get results for You-Tube videos featuring step-by-step instructions on how to make fake IDs.

The Immigration Reform and Control Act of 1986 put in place the weak standard of employment eligibility verification. It states that an identification document simply has to appear genuinely on its face. As a result of that low standard, the ID black market is no longer used overwhelmingly simply because of the underage teenagers who want to get fake ID for the purpose of maybe at-

tending a bar on Friday night, maybe sometimes on Saturday night.

Now, fake IDs are a million dollar business that helps illegal immigrants secure jobs that should be reserved for Americans and legal residents. Today's hearing highlights how pervasive the use of fraudulent IDs are in employment authorization and how E-Verify can combat that use. E-Verify allows employers to check the work eligibility to new hires by running the employee's Social Security number or alien identification number against Department of Homeland Security and Social Security records.

Recent polling shows that 82 percent of likely voters support requiring employees or employers to use E-Verify, and Americans are right to support a program that makes it much more difficult to use fake identification to get a job. Under E-Verify the order to be confirmed as work authorized, the Social Security number, name, and date of birth must match the information on the file with the SSA and DHS. If there is no match, then an individual is not confirmed to be work eligible.

Unfortunately, for most employers E-Verify is a voluntary program. As it currently operates, E-Verify is susceptible to identity theft. That is why H.R. 2885, the Legal Workforce Act, which Mr. Smith and I introduced, contains several measures that will help close the identity theft loophole and further prevent the use of fraudulent documents in the hiring process.

I look forward to the testimony of the witnesses today. I yield back my time and would yield to the gentlelady, the Ranking Member from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. Identity theft is a significant and growing problem in the United States. The question before us is not whether to deal with the problem but how to deal with it. The Chairman proposes that we mandate the use of E-Verify without otherwise reforming our immigration laws, but that will only make matters worse. Rather than prevent identity theft, an expansion of E-Verify without more will aggravate the problem while costing taxpayers billions, harming agriculture and other industries.

It is important that we are mindful of how we got here. It might surprise some of you to hear this, but Congress played a significant role in actually creating this problem, and it is for us to learn from that history.

In 1986, in an attempt to restrict illegal immigration, Congress enacted the new employment restrictions in IRCA and these provisions actually for the first time made it illegal to employ undocumented immigrants. It also created the need for workers to show employers identity and work authorization documents.

Before IRCA, businesses were not required to check, and document fraud was not therefore a problem, but IRCA changed that, creating a new market for fake Social Security cards and other documents that could be used to complete the I-9 forms. As we now know, the biggest problem with IRCA was that it cracked down on unauthorized employment without ensuring that agriculture and other industries had access to authorized labor. Basically it created penalties to address a symptom of a broken immigration system, but it did nothing to actually fix the immigration problem itself. In

doing so, IRCA created a market for false documents and ensured that such a market would grow with the Nation's economy.

In 1996, Congress then doubled down with the Illegal Immigration Reform and Immigrant Responsibility Act. Among other things, the bill created the basic pilot program now known as E-Verify. The authors said it would prevent document fraud because unlike the I-9 system created by IRCA, E-Verify could not be fooled by fake Social Security numbers. But once again, this law did nothing to provide for the legal flow of workers needed by our economy. So employers and workers began to seek ways to obtain information that could fool E-Verify. Thus, rather than drive down document fraud, E-Verify created a new and much worse problem, identity theft, for the purpose of obtaining employment.

The bill's author said it would stop illegal immigration, but undocumented immigrants came in even larger numbers. And the problems associated with unauthorized employment only grew. As E-Verify use increased, so did identity theft. That is because E-Verify cannot catch identity theft. In one DHS-commissioned study, 54 percent of the undocumented workers run through the system were confirmed as work authorized by E-Verify. Those were the ones using other people's identities. In Arizona, where E-Verify is mandated by State law, employers have helped to procure false identities for their unauthorized workers.

This is the history that we have to contend with. Those who created E-Verify are now asking us to ignore that history and again trust that their enforcement-only solutions will work. Previous attempts to tighten the enforcement screws without fixing the system have led to more damaging results, but this time they promise things will be different. This time they say they have a bill that will stop identity theft, but we should all know better.

Our system is fundamentally broken. For decades it has failed to provide legal pathways for American industries like agriculture to meet their labor needs. If we now tighten the enforcement screws yet again without fixing the system, we are just going to drive a new and more pernicious form of fraud. That is the lesson we must heed from history.

The Chairman's bill may also drive off the books employment and closure of American businesses. According to a 2010 GAO report, employers seeking to get around E-Verify are increasingly misclassifying workers as independent contractors and moving them off the books entirely.

The Chairman's bill does nothing to prevent such arrangements from accelerating, even though they lead to lower wages, fewer worker protections, and significant reductions in tax revenues. And let's not forget that the CBO estimates that mandatory E-Verify would cost \$17.3 billion in lost tax revenues over 10 years as employers and employees move to the underground economy.

At the same time, Chairman Smith's bill does nothing to prevent economic damage to the industries that rely most on undocumented workers. After all the hearings we have had on this issue, this Congress, this Subcommittee should by now know that the Chairman's bill would hurt American farmers. Mandatory E-Verify without reform of the immigration system would mean more American farms going under, a less secure America, and the offshoring of jobs, in-

cluding upstream and downstream American jobs supported by agriculture.

Make no mistake about it, one-sided solutions such as the Chairman's mandatory E-Verify proposal are a big part of how we got into this mess, and history tells us they will only make things worse.

I yield back, Mr. Chairman.

Mr. GALLEGLY. The time of the gentlelady has expired. The gentleman from Texas, the Chairman of the Judiciary Committee, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

The Immigration Nationality Act prohibits the hiring of individuals who are not authorized to work in the United States. And it requires employers to check the immigration status of an employee and make sure that the identification document submitted by the employee "reasonably appears on its face to be genuine."

That requirement was put in place by the Immigration Reform and Control Act of 1986. Unfortunately, the underground market for fraudulent identification documents grew extensively after the enactment of that bill.

Fake documents, which can be obtained cheaply and are produced by the millions, have made a mockery of these identification requirements.

Dishonest employees simply hand employers fake documents that "reasonably appear to be genuine," and an honest employer has no recourse other than to accept them. And many dishonest employers actually welcome employees who submit counterfeit identification documents so they can pay lower wages or otherwise exploit illegal immigrant employees. Sometimes these dishonest employers themselves actually obtain the documents for the illegal workers.

In response, Senator Alan Simpson and I drafted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which contains a pilot program to provide employers with an accurate and easy way to determine employment eligibility.

The basic pilot program, now known as E-Verify, is 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. As this Subcommittee has heard in testimony many times, E-Verify is free, quick, and easy to use.

E-Verify can be vulnerable to identity theft. If an employee provides an employer with a stolen Social Security number and matching identification number, 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 incorporated the photo matching tool. This allows an employer to view a picture of the employee from a green card, an employment authorization document or a passport to determine that the employee is, in fact, the person to whom this Social Security number or alien identification number was issued.

H.R. 2885, the “Legal Workforce Act,” a bipartisan bill that was approved by the Judiciary Committee last September, gives USCIS and Social Security Administration additional tools to help recognize and prevent identity theft.

For instance, the bill requires DHS to allow individuals to “lock” their own Social Security number so that it cannot be used by impostors to verify work eligibility. It also requires USCIS to “lock” a Social Security number that shows a pattern of unusual multiple use. And it imposes significant criminal penalties on employers and employees who engage in or aid identity theft.

In addition, H.R. 2885 requires individuals who have likely been victims of identity theft for work authorization purposes to be notified of that likelihood so they can then take steps to prevent further illegal use of their identity.

As long as the IRCA standard whether an identification document “reasonably appears on its face to be genuine” is the only requirement for employers, illegal immigrants will be able to easily cheat the system and get U.S. jobs.

With today’s technology, it makes no sense to use a paper-based, error-prone system when a successful web-based option is available. It is time to bring our I-9 system into the 21st century. American jobs and identities could easily be protected by simply requiring all employers to use E-Verify and by improving E-Verify to help close the identity theft loophole.

Mr. Chairman, before I close, I want to add to your comments about my disappointment in the ICE witness not appearing today. That ICE witness was disinvited intentionally because the testimony was completely nonresponsive, and that was a disappointment because it was clear that the Administration or someone higher up in the Administration had censored the testimony which might well have been supportive of E-Verify. That is not the first time we have seen that on this Judiciary Committee, and in fact I don’t think it is an exaggeration to say that the Administration has actually shown a pattern of behavior of either refusing to cooperate or refusing to give us, the representatives of the American people, information that we need to do our jobs.

Last August, for example, we requested from ICE a list of individuals that the Administration had refused to detain, and we wanted to find out what other crimes these individuals had committed. We were told initially by ICE that the list existed and that they would give it to us. Suddenly we had a reversal of that. Again, someone else in the Administration must have censored their willingness to cooperate, and we had to subpoena the list, and finally we did obtain it. We have seen the same kind of refusal to cooperate, and frankly dishonesty, when it comes to Fast and Furious, when it comes to perhaps then Solicitor General Kagan’s participation in the debate in regard to the health care bill.

So this is nothing new. But we are simply not going to allow an Administration witness to continue to testify when their testimony, in fact, has been nonresponsive.

Ms. LOFGREN. Would the gentleman yield?

Mr. SMITH. Thank you, Mr. Chairman. I will yield back. Unless, if we have time, I would be happy to yield to the gentlewoman from California.

Ms. LOFGREN. I would just note—first, I would ask unanimous consent to put the ICE testimony into the record.

Mr. SMITH. I don't have any objection to that, but I am very happy that I said what I did about the testimony.

Ms. LOFGREN. Mr. Chairman, if I could have another few seconds, I would like to also point out in regard to E-Verify that that is supported by 82 percent of the American people. If you look at a breakdown of supporters, it is supported by 72 percent of minorities and 71 or -2 percent of Democrats even. Everybody realizes that it is only right to hire individuals who are legally able to work in the United States and to make sure those jobs go to unemployed Americans, and those who oppose E-Verify are really perpetuating a system that leads to the high unemployment rates among minorities, and that is very regrettable.

Ms. LOFGREN. If the gentleman would yield.

Mr. SMITH. I will be happy to yield.

Ms. LOFGREN. And I ask unanimous consent for an additional minute be—

Mr. GALLEGLY. Without objection.

Ms. LOFGREN. First, I just think it is important to say that if there is censorship here, it is of ICE by this Committee. I mean, they were willing to offer testimony that I think when people read it will obviously be responsive. And finally in terms of public support, all of the opinion polls show that 60 to 70 percent of the American people favor comprehensive immigration reform as well.

Mr. SMITH. I will reclaim my time.

Ms. LOFGREN. And the Committee has not yet adopted that.

Mr. SMITH. I will reclaim my time because I want to make the point again not only is the witness being nonresponsive, the gentlewoman from California is being nonresponsive. That is not the subject of this day's hearing.

Ms. LOFGREN. I raised it only because you are listing public opinion.

Mr. SMITH. I will yield back the balance of my time.

Mr. GALLEGLY. Time has expired, and relating to the unanimous consent request, I am not going to object, but I do want to make a statement. When the gentlelady said that she would like to put the statement from ICE into the record under unanimous consent, I will not object. However, I want to make for the record clearly the statement that she is asking to be put into the record, in my opinion, does not reflect what the request of this Committee was, and it was a complete spin to satisfy someone in the Administration, and it does not represent the text of what this hearing was all about, and without objection, that incomplete complete document can be placed into the record.

[The information referred to follows:]



U.S. Immigration and Customs Enforcement

STATEMENT

OF

WALDEMAR RODRIGUEZ
DEPUTY ASSISTANT DIRECTOR
TRANSNATIONAL CRIME AND PUBLIC SAFETY DIVISION

HOMELAND SECURITY INVESTIGATIONS
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ENTITLED

“DOCUMENT FRAUD IN EMPLOYMENT AUTHORIZATION:
HOW AN E-VERIFY REQUIREMENT CAN HELP”

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION POLICY AND ENFORCEMENT

Wednesday, April 18, 2012 - 11:15 a.m.
2141 Rayburn House Office Building

Chairman Gallegly, Ranking Member Lofgren, and distinguished members of the Subcommittee:

On behalf of Secretary Napolitano and Director John Morton, thank you for the opportunity to discuss the efforts of U.S. Immigration and Customs Enforcement (ICE) to combat identity and benefit fraud. ICE's Homeland Security Investigations (HSI) directorate is a critical asset to the ICE mission and maintains a global footprint with Special Agents assigned in more than 200 cities throughout the United States and 71 offices in 47 countries worldwide. HSI is uniquely positioned to leverage its broad statutory authority to enforce customs and immigration laws and to aggressively target transnational criminal enterprises and individuals who seek to exploit America's legitimate trade, travel and financial systems at and beyond our borders.

As the main investigative arm of the Department of Homeland Security (DHS), HSI is statutorily charged with enforcing over 400 federal statutes including the smuggling of narcotics, weapons, and other contraband, violations of the Immigration and Nationality Act, human rights violations and human smuggling, financial crimes, cybercrime, and export enforcement. One area that HSI continues to prioritize is the investigation of identity and benefit fraud. These types of crimes pose a significant threat to national security and public safety. Identity and benefit fraud are integral elements in many immigration-related crimes, such as human smuggling and human trafficking, and are regularly found in investigations involving critical infrastructure protection, worksite enforcement, visa compliance enforcement and national security investigations.

HSI Identity and Benefit Fraud Unit

The purpose of identity and benefit fraud investigations is to prevent organizations and individuals from obtaining identity documents through fraud and misrepresenting material facts on petitions or applications to gain immigration benefits that would permit or further the stay of authorized foreign nationals. While commonly used by aliens attempting to enter or remain in the United States typically to obtain work, document and benefit fraud have also been used by terrorists and other criminal organizations to facilitate illicit activity. Large-scale fraud facilitators have the potential not only to provide access to illegally-obtained benefits and documents, but to provide cover for others engaged in criminal activity.

The mission of the HSI Identity and Benefit Fraud Unit (IBFU) is to target those who threaten the integrity of the lawful United States immigration process, and to utilize ICE's broad authorities to ensure terrorists and criminals are prosecuted to the fullest extent under the law.

Document Fraud (Identity Fraud)

Document fraud, which is also known as identity fraud, is the manufacturing, counterfeiting, alteration, sale and/or use of identity documents and other fraudulent documents to circumvent immigration laws or further other criminal activity. The IBFU not only investigates violations relating to immigration documents, such as resident alien cards, but also violations pertaining to passports, Social Security cards, and state identity documents and licenses. Document fraud also involves the sale of genuinely issued documents through fraudulent means. Document fraud is a national security and public safety concern because the true identity and purpose of those who hold counterfeit and fraudulently-obtained identity documents is unknown. Fraudulent documents are often used to obtain genuine government

issued documents for employment purposes, to acquire bank accounts, to board airplanes, and to gain access to sensitive locations such as government buildings. Profit is often the sole motivator of criminal activity and unlawful document vendors only care if their clients can pay for fraudulently-obtained documents with no regard for their intended use. Consequently, this criminal activity creates significant vulnerabilities for the safety and welfare of the homeland.

Benefit Fraud

Benefit fraud is the knowing and willful misrepresentation of a material fact on a petition or application to gain an immigration benefit. Common types of benefit fraud include employment-based fraud, asylum fraud and relationship fraud (e.g., marriage fraud). Benefit fraud allows an alien who would otherwise be kept from entering the country due to criminal and security reasons to enter or reside in the United States by posing as an impostor, stealing an identity or creating a false background. In addition, an alien may defraud several government agencies in order to receive an immigration benefit.

Combating Benefit Fraud Relating to Employment

The IBFU directs most of its anti-fraud efforts within HSI's Document and Benefit Fraud Task Forces (DBFTFs). There are currently 19 DBFTFs nationwide working in collaboration with our federal, state and local partners. DBFTFs combat the criminal organizations that exploit the United States immigration process and investigate individuals who violate criminal or immigration laws and who may pose threats to national security or public safety.

The DBFTFs maximize resources, eliminate duplication of efforts, and promote the sharing of information. DBFTFs combine a variety of law enforcement processes and authorities

to achieve focused, high-impact criminal prosecutions and financial seizures. Our DBFTF partners vary from task force to task force, but can include agencies such as: the U.S. Attorney's Office, U.S. Citizenship and Immigration Services (USCIS); U.S. Department of Labor, Office of the Inspector General; U.S. Department of State, Bureau of Diplomatic Security; the U.S. Social Security Administration (SSA), Office of the Inspector General; and numerous state and local agencies.

In addition, HSI maintains five Benefit Fraud Units (BFU) at or near USCIS Service Centers nationwide. The BFUs are the primary liaison between HSI and USCIS, and are responsible for the receipt and dissemination of employment based benefit fraud referrals throughout HSI.

As a proactive measure against this ongoing criminal threat, HSI has developed several outreach campaigns highlighting issues and vulnerabilities associated with identity and benefit fraud. These outreach campaigns serve as a deterrent and provide the general public enhanced awareness of this specific kind of fraud. For example, in order to enhance identification efforts at the state level, the IBFU developed an outreach campaign in 2010 to raise awareness about employee corruption at DMV facilities. The campaign alerts law enforcement and the public to the seriousness of fraud schemes perpetrated at DMV facilities while allowing HSI to take steps proactively to deter the crime from happening. The DMV awareness campaign encourages reporting, provides the means necessary for DMV employees and the public to report the crime, and develops strong partnerships to ensure that HSI investigations are comprehensive and more efficient. HSI DMV outreach materials have been transmitted to 48 states, as well as the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands and Puerto Rico.

The following are recent IBFU successes:

- On February 28, 2012, the owner of Texas Staffing Resources, Inc., (TSR) was sentenced to 41 months' incarceration and three years of supervised release following his September 2011 guilty plea to conspiracy to commit visa fraud and conspiracy to encourage and induce aliens to illegally enter and reside in the United States. In addition, a \$1 million forfeiture judgment was ordered against the main defendant. The investigation determined that TSR, a visa acquisition firm based in the Austin, Texas area, orchestrated an alien smuggling operation through the exploitation of the H-2B employment-based visa program between 2004 and 2011. The main defendant, a United States citizen, together with his wife, a legal permanent resident, and other TSR associates, coordinated the scheme. TSR manipulated H-2B visa petitions on behalf of other companies based in the United States to secure surplus visas without their client company's authorization or knowledge. The additional visas issued were sold to illegal aliens in the United States or to Mexican nationals seeking entry into the United States for fees ranging between \$1,500 and \$2,000 each. The visas were provided to aliens who otherwise would attempt to enter the United States without inspection at a port of entry. As a result, TSR illegally profited millions of dollars through the operation of their visa fraud scheme.
- In January 2012, HSI conducted numerous arrests in Operation Island Express, a multi-jurisdictional investigation targeting the large-scale trafficking of legitimate Puerto Rican birth certificates and United States Social Security cards in 17 states, Puerto Rico, and overseas, as well as in several connected cases. The majority of the arrests were made by HSI Chicago and HSI Puerto Rico, with enforcement actions in approximately 44

different HSI offices nationwide. The goal of the arrests was to dismantle the Puerto Rico-based organization supplying these documents. The operation resulted in the execution of approximately 60 arrest warrants, 28 search warrants and 24 administrative arrests. Additionally, law enforcement conducted numerous consent searches nationwide resulting in the seizure of four firearms, \$87,000 in Treasury checks, \$50,000 in cash, 1.8 kilograms of heroin and paraphernalia.

- On January 6, 2011, an HSI Los Angeles investigation led to the guilty plea of Samuel Klein for visa fraud, false statements, and fraudulent or false tax returns and the plea of his wife Zipora Klein to violations of fraudulent or false tax returns. On August 31, 2011, Klein was sentenced to 63 months in prison and ordered to pay a \$300 special assessment, a \$12,500 fine, and restitution in the amount of nearly \$766,000. On that same date, Zipora Klein was sentenced to 27 months in prison, and ordered to pay a \$100 special assessment, a \$12,500 fine and restitution in the amount of nearly \$756,000. In June 2007, this investigation was initiated and ultimately identified Samuel Klein as being responsible for orchestrating a large-scale religious-worker visa fraud scheme. The investigation revealed that Klein, a naturalized U.S. citizen from Israel, fraudulently obtained religious-worker status for Israeli nationals present in the United States on B-2 visitor visas. HSI Special Agents determined that Klein charged his Israeli clients approximately \$5,000 for his services and utilized his business Smartax as a shelter to conceal his fraudulent activities. Klein used various synagogues in both Los Angeles and New York City to petition for potential beneficiaries seeking to adjust their status. The fraud scheme was initially detected through common addresses used in B-2 extension and religious-worker visa applications. This HSI-lead case was investigated in conjunction

with the Internal Revenue Service, Criminal Investigation Division, and the Department of Education, Office of Inspector General.

Worksite Enforcement

Employment opportunities remain a primary motivation for foreign nationals seeking illegal entry into the United States. As the agency charged with immigration enforcement, ICE remains committed to the smart and effective enforcement of our immigration laws and remains steadfast in our focus on worksite enforcement investigations.

Though the arrest and removal of illegal workers is one part of our comprehensive worksite enforcement strategy, we focus our worksite enforcement investigative efforts on employers. ICE's enforcement strategy includes the promotion of compliance through criminal prosecutions of egregious employers, Form I-9 Employment Eligibility Verification inspections, civil fines and debarment, as well as promoting education and compliance tools. Since January 2009, ICE has audited more than 7,000 employers suspected of hiring illegal labor, debarred 596 companies and individuals, and imposed over \$80 million in civil penalties.

An important tool in combating the employment of illegal aliens is the ICE Mutual Agreement between the Government and Employers (IMAGE) program. The IMAGE program was created in 2006 and was designed to promote voluntary compliance, to educate employers about best practices, and to help companies train their employees to comply with the nation's immigration-related employment laws. IMAGE members are required to participate in E-Verify, an internet-based system that compares information from an employee's Form I-9 to data from DHS and SSA to confirm employment eligibility.

Since 2011, ICE entered into IMAGE agreements with many companies, including Chick-fil-A, Best Western, Toyota, Tyson Foods, and Kelly Services, among others. In fiscal year (FY) 2013, ICE will continue to expand IMAGE outreach nationwide and provide regional and local IMAGE training conferences to increase voluntary compliance among key employers.

HSI Forensic Laboratory

The HSI Forensic Laboratory (HSI-FL) is the premier resource for forensic, research, training, and law enforcement issues related to travel and identity documents, and is the only crime laboratory in the United States that specializes in the detection and deterrence of fraudulent travel and identity documents. The HSI-FL is a unique asset that addresses critical U.S. Government needs pertaining to document examination and fraudulent document identification.

The HSI-FL is accredited by the American Society of Crime Laboratory Directors – Laboratory Accreditation Board, and its primary mission is to detect and deter domestic and international travel and identify document fraud by providing a wide variety of forensic and support services to all DHS components, including ICE, U.S. Customs and Border Protection, USCIS, and the U.S. Secret Service. The HSI-FL also supports other federal, state, and local agencies, as well as foreign government law enforcement organizations and components.

Documents, including passports, visas, identity cards, birth certificates, and Social Security Cards, submitted to the HSI-FL for forensic examination can be used for obtaining illegal employment. In FY 2011, the HSI-FL completed 2,116 forensic examination cases. One such case involved the examination of multiple counterfeit documents in support of Operation Phalanx, an HSI investigation in Norfolk, Virginia. Operation Phalanx investigated a nationwide

fraudulent document criminal enterprise that resulted in the conviction of several individuals under the Racketeer Influenced and Corrupt Organizations Act and other criminal statutes.

In addition, HSI-FL provides support services to deter document fraud. This support includes providing training to HSI Special Agents and other law enforcement agencies on document fraud detection. The HSI-FL also works with the ICE's IMAGE program by providing reference material on document security and document fraud for use in employer outreach.

The HSI-FL publishes the "*Guide to Selected U.S. Travel and Identity Documents*," which is available to the public. The latest version is a high-quality color booklet with information and photographs (front and back) of the most common U.S. travel and identity documents. These documents include the U.S. Passport, Naturalization Certificate, Resident Alien Card, Permanent Resident Card, the Employment Authorization Card, Visas, and Social Security Card. This reference guide, which is one of many published by the HSI-FL, is helpful to employers who are responsible for completing Forms I-9.

CONCLUSION

Thank you again for the opportunity to appear before you today to discuss our efforts in combating identity and benefit fraud, and for your continued support of ICE and its law enforcement mission.

I would be pleased to answer any questions.

Mr. GALLEGLY. At this time I have a unanimous consent request, and I don't think it will be maybe as controversial, and if it is, I will respect anyone's right to object, but I ask that we have unanimous consent to have the following documents made a part of the record of the hearing: The statement of the Honorable Barbara Jor-

dan, a former Member of the House Judiciary Committee, who was the chair of the U.S. Commission on Immigration Reform. In 1995 she told this Subcommittee the current process of employment verification has not functioned as the law intended to deter the hiring of undocumented aliens. The system may be thwarted easily by—toward all—easily by fraud. Widespread counterfeiting of documents that can be used for verification of identity and employment authorizations has been reported since IRCA's implementation. Unfortunately, this is still true today.

Also I would like to have added to the record a joint statement of the Society for Human Resource Management and the American Council on International Personnel indicating their support for the Legal Workforce Act and suggested changes to E-Verify program.

And, third, a Huffington Post article entitled Rise in Child Identity Theft Prompts Push for Solutions, detailing Miss Andrushko's case as well as other cases of misuse of Social Security numbers by illegal immigrants.

Hearing no objection, those items will be placed into the record of the hearing.

[The information referred to follows:]

U.S. COMMISSION ON IMMIGRATION REFORM

**Testimony of Barbara Jordan
Chair, U.S. Commission on Immigration Reform
Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration and Claims
March 30, 1995**

Mr. Chairman and Members of the Subcommittee, on behalf of my fellow members of the U.S. Commission on Immigration Reform, I want to thank you for this opportunity to testify. This bipartisan Commission recognizes and deeply appreciates the support which we have received from Congress, and this Subcommittee in particular.

In our first report to Congress last fall, U.S. Immigration Policy: Restoring Credibility, we sought to recommend a comprehensive strategy. We chose to focus much of that report on measures to control illegal immigration because growing frustration about it undermines our first commitment to legal immigration in the national interest.

Let me sum up the Commission's reasons for proposing that we develop a better system for worksite verification. Reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration. Illegal aliens are here for jobs. That is the attraction. So the only effective way to deter illegal immigration must include the worksite.

A better system for verifying work authorization is central to the effective enforcement of employer sanctions. The current system of verification is doubly flawed: it is too susceptible to fraud, particularly through the counterfeiting of documents; and it can lead to increased discrimination against foreign-looking and foreign-sounding authorized workers.

IRCA stipulates that all employers are required to verify all employees' identity and authorization to work. Employers are responsible for examining documentation establishing identity and employment eligibility and ensuring that the documents presented reasonably "appear" to be genuine and relate to the individual. This information is documented on the Employment Eligibility Verification Form [I-9 Form]. Under these verification provisions, employees can use a combination of more than twenty-nine different documents to prove identity and work eligibility.

The current process of employment verification has not functioned as the law intended to deter the hiring of undocumented aliens. The system may be thwarted easily by fraud. Widespread counterfeiting of documents that can be used for verification of identity and employment authorization has been reported since IRCA's implementation. Moreover, it is relatively easy to obtain genuine documents, such as birth certificates or drivers licenses, by fraudulent means. The ease of obtaining fraudulent employment eligibility documents has resulted in their increased use to satisfy I-9 requirements. The General Accounting Office [GAO] documented that 39 percent of unauthorized workers identified by INS investigators during a six-month period in 1987-1988 used proven or suspected counterfeit documentation to obtain employment. Other studies confirm similar levels of fraud. Because numerous documents-many of which may be unfamiliar to any given employer-may be shown to verify employment authorization, employers may have difficulty in determining if these documents meet the verification test, that is, that they "reasonably appear on their face to be genuine and to relate to the person presenting them."

Employer sanctions also have created problems for employees, who, if they are foreign-looking or foreign-sounding, may find themselves subject to unfair immigration-related employment practices. A number of government and private studies, including the Congressionally-mandated GAO study of discrimination, have documented practices that put a greater burden on foreign-sounding and foreign-looking applicants for employment. These include employer demands that such employees provide additional or different documentation, or that employers selectively use Form I-9 for presumed aliens but not for U.S. citizens.

Although it remains a matter of controversy whether these practices represent widespread discrimination caused by IRCA, the evidence appears consistent that even some well-meaning employers are confused by the requirements under IRCA and, as a result, violate the terms of the law. While the completion of a Form I-9 is a good faith defense against allegations of knowing hire of illegal aliens, in some cases, employers may be found to have constructive knowledge of the illegal status of their worker if they do not follow up on anomalies uncovered in the I-9 process. If they press for additional documentation because they think they have reason to believe an employee is an unauthorized worker (for example, the document does not appear to be the same as the one reproduced in the INS Handbook) and their reasoning is faulty, they may violate the antidiscrimination provisions of IRCA.

In explaining their concerns about the current verification process, employers also cite what they consider to be excessive administrative and paperwork requirements. As a recent addition to tax records and other compliance and recordkeeping requirements, the I-9 is seen by employers as one more paperwork burden. Oftentimes employers photocopy all documents presented to satisfy the I-9 process as evidence to avoid a knowing hire challenge—a formidable increase to their paperwork volume. Further, the technical complexity of the requirement places significant demands on the employer in the form of compliance instructions, training of staff, and contact time with candidates for employment.

The sheer number of documents available for use in verification presents challenges for effective implementation of employer sanctions. Some efforts are underway to correct this situation. INS has proposed regulatory changes that would reduce the number of documents to be used for verifying work authorization for aliens. In addition, voter registration cards will be eliminated from the list as they generally do not contain a photograph needed to verify identity. The Commission believes that these efforts will not solve the problems inherent in the current verification process for several reasons. Reducing the long list of documents by a few documents would still leave too many documents for effective verification; it also would be unlikely to reassure employers sufficiently about the security of the system and may even add to employer confusion and lead to a potential increase in differential treatment. Counterfeiting or the fraudulent use of documents still would continue.

The Commission reviewed options that would reduce the number of acceptable documents even more stringently. The proposals that all aliens use an INS-issued document and all citizens present one of a limited number of documents, such as a passport, birth certificate, social security card, and/or driver's license, still contain a basic flaw: the employee would still have to self-identify as an alien or citizen. Such proposals would continue to permit considerable amounts of fraud if illegal aliens declare themselves to be citizens and present counterfeited documents. They potentially also would permit perpetuation or increase of current levels of differential treatment if employers question whether foreign-looking or -sounding citizens are citizens and require an INS-issued document.

Recognizing the problems inherent in strategies to reduce documentation but not to change the overall system of verification, the Commission set a number of criteria by which it measured the potential impacts of more comprehensive reform.

First, a new system would have to be potentially more reliable and less susceptible to unfair immigration-related employment practices than the present one. Any solution would have to take into account that most documents now can be counterfeited within a relatively short time and for a cost that would be recoverable

from the sale of the counterfeit documents. Employers generally do not have sufficient expertise to recognize counterfeit documents and, therefore, require a simple, effective means of validating the information presented by new workers. Moreover, the new system would need to apply not only to aliens, but also to U.S. citizens; otherwise, problems of fraud could continue (illegal aliens could claim to be U.S. citizens) and/or unfair immigration-related employment practices may increase (employers could set different documentation standards for all foreign-looking and -sounding individuals).

Second, the new system would have to meet civil liberties and privacy standards. The new verification process should provide protection against use of the system for purposes other than those specified in law. The verification system should protect the privacy of the information to be used in verifying work authorization.

Third, the system would have to lessen the time, resources, and paperwork spent by employers in verifying work authorization. The Commission is persuaded that the current I-9 process requires excessive commitment of time and resources because of the complexity of the verification process. Any new system should be simple to use and require as little paperwork as possible for employers. It also should be simple in overall design, so that enforcement may focus on substantive violations and not become preoccupied with paperwork violations rather than knowing hire of unauthorized workers.

Fourth, the new system would have to be as cost-effective as possible. Given that illegal aliens represent at most a very small portion of the total U.S. labor force, the Commission does not think it appropriate to recommend strategies with costs out of proportion to the problem to be solved. To improve verification without undue costs is possible, we believe, if a new verification system builds to the extent possible on the existing responsibilities, capabilities, and data systems of federal agencies rather than if it were to create new mechanisms that would be used only for verification of immigration-related work authorization.

Fifth, more effective verification likely would require a companion initiative for improvements in the integrity of the underlying or "breeder documents" (such as birth certificates) used to establish identity in this country. Birth certificates are easily counterfeited or easily obtained through counterfeit means. Since counterfeiting operations have become multimillion dollar businesses, meaningful penalties would be needed to deter the counterfeiting of documents. New enforcement measures, commensurate with the scale of these operations, are needed to identify and destroy the counterfeiting rings.

The Commission believes that the most promising option for secure, nondiscriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the Immigration and Naturalization Service [INS].

Having assessed dozens of options for verification of work authorization, the Commission believes that the proposed computerized registry best meets the criteria described above. As envisioned by the Commission, the computerized registry would be used to verify that a social security number is valid and has been issued to the individual who is being hired. This database would be created and updated from SSA and INS files, but not connected to either. From SSA would come a limited set of data: name; social security number; and several other identifiers, such as date of birth and mother's maiden name. From INS would come information about the immigration status of lawfully-admitted immigrants, nonimmigrants, and other aliens permitted to remain temporarily or permanently in the United States. The INS data would also contain information about the duration of work authorization for aliens granted temporary employment permits.

The Commission believes the key to this process is the social security number. For decades, all workers have been required to provide employers with their social security number. The computerized registry would add only one step to this existing requirement: an employer check that the social security number is valid and has been issued to someone authorized to work in the United States.

Most citizens obtain a social security number before age eighteen, and the majority obtain it immediately after

birth because it is required if a parent requests a tax exemption for a child. SSA has programs with all but four states to issue social security numbers at birth to U.S. citizens. According to SSA, among the forty-six states that participate in the Enumeration at Birth system, 85 percent of the parents of newborns elect to participate.

SSA already has taken steps to make it more difficult for unauthorized aliens to obtain social security numbers by requiring any individual over age eighteen who requests a social security number to have a face-to-face interview. SSA checks immigration status before issuing the social security card to anyone who did not receive a social security number as a child because they immigrated to this country. SSA also keeps information that designates whether the alien has full work authorization or is temporarily authorized to work with permission of INS. SSA will give social security numbers to individuals not authorized to work if needed to open up bank accounts or for other reasons not related to work, but the social security cards issued to these individuals clearly state that they are ineligible for employment.

Under the proposed verification system, the employer would not ask individuals if they are citizens or aliens. Instead, the individuals would be asked for a name and social security number. This information could then be verified with the computerized registry. The employer would be given a confirmation number if the information given by the employee matches the database information. This verification number would be kept by the employer and could be used as an affirmative defense if the employer is accused of knowingly hiring an illegal alien. If, for any reason, a match is not found within the system, the employer would receive acknowledgement that the verification process was carried out but that, as confirmation could not be made within the system, the employee should check with the local social security office to correct the problem. It would not be necessary-or possible-for the inquiry to give to the employer information about the reason why a match was not effected.

Also under this approach, in situations where the worker has temporary authorization to work, the employer could be told the individual has work authorization but to reverify as of a particular date when the eligibility expires. By the time of reverification, the information would be updated to include the individual's current employment eligibility status. The computer registry also could verify that an alien granted authorization to work for a specific employer, for example, under certain nonimmigrant visas, did not obtain employment elsewhere. Some of the costs of the new system may be offset by savings if the computer system allows extension of work eligibility to be done through updating of the database rather than through issuance of a new INS employment authorization document [EAD].

The Commission believes a computerized registry based on the social security number is the most promising option for verification because it holds great potential for accomplishing the following:

- **Reduction in the potential for fraud.** Using a computerized registry rather than only an identification card guards against counterfeiting of documents. It provides more reliable information about work authorization.
- **Reduction in the potential for discrimination** based on national origin and citizenship status, as well as inappropriate demands for specific or additional documents, given that employers will not be required to ascertain whether a worker is a citizen or an immigrant and will have no reason to reject documents believed to be counterfeit. The only relevant question will be: "What is your social security number?"
- **Reduction in the time, resources, and paperwork** spent by employers in complying with the Immigration Reform and Control Act of 1986 and corresponding redirection of enforcement activities from paperwork violations to knowing hire of unauthorized workers. Through use of this system, employer confusion will be greatly reduced as employers will not need to rely on faulty documents.

The Commission recommends that the President immediately initiate and evaluate pilot programs using the proposed computerized verification system in the five states with the highest levels of illegal immigration as well as several less affected states. We are pleased that the President's immigration initiative and FY 1996 budget includes funding to begin the pilot programs.

A pilot program will: permit the testing of various approaches to using the proposed verification system; provide needed information about the advantages, disadvantages, and costs of the various approaches; develop and evaluate measures to protect civil rights and civil liberties; and ensure that any potential obstacles, such as the quality of the data used in the registry, are addressed prior to national implementation. Assuming the results are positive, Congress should pass the necessary statutory authorities to support more effective verification.

The Commission recommends that these projects be undertaken in the high impact states because that is where the bulk of the illegal alien problem is. We did not recommend that the pilots be undertaken throughout all of the five states immediately. Pilot projects should start small. At each step, we should have results to determine what to do next.

The pilot program should incorporate a number of features:

- **A means by which employers will access the verification system to validate the accuracy of information given by workers.** We have received conflicting testimony about the best way to check the applicant's identity. We have heard proposals for a more secure social security card, a counterfeit-resistant driver's license, and a telephone verification system that does not rely on any document. Several different options could be tested simultaneously in different states. The pilot program presents an opportunity to determine the most cost-effective, fraud-resistant, and nondiscriminatory method available.

Counterfeit-resistant driver's license or state-issued identification documents. An almost universal identification document is the driver's license or identity document issued by Departments of Motor Vehicles [DMVs]. These documents are obtained in most states with a birth certificate, social security number, driver's license from another state, or other documents. During the past few years, there has been significant progress in increasing the security of these documents, pointing to further improvements that could be made. In the issuance of drivers' licenses, states are typically using secure paperstock, lamination, and other security features with a four to five year cycle for license replacement. Several states are issuing licenses made of hard plastic with a magnetic stripe. Alteration of the card is difficult and an operation for mass producing of replicates would be very expensive. The use of a smart-card chip and a biometrics identifier on the license is currently being explored through the Department of Transportation. Digital imaging, a new technology currently used for Virginia drivers' licenses, allows for automated capture, display, and comparison of current and previously recorded signatures and photographs. Employers would not be required to assess the validity of the drivers' licenses, however. The computer registry would tell an employer if the name and social security number on a license are valid. In this way, even a very good counterfeit would not pass muster.

Social security cards. Existing social security cards cannot serve as effective identifiers of the holders of those cards. While currently issued cards are more resistant to counterfeiting than earlier versions, many easily counterfeited cards remain in circulation. There are forty-four versions (twenty-six original and eighteen replacement) of the social security card. As of June 1993, 63 percent of the total number of active card holders had been issued the new counterfeit-resistant card, still leaving a substantial number of valid older documents in use. (There is no way of knowing how many counterfeit cards are currently in use or how many illegal aliens may have obtained valid social security numbers through fraudulent means.) Even the new cards have problems as identifiers; these cards do not have any identifying information other than the individual's name. A number of proposals have been put forth in Congress and elsewhere for the development and reissuance of a more counterfeit-resistant social security card. Even apart from the immigration-related reasons for a more secure social security card, arguments in favor of reissuance point to the need for greater integrity in the social security system itself. Critics of these proposals point out the cost and inconvenience to the public of a requirement for reissuance of the social security card. Further, if a photograph is used on the new issuance, it will be

necessary for cards to be reissued periodically. SSA estimates the initial cost would be in the range of \$2.5 billion. The pilot program would provide an opportunity to determine the cost-effectiveness of proposals to reissue the social security card.

Telephone verification. Some experts testified that a stand-alone telephone verification system could work to verify identity if workers are asked for information that they alone know. Many credit card and bank companies use a Personal Identification Number [PIN] to verify identity. Under this proposal, employers would enter individuals' social security numbers and workers would enter a PIN that only they knew. Alternatively, or in conjunction with the PIN, employees could provide a set of identifying information: for example, name, social security number, mother's maiden name, and date of birth. The pilot would test whether a telephone verification process that requires no documentation affords sufficient protections against fraud and discrimination.

Experts note that under any of these systems, the computer system could have a built-in process for logging and auditing inquiries to identify likely fraud. For example, if the same social security number was used too often or in too many locations, the computer system would record the incidence. The system then could inform the employer that the employee must reconfirm the information in the database. The authorized worker would benefit from learning that others were using his or her social security number. The social security number might then be canceled and the authorized worker issued a new number. The unauthorized worker could not reconfirm the information and, therefore, would not be able to continue in that employment. The process would also permit estimates of likely fraud to use in determining the efficacy of the verification system.

- **Measures to ensure the accuracy of and access to the specific data needed** to ensure that employers have timely and reliable information when seeking verification of work authorization. Improvements to the Social Security Administration and INS databases must be made to ensure that these data are available. Both the INS and SSA are already improving their data systems.

Both houses of Congress already have earmarked funds in the INS FY 1995 appropriation to enable the agency to undertake such needed reforms. INS currently is completing the process of combining several databases into one integrated system. Nonimmigrant and refugee data are now integrated into the Alien Status Verification Index [ASVI] database, that is used in the benefits verification process, the System for Alien Verification of Eligibility [SAVE], and the Telephone Verification System [TVS] pilot for employment eligibility verification. In FY 1995, the INS information systems division will almost double its budget, from \$110 million to \$200 million, to improve the infrastructure of the data systems.

The Commission welcomes these steps and encourages INS and SSA to take seriously their responsibility to have accurate, accessible data fully protective of privacy. Even with these improvements in the source data for the computerized registry, procedures must be developed to ensure timely and accurate extraction as well as updating and correcting the needed data. The Commission encourages INS and SSA to cooperate in this endeavor as the proposed registry would be built upon and-once implemented-would support the primary missions of both those agencies. Each agency has a vested interest in ensuring that its data are accurate, even apart from their common interest in ensuring that unauthorized workers do not obtain jobs. It is unacceptable that neither agency's records currently can provide needed information quickly. Resources requested and used for employment and benefit authorization purposes can be seen largely as enhancing or parallel to the resource needs of the larger mission of these agencies.

- **Measures to ensure against discrimination and disparate treatment of foreign-looking or -sounding persons.** The Commission believes that the least discriminatory system would have the same requirements for citizens and aliens alike. To reduce the potential for discrimination and increase the security of the system, the Commission also believes that employers should not be required to ascertain

immigration status in the process of verifying authorization for employment. Their only requirement should be to check the social security number presented by the employee against the registry and record an authorization number to demonstrate that they have done so.

- **Measures to protect civil liberties.** It is essential that explicit protections be devised against use of the database and any card or any other means used to gain access to it for purposes other than those specified in law. The uses to be made of the verification system must be specified clearly. We believe the worksite verification system could be used, without damage to civil liberties, for verifying eligibility to receive public benefits. However, it should be stipulated that no one should be required to carry a card, if one is used, or to present it for routine identification purposes. Also, there should be penalties for inappropriate use of the verification process. Putting these provisions in law, rather than regulation, would make it more difficult to change them later in a manner that would evade protection of civil liberties.
- **Measures to protect the privacy of the information included in the database.** The Commission is aware of the proliferation of databases and the potential for the invasion of privacy by both government and private agencies. The computer registry recommended by the Commission will be drawn from an existing national database, the Social Security Administration computer system. Given the scope of the registry, it is essential to build in explicit provisions for protecting privacy. As with other aspects of our recommendations related to civil liberties, these safeguards should be made by law, not just regulation. The resultant computer system should incorporate appropriate technical safeguards regarding authorized users' access to individual information. In establishing privacy safeguards, it is important to take into account that, while access to any one piece of information may not be intrusive, in combination with other information such access may violate privacy. In particular, safeguards must ensure that information about specific individuals other than the limited information to be provided as a part of the verification process itself cannot be obtained from the database. To create a viable system, institutions and individuals with expertise in privacy matters should be involved in the development and assessment of the pilots. For example, the Computer System Security and Privacy Advisory Board created by the Computer Security Act of 1987 to identify and advise on security and privacy safeguard issues relating to federal computer systems should be involved in this process.
- **Estimates of the start-up time and financial and other costs** of developing, implementing, and maintaining a national system in such a manner that verification is reliable. The establishment of the proposed computer registry is the top priority during the pilot process and the key to the effectiveness of the process. While the record structure is simple, ensuring the quality of the source data is essential. Updating the information in a timely way is another basic, but very important, requirement. The database would contain only one-half dozen data elements (name, social security number, date of birth, place of birth, mother's maiden name, immigration status code, for example), and therefore would be quite straightforward from a programming viewpoint. However, ensuring that these elements are complete and correct for all records will require significant start-up costs in making the necessary improvements to existing databases, particularly for INS.

Informal estimates by the Social Security Administration indicate that the cost of design and development of the combined SSA/INS database is \$4 million over a two-year period. Annual cost of maintaining and operating the verification system is estimated at about \$32 million. This figure maintains the computer registry itself, the costs of operating the automated system for checking social security numbers against it, operator costs for calls that cannot be handled automatically, and telephone lines for an 800-number to be used by employers.

Correcting errors in the INS and SSA databases will require the largest financial input. Discrepancies referred to SSA for resolution will cost approximately \$122 million initially with an annual cost of \$30 million. The cost of resolving discrepancies in the INS database will be additional. INS is already taking

steps to improve its recordkeeping, but under the current plan, these improvements will take several years to accomplish. Additional appropriations will be needed to speed that process and ensure that accurate information will be available in a timely manner. Correcting discrepancies in the existing SSA and INS databases would be good investments, even if the computer registry were not at issue.

- **Specification of the rights, responsibilities, and impact on individual workers and employers.** The pilot program will need to determine a number of important issues related to the rights, responsibilities, and impact upon the users of the verification system. These include, for example, what individuals must do, how long it will take for newly authorized workers to get on the system and to correct inaccurate data, and what will be required of employers and at what expense.

Provisions also must be developed to protect both workers from denial of employment and employers from penalties in cases where the information provided by the computer registry may be missing or inaccurate.

Even with major improvements in the reliability of the data, the pilot programs will require mechanisms for timely manual secondary verification and an appeal when there is no match. Experience with existing databases, such as SAVE, indicate a sufficiently high error rate to merit further review. If the error rate is too high, the result may be discrimination against employees who come up as false negatives. To deter such discrimination, employers could be required to retain in employment those individuals until the employment authorization is confirmed (as in the current law, verification is a post-hire process). The current pilot project on telephone verification [TVS] has this provision.

- **A plan for phasing in of the system.** The Commission recognizes that the proposed verification system will result in financial costs. The system should be phased in to lessen the immediate fiscal impact. The pilot programs should test various phase-in procedures. Given the required levels of accuracy, reliability, and convenience required, the evaluation should help measure the cost of phasing in the system nationally.

The Commission recommends evaluation of the pilot programs to assess the effectiveness of the verification system.

The evaluation should include objective measures and procedures to determine whether current problems related to fraud, discrimination, and excessive paperwork requirements for employers are effectively overcome without imposing undue costs on the government, employers, or employees. The evaluation should pay particular attention to the effectiveness of the measures used to protect civil liberties and privacy. In carrying out the various components of the evaluation, study designs should be capable not only of identifying the degree to which the pilot alternatives achieve defined goals, but also of identifying why certain outcomes have occurred. In particular, the evaluation should assess the extent to which any identified strengths and weaknesses in the pilot programs are attributable to the computerized registry itself and/or the mechanisms used to access it. This information is essential to determining if the computerized registry should be maintained as a cost-effective mechanism for verification and, if so, what means of access should be used nationally.

The Commission supports INS efforts to improve its Telephone Verification System/SAVE [TVS/SAVE] database-but only as an interim measure.

The improvements are essential for improving the data needed for the new, more effective verification process. The Commission is aware of the inadequacies of the current INS data that would be used in the proposed system. The Commission does not endorse the TVS/SAVE program as a long-term solution to the verification problem because use of TVS/SAVE requires the inadequate mechanism of self attestation by workers as to their citizenship or alienage, thus making it easy for aliens fraudulently to claim U.S. citizenship. It also imposes requirements on legal immigrants that do not apply to citizens. Nevertheless, improvements in

this database as well as the Social Security Administration database are essential to the development of a more secure, less potentially discriminatory verification system.

The current Telephone Verification System builds on the ASVI database that was established for the SAVE program. SAVE was designed for verification of legal status as it pertains to eligibility for federal assistance programs.

The following information is contained in the ASVI database: alien identification number; verification number; last name; first name; and an employment eligibility statement. The time-consuming aspect of the ASVI database is that often the system, for any number of reasons (e.g., files are not updated, there is a systems error, or the number provided is not functioning) cannot provide a response to A-number queries. When this happens the system refers the case for secondary verification. In FY 1994, (September - July) there was a 17 percent secondary referral rate for the SAVE system. A study of Phase I of the TVS pilot reported a 28 percent secondary referral rate. INS is already in the process of improving its system and is working to upgrade the ASVI database and reduce the need for secondary verifications. The Commission endorses INS initiatives to improve the SAVE/ASVI system as this step is necessary before a more secure system can be achieved.

Those are the Commission's recommendations on verification of work authorization. They are part of a comprehensive approach to immigration reform which this Commission proposes. I will be glad to answer any questions.



Last update August 15, 1996



April 17, 2012

The Honorable Elton Gallegly
Chairman
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement

The Honorable Zoe Lofgren
Ranking Member
House Judiciary Committee
Subcommittee on Immigration Policy and Enforcement

Dear Chairman Gallegly and Ranking Member Lofgren:

We are pleased to submit this statement on behalf of the American Council on International Personnel (ACIP) and the Society for Human Resource Management (SHRM) for the hearing on April 18, 2012 entitled, "Document Fraud in Employment Authorization: How an E-Verify Requirement Can Help." We ask that you place this statement into the hearing's record. We believe that a reliable, efficient and secure electronic employment eligibility verification system is central to our immigration system and we look forward to working with you to craft policies that meet the needs of employers.

Our organizations represent large and small employers in industries across the United States and we work closely with the in-house professionals responsible for verifying the employment eligibility of their employees. A uniform federal law is central to their efforts to treat all applicants and employees fairly at all locations throughout the United States. However, the current patchwork of state and local verification laws is unworkable and creates a confusing set of legal requirements for American employers and employees. We recognize that this patchwork has been created partly as a result of the inability of the current system to combat identity and document fraud. We therefore applaud you Mr. Chairman, for holding this hearing and for your and the subcommittee's commitment to creating a reliable employment eligibility verification system.

We have closely followed E-Verify's evolution from the telephone-based Basic Pilot program to today's internet-based system. Many of our 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. We believe these issues can be solved through: the implementation of a voluntary identity authentication pilot; the transition of the current system to a fully electronic system; and the introduction of an Ombudsman office that will facilitate the resolution of any false negatives that are produced by the system.

I. Identity Theft Will Grow as E-Verify Expands Unless Authentication of True Identity is Incorporated

Our 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, however, if it is based on trust, and built upon a system that provides employers with certainty. While E-Verify's capability and accuracy have improved immensely in matching a name with a Social Security number, it cannot confirm that the person presenting the document is who he or she claims to be, leaving employers vulnerable to being duped by those using stolen identities.

Workers' identities need to be authenticated by more than documents or employer judgments. It is widely acknowledged that E-Verify is vulnerable to identity theft. According to a December 2009 report by Westat, 54 percent of the unauthorized workers who are checked through E-Verify are confirmed as work-authorized. The December 2010 GAO report reiterated this assessment. The current system promotes identity theft by unauthorized workers by enabling them to present stolen but "valid" ID numbers and thereby be cleared by the system as work-authorized. In addition, because of its reliance on the employer's subjective review of documents, the current system is unable to detect many forms of document fraud and identity theft. This is due to the fact that E-Verify does not authenticate the identity of the *person* presenting the documents; rather, it only verifies that the data on the documents matches the information in the federal databases.

For these reasons, we support a voluntary "authentication pilot" that would utilize biographic information in order to identify an individual. This system would 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 legally work. There are a number of ways that authentication can be done, and "The Legal Workforce Act" (HR 2885) addresses this issue by including a biometric pilot. Another pilot could build upon the current E-Verify Self Check system, by providing a rigorous validation of credentials in order to protect the system from potential imposters. Attention to these and other details will be critical to the successful expansion of E-Verify.

II. An Electronic E-Verify System Needs to Replace the Paper Form I-9

The current system, which requires both a paper-based Form I-9 and the online E-Verify check, which is mandatory in a number of states, is redundant, expensive, and burdensome. The "Legal Workforce Act" (HR 2885) would integrate these systems.

The purpose of an E-Verify system is to identify those who are authorized to work in the United States. The current paper Form I-9 needs to be fully replaced with a simple electronic form that utilizes computer-based rules for completing the forms, thereby preventing the user from making simple and avoidable errors. Paperwork errors should not be the focus of enforcement, as this is a misuse of critical resources which can be better deployed to investigate true fraud in the system. In addition, an electronic system removes the subjective scrutiny of documents that is now an integral part of the process, and

documents. Furthermore, the current system leaves good faith employers vulnerable to large fines, the degree of which differ by field office, even if they do not have any unauthorized workers on their payroll.

III. E-Verify Needs an “Ombudsman Mechanism to Fix False Negatives

There are very few false negatives (a truly authorized worker whom the system deems unauthorized for employment in the United States) with the current E-Verify system. However, the impact of any false negative is devastating to the legal worker who is denied employment. The process for correcting an instance of a false negative can be very confusing and difficult for a worker. The worker may have to navigate multiple government bureaucracies and they may in fact receive a different answer from each avenue on the best way to correct the issue. Therefore, we propose that there be an Ombudsman who can assist the worker and facilitate their conversations with the correct agency, whether it be SSA, DHS or another. This should be a route to assist in the correction of these true errors, without creating a complicated process that could encourage appeals by the truly unauthorized worker. The ombudsman mechanism has worked well in other areas of the immigration system, such as the CIS Ombudsman.

ACIP and SHRM thank the Subcommittee for holding this hearing and ask the Subcommittee to consider our recommendations to improve E-Verify as it expands. We look forward to continuing to work with you to develop a verification system that works for America’s employers as it works its way through Congress.

Sincerely,



Michael P. Aitken
Vice President,
Governmental Affairs
SHRM



Lynn Shotwell
Executive Director
ACIP

Cc: House Committee on the Judiciary

Rise In Child Identity Theft Prompts Push For Solutions

First Posted: 12/22/11 11:12 AM ET Updated: 12/23/11 05:12 PM ET]

By Gerry Smith

React



"Burdened Beginnings" is a series examining the problem of child identity theft. Other stories in the series can be found [here](#).

When Jennifer Andrushko applied for public aid two years ago, a state employee entered her son Carter's Social Security number into a computer and discovered something strange: The boy appeared to have been earning wages for the past eight years.

"I thought, 'How could this be happening? He's only three years old,'" Andrushko said.

It turned out an undocumented immigrant had been using Carter's number to acquire jobs since before he was born. But Carter proved relatively fortunate. Unlike many child identity theft victims who do not realize their credit is ruined until they reach adulthood, his case was caught while he was young, giving him time to recover his good name.

In Carter's case, the crime was foiled by a unique campaign underway in Utah to eradicate the growing problem of child identity theft. The state cross-references an employment database with a list of children receiving public assistance to reveal people who have used children's Social Security numbers to secure employment. Since 2007, Utah's checks have found "thousands" of instances of child identity theft, including one in which nine people used a nine-year-old's Social Security number to gain employment, according to Utah Assistant Attorney General Richard Hamp.

Utah's successful efforts highlight the existence of potentially potent responses that can be wielded to limit the problem of child identity theft, an emerging crime that leaves young adults

with tattered financial histories. But such efforts remain patchy and scarce, providing thieves with substantial opportunities to tap into the pristine credit histories of children, experts say. Parents too willingly hand over their children's Social Security numbers to schools and health care providers, and these institutions are not sufficiently vigilant about preventing the data from falling into malevolent hands. One agency alone -- the Social Security Administration -- could significantly reduce the vulnerability by making it easier for credit agencies to discern that a given Social Security number belongs to a child, experts say.

"All of us have a little bit to do with solving the problem...We are no longer going to passively hand our children over to bad guys, who are only focused on exploiting their good names," Michelle Dennedy, chief privacy officer at the security firm McAfee, said at a July forum on child identity theft.

Last year, more than 18,000 cases of child identity theft were reported to the Federal Trade Commission, compared with about 6,500 cases in 2003. The real figure, however, is probably much higher because the crime often goes undetected, experts say. ID Analytics estimates that more than 140,000 children are victims of identity theft each year, based on a one-year study of those enrolled in the firm's identity protection service.

In the largest study on child identity theft to date, researchers at Carnegie Mellon University found that 10 percent of children were victims of identity theft, compared with less than 1 percent of adults. The study, which was published this spring, analyzed more than 800,000 records -- including 40,000 belonging to minors -- compromised by data breaches in 2009 and 2010. The data was provided by the credit monitoring service Debix.

The stolen identities were used to purchase homes and cars, open credit card accounts, gain employment and obtain driver's licenses, the report found. The youngest victim was five months old. In one case, eight people were suspected of opening 42 accounts and racking up more than \$725,000 in debt using a 17-year-old's Social Security number.

Thieves now exploit a gap in the system used by the three major credit bureaus to check consumer credit. When the bureaus pull reports, they look for matching names, birthdates and Social Security numbers. But identity thieves escape detection by pairing a child's number with a different name and birth date, creating the appearance of a consumer who is applying for credit for the first time. Debix says it recently ran credit reports on 381 cases of confirmed child identity theft and found that credit reports only turned up fraudulent activity in four cases, or 1 percent.

Experts say the Social Security Administration could fix this flaw by allowing companies to validate whether a given Social Security number belongs to a child. Since 2008, companies have been able to check this information with the Social Security Administration, but the agency charges a \$5,000 fee upfront, plus \$1 for each check, because the service is not part of the agency's mission, according to agency spokeswoman Kia Green.

Bo Holland, chief executive at Debix, said companies are likely unwilling to pay those fees, so Congress should pass a law that funds the agency to provide the service at no charge.

"It would stop every one of these attacks we've seen," Holland said.

Meanwhile, unique partnerships are forming in a growing effort to stop child identity theft. In January, Utah officials plan to team up with TransUnion, a credit bureau, to launch a new program aimed at catching identity theft of all children in Utah, not just those who receive public aid.

"It should effectively shut down people opening credit on kids' numbers," Hamp said.

Some also say lenders should be more diligent by raising questions about suspicious loan applicants -- such as older applicants with thin or empty credit files -- and requiring more documentation to qualify for loans.

"How can somebody open up any kind of account with just a name and Social on its own?" Stuart Pratt, president of the Consumer Data Industry Association, the trade association for the three credit reporting agencies, said at a [July forum on child identity theft](#). "Authentication should be much more than that. It has to be robust."

For decades, most children did not have Social Security numbers. Then in the late 1980s, the Social Security Administration began requiring that parents list their children's numbers to claim them as dependents on their tax returns. This led to a rapid expansion of newborns being assigned pristine credit slates that are left unchecked until their 18th birthday, making them particularly attractive to identity thieves.

Many child identity theft cases are not caught sooner because laws do not permit minors to request their credit reports, according to Mark Fullbright, a fraud specialist with [Identity Theft 911](#). If teens could access their credit reports at 16, victims would have time to restore their credit "before they turn 18 and everything counts," Fullbright said.

Instead, many victims are like Jalecsa Suell, of Oakland, Calif., whose identity was stolen to open a credit card when she was 17 but went undiscovered until she turned 21 and was denied her first credit card. The unpaid debt, which totaled \$300, went to a collection agency, destroying her credit, she said.

Now 22, Suell has spent the last six months disputing the fraud with Plains Commerce Bank, based in South Dakota, where the account was opened. Before accepting the charges were fraudulent, the bank insisted that Suell provide a full police report. But the Oakland Police Department has refused to provide such a report because \$300 does not meet the department's threshold.

Identity Theft 911, which is working pro-bono to help Suell, plans to write letters to the FDIC, FTC and the Better Business Bureau to pressure the bank to "do the right thing," according to Kelly Colgan, a spokeswoman for Identity Theft 911.

If her case is not resolved, Suell fears she will graduate college in May and be unable to rent an apartment or acquire student loans for graduate school due to her damaged credit.

"I'm at an impasse," she said. "It's extremely frustrating."

Even those who have resolved their cases have faced roadblocks. On the day after her 18th birthday, Katrina Haywood used her credit for the first time to apply for Internet service. She was denied. Then she was denied an apartment, a bank account, and jobs at retail stores in Sacramento.

The reason: Her credit report included a list of unpaid credit cards, utilities and payments to tow truck companies totaling about \$6,000. The debt was accrued by her mother, she said.

"I was really upset," Haywood said. "I tried to clear it myself but didn't know how to do it and didn't get very far."

But recently, Haywood was able to acquire a detailed police report that proved she was only 11 when the fraud began. She sent the report to the three credit bureaus, which quickly removed the bad debt from her name.

Now, Haywood has a job at a clothing store at a mall. She has opened her first bank account. And this month, she moved into her first apartment with her 1-year-old daughter.

"Everything is going good now," Haywood said. "I have a fresh start."

Mr. GALLEGLY. Today we have a very distinguished panel of witnesses. Each of the witnesses' written statements will be entered into the record in its entirety. I ask that each of you make every effort to summarize his or her testimony in 5 minutes or less. To help, we have the lights down there, and when the red light comes on, if you could wrap up your comments, and we will make sure that your testimony is made a part, the entire, in its entirety.

Our first witness is Dr. Ronald Mortensen. Dr. Mortensen is a retired United States Foreign Service Officer. He has published, he

has been published by the Center for Immigration Studies and writes for examiner.com. He has researched and written extensively about employment-related child identity theft and was instrumental in the passage of Utah's E-Verify requirement. Dr. Mortensen holds a Ph.D. in political science from the University of Utah.

Our second witness is Ms. Jennifer Andrushko. She has worked as a small business owner in Utah since 2009. Previously she worked as a kindergarten teacher from 2002 to 2006. Ms. Andrushko is the mother of a 5-year-old identity theft victim and is cosponsor of Defending Our Children's Future. She received her Bachelor's Degree from Weber State University in Ogden, Utah.

Our third witness today is Dr. Bert Lemkes, Mr. Lemkes is general manager and co-owner of Van Wingerden International, a family-owned horticulture business in Mills River, North Carolina, which includes 37 acres of climate-controlled greenhouses. Prior to this, Mr. Lemkes worked in the various horticulture businesses around the world before emigrating to the United States in 1987. He became a U.S. citizen in 2001 and studied horticulture at the college of, the Horticulture College in Utrecht, Netherlands.

With that, Mr. Mortensen, we will—Dr. Mortensen, we will start with you.

TESTIMONY OF RONALD MORTENSEN, Ph.D., U.S. FOREIGN SERVICE OFFICER, RETIRED, CENTER FOR IMMIGRATION STUDIES

Mr. MORTENSEN. Thank you. The use of fraudulent documents for employment authorization all too often involves the Social Security numbers of children. Children's numbers are especially valued because they can be used for years without detection. Unfortunately, during those years children can suffer serious harm. Thus, employment-related document fraud is not a victimless crime.

People obtain children's numbers for employment in a variety of ways. Parents use their children's numbers, people steal children's Social Security numbers and then sell them, and still others randomly make up numbers that end up belonging to children. Most often people just attach the child's Social Security number to their own name rather than using the child's full identity, which includes the full name, date of birth, and Social Security number.

And this Social Security number only identity theft—or, this is Social Security number-only identity theft, and according to a Social Security official, quote, 98 percent of Social Security-related ID theft cases involve people who use their own names but invent or steal their numbers. So given the prevalence of Social Security number-only identity theft, a mandatory E-Verify requirement can serve as a strong child protection measure because E-Verify does match the name, date of birth, and Social Security number, which prevents an adult from using his own name with the child's Social Security number for employment purposes.

Now, it is important to note that when someone simply makes up a Social Security number and uses it with his own name, there is roughly a 50/50 chance that an adult already—that that number already belongs to someone else, either a child or an adult. However, even if the randomly generated number has not been issued,

the Social Security number—the Social Security doesn't take it out of the database once it begins to be used. Therefore, at a future date, Social Security may assign that number to a newborn infant.

In Utah, based on a 2005 investigation, it was estimated that 20,000 Utah children under age 13 were the victims of employment-related identity fraud and as many as 50,000 children under age 18 may have had their Social Security numbers used for employment purposes. In addition, Utah's Workforce Services identified 1,626 employers paying wages to the Social Security numbers of children under 13.

Most parents didn't even know that their children's identities were being used unless they applied for public assistance and were notified at that time that the child's number may have been compromised, and many of these children had their good names destroyed, some had their credit ruined, others had people obtaining medical services using their Social Security numbers, and still others had arrest records attached to their names, and some were even denied critically required Medicaid benefits.

E-Verify is an important tool in the battle against employment-related child identity theft because it catches Social Security number employment identity theft, and if properly administered it will also prevent an adult from using a child's birthdate to get it through the system even if he has the child's total identity.

Arizona's experience seems to indicate that the use of E-Verify can make a contribution toward preventing employment-related identity theft. Following the enactment of Arizona's strong E-Verify requirement in 2007, employment-related identity theft has declined by 36 percent. Identity theft cases still continue to be reported from thefts that occurred prior to the implementation of E-Verify, and unfortunately not all employers are complying with the law, which leads to new cases, and also the numbers of Arizona children continue to be used in other States that do not mandate E-Verify. Therefore, a mandatory nationwide E-Verify program with strong employer sanctions would protect the futures of American children, both the born and the unborn. Ideally, employers would be allowed to use E-Verify to check the status of all current employees as well as new hires in order to identify individuals who are currently using children's Social Security numbers. In addition, victims of employment-related identity theft should be allowed to sue employers for damages if employers fail to comply with the mandatory E-Verify requirement.

In conclusion, the mandatory use of E-Verify is a child protection measure that can play a key role in defending our children's future. Thank you.

[The prepared statement of Mr. Mortensen follows:]

**Prepared Statement of Ronald Mortensen, Ph.D., U.S. Foreign Service
Officer, Retired, Center for Immigration Studies**

Introduction

The use of fraudulent documents for employment authorization and child identity theft go hand-in-hand because adults can use children's Social Security numbers for years without being detected. Document fraud, therefore, is not a victimless crime and the children whose Social Security numbers are used for employment purposes suffer very real and serious harm.

An E-Verify requirement is actually a child protection measure because it makes it virtually impossible for adults to use the fraudulently obtained Social Security numbers of children for employment purposes.

Therefore, a mandatory, nationwide E-Verify program with extremely strong employer sanctions should be implemented immediately in order to protect the futures of American children. Employers should be required to use E-Verify to check the status of all current employees as well as new hires in order to identify individuals who are using the Social Security numbers of children.

In addition, the families of victims of employment related identity theft should be allowed to sue employers for damages if employers fail to comply with the law.

I-9 process encourages document fraud and identity theft

The current I-9 employment authorization requirement has the unintended consequence of fueling a demand for fraudulent documents and encouraging employment related identity theft since new hires are required to provide specific documents which illegal immigrants and individuals who are trying to hide their true identities cannot legally obtain.

Illegal immigrants are by far the prime drivers of employment related document fraud and identity theft because a Social Security number is required to get a job with reputable employers. Dead beat parents, sexual predators, criminals trying to hide their identities and others also use fraudulent documents for employment purposes.

Shortly after arrival in the United States, most illegal immigrants purchase a set of fraudulent documents which includes a Social Security number. This results in three-quarters (75%) of all illegal immigrants holding and using fraudulently obtained Social Security numbers according to the Actuary of the Social Security Administration.

Thus, fraudulent documents abound and since the quality of the documents is generally quite good, employers are unable to determine if the Social Security cards, driver's licenses or "green cards" presented by job seekers are real or fake by simply looking at them.

Social Security Number Only versus Total Identity Theft

Almost all employment related identity fraud is Social Security Number Only fraud. In fact, according to a Social Security official, "Ninety-eight percent of Social Security-related ID theft cases involve people who use their own names but invent or steal their numbers."¹

The Social Security number being used by the perpetrator of Social Security Number Only identity fraud may not belong to anyone or it can belong to a man, a woman or to a child of any age.

¹ http://www.sltrib.com/business/ci_3778628

According to the Social Security Administration,² 453.7 million Social Security numbers have been issued; therefore, there is roughly a fifty-fifty chance that a randomly made up number has already been officially assigned to someone else. However, even if the randomly generated number has not been issued by the Social Security Administration, it is not taken out of the system when someone begins to fraudulently use it. The Social Security Administration, therefore, eventually assigns numbers that are already being used to new-born infants. When this occurs, a child may begin life with a wage history, bad credit, income tax liabilities and an arrest record.

Total identity theft is the use of another person's full name, Social Security number and complete date of birth. It is relatively rare because it is much harder to carry out, easier to detect and more subject to prosecution than is Social Security Number Only identity fraud.

In order to steal another person's total identity, the identity thief has to get the victim's full name (first, last, middle), his actual date of birth (month, day, year) and his actual Social Security number. In addition, the perpetrator has to be the same gender as his victim, be roughly the same age and the name being used should more or less match the identity thief's physical appearance.

Total identities are also much more expensive to purchase than randomly made up or stolen Social Security numbers that are simply attached to another individual's name.

Children are victims of employment related identity theft

According to Carnegie Mellon University's CyLab, children are 51 times more likely to be the victims of identity theft than adults. CyLab found that 10.2% of the 42,232 American children in its survey had their identities compromised.³

Children's Social Security numbers are especially valuable for employment purposes. Children do not use their Social Security numbers for employment, credit or other purposes, thus the illegal use of their Social Security numbers can go unnoticed for many years.

In Utah, a joint federal-state investigation in 2005 confirmed that the Social Security numbers of Utah children were being used for employment purposes. Based on that investigation, it was estimated that 50,000 Utah children under age 18 were the victims of employment related identity fraud at that time. Under Utah law, identity fraud for employment purposes is a major felony.

In addition, Utah's Workforce Services identified 1,626 employers paying wages to the Social Security numbers of children under age 13.⁴

In 2009, Utah implemented its first E-Verify legislation that required public employers and their contractors to use E-Verify. In 2010, it added a requirement for all private employers with 15 or more employees to use E-Verify. Both laws simply left it up to employers to comply and did not include any penalties for non-compliance.

² <http://www.ssa.gov/history/hfaq.html>

³ <http://www.cylab.cmu.edu/files/pdfs/reports/2011/child-identity-theft.pdf>

⁴ <http://www.citizensfortaxfairness.org/pdf/identity%20Theft%20-%20Karen%20Morgan%20-%20Fact%20Sheets%202-13-07.pdf>

The most recent figures available from Utah's Workforce Services, show that in 2010, 972 children on public assistance under age 13 had wages being reported to their Social Security numbers compared to 1,800 in 2005, a decline of 46%. In 2011, that number had dropped to 800, a 56% decrease.

In addition, in 2010, 1,367 employers reported wages on Social Security numbers that belong to children on public assistance. In 2011, that number rose to 1,449. These numbers are also down from the 2005 level.

The reasons for these decreases are difficult to determine. The nationwide economic downturn impacted Utah, although less severely than the rest of the nation. Many people lost jobs and when that occurred, wages ceased to be reported on the children's Social Security numbers that they were using.

In addition, a less friendly legislative environment for illegal immigrants coupled with Utah's weak E-Verify laws likely had some impact as more companies used E-Verify. A growing awareness of illegal immigrant driven child identity theft may have also contributed to the decline.

In spite of these favorable trends, child identity theft in Utah continues to be a serious problem as noted by a headline in the April 7, 2012 edition of the Salt Lake Tribune which read: "Identity theft involving children is a growing crime."⁵ According to the Tribune:

In the past five years, the Utah Attorney General's online Identity Theft Reporting Information System has received more than 3,000 reports of ID theft — about 67 percent of which involved Social Security numbers belonging to children. Nationally, more than 19,000 reports of child identity theft were made to the Federal Trade Commission, up from about 6,000 reports in 2003.

These reported cases of identity theft are, however, just the tip of the iceberg because most parents are unaware that their children's identities are being used and the crime is only discovered when children grow up and eventually apply for credit or when the family applies for public benefits. Therefore, many of the reported adult cases of Social Security Number Only identity theft may have occurred during childhood but were only discovered later on.

Document fraud is not a victimless crime

The children and other victims of employment related document fraud and identity theft suffer real harm.⁶ They have their good names destroyed and can have their credit ruined and medical records compromised with life threatening consequences.

They can have income tax liabilities attached to their names for unpaid taxes on revenue earned on their Social Security numbers and they can be denied public benefits such as critically needed Medicaid coverage because wages are being reported on their Social Security numbers.

⁵ <http://www.sltrib.com/sltrib/money/53803171-79/credit-child-utah-program.html.csp>

⁶ www.cis.org/mortensen/dreams

And once children enter the workforce or go to college, they may not be able to qualify for internships, student loans, jobs, unemployment benefits, and mortgages because of the records of other people that are attached to their Social Security numbers.

Multiple felonies to get a job

People from diverse backgrounds use fraudulent documents and the identifying information of American children to get jobs. Dead beat parents use their children's Social Security numbers to avoid having their wages garnished for child support.

In a well publicized case in Utah, a child pornographer used a fraudulently obtained Social Security number to obtain employment as a truck driver, and still other individuals who are trying to hide criminal records from employers may use the identifying information of children.

Perhaps most seriously of all, millions of illegal immigrants use fraudulent documents and the fraudulently obtained Social Security numbers of an untold number of American children to get jobs. In fact, illegal immigration, document fraud and identity theft, go hand-in-hand because millions of individuals illegally in the United States must have Social Security numbers to get jobs with employers who require the completion of an I-9 form.

Since individuals illegally in the United States cannot legally obtain a Social Security number and cannot legally work using an Individual Taxpayer Identification Number (ITIN), they rely on fraudulently obtained Social Security numbers. They also purchase and use other fraudulent documents such as drivers licenses and "green cards." When they do this, they commit multiple felonies including document fraud, Social Security fraud, forgery, perjury on an I-9 form and under state laws, identity fraud.

States with the highest percentage of illegal aliens in their population also tend to be among the states with the highest levels of both overall and employment related identity theft.⁷ Border states including California, New Mexico, Arizona and Texas are among the most impacted not only because they have large populations of illegal immigrants but also because many newly arrived illegal immigrants obtain their false documents in those states before moving inland.

E-Verify prevents document fraud and employment related identity theft

Given the high quality of fraudulent documents being used by illegal immigrants, dead beat parents, pedophiles and others, employers have no grounds to challenge them. That is why it is so important to have a mandatory employment verification system in use that protects children from becoming victims.

E-Verify can help dramatically reduce job-related, child identity theft because an employer using the system in good faith cannot legally enter a child's date of birth when the employee is obviously an adult.

E-Verify also stops 100% of all Social Security Number Only, job related identity theft which accounts for as much as 98% of all employment related identity theft. And with the addition of photos and other features, E-Verify makes it very difficult for individuals to use total stolen identities for employment purposes.

⁷ www.cis.org/identitytheft

Arizona's experience seems to indicate that the use of E-Verify plays at least some role in preventing employment related identity theft. Prior to the enactment of its E-Verify legislation, employment related identity theft made up an exceptionally large percentage of total identity theft in Arizona and it had been rapidly increasing year after year.

Following the enactment of Arizona's strong E-Verify requirement in 2007, employment related identity theft declined from over 39% of total identity theft in 2006 to 25% in 2011. This is a 36% decline and it is likely that many of the cases of employment related identity theft now being reported occurred before the implementation of mandatory E-Verify. In addition, new cases continue to occur because not all Arizona employers are complying with the law and because other states where people use the Social Security numbers of Arizona children do not mandate E-Verify.

It is important to note that the decline came during a time of economic retrenchment and that factors in addition to E-Verify likely played a role in the decrease of employment related identity theft. However, given the heavy reliance on Social Security number only identity theft for employment purposes, E-Verify almost certainly contributed significantly to the decrease.

Arizona – Employment Related Identity Fraud Trends		
Source: Federal Trade Commission		
Year	Employment related identity fraud as a % of total identity fraud	% Increase/Decrease from one year to the next
2002	20%	-
2003	25%	+25%
2004	31%	+24%
2005	34%	+10%
2006	39%	+15%
2007 (E-Verify with sanctions)	36%	(-9%)
2008	33%	(-8%)
2009	30%	(-9%)
2010	29%	(-3%)
2011 (E-Verify law upheld – May)	25%	(-14%)

As noted previously, the number of Utah children on public assistance who have their Social Security numbers used for employment purposes appears to be down as is the number of Utah employers paying wages to the Social Security numbers of children. This consistent with FTC reports that show an initial leveling off of employment related identity theft and then a sharp drop since Utah's E-Verify requirements took effect.

This initial trend suggests that even a weak employment verification requirement with no enforcement mechanism may help reduce the incidence of child identity theft for employment purposes.

The uptick in rates in 2010 may be the result of outreach activities by Utah's Attorney General and other law enforcement, community and business leaders to convince illegal immigrants that they had nothing to fear from weak E-Verify requirements and other illegal immigration provisions passed by the legislature.

Utah – Employment Related Identity Fraud Trends Source: Federal Trade Commission		
Year	Employment related identity fraud as a % of total identity fraud	% Increase/Decrease from one year to the next
2002	8%	-
2003	9%	+12%
2004	13%	+44%
2005	12%	(-8%)
2006	13%	+8%
2007	13%	0%
2008	16%	+23%
2009 E-Verify (public employers and contractors only - July)	16%	0%
2010 E-Verify (private employers 15 or more employees - July)	17%	+6%
2011	13%	(-23%)

Recommendations and Conclusion

Given the already existing high rates of Social Security number only, employment related child identity theft and the continuing hiring of people using children's Social Security numbers, a mandatory, nationwide E-Verify program with extremely strong employer sanctions should be implemented immediately in order to protect the futures of American children.

Employers should be required to use E-Verify to check the status of all current employees as well as new hires in order to identify individuals who are stealing our children's identities.

In addition, victims of employment related identity theft should be allowed to sue employers for damages if employers fail to carry out proper employment verifications.

In conclusion, it is imperative that the United States government do everything possible to protect children who are America's future from massive, employment related document fraud and child identity theft. The mandatory use of E-Verify can play a key role in defending our children's future.

Appendix A

Key Findings

Illegal, but Not Undocumented: Identity Theft, Document Fraud, and Illegal Employment

By Ronald W. Mortensen, Ph.D. (June 2009)

This *Backgrounder* examines illegal immigration-related document fraud and identity theft that is committed primarily for the purpose of employment. It debunks three common misconceptions: illegal aliens are "undocumented;" the transgressions committed by illegal aliens to obtain jobs are minor; and illegal-alien document fraud and identity theft are victimless crimes. It discusses how some community leaders rationalize these crimes, contributing to a deterioration of the respect for laws in our nation, and presents a variety of remedies, including more widespread electronic verification of work status (E-Verify and the Social Security Number Verification Service) and immigrant outreach programs to explain the ramifications and risks of document fraud and identity theft.

The findings include:

- Illegal immigrants are not "undocumented." They have fraudulent documents such as counterfeit Social Security cards, forged drivers licenses, fake "green cards," and phony birth certificates. Experts suggest that approximately 75 percent of working-age illegal aliens use fraudulent Social Security cards to obtain employment.
- Most (98 percent) Social Security number (SSN) thieves use their own names with stolen numbers. The federal E-Verify program, now [2009] mandated in only 14 states, can detect this fraud. Universal, mandatory use of E-Verify would curb this and stop virtually 100 percent of child identity theft.
- Illegal immigration and high levels of identity theft go hand-in-hand. States with the most illegal immigration also have high levels of job-related identity theft. In Arizona, 33 percent or all identity theft is job-related (as opposed to identity theft motivated simply by profit). In Texas it is 27 percent; in New Mexico, 23 percent; in Colorado, 22 percent; California, 20 percent; and in Nevada, 16 percent. Eight of the 10 states with the highest percentage of illegal aliens in their total population are among the top 10 states in identity theft (Arizona, California, Florida, Texas, Nevada, New York, Georgia, and Colorado).
- Children are prime targets. In Arizona, it is estimated that over one million children are victims of identity theft. In Utah, 1,626 companies were found to be paying wages to the SSNs of children on public assistance under the age of 13. These individuals suffer very real and very serious consequences in their lives.

- Illegal aliens commit felonies in order to get jobs. Illegal aliens who use fraudulent documents, perjure themselves on I-9 forms, and commit identity theft in order to get jobs are committing serious offenses and are not "law abiding."
- Illegally employed aliens send billions of dollars annually to their home countries, rather than spending it in the United States and helping stimulate the American economy. In October 2008 alone, \$2.4 billion was transferred to Mexico.
- Tolerance of corruption erodes the rule of law. Corruption is a serious problem in most illegal aliens' home countries. Allowing it to flourish here paves the way for additional criminal activity and increased corruption throughout society.
- Leaders support perpetrators and ignore victims. Political, civic, religious, business, education, and media leaders blame Americans for "forcing" illegal aliens to commit document fraud and identity theft. No similar concern is expressed for the American men, women, and children whose lives are destroyed in the process.
- The Social Security Administration and Internal Revenue Service facilitate illegal immigrant-driven identity theft. Both turn a blind eye to massive SSN fraud and take no action to stop it. The Social Security Administration assigns SSNs to new-born infants that are being used illegally. The IRS demands that victims pay taxes on wages earned by illegal aliens using their stolen SSNs, while taking no action to stop the identity theft.
- State and local governments need to adopt tougher laws to supplement federal efforts. The Bureau of Immigration and Customs Enforcement (ICE) is targeting large document fraud rings and the most egregious employers, but their resources are limited and stretched across multiple priorities. In 2007, identity theft cases represented only 7 percent of the total ICE case load.
- Employers must do their part. They can ensure that they have a legal workforce by using a combination of the federal government's E-Verify and Social Security Number Verification Service systems and by signing up for the federal government's IMAGE program or privately conducted audits.

The full study can be found at: www.cis.org/identitytheft

Appendix B**Illegal Aliens: Turning the Dreams of American Children into Nightmares****By Ronald W. Mortensen, January 12, 2010**

Note: This fictional account is an accurate depiction of the harm that illegal aliens are doing to millions of American children. Any resemblance in this account to any person living or dead is purely coincidental.

Years ago, Kinara Matuaki of Nairobi, Kenya traveled to Utah on a tourist visa to attend a major religious conference. Upon entering the U.S., an inspector of the Immigration and Naturalization Service (INS), placed a small card in Kinara's passport. On the card, the inspector recorded a specific date and informed Kinara that he had to leave the United States on or before that date. He also reminded Kinara that he was not authorized to work in the United States. Kinara told the inspector that he fully understood and that he was honor bound to leave as required.

However, after just a few days in Utah, Kinara decided that he was not going to return to Kenya where unemployment stood at 40 percent, per capita income was less than \$1,000 per year, and life expectancy was only 50 years.

Although he had a wife and a child still in Nairobi and a job that paid \$100 per month, Kinara knew that if stayed in the United States, he could make an even better life for himself and his family.

In order to get a job, he needed documents, so he purchased a Social Security card and a drivers license from a fraudulent documents dealer for \$50. Both documents carried his own name and he didn't know that the Social Security number that was on his card already belonged to a six-month-old American girl, Susie.

Using the fraudulently obtained Social Security card and driver's license, Kinara quickly found a job that paid \$140 per week. Later, using the same fraudulent documents, he took a second job driving taxi at night. In both cases, he entered the information from his false documents on an I-9 form under penalty of perjury.

Within a year, through hard work and lots of overtime, Kinara had enough money saved to bring his wife (Eddah) and teenage son (Oginga) to Utah. Being unable to get United States visas, Eddah and Oginga traveled to Canada. For a fee of \$3,000, a smuggling ring got them across the border and shortly thereafter they were reunited with Kinara.

Once in Utah, just like Kinara had done earlier, Eddah and Oginga quickly obtained false documents in their own names including Social Security numbers that belonged to two other American children – Aaron, age 10, the son of an American-born janitor, and Maria age 8, the child of a first-generation

legal immigrant from Peru. And just like Kinara, they were now committing major felonies under a combination of federal and Utah laws – document fraud, perjury on an I-9 form, and identity fraud.

The Matuaki family quickly integrated into the community and joined a church. They were, by all appearances, a model family. Those who knew that the Matuakis were illegally in the United States were not concerned because they had always been told that illegal immigrants were only trying to make a better life for themselves without hurting anyone else.

Eddah worked in one of the best hotels in the city as a housekeeper using Aaron's Social Security number, and Oginga used Maria's Social Security number to get part-time work at grocery stores and fast-food outlets.

When Oginga eventually graduated from high school, he attended a state university under Utah's in-state tuition program for illegal aliens. In order to pay for his tuition, he worked nights as a waiter in a private club still using the Social Security number that belonged to Maria.

He finally earned a degree in electrical engineering, but when he graduated he was unable to get a professional job using his fraudulent documents. He, therefore, continued to use Maria's Social Security number to get low-paying, unskilled jobs with employers who didn't verify his identity or authorization to work in the United States.

Over the years, the Matuaki family obtained credit cards, purchased cars on credit, and obtained bank loans. For a period of time Kinara was without work and he defaulted on several loans. During that time, neither he nor Eddah filed an income tax return, although Eddah continued to work. In addition, Eddah had taken out numerous credit cards in her name and she missed payments on at least a dozen occasions.

After purchasing a small condominium with a loan from a Utah bank that openly solicited the business of illegal aliens, Oginga was unable to make the payments and lost it in a foreclosure action.

Eventually, Susie, Maria, and Aaron -- the real owners of the Social Security numbers used by the Matuakis -- graduated from high school. All three went on to college. When they tried to obtain internet service in their own names, they were denied because their credit histories had been destroyed by the Matuaki family. For the first time, they became aware that their identities had been stolen.

When they tried to get student loans, they were not able to qualify because of their bad credit.

When they tried to get financial assistance, they were denied because the income earned under their Social Security numbers by Kinara, Eddah, and Oginga made it impossible for them to qualify.

When Aaron, the janitor's son, applied for an internship with the U.S. Department of State to help fulfill his dream of becoming a diplomat, he was not able to obtain a security clearance in a timely manner due to a poor credit history and because IRS records showed that he had an outstanding tax liability for the money earned by Eddah on his Social Security number.

The families of all three American children were thrown into a panic and lives were severely disrupted. The children had to spend hundreds of hours and thousands of dollars trying to recover their good names which had been destroyed by the Matuaki family.

Aaron's father took a second janitorial job in order to hire an attorney to help clean up the damage that Eddah had done to his son's credit history and to get the IRS to finally acknowledge that Aaron was not responsible for paying taxes on the money earned by Eddah. However, by the time everything was done, Aaron's dream of becoming a diplomat had evaporated.

Susie was able to use her father's political influence to get a U.S. Senator to intervene on her behalf with the credit bureaus and her credit history was eventually cleared so she was able to get her student loan and a new car.

As the daughter of a single mother, a first-generation legal immigrant from Peru, Maria simply didn't have the resources to clear her credit history. So rather than going to college, she took a low-paying job in a convenience store, got married at age 19, and was divorced, with a child, at age 21.

Available at: www.cis.org/mortensen/dreams

Appendix C

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Mr. GALLEGLY. Thank you, Dr. Mortensen.
 Ms. Andrushko. Am I pronouncing that correctly?
 Ms. ANDRUSHKO. Yes, Andrushko.
 Mr. GALLEGLY. Thank you.

TESTIMONY OF JENNIFER ANDRUSHKO, OGDEN, UT

Ms. ANDRUSHKO. Yes, thank you. Well, thanks for having me here. I am really honored to be here. As mentioned, I am the mother of a 5-year-old identity theft victim. His Social Security number has been used since before his birth by an illegal alien for employment purposes, and also I just found out 2 weeks ago that it has also been for financial purposes and also for medical care.

The only reason that my husband and I became aware of this theft was quite by accident. In November of 2009 my husband found himself unemployed in a falling economy, and I had gone into the Department of Workforce Services in Utah to apply for some food stamp assistance and for Medicaid, as we did not have any health insurance at the time because of his unemployment, and during our interview to determine our eligibility, we were informed that wages were being reported to my then 3-year-old Social Security number since 2007. I can't even describe to you in 5 minutes or in any time adequately how disturbing that was to me to learn that my 3-year-old son's identity was being used by someone else where we had done absolutely nothing that would compromise his identity.

Through my own research over the next 2 weeks, I was able to ascertain that the employment had started in 2001 when my son was born in 2006. The help that a family gets in the case of a Social Security number theft of a child is little to nonexistent currently. In 2½ years I have heard nothing, absolutely nothing from my local police department. It was through my own aggressive, assertive calling of my State and local Senators and Representatives which put me in contact with one of the chief deputies in the Utah Attorney General's office who then gave my information to a prosecutor, Rich Hamp, in that office, that we were able to actually do something.

Two-and-a-half years later the individual has been apprehended, booked into a county jail, is in a county jail in Utah in the Park City area, and she had an ICE hold on her, which was lifted, and then she was released on bail. She was also picked up a week later, the same thing happened, out on bail.

Because of the prevalence of child identity theft and the devastating effects that it can have on a family and a child, I have co-founded an organization, as mentioned, called Defending Our Children's Future, to raise awareness and to push for protection that will not leave our children being the ones holding the bag of this problem.

As I have gone out and spoken to groups and as I have met other victims, they all ask me the same question, how can we find out if our child is a victim of Social Security number theft? My answer, unfortunately, has to be you can't unless you are receiving government aid or in the case of our family you need to apply for government aid or, as in the case of a family in Davis County, Utah, the IRS comes after you and says you are making a false tax return, your child is earning income that you have not reported, so they can't possibly be your daughter, and so you cannot claim them on your tax return as a dependent.

Another question they ask, how can I prevent this? And I say you can't. Well, what can we do to encourage businesses or the gov-

ernment to verify that the people who they are hiring are not using my child's number for employment? And I mention some tools, one of them being E-Verify. E-Verify, with checking the date of birth, would not allow an adult to use a child's-issued Social Security number to work.

I am also asked the question how on earth was your son issued a number that had been in use since 2001 for employment, and I have asked Social Security Administration that same question, I have asked for an investigation. They absolutely refuse to investigate, and they say they claim they have no record of it.

The Vockler family in Utah is in the same situation that we are in. Their daughter in 2009, they applied to the same thing we did, and their 1-year-old daughter had wages reported for several years before her birth also, so this is a huge problem, and we need to close these loopholes that are not catching this identity theft. It is not fair for our children to fall prey to this crime regardless of good intentions. Thank you.

[The prepared statement of Ms. Andrushko follows:]

Prepared Statement of Jennifer Andrushko, Ogden, UT

The identity theft of a child is a devastating, nightmarish crime with terrible ramifications on the future of the child victim. Most identity thieves are illegal aliens who use fraudulent documents, such as SSNs, to obtain work, open bank accounts, apply for government aid, housing, credit and medical care. Currently, parents and children may never discover an identity theft until years later when the child has need of a license, employment, credit, bank accounts, scholarships or when the family needs to apply for government aid, or receives a notice from the IRS demanding that the child pays taxes on wages earned by another or are told they cannot claim their child as a dependent on their tax returns. For the victims of child identity theft, correction is very costly in money, resources, time and energy.

Illegal Alien driven identity theft is ignored, rationalized and supported and perpetrators are defended by some local, state and federal leaders, civic leaders, religious organizations, businesses, media, and law enforcement leaders. These people justify these crimes stating that the crime does not impose a burden, or the perpetrators are forced into this or are told that that is how it is done. The IRS and SSA seem to turn a blind eye as well.

How do I know these things? Because my family is living this nightmare. My story is a prime example of the lack of notification, the lack of action on the part of government entities and law enforcement, the blind eye that is turned, and how deep this crime against innocent children can go. Words cannot adequately express the hurt, anger, frustration and betrayal that we have felt in battling this.

In November 2009, my husband found himself unemployed in a falling economy. On Monday, November 16, 2009, I went to the Utah Department of Work Force Services (DWS) to apply for food stamps and Medicaid to help our family get by until my husband was able to gain new employment a month later. During our eligibility interview over the phone, the eligibility specialist informed me that wages were being reported to my then 3 year old son's SSN since 2007. I inquired as to where the wages were being reported and to whom, and was told that due to the privacy act I was not allowed to have that information, although they had it. I was told that a notice would be sent with instructions and not to contact them again concerning the matter. During the interview, our eligibility and application was declined as our income, which consisted of my husband's unemployment and my income exceeded the limit of our family size by a few hundred dollars. Later, it was brought to my attention that we could have been denied aid because my son was "earning too much money."

I was shocked, sick and lost. I had no idea how this could be happening to my 3 year old. We had not ever been in a situation where his identity could have been stolen. I felt very upset that the criminal was being protected rather than my son. How frustrating and disturbing to me this was. I had no idea that it would get even worse.

The next day, I went to the local SSA office and waited to speak to a representative who informed me there was no activity on the SSN. I returned again the next day to request a work history and was told not to waste my time and money, because there was none. I asked for a statement stating that and was denied one. I was also told that my son did not qualify for a new SSN. The reasoning was that there had to be 2 years of continual abuse that caused so much financial damage that the victim

would never be able to recover from. Upon more inquiries the person was able to access the wage reporting database from DWS and told me the wages were being reported from TJX, a division of TJ Maxx.

I went to the local police department to file a report. My statement was taken and I was advised to contact all 3 credit reporting agencies.

Over the next 2 weeks, I experienced increasing levels of frustration. This only increased my determination. I received nothing but the run around, passing of the buck and refusal to investigate the situation. I contacted SSA several more times and requested an investigation as to why my son was issued a SSN that was already in use. I spoke with several people about this and even asked to speak to some sort of supervisor. Each person I spoke with either said that they could not help me or that there would be no investigation. I know for a fact that we are not the only victim that has received this same response from the SSA. The IRS has also reported that no taxes have been paid on the SSN.

I contacted an ID Theft Resource Line at 1-888-400-5530 and was provided the email address for TransUnion. I sent an email inquiring of possible credit fraud and received a response that no report existed. I sent requests to all 3 credit reporting agencies and all responded stating there were no files found, which was a relief, or so I thought until 2 ½ years later. I also requested a freeze on my son's credit and was told that this was not possible until after fraudulent credit was established. I reported the theft with the FTC and on IRIS (reporting system with the Utah Attorney General's Office).

I also contacted the Utah Driver's License division and it was reported that no license or state ID had been issued to my son's SSN. I contacted the Utah State Tax Commission local office. The individual I spoke with was also able to access the wage information and informed me that the record included a name and address other than my son's and that the wages dated back to 2001, my son being born in 2006. The tax commission employee stated that she would give the information to their fraud investigator, which I heard nothing from until 2 ½ year later. I took this new information to the police department but the office person seemed to take the position that since this incident occurred before my son's birth, it was not fraud and it was not theft which showed that he didn't understand Utah's identity fraud law. As of today I have heard nothing from the police department or their investigator.

I telephoned and left messages with and spoke with Bill Gephardt, a local investigative news man, who did not help at all. I also contacted Senators Orrin Hatch and Bob Bennett and heard nothing back from either, ever. I also contacted my local Representative Gage Froerer and Senator Scott Jenkins. As requested by Representative Froerer, I sent him an email about the situation because he said he would talk with US Representative Rob Bishop. I never heard from either of them. I did eventually get a contact name and number from Utah State Senator Scott Jenkins for Kirk Torgenson, head deputy of the Utah Attorney General's Office and told me to mention his name when calling. Sen. Jenkins also told me to keep him posted and to tell him if I did not get any help. I left a message with Kirk who returned my call a few days later. He gave my information to Richard Hamp with the Utah Attorney General's Office who called me within 45 minutes of my conversation with Kirk. Since then, the investigation was

completed, charges were filed and a warrant was issued. When attempting to apprehend the suspect, it was found that she had moved. It was not until March of 2012 that she was booked into jail.

I telephoned the jail, Summit County jail in Utah, on March 20, 2012. Deputy Pace told me that Lidia Aguirre had been booked into jail on 2 counts of forgery, and 3 counts of identity fraud (3rd degree felonies) on 3/14/2012 at 12:05 PM with an ICE hold. She had the ICE hold cleared and made \$5,000 bail at 7:02 PM that same day. I was so upset by this. How could she get out on bail? It took them 2 ½ years to find her the first time. What are the chances that she will stay and appear in court? That she will be found again? Slim to none. I was so upset that I called a reporter and informed him. Our first court date was Monday, March 26 in Park City and the Summit County court house. Lidia Aguirre was there with her husband. They requested a tax payer funded interpreter as well as a public defender claiming that they are both unemployed and do not have the financial resources to get their own. It was pointed out to the judge that they were able to post bail and then might subsequently be found to have the funds to reimburse the publicly funded services. Aguirre has been employed on my son's SSN at TJMaxx in Park City, Utah and at Zurmatt Resort in Midway, Utah.

Following the hearing, I googled Ms. Aguirre's name and found another booking for ICE on March 21, 2012 by the Salt Lake City Sherriff's Office. Obviously, she was released again as she was not in custody for the hearing.

In December of 2011, Rich Hamp had telephoned me to inform me of a new partnership between his office and TransUnion credit reporting agency where a child could be proactively protected from credit fraud. This is the first of this kind of partnership in the nation. He asked if we would like to be a part of a press conference announcing this ground breaking program. I gladly accepted and participated in the press conference on Tuesday, January 31, 2012. The program is called Child Identity Protection, or CIP. I immediately enrolled my son in it. This program puts the child's SSN in a high alert database which flags merchants or credit issuers of a possible compromise and also provides notification to the parents of any suspicious activity. Fortunately and unfortunately, the program works.

On March 29, 2012, I received an email from a fraud specialist with TransUnion stating that corresponding files were found and to contact them about the alert. I did so and was told that there were 9 files, the first dating back to 1999. How is this possible? I asked in 2009 and was told by all 3 agencies there was nothing. 7 of the files were medical bills that had now gone to collections. This perpetrator has been receiving medical care on my 3 year old son's SSN. I cannot tell express how ridiculous it is that my son's SSN has been used for care at an OB/GYN's office or how frightening it is to know that my son's medical history has been blatantly corrupted which could have serious, life threatening impact on my son's life and medical care. How grateful I am for the CIP program between the state of Utah and TransUnion, otherwise this would not have been brought to my attention before a serious situation occurred.

How grateful I am that my husband found himself unemployed so that we could find out about this theft. Currently, notification is not provided unless you are receiving or applying for government aid/benefits or the IRS comes calling.

At the press conference announcing CIP, my husband spoke with Dr. Ronald Mortensen, Ph.D about child identity theft. Dr. Mortensen provided my husband with a publication of a study he had completed for the Center for Immigration Studies, titled "Illegal But Not Undocumented." Following the press conference, I read the study. I was appalled at the findings. I tracked down Dr. Mortensen and the result of our conversation was the organizing of Defending Our Children's Future, an organization which offers victim support, raises awareness and pushes for legislation that would provide notification of, prevention of, and prosecution of this rampant, growing crime of child identity theft, of which I am a co-founder. Government aid can be denied, scholarships lost, arrests made, life threatening situations encountered to the child victim all because someone has stolen the SSN of a child.

As I have spoken in front of many groups, I have been asked repeatedly by concerned parents and grandparents, "How can we find out if this is happening to our child/grandchild?" "How can we protect them from employment fraud, credit fraud, medical fraud?" My answer, sadly, has to be that unless you are receiving or applying for government aid, or the IRS comes calling or things are denied you, there is no way of finding out. I also sadly have to tell them that there is no way to prevent the employment or medical aspect of it. I refer them to CIP for the credit aspect of it. They are all very disturbed and disgusted by how things really are.

I would now like to share some other stories of child identity theft in Utah.

From the Roush Family:

They had gone to apply for medical coverage and were informed that wages (\$70,000) were being reported and that fraudulent credit was established. They were almost denied aid because of it. Their 11 year old daughter's SSN is being used by multiple people. The victim is also a co-founder of Defending Our Children's Future.

From Shawn Vockler:

In the year of 2009 I was laid off from my employer and at that time I got my family enrolled in state assistance programs. I was informed that my daughter's (Brookelyn being 1 at the time) social security number was being used to receive wages for multiple years prior to her even being born. I called the social security office and got no help from them. I then called the city's police department that I lived in at the time, I had a detective come to my house and got all of our information including my daughters ss#. With his investigation he found out who and where this person was. At that time he informed me that he would pass on the information to the current city this person lived in. After that last conversation with that detective I have heard nothing. Don't know if the person was found for what happened. To this day I don't know if her ss# is being used to receive wages.

From the Whaley family:

The family was receiving Medicaid. Upon time for renewal, their 9 year old son was denied as the family had not reported his wages. After contacting law enforcement and the Attorney General's office a few months ago, nothing has been heard.

From the Weed family:

Their 13 year old daughter's SSN is being used by 10 illegal aliens in Utah for employment purposes and for medical care. They are likewise receiving little to no help.

From the Ward/Eastman family:

Their daughter/granddaughter has wages being reported to her SSN and they were notified while receiving aid. They were told by the police department that it was the family's responsibility to investigate and clear it up, not the PD's and there was nothing they could do.

From a family in Davis County:

The IRS contacted them and informed them of a "false" tax return. Their 13 year old daughter's SSN, listed on their returns as a dependent, had wages on it. Therefore, she could not possibly be their daughter and they could not claim her on their return.

From a mother I met at an event:

My story was very disturbing to her. She had either applied for aid or was receiving aid and was informed that her young child had wages reported to their SSN. She contacted the SSA, like the rest of us, and, like the rest of us, was told that there was no record. Thus, she thought it was a mistake and dropped it. Now, she regrets doing so and will be revisiting it, not knowing what to do.

Where is the protection of our children? Where is the notification? Where is the cooperation? Where is the prevention? Where is the prosecution? Where is the restitution? Why do we, the victim's families have to jump through all these hoops and clear things up? Why with today's technology is this happening?

There are tools available to help including the E-Verify and Social Security Number Verification Systems. According to the staff of Senator Orrin Hatch, the IRS notifies businesses of name/SSN mismatches and asks businesses to either fix the error or terminate an employee who is committing SSN theft. This is not being done. The IRS is not following through. How can SSA continue to say to us "there is no record of this?"

All of the victim's families have experienced the same frustration, devastating nightmare that is child identity theft. Those who do not know if they are affected or not want to know if they have been and they want protection. We, known victims or not, are mortified that this is happening to our children and that there is nothing being done to stop it. We want protection, notification, prosecution, prevention and accountability of this rampant crime against our children. We also want the ability to sue employers who don't verify the information of those who they are hiring and who sacrifice our children for profits. Our children are innocent and there is nothing we could do to stop this, and we are hitting brick walls. We are speaking out. Please, help us.

Mr. GALLEGLY. Thank you, Ms. Andrushko.
Mr. Lemkes.

**TESTIMONY OF BERT LEMKES, CO-OWNER,
VAN WINGERDEN INTERNATIONAL, INC.**

Mr. LEMKES. Chairman Gallegly, Ranking Member Lofgren, Members and guests, my name is Bert Lemkes. I am honored to be here. I am co-owner of Van Wingerden International. We own

and operate 37 acres of greenhouses in Mills River, North Carolina, and we employ over 350 people in the peak season.

The subject of this hearing is E-Verify and identity fraud. We voluntarily switched to E-Verify about 2 years ago after we were exposed to a rumor that our business employed too many people that speak little English. We have found that E-Verify confirms the real problem with our current outdated and failed immigration laws. When asked how does E-Verify work for you, my answer is those that are willing to do the work fail the system, but many of those that pass the system fail to do the work.

The jobs of our American employees, which includes growers, supervisors, merchandisers, managers, are at stake when we cannot find the production labor that we need. Around 70 percent of the labor force in agriculture is estimated to be unauthorized. These are honest, hard working, and loyal folks who have come here only seeking work and better pay. This is not about low wages. Our starting pay is way above the minimum wage, includes benefits with all the payroll withholdings going to the government. This is also not about taking jobs from American workers. Even in the economic downturn, with high unemployment, it is very tough to find those willing to thrive at these jobs.

I, too, am an immigrant. I came to the U.S. for opportunity because of my work. I know how long and costly the process is to legally get a visa and eventually become a U.S. citizen. Our current labor force in agriculture has no way to follow this route. Practically speaking, there is no line for them to get in to get a resident visa, and the temporary program known as H-2A is a failed bureaucracy on a good day. The majority of our labor force came for one reason only, work, not to emigrate permanently, not to use our Social Security or welfare systems, not to cause problems. Just to work.

If agriculture cannot find the labor to do the often back-breaking, repetitive, and sweaty work, many American jobs in the production chain will be lost. Economic activity will leave this country. Agriculture needs a legal workforce with a visa system that is market driven, flexible to deal with crop cycles and weather, and portable to allow the workforce to choose and move among farm employers. This will sustain a normal competitive labor market, rewarding employers that take care of their workers.

Government's role should be smart and limited because too much bureaucracy kills all good intentions. For too long the political solutions on immigration have failed us and led to unintended and even irreversible consequences. Employers and employees are being held hostage by the failure of our government to address immigration reform. The danger now is that stand-alone E-Verify will shift the risk from identity fraud to more identity theft. A recent independent report I reviewed found that E-Verify clears borrowed or stolen documents with good numbers over 50 percent of the time.

We urge you, America's leaders, to pass an agriculture worker visa program before strong anti-immigrant emotions and enforcement-only laws take control with dramatic and devastating results for our agriculture sector and everyone that depends on it. We will export jobs and we will import more food.

In closing, I would like to make these most important points: First, the agriculture industry is willing to embrace and improve the E-Verify system but only if it is combined with a modern and viable agriculture worker program that ensures a legal labor force now and in the future. To put this in an agriculture picture, they are the cart and the horse. The cart can't move without the horse, and they need to be in the right sequence.

We need a solution that ensures timely access to legal workers. It must also facilitate the work authorization of current and experienced workers who may lack proper immigration status. These workers are most of the experienced talent pool in America's farms, and it is unthinkable that they could somehow be replaced.

Finally, we need to protect our country and its borders, and that includes sustaining our food and agriculture production inside those borders. Thank you.

[The prepared statement of Mr. Lemkes follows:]

**Statement of Bert Lemkes
Before the
United States House of Representatives
Judiciary Subcommittee on Immigration Policy and Enforcement
Wednesday, April 18th, 2012**

Chairman Gallegly, Ranking Member Lofgren, Committee members and guests, my name is Bert Lemkes. I am co-owner of Van Wingerden International. Our company owns and operates 37 acres of commercial greenhouses in Mills River, NC. We employ about 350 people in the peak season. We are part of the specialty crop agricultural industry, which also includes fruit, vegetable, nursery, and Christmas tree farms. These sectors are high-value crops, representing roughly half of the total value of all crop production in America. They are a major part of the economy in our local area, and in many places from coast to coast.

Operations like ours cannot exist without workers who have the skilled hands and the stamina needed to plant, space, pinch, harvest and ship the plants. The critical work performed by year-round and seasonal laborers supports the jobs of our American employees which include growers, supervisors, merchandisers and managers. These good American jobs are at risk if we cannot keep or find skilled and talented production workers. This is the same all through our Agriculture. Simply replacing and retraining experienced labor which has done a dedicated job for many years is impossible. If Agriculture is forced to do this, it will be a disaster in proportions enough to fulfill one of the Hollywood "end time" movie scenarios.

The subjects of this hearing are identity theft and E-Verify. To do the right things now, and avoid the things that lead to unintended consequences, you must consider how we got where we are.

In 1986, Congress passed the Immigration Reform and Control Act. History has shown that there were two big flaws to this bill. One, it failed to anticipate future labor needs in our economy, and to put into place a legal system to accommodate those needs. Secondly, the law for the first time put the responsibility on employers to determine whether new hires were legally authorized to work. It established the I-9 form and process to accomplish this goal.

From that point on, employers had to walk a very fine line. On one hand, they could not employ workers who could not provide acceptable documents to establish their identity and work authorization. On the other hand, they had to avoid discriminatory practices when hiring.

Hindsight is 20/20, and we now know that the paper-based I-9 process led to the widespread use of false documents that appeared genuine. I'm not an expert on the specifics, but I believe that these false documents may have included fake Social Security or other numbers, but they did not usually or necessarily involve stolen identities.

Now the debate is about E-Verify, and whether it will help prevent identity theft, or lead to more of it. I expect the answer will rest in how you proceed. I have a few things to say about how it works, then a few thoughts on implications for the future.

My company is using E-Verify. We chose to about two years ago after we and several other local employers were the subject of rumors that our business employed too many people that do not look or sound like locals. The implication, of course, is that they must be *illegal aliens*. We have learned through experience that E-Verify poses many challenges for seasonal agricultural employers. We must hire large numbers of workers in short timeframes. There is often high employee turnover. Few farms have dedicated personnel offices staffed with human resources professionals. Many don't have high-speed internet. So the program is not well-suited for many farm employers.

We have also found that E-Verify confirms the real problem with our current outdated and failed immigration laws. This spring, amidst signs that the economy is slowly rebounding, found us experiencing terrible problems finding help for our busiest shipping season. When I get the question "how does E-Verify work for you" my answer is: "Those that are willing to do the work often fail the system, but many of those that pass the system, fail to do the work."

Just over the past four weeks, of the 40 seasonal positions we needed to fill, we were only able to get 21 new hires to pass e-Verify. Of these 21 new hires, only eight have made it past the two-week mark! We had to use temporary labor agencies to fill the remaining positions and meet short term labor needs. The temp agency that used E-Verify had a 55% "fail rate" of

workers quitting the job within the first week. In other words, workers who express interest in our jobs and pass E-Verify do not perform them for more than a few days before quitting.

My question to you is this: how can we sustain high-value agriculture in this great country in the aftermath of mandatory E-Verify, if it actually works? We know from government statistics and other evidence that more than half, and probably more like three out of four of the farm workers in this country have papers that look legitimate but that are not when checked against government records. If E-Verify works, what happens next? As I see it, there are three possibilities:

Workers get better fake IDs. It's no secret that a fake Social Security card using a real name and number can clear E-Verify. I read that a recent independent study by the Westat Corp., commissioned for the Homeland Security department, found that *fake documents with real names and numbers were cleared by E-Verify as much as 54% of the time!*¹ Think of the new incentive for massive criminal identity theft and new-generation fake documents if this problem persists! I suppose some will say you have ideas to fix this. My advice to you: test those ideas in a real-world pilot program before taking a chance across the whole economy!

Legitimate businesses fail, while the underground economy swells. Without production labor, our farm business would shrink or close. For others, if it comes down to the question of whether your farm or business survives or not, desperate employers might take workers off the books. *This will mean lost federal and state tax revenue, and less money for the Social Security and Medicare systems.* Our laws should not force employers to decide between compliance with the law and survival. Congress should enact laws that make both possible.

America exports her high-value agriculture, and the U.S. jobs it sustains. Maybe you think that this is just an idle threat. Ladies and gentlemen, it is happening as we speak. In my own industry, the production of unrooted cuttings, which are the start of our wide assortment of plants, is now mostly done in Central America and even Africa, where labor is more available. Maybe you don't mind the cuttings for your Christmas poinsettias coming from Guatemala or your geraniums starting their life in Ethiopia, but please stop to think of the jobs and economic

¹ See Westat report at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.

activity we will export out of the U.S. if we export more of our other high value agriculture. Will we really be more secure as a nation as we import more and more of our food?

For too long, our “political” solutions on immigration have failed us, and led to unintended and maybe even irreversible consequences. The stigma associated with undocumented workers in agriculture isn’t justified when the farm workforce is paying taxes and withholdings, and doing the jobs that fail to attract many Americans or that Americans will not do for more than a few days. Employers and employees are being held hostage by the failure of our government to address immigration reform. Unintended consequences of just ratcheting down the enforcement will transition us from lots of identity fraud to more identity theft. We will export jobs, we will import more food.

Agriculture needs a legal workforce with a visa system that is market driven, flexible to deal with crop cycles and weather, and portable to allow the workforce to move among registered agricultural employers. This will sustain a normal competitive labor market, rewarding employers that take care of their workers. While government has role in such a program, it should be limited because too much bureaucracy kills all good intentions. Make the program relate to the market, seasons and crops.

In closing I would like to make these most important points:

First, the Agriculture industry is willing to embrace an improved E-Verify system, but only if it is combined with a viable agricultural worker program that ensures a legal labor force now, and in the future. They are a cart and a horse. The cart can’t move without the horse, and they need to be in the right sequence.

A fix that works will ensure timely access to legal workers. It will also facilitate the work authorization of current and experienced workers who may not have proper immigration status. These workers are most of the experienced talent pool on America’s farms, and it is unthinkable that they can somehow be replaced.

Finally, we need to protect our country and its borders, and that includes sustaining our food and agriculture production inside those borders. Thank you.

Mr. GALLEGLY. Thank you, Mr. Lemkes. Mr. Lemkes, you just stated a study done by Westat; is that correct?

Mr. LEMKES. That is correct.

Mr. GALLEGLY. One of the things that you didn’t refer to and perhaps you are not aware that the Westat report states that this was

an estimate and that Westat did not identify one single instance in which an illegal immigrant was not detected by E-Verify. Are you aware of that?

Mr. LEMKES. I know that they are estimates. A lot of studies are based on—

Mr. GALLEGLY. Yeah, but are you aware that they didn't have one example? Does that not bring into question maybe the validity and the accuracy of—I mean, we can all estimate. I estimate that 95 percent of the people working in agriculture is, are illegal. Now maybe that is not totally accurate, but in some areas I know it to be. So would you yield that an estimate is not always the best way to give a valid number?

Mr. LEMKES. Can I react to that one?

Mr. GALLEGLY. Sure.

Mr. LEMKES. We experienced about a year ago whereby we got a call from the Charlotte ICE or DHS office if we employed a certain person. We checked. We didn't answer right away, we checked and, yes, that person was employed by us, was a new employee, so we ran him through the E-Verify system. We called back, and the officer on the other side said well, we just arrested him, he is an illegal immigrant. He passed our E-Verify system.

Mr. GALLEGLY. Well, but he was caught in the system.

Mr. LEMKES. He was caught afterwards, not employed for us anymore, sir.

Mr. GALLEGLY. And are you still currently using E-Verify?

Mr. LEMKES. Yes, sir.

Mr. GALLEGLY. I would like to thank you for that. Would you say that the issue is—you have approximately 350 employees?

Mr. LEMKES. Yes, sir.

Mr. GALLEGLY. And for the record, it is clear that we don't know exactly the number, but it is 14, 15 million, 16, people unemployed in the United States today, obviously not all capable of working in agriculture, but would you say it is virtually impossible to find 350 out of 14 million that could do the job? Or would be willing to do the job?

Mr. LEMKES. Our experience over the past couple weeks, as an example, when we have peak shipping for a holiday like Easter, it is very difficult to find people that are willing and able to thrive in these jobs. Everybody can do the work, but—

Mr. GALLEGLY. But they are not willing to, no matter how hungry they get, maybe because of extensions of unemployment benefits?

Mr. LEMKES. By noon they look at the clock, and that afternoon they leave, and they don't come back.

Mr. GALLEGLY. Well, let me—in closing, Mr. Lemkes, could you tell me, do you believe in the E-Verify bill that we have before Congress today, did a clear exemption for agriculture, that would solve all the problems of agriculture as it relates to employees?

Mr. LEMKES. No, I think we need an agriculture work visa. Agriculture does not—

Mr. GALLEGLY. Well, let's talk about that for a second. If E-Verify was exempted for agriculture and E-Verify went on all the other trades, if someone was illegally in the country, they couldn't go to work hanging drywall or working in a hotel or any number

of other things, they couldn't leave agriculture. That wouldn't be a benefit to you?

Mr. LEMKES. No, because agriculture does not want to do anything that is illegal. We would like to get this resolved. We would like to take the fear out of the business side as well as the employee side.

Mr. GALLEGLY. Okay. I thank you for using E-Verify.

Ms. Andrushko, your child, I hear these stories. If it is any consolation, you are not the only person in the country, unfortunately, that is facing these.

Ms. ANDRUSHKO. I know.

Mr. GALLEGLY. And I am sure with your group and good work, that is an indication of that. The woman that stole your son's theft—stole his identification, she was apprehended.

Ms. ANDRUSHKO. Yes.

Mr. GALLEGLY. And she was booked?

Ms. ANDRUSHKO. Yes, twice.

Mr. GALLEGLY. And you say she was released?

Ms. ANDRUSHKO. She was booked and released on bail twice in 1 week.

Mr. GALLEGLY. On two—

Ms. ANDRUSHKO. She has five counts, she has five counts of felonies, she has two counts of forgery, three counts of identity theft just for the employment aspect of it.

Mr. GALLEGLY. And how long has she been out and not in custody?

Ms. ANDRUSHKO. Her first arrest was on Wednesday, March 14th of 2012, and her second arrest with a different facility for ICE purposes, which she was also released from—

Mr. GALLEGLY. So she is not even—

Ms. ANDRUSHKO [continuing]. Was a week later. So she is not in custody.

Mr. GALLEGLY. They don't even have an immigration hold on her?

Ms. ANDRUSHKO. No, I don't believe so. But I am not sure.

Mr. GALLEGLY. I see that my time has expired, and with that I will yield to the gentlelady from California, the Ranking Member.

Ms. LOFGREN. Thank you, Mr. Chairman. I read the testimony with some interest, and I just want to note that we contacted the Federal Trade Commission after we took a look at Mr. Mortensen's testimony. And here is what the FTC told us, that the data in his report comes from self-reported consumer complaints, not actual data pertaining to criminal conduct. They told us there was no study, there had been no survey, and the FTC made it clear to us that this data is not scientific and that from this data one cannot determine whether identity fraud has gone up, down or sideways.

In any event, the data upon which Mr. Mortensen's testimony relies shows that employment-related identity fraud complaints from Arizona have been declining, but I think it is worth noting that that same decline in terms of the self-reporting data is present in States that do not have mandatory E-Verify, including California, Colorado, Florida, Illinois, Maryland, and on and on.

I also think it is important to note the difference between document fraud and identity fraud. Before the hearing I asked my staff

to speak with the Social Security Administration so that we could better understand the issue, and what they, the Social Security Administration, told us is that there is a clear difference between the two. When an undocumented immigrant uses a fake Social Security number to get through the I-9 process, it may or may not be that the number belongs to another worker. But even if the number does belong to someone else, SSA says it segregates any earnings made by someone whose name does not match the name officially associated with that number, and those earnings and any tax liabilities that may arise are not attributed to the rightful owner of the number. Those earnings are placed in a suspense file, and it is worth noting that almost a trillion dollars in earnings have been placed in that suspense file since 1938.

Now, the situation is much worse if the unauthorized worker engages in identity theft to evade E-Verify by using a matching name and Social Security number. Then you have the kind of problems that Ms. Andrushko identified, and which is a terrible problem. I am going to take your testimony, which is very meaningful, and talk to Members of the Ways and Means Committee about what can be done further with victims because you shouldn't be left on your own as you described.

Ms. ANDRUSHKO. Thank you.

Ms. LOFGREN. I would like to talk, Mr. Lemkes, I would like to ask you a couple questions because this is, I think, the sixth hearing we have had in Congress about E-Verify. And we have heard over and over again from the agricultural sector that if we do mandatory E-Verify without reform to the immigration laws, it is going to destroy agriculture and the industries that rely on ag.

You have indicated that the H-2A program is a mess, and we have heard that from others. Do you think it is possible or impossible to replace the current undocumented workforce with millions of new temporary workers? And do you believe that, assuming you could get those millions of people actually interviewed in consulates abroad in a timely fashion, that they would have the skill set that is present among the current ag workforce?

Mr. LEMKES. The skills that our labor force has it gained over years, and it will take an equal amount of time to retrain another workforce. It is not a highly educated requirement, but it is skill sets that just do not simply transplant from one person to another person.

Ms. LOFGREN. We had a Republican witness, Paul Wenger, from the California Farm Bureau, who testified at a prior hearing, saying that mandatory E-Verify without reform of the immigration system would be a disaster. He pointed out in addition to the skill set that is necessary that there is something that is very interesting which is an improving economy in Mexico but a drastically declining birthrate in Mexico. His view is that you would never really be able to recruit another 1.2 million farm workers in Mexico to replace the people who have been here in some cases for decades. Do you have a viewpoint on that?

Mr. LEMKES. I don't. I hope that we will be able to continue our agriculture in this country and that we will be able to secure the labor that we have right now as well as the future.

Ms. LOFGREN. My time has expired, but your agricultural sector is very dependent, if I am hearing you correctly, on manual labor. You can't mechanize what you are doing; is that correct?

Mr. LEMKES. We mechanize a lot. We have automatic transplanters, we have spacing machines, but there is still a lot of hand labor, and to illustrate what could happen with the food side, already a lot of our supply cuttings come from Guatemala, El Salvador, Ethiopia, Kenya. So very labor intensive stock production has already moved offshore.

Ms. LOFGREN. Thank you, Mr. Chairman. My time has expired.

Mr. GALLEGLY. Thank the gentlelady. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I would first turn to Ms. Andrushko and ask if Lidia Aguirre, if her, when she applied for a job on your son's Social Security number, if that employer had used E-Verify, what would have happened?

Ms. ANDRUSHKO. If they had used E-Verify, it is my understanding that they would have received a notice that the number had not been issued yet.

In which case there wouldn't have been a confirmation that the applicant was eligible to work in the United States?

Ms. ANDRUSHKO. Correct. Yes.

Mr. KING. In which case you might have found out about this sooner perhaps?

Ms. ANDRUSHKO. Yes.

Mr. KING. Thank you. And I appreciate all your testimony. I just listen to some of the remarks here, and I start to think about what would happen if everybody woke up tomorrow morning in a legal residence; if they went to bed tonight in the country that they were legal to live in, what would happen.

Well, one thing that would happen, according to the Drug Enforcement Agency, it would receiver at least one link in every distribution chain of illegal drugs in America. It would dramatically change the crime scene in the United States. It would put Mr. Lemkes perhaps at a disadvantage, but he is using E-Verify, so I am going to suggest that it wouldn't be particularly dramatic in your company, but it might be dramatic in a number of other companies.

I don't believe that the land in America would grow up to weeds. I think at some point we would turn it into the kind of operations that could operate without illegal labor.

And I recall listening to testimony in the last Farm Bill we did in 2007 down in Stockton, California. We had a witness that came in and said they had 900-some employees, they worked really close to the border, I believe it was New Mexico, and they raised onions and peppers and high intensity labor crops like that. And I, asked why did you build that farm there? It was desert and you set up irrigation systems. Well, it is because we get labor to come right across the border. Well, they had a business that was predicated on illegal labor.

Ms. LOFGREN. Will the gentleman yield?

Mr. KING. No, if I have enough time, I will yield. No, I wouldn't yield then.

But if you establish a business on illegal labor and then come to the Congress and say make those people legal because it is an inconvenience to me with my operation, they won't be raising the peppers and the rutabagas and the tomatoes we would be raising otherwise, I think we need to look back at this.

Because the Federal Government hasn't aggressively enforced their immigration law, we have allowed numbers of 10, 11, 12, 20 or more million people to come here and stay here, and we turn a blind eye and we have an opportunity to enforce like they did with the theft of the Social Security number that you talked about, Ms. Andrushko.

I mean, I envision a country that enforces the law whenever we encounter people that are breaking it. If we do that, people have an expectation then that the law will be enforced. When that happens, we will have reinforced the respect for the law and the rule of law. And, by the way, that is one of the reasons that many people come to the United States in the first place is because we have the rule of law. They don't have to pay mordida. When you get pulled over for speeding or running a stop sign or whatever it is, you don't have to get your cash out in order to move on. And when someone goes before a court, they are treated the same whether they are—whatever their status and social status is in life. And I think it is an important of this is the rule of law.

But as I listened to Mr. Smith in his opening remarks, and he talked about the paper version of I-9. I remember that. I have been an employer for years. And I lived in fear that the Federal INS agents would come in and see if I had my records completely under control. They are still someplace in my archives, they are under control.

But to move this to a modern version in 2012 where we can use an electronic base is a wise and prudent thing to do, and I would add to that and ask the question then of Mr. Mortensen, but isn't the next generation of E-Verify, and you know that I want the IRS to be involved in this as well and provide that kind of incentive, but isn't the next generation of E-Verify to take the problems that we have of identity theft and the value of those Social Security numbers that you testified about, and to take some of that away by either using it tied to a bio-identification or a picture ID, Mr. Mortensen?

Mr. MORTENSEN. Yes, it is important to get beyond simply the fact of the paper documents and not really knowing the person who presents those documents, because as has been noted, if somebody, if I take—well, you are a little young maybe, but if I take your name and birth date and Social Security number, I can probably get through E-Verify, unless the employer questions why the age discrepancy maybe. But if we go to a biometric or with a photo ID system or some way they could pull up your photo and compare it to my photo, then E-Verify would throw that out.

Mr. KING. I appreciate this response. And I would remark that in this room earlier this morning we had the video demonstration of how an individual walked in and was offered the ballot of our Attorney General, Eric Holder, without a picture ID as well. So I tie these two things together.

I thank the Chairman and yield back will balance of my time.

Mr. GALLEGLY. Thank the gentleman. With that, I just have one clarification for the record. I was a little confused about one thing you said. You referenced a hearing in Stockton, California, and the reference to one of the witnesses you believed to be from New Mexico or somewhere. I assume you meant that that person testifying wasn't from Stockton, California, but rather from another State, not close to Stockton, California.

Mr. KING. For clarity, Mr. Chairman, I would emphasize that this individual was not a Californian and it may have been the only time she ever went to California, for all I know.

Mr. GALLEGLY. I just wanted to keep the record straight, Mr. King.

With that, I yield to the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I want to thank the Chairman and Ranking Member and just for the record indicate we are in markup on Homeland Security on cybersecurity legislation, and so I thank the Chairman for the indulgence. This is an important Committee, and I thank the witnesses very much.

Let me just say to Ms. Andrushko, I hope I have a close pronunciation, I have been briefed on your testimony.

Ms. ANDRUSHKO. You did.

Ms. JACKSON LEE. And just say that I am appalled and want to make sure I read your testimony very thoroughly, and separate and apart from where we are today in this hearing, I want to make sure that in fact the cybersecurity markup dealing with technology had a lot to do with how we are invading people's privacy. But let me give you my commitment of concern and that we should be working on this whole question of identity theft. Thank you very much for your presence here today.

Ms. ANDRUSHKO. Thank you.

Ms. JACKSON LEE. I wanted to just for the record state what I have said for the record on many occasions, and that is when, O Lord, when are we going to have comprehensive immigration reform so that all of the persons who are raising these very vital concerns can be protected. Once we have the establishment of the four parameters of who is here, who is not here, parameters of entry, whether or not there is going to be temporary documentation to work in certain industries, whether we answer the American public's question of I need a job, why are you letting others get a job. And we have an answer for that, a perfect answer.

I might say that we have jobs that are being created. One of my constituents in the forgery industry, not forging, but dealing with metals and others, is having a job fair in Houston because they need jobs. So I think it is extremely important.

I would take note, Mr. Chairman, you have the right to laugh, so does your staff, so does this lady that sits in the front row in our hearings all the time. But let me be very clear whether or not there was a pronunciation issue or not, this is not a funny issue. And I see that individual sitting all the time laughing in this hearing, and I guess I am the only one that is willing to make point of it. We welcome visitors or whoever the person is, but we certainly think that we are dealing with serious issues.

But as I was saying, this is—

Mr. GALLEGLY. Would the gentlelady yield for a second?

Ms. JACKSON LEE. I would be happy to yield.

Mr. GALLEGLY. I apologize, but the issue is that we have all made maybe a little faux pas in making a statement about something, but I do not take forgery lightly.

I would yield back.

Ms. JACKSON LEE. I recognize that, and that is why I corrected myself for making that comment. And I am sure I will find myself on Rush Limbaugh, but since I have a backbone of steel, let me say to all of the right-wingers and Tea-Partiers, I don't care.

Let me proceed and go on at the comment I am trying to make. We have repeatedly had these kinds of hearings, and, frankly, we do this over and over again and accomplish nothing. This hearing is again about E-Verify. And what I was saying is that there are many jobs and many job fairs, and it shows that the American people have opportunities. When we talk about comprehensive immigration reform, what happens is that people are concerned about their jobs.

So I want to ask you, Mr. Lemkes, is that the correct pronunciation of your name, let me just put this on the record. By my count this is our sixth hearing so far this Congress has had where E-Verify was the main topic of discussion, and we debated the issue for days more when this Committee marked up the Chairman's E-Verify bill. The one theme that ran through all of these hearings and markups was that mandatory E-Verify without other reforms to our immigration law would destroy agriculture and other industries that rely on immigrant labor. There was a consensus on that on both sides of the aisle. Yet this Committee seemed not to be getting the hint. If it wants E-Verify, it is going to need to do something about this country's labor needs.

My question to you, can you please remind this Committee what mandatory E-Verify without providing a viable agricultural workforce would do to your business and those of other agricultural employers? And the gist of it is simply can we just hit you over the head with E-Verify, can we ignore that we need to work on identity theft, but just hit you over the head and have no other larger structure of comprehensive immigration reform?

Mr. LEMKES. The issue is that E-Verify in itself is not the problem.

Ms. JACKSON LEE. Or not the answer.

Mr. LEMKES. And it is not the answer. In my statement I said it is the cart and the horse. We need E-Verify and we need an agriculture worker visa program. The fact that we voluntarily switched to E-Verify proves to us that the immigration system does not work too well. The laws are outdated. The changes in demographics in the U.S. are documented well. We try to get labor, but if people do not really want to thrive in the jobs that we have, I can just imagine the disaster it will be if it is mandatory for the whole Nation. In North Carolina we are going already in that direction, because we got an E-Verify law that is coming into effect. Now, there are some exemptions which create other complications.

But agriculture is not against E-Verify. Agriculture is against E-Verify without immigration reform, or specifically an agriculture worker visa.

Ms. JACKSON LEE. I think that is excellent. I yield back to the Chairman and just say the Restaurant Association members are here. I understand one of their issues is immigration. I am not sure if they have pulled back, but I know they have been advocates to the Ranking Member of comprehensive immigration reform.

I just wanted to make the point, Mr. Chairman, that there are jobs out there. And let me apologize to the Committee's record for rushing my pronunciation, but I don't think I have anything to apologize for when we are talking about serious issues.

I yield back to this Committee. Thank you.

Mr. GALLEGLY. I just would like to briefly respond to the gentlelady's reference to the National Restaurant Association. I have not heard anything about the specifics of comprehensive immigration reform, unless you are referring to their strong support and advocacy for E-Verify as their answer to comprehensive immigration reform.

With that, I would yield to Mr. Gowdy.

Ms. JACKSON LEE. Well, Mr. Chairman, I have heard from them nationally and they support comprehensive immigration reform.

Ms. LOFGREN. Would the Chairman yield?

Mr. GALLEGLY. Yes.

Ms. LOFGREN. I would ask unanimous consent to put into the record the testimony of the association from the prior Congress in support of comprehensive immigration reform.

Mr. GALLEGLY. I would agree with that, and I would also ask unanimous consent that the current Congress, the representation of the National Restaurant Association as it relates to the current Congress be added to the record as well.

With that, I would yield to Mr. Gowdy.

[The information referred to follows:]

News Release

National Restaurant Association Committed to Comprehensive Immigration Reform

March 20, 2010

Contact: [Sue Hensley](#) (202) 331-5964, [Annika Stensson](#) (202) 973-3677

(Washington, D.C.) – As activists gather from all over the nation to rally in Washington D.C. on the issue, the National Restaurant Association reaffirmed its strong support for action on comprehensive immigration reform in the U.S. Congress.

The restaurant and foodservice industry is the second largest private sector employer in the U.S. with 12.7 million employees, as well as one of the largest private sector employers of immigrant workers. The Association estimates the number of jobs in the industry will grow by 1.3 million over the next 10 years.

"Our nation's 945,000 restaurant locations and their millions of employees have much at stake in this effort, and it is critically important that the Congress continues to work to address this important national issue," said Scott DeFife, the Association's Executive Vice President of Policy and Government Affairs. "We commend the President and Senators Charles Schumer and Lindsey Graham for their leadership in attempting to move this vital issue forward."

"The Association continues to support comprehensive reform that strengthens our borders; provides a way for employers to hire from abroad when U.S. workers are not available; creates a reasonable solution to the undocumented in the United States; and establishes a verification system that is effective, inexpensive and reliable, and does not unfairly penalize employers," said DeFife. "We will continue to work with members of both the House and the Senate to ensure passage of workable comprehensive immigration reform in this Congress."

The National Restaurant Association has been extremely active in the effort to achieve comprehensive immigration reform, serving as co-chair of the Essential Worker Immigration Coalition, which includes more than 40 national businesses and trade associations seeking reform of America's broken immigration system. For more information, please visit the EWIC website at: www.ewic.org

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Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry, which comprises 960,000 restaurant and foodservice outlets and a workforce of nearly 13 million employees. Together with the National Restaurant Association Educational Foundation, the Association works to lead America's restaurant industry into a new era of prosperity, prominence, and participation, enhancing the quality of life for all who serve. For more information, visit our Web site at www.restaurant.org

News Release

National Restaurant Association Praises President's Commitment on Comprehensive Immigration Reform, Pledges Continued Support

July 01, 2010

Contact: [Sue Hensley](mailto:Sue.Hensley@nra.org) (202) 331-5964, [Annika Stensson](mailto:Annika.Stensson@nra.org) (202) 973-3677

(Washington, D.C.) – In response to President Obama's address today at American University on the urgent need to fix the nation's broken immigration system through comprehensive immigration reform, the National Restaurant Association issued the following statement:

"Each day the need for immigration reform becomes clearer, and we commend the President for his commitment and continued leadership," said National Restaurant Association President & CEO Dawn Sweeney. "It is absolutely critical for our nation that Congress develop a sensible immigration reform solution."

"Addressing our broken immigration system is an economic necessity for our industry as well as our country," continued Sweeney, who attended the President's remarks. "The nation's 945,000 restaurant locations and their millions of employees have much at stake in this debate, and the consequences of failure to find a solution on this vital issue will be severe. The President has been a leading voice working to find a resolution to this crisis, and while significant areas of disagreement exist among advocates, we remain committed to the work ahead."

"We believe that a bipartisan process has the best chance of success, and it is imperative that the Congress continues to work toward a solution," said Sweeney. "The Association pledges its continued vigorous support of sensible reform that strengthens our borders; provides a way for employers to hire from abroad when U.S. workers are not available; establishes a verification system that is effective, inexpensive and reliable, and does not unfairly penalize employers; and creates a commonsense solution for undocumented workers in the United States."

The restaurant and foodservice industry is the second largest private sector employer in the U.S. with 12.7 million employees, and the Association estimates the number of jobs in the industry will grow by 1.3 million over the next 10 years. The Association is an active leader in the Essential Worker Immigration Coalition, which includes more than 40 national businesses and trade associations seeking reform of America's broken immigration system.

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Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry, which comprises 960,000 restaurant and foodservice outlets and a workforce of nearly 13 million employees. Together with the National Restaurant Association Educational Foundation, the Association works to lead America's restaurant industry into a new era of prosperity, prominence, and participation, enhancing the quality of life for all we serve. For more information, visit our Web site at www.restaurant.org

Mr. GOWDY. Thank you, Mr. Chairman. I also want to thank the three witnesses who came today and actually were responsive to the Chairman's questions. It is a shame, Mr. Chairman, that ICE was not willing to answer your legitimate questions. It is a shame, Mr. Chairman, that ICE was not willing in a timely fashion to comply with the legitimate subpoenas issued by Chairman Lamar Smith.

Mr. Chairman, it has been a bad week with respect to the disconnect between certain government agencies and the people for whom they work. I guess at one level I should be encouraged that we actually had a congressional hearing where no government employees invoked their Fifth Amendment right against incrimination. But maybe I may have set the standard too high.

If ICE were here, Mr. Chairman, I was going to ask them with respect to the testimony from Ms. Andrushko, she testified ICE let the illegal immigrant who was fraudulently using her son's Social Security number go twice after being arrested. I think it is a very legitimate fair question to ask ICE why they did not detain an illegal immigrant who was arrested multiple times. That is a fair question, it is a legitimate question. Why ICE won't come answer that question is beyond me.

I also wanted to ask ICE, Mr. Chairman, if they agreed that the widespread use of fraudulent documents has undermined the effectiveness of the I-9 process. But I can't ask them when they are not responsive to the Chairman's questions and they are not here.

I wanted to ask ICE what priority they give to breaking up fraudulent identity document rings. That is a legitimate question. It is a fair question. It is a question I suspect I am not the only one that would ask. But I can't ask ICE that question when they haven't been responsive to the Chairman's questions and they are not seated at the witness table.

Then, Mr. Chairman, I looked at the subpoena request that Chairman Lamar Smith sent that were not complied with in a timely fashion, and what Chairman Smith asked for is information on aliens arrested between two certain dates, about 3 years apart, so essentially 3 years worth of records on aliens about whom ICE was notified but did not take custody. It is not a complicated question, it is not an unfair question, it is not an irrelevant question, it is not an immaterial question, but it took a long time for ICE to answer it.

So what I wanted to ask ICE this morning, but I can't because they are not here because they wouldn't answer your legitimate questions, I wanted to ask them whether or not the Administration advised them not to answer that subpoena. I wanted to ask them whether anyone in the Administration counseled them to drag their feet or otherwise not respond to a legitimate subpoena from the Chairman of the House Judiciary Committee. But I can't ask them because they didn't answer your questions and they were uninvited.

The other thing I was hoping to ask them, had they come, Mr. Chairman, was Chairman Smith asked for information about aliens arrested again over that same 3-year time period. It is not even a different time period, it is the same 3-year time period, so they are not going to have to do any extra work. Three years worth of records about aliens that ICE was notified about but declined to put into removal proceedings, because I am asked all the time in South Carolina, they cannot fathom of someone being convicted of a crime that is here unlawfully and not removed.

So I wanted to ask what took so long to comply with Chairman Smith's subpoena. Did the Administration advise you to drag your feet? Did the Administration counsel you not to answer these questions because the answers would be unflattering to the Administration?

So, again, I want to thank the three witnesses who actually were responsive to the Committee's questions, and I thank the Chairman for his leadership on this issue. And until ICE will come and

answer what I think are pretty relevant, material, fair questions, that would be all I have for the day.

Ms. LOFGREN. Would the gentleman yield?

Mr. GOWDY. I would be delighted to.

Ms. LOFGREN. I understand the gentleman's frustration. I just would note for the record that ICE was perfectly willing to come and testify today. It was the Chairman who disinvited them. I understand he disagrees with the nature of their written testimony. I do not. But they were willing to come, and I think it is important to say that.

Mr. GALLEGLY. Would the gentleman yield to me?

Mr. GOWDY. Yes, sir, of course.

Mr. GALLEGLY. Yes, I did disinvite them because they were non-responsive. It wasn't because I disagreed with what they had to say. I disagreed with the fact that they did not respond to the germane question that was asked as it related to the purpose of this hearing today. And I would further say that when they did contact us and talked a little bit about well, why we didn't do it, we couldn't understand how that portion was kind of redacted from their statement, but they would be willing to come forward and in my opinion come forward and be non-responsive to the questions that I believe that had Mr. Gowdy asked them they would have been as non-responsive to his questions as they were to their written statement that related to the purpose of this hearing to start with.

So it wasn't because I didn't agree with their statement. I didn't agree with the fact that they didn't respond.

So, with that, Mr. Gowdy's time has expired due to my further discussion, and all time has expired. With that, I would like to thank our witnesses for being here today, particularly Ms. Andrushko. I can only begin to understand the frustration that this has put you through, and that obviously it is not over.

Ms. ANDRUSHKO. No.

Mr. GALLEGLY. And not over for a lot of other folks. That is really the purpose of the hearing today. I appreciate—

Ms. ANDRUSHKO. Could I just say something? I know our time is up.

Mr. GALLEGLY. Without objection.

Ms. ANDRUSHKO. There were a couple of issues that I would like to touch on that were brought up. Mr. Lemkes, thank you for trying to protect our children's identities. First of all, thank you very much.

I think a valid thing was brought up about jobs. My uncle owns a flower farm in California, southern California, and he does employ migrant workers who are authorized for work. So it is possible. Yes, it needs reform, but it is possible.

On the citizen side of that, as an educator, I truly believe in determining the cause of a behavior in order to address the behavior issue. My son wants a farm. He wants a zoo when he grows up. I am sorry, I probably will get emotional talking about him because I just love him so much. But he has horrible, horrible seasonal allergies. By the end of the day, he can't even see because his eyes are so swollen shut, being on prescription eye drops and things. He would absolutely love to come and work for somebody like Mr.

Lemkes, and I think other people would also. And the people who won't I think we need to look at why they won't and address that issue, because they would if they truly had a desire.

Mr. GALLEGLY. Thank you very much. I thank all the witnesses.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses which we will forward to the witnesses to respond as promptly as possible in order that we make your responses as well as the questions part of the record of the hearing.

Without objection, all Members have 5 legislative days to submit any additional materials for inclusion in the record.

Again, I want to thank you all. I want to thank the Members for attending today. With that, the Subcommittee stands adjourned. Thank you.

[Whereupon, at 12:36 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Prepared Statement of Emily Tulli, Policy Attorney, National Immigration Law Center

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 policy-makers, attorneys, workers' rights advocates, labor unions, government agencies, and the media. NILC has analyzed and advocated for improvements to the E-Verify program since it was first implemented in 1997 as the Basic Pilot program, and has extensive experience assisting advocates and attorneys in responding to problems with the program as it affects workers—immigrants and U.S.-born alike. NILC is a nonpartisan national legal advocacy organization that works to protect and promote the rights of low-income immigrants and their families.

OVERVIEW

An E-Verify mandate will result in the increased use of false documents, employer misuse of the program, employers refusing to use the program, and will do nothing to fix our broken immigration system. Everyone agrees that document fraud is a problem. But mandating E-Verify is an ineffective reaction that does not provide a real solution. Like any immigration enforcement-only policy, the Legal Workforce Act and other mandatory E-Verify proposals do not alter the fundamental economic realities that encourage—and even necessitate—the employment of unauthorized workers and the attendant document fraud. *With or without mandatory E-Verify, the eight million unauthorized workers currently in the U.S. will continue to seek work and employers will continue to hire unauthorized workers.*

Attempts to mandate E-Verify are not innovative. In fact, mandatory use of the program has been a 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. However, these efforts always paired E-Verify's use with a path to legal status for unauthorized workers laboring in our economy. Instead of piling mandatory E-Verify on top of a dilapidated system, we need real immigration reform that provides employers with a steady workforce and unauthorized workers with a path to citizenship.

WITH MANDATORY E-VERIFY, MANY EMPLOYERS REFUSE TO USE THE PROGRAM AND THE USE OF FALSE DOCUMENTS INCREASES.

Without a path to citizenship for unauthorized workers, an E-Verify mandate results in employer nonuse of the program. Arizona and Georgia, both states that require employers to use E-Verify, show us how employers behave. In Arizona, during the first fiscal year following the law's passage, nearly half of all employers did not use E-Verify to check the work authorization of newly hired employees.¹ Similarly, in Alabama most employers are not using E-Verify, despite a state mandate. Estimates vary, but between 79 and 96 percent of Alabama employers had not registered to use E-Verify when the state law went into effect, much less used the pro-

¹Jahna 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-everify.html.

gram to verify new employee's work authorization.² Simply put, even when required by law to do so, many employers refuse to do so.

Of the employers who do register with United States Customs and Immigration Services (USCIS), some coach unauthorized workers, allowing them to beat the system's requirements, increasing the fraudulent use of documents. In Arizona, Immigration and Customs Enforcement (ICE) reports that employers have learned that E-Verify's photo matching tool accepts only two documents, permanent resident cards and employment authorization documents, which are heavily protected from tampering and counterfeiting.³ When some unscrupulous employers believe that an employee does not have valid work authorization, they ask the employee to provide other identity documents that will not trigger the photo matching tool. Senior ICE officials have said that this has increased the fraudulent use of documents which are not part of the photo matching tool.⁴ Without an overhaul of the current immigration system, mandatory E-Verify allows unscrupulous employers to continue to employ unauthorized workers while incentivizing the increased use of false documents.

Arizona and Alabama are the canaries in the coalmine. With a national E-Verify mandate, we can expect widespread employer nonuse of the program and the increased use of false documents.

WITH MANDATORY E-VERIFY, EMPLOYER MISUSE WILL INCREASE.

As a largely voluntary program, there is already significant employer misuse of E-Verify. This misuse of E-Verify has a tangible impact on workers' job stability and quality. For example, under the current regime, over 66 percent of employers took adverse actions against workers receiving a tentative nonconfirmation (TNC), despite program rules that direct prohibit them from doing so.⁵ Adverse actions include prohibiting workers from working; restricting such workers' work assignments; and delaying job training for such workers.⁶

Workers are often kept in the dark by employers about TNCs issued by the program. Although required by law to do so, employers do not always notify workers of a TNC, depriving workers their ability to contest the TNC and keep 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.⁷ *This is particularly troubling given the fact erroneous TNCs are issued for lawful workers and U.S. citizens.*

Using Westat's statistical model, approximately 0.8 percent of TNCs are issued in error.⁸ Although E-Verify's use remains voluntary in most states, there were 16 million E-Verify queries by employers in fiscal year 2010, resulting in 128,000 erroneous TNCs.⁹

Under a nationwide mandate, it is likely that employer misuse would grow and is not limited to TNC issues. At least 57 percent of employers using E-Verify violate the program's rules by using it to prescreen workers.¹⁰ When workers are prescreened and not offered a job, it takes them at least three weeks to find other employment.¹¹ Employer misuse likely 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

²See Jay Reeves, "Most Alabama Firms Miss Immigration Goals," *The Associated Press*, April 4, 2012, <http://news.yahoo.com/apnewsbreak-most-ala-firms-miss-immigration-goal-133758590.html>. The percentage range cited was calculated by dividing the state number of AL registered companies (provided by USCIS equally 18,137) by the number of total companies doing business in the state as reported by the Alabama Department of Revenue (368,613) and the state Department of Industrial Relations (85,000).

³Richard 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.

⁴*Id.*

⁵*Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 157.

⁶*Id.* at 157, 204.

⁷*Id.* at 154, 199.

⁸Employers 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 the .08 percent erroneous TNC rate, see Westat, *supra* note 5, p. 117.

⁹*Id.*

¹⁰See Westat, *supra* note 5, p. 149.

¹¹*Id.*

voluntary basis — all factors that make them *more likely* than a “typical” U.S. employer to approve of the system and use it successfully. Misuse of the program would almost certainly increase if all employers were required to use the system. In Arizona, the employers are less compliant with E-Verify procedures than E-Verify employers nationwide.¹²

Employer misuse of E-Verify is likely to grow with a national mandate, threatening to cause adverse action against even more work-authorized individuals and U.S. citizens who will receive erroneous TNCs.

CONCLUSION

Without immigration reform, E-Verify does not provide an effective solution to the problems that arise alongside unauthorized employment. Mandatory E-Verify, through the Legal Workforce Act or other bills, does nothing to address the underlying economic realities that drive the employment of unauthorized workers, and serves to make matters worse. There are currently 8 million undocumented workers in the country, representing 5.2 percent of the U.S. labor force.¹³ And while fraudulent use of documents is a serious problem, an E-Verify mandate fails to address employers’ or workers’ needs while actually incentivizing the use of false documents and misuse of the program. Lawmakers should learn from the states with E-Verify mandates and address the real issue. The immigration system is broken and needs a total overhaul, not misplaced solutions like mandatory E-Verify.



¹² See Westat, *supra* note 5, p. 237.

¹³ 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>, p. 17.