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HOW E-VERIFY WORKS AND HOW IT BENEFITS AMERICAN EMPLOYERS AND WORKERS

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

FEBRUARY 27, 2013

Serial No. 113–4

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://judiciary.house.gov

U.S. GOVERNMENT PRINTING OFFICE

79–586 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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HOW E-VERIFY WORKS AND HOW IT BENEFITS AMERICAN EMPLOYERS AND WORKERS

WEDNESDAY, FEBRUARY 27, 2013

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

COMMITTEE ON THE JUDICIARY

Washington, DC.

The Subcommittee met, pursuant to call, at 4:10 p.m., in room 2141, Rayburn Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Gowdy, Goodlatte, Smith, King, Jordan, Labrador, Lofgren, Gutierrez, Garcia, and Pierluisi.

Staff present: (Majority) Allison Halataei, Parliamentarian & General Counsel; Andrea Loving, Counsel; Graham Owens, Clerk; and (Minority) Tom Jawetz, Counsel.

Mr. GOWDY. Good afternoon. This is a hearing entitled: How E-Verify Works and How It Benefits American Employers and Workers. Welcome to all of our witnesses, and on behalf of all of us, we apologize for the fact that you were waiting on us. We had votes, and it is unavoidable.

The Subcommittee on Immigration and Border Security will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time. And again, we welcome all of our witnesses in the interest of time, and because you have been waiting on us, I am going to make my statement part of the record so we can get to your testimony quicker.

[The prepared statement of Mr. Gowdy follows:]

Statement of Subcommittee Chairman
Trey Gowdy
Hearing on "How E-Verify Works and How it Benefits American Employers and Workers"
Subcommittee on Immigration and Border Security
Wednesday, February 27, 2013

Prior to 1986, there was no law prohibiting U.S. employers from hiring or employing illegal immigrants. To help end the "job magnet" for illegal immigrants, the "Immigration Reform and Control Act of 1986," (IRCA) made it unlawful for employers to knowingly hire or employ individuals who are not eligible to work in the United States. It also required employers to check the identity and work eligibility documents of employees.

Unfortunately IRCA simply said that employers must look at the identity and work eligibility documents and if those documents appeared on their face to be reasonably genuine, the employer had met his obligation under the law.

The IRCA provisions are still the only employment eligibility requirements on the books. As a result of the lax requirement a counterfeit documents business has flourished, ensuring jobs for millions of illegal immigrants in the U.S.

The IRCA system benefits unscrupulous employers who do not mind hiring illegal immigrants but want to show that they have met legal requirements. And it harms employers who don't want to hire illegal immigrants but have no choice but to accept documents they know have a good likelihood of being counterfeit.

Recognizing the deficiencies of IRCA's provisions, in 1996 Congress created the Basic Pilot Program, an electronic employment eligibility verification system which is now known as E-Verify.

E-Verify is voluntary and initially was available only to employers in five states. Eventually, Congress expanded E-Verify nationwide. Certain employers are

now required to use the system. For instance, the vast majority of federal contractors, employers of students in the Optical Practical Training program and even some H-2A employers must use it.

Recently some states, such as South Carolina, and localities have required employers within their jurisdiction use E-Verify.

E-Verify is administered by U.S. Citizenship and Immigration Services (USCIS) in conjunction with the Social Security Administration. It checks the employee's Social Security Number (SSN) or alien identification number against SSA and DHS databases in order to help determine whether the employees are work eligible.

E-Verify is quick and easy to use. In fact a representative from USCIS will demonstrate an E-Verify query for us shortly.

The accuracy of the system has been of concern but that accuracy continues to rise and recent statistics show that individuals who are authorized to work received immediate confirmation of that work eligibility 99.5 percent of the time.

And according to USCIS, a 2012 study shows that 98.7 percent of queries resulted in a confirmation of work eligibility immediately or within 24 hours.

The accuracy rate has continued to rise even though more and more businesses are signing up to use E-Verify. Over the years, USCIS has been making improvements to the system in order to improve accuracy. For instance, in 2008 they enabled the system to automatically check USCIS naturalization data. And in 2010 USCIS incorporated State Department passport data into E-Verify.

These and other improvements are important steps in ensuring individuals who are eligible to work receive

timely confirmation and individuals who are not eligible to work in the U.S. are not.

E-Verify is not a perfect system, and we will hear some concerns today. But it is an easy and effective tool that must be part of any broad ranging immigration reform efforts. I look forward to the testimony of our witnesses.

Mr. GOWDY. And with that, I am going to recognize the Ranking Member, the gentlelady from California, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I will also make my statement part of the record and simply note that E-Verify can only work if we reform the immigration system. Otherwise, we are just finding out how dysfunctional it really is. That is one issue.

And also I am concerned about the error rate. I know we are making great improvements, but if there is a massive expansion, we are talking potentially over 100,000 Americans who might lose a job and need a remedy. And I am hoping the Committee can deal with that.

And with that, I will ask unanimous consent to put my statement in the record.

Mr. GOWDY. Without objection.

[The prepared statement of Ms. Lofgren follows:]

Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

I appreciate that Chairman Goodlatte and Chairman Gowdy have scheduled this hearing to get updated information on the E-Verify system and how it is, and is not, working. Last Congress, we held three hearings on this issue, and we marked up a bill on it as well. I think we learned a great deal from all that work.

For starters, we know that expansion of E-Verify can only happen in tandem with other necessary reforms to our broken immigration system. We also know that the E-Verify system continues to need improvement.

Expanding E-Verify thus requires us to engage in two distinct conversations. How do we improve our immigration laws so mandatory E-Verify does not damage our economy and hurt U.S. businesses and workers? And how do we improve the system so that database errors and other problems do not harm them either?

There is no dispute that our immigration system is broken and fails to meet the needs of our country. Just yesterday we discussed our system's failure in the agricultural sector, where 50–75% of the 1.6 million people working in the fields are undocumented. If all growers were required to use E-Verify, we would confirm what we all know to be true: that American agricultural is built on the backs of undocumented immigrants.

But would that knowledge help anyone? Just look at the damage done to farmers in Georgia and Alabama after those states made E-Verify mandatory. In the months after the laws were enacted, farmers suddenly found themselves with ripening harvests but without sufficient workers. Georgia Governor Nathan Deal bussed in ex-convicts to do the work, but that was a complete failure. The losses in Georgia alone were estimated to reach $300 million.

Without top-to-bottom-reform of our immigration laws, expanding E-Verify would devastate the agricultural economy, resulting in closed farms, a less-secure America, and the mass off-shoring of millions and millions of U.S. jobs, including all of the upstream and downstream jobs that are created and supported by our agriculture industry.

Expanding E-Verify without more would also cost the government significant tax revenues. In 2008, the Congressional Budget Office and the Joint Committee on Taxation concluded that mandatory E-Verify in Rep. Heath Shuler's SAVE Act would decrease federal revenues by $17.3 billion over a 10-year period. Those offices determined that expanding E-Verify to an economy with a significant undocumented workforce would drive employers and workers off-the-books and into the underground economy.

The end result would be lost tax revenues and depressed wages and working conditions for all workers, including U.S. workers.

We also know that although the E-Verify system has improved over the years, it continues to need improvement. According to studies, USCIS has been successful in

reducing the E-Verify error rate. This means that fewer U.S. citizens and other authorized workers are now being incorrectly rejected by the system.

But mistakes still happen. Recent USCIS data indicates that 0.26% of the 20.2 million E-Verify queries submitted in FY 2012 were confirmed as employment authorized after first receiving a tentative non-confirmation. If E-Verify was expanded to cover all 60 million new hires each year, that error rate would mean that 156,000 authorized workers would have to clear up errors in government databases—either by calling USCIS or visiting a Social Security office—to avoid losing their job.

Of course, that assumes every employer uses E-Verify correctly. It assumes that employers do not use E-Verify to pre-screen workers before hire, and it assumes that employers properly notify employees when they receive tentative non-confirmations. But studies have shown that neither of those assumptions is accurate, which means that some authorized workers are undoubtedly being denied jobs or terminated based upon incorrect information in government databases.

USCIS data shows that 0.9% of tentative non-confirmations are never challenged. Some of these cases certainly involve people who lack work authorization. But we know that this percentage—which amounts to 540,000 cases each year if applied to all 60 million new hires—includes people who were not informed of tentative non-confirmations and who had no chance to correct their records and save their jobs.

Expanding E-Verify—even as part of a broader immigration reform effort—without ensuring that proper safeguards are in place, is just one more way in which E-Verify would not benefit American workers.

The witnesses before us today will help us evaluate how E-Verify is working. Just as importantly, I think they will help us understand what more needs to take place if we are to expand the system to all employers. I am pleased to have these witnesses before us today and I look forward to their testimony.

Mr. GOWDY. And I am grateful to the gentlelady for helping to expedite this.

I am going to introduce all the witnesses and briefly give their bio, and then we will recognize from my left to right, your right to left. At some point after I do—I knew it was a matter of time before I made a mistake.

I want to recognize the Chairman of the full Committee, the gentleman from Virginia, Mr. Goodlatte, for his opening statement.

Mr. GOODLATTE. Well, thank you, Mr. Chairman. I am going to join you and the Ranking Member in putting my statement into the record.

But I do want to say how important I think E-Verify is as we work through the entire issue of immigration law reform. We had a failure in 1986 with immigration that did grant a pathway to citizenship for nearly 3 million. The people who passed it at the time believed that they were taking care of this problem, but because they did not have a good enforcement mechanism, and the laws that were put on the books were indeed not enforced, we have a much greater problem today.

E-verify is not the entire solution, but it is a critical part of the enforcement solution making it easier for employers to be able to know whether the person presenting their credentials to them for a job are indeed the person they say they are and have the authorization that they claim to have. And it does so electronically, which I think we are going to see a demonstration of here today, so let us get on with the opportunity to do that.

And I will put the rest of my statement in the record. Thank you.

[The prepared statement of Mr. Goodlatte follows:]

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary

Thank you Chairman Gowdy.

Nearly every discussion regarding the reform of U.S. immigration laws acknowledges that we must have in place a nationwide, mandatory system for employers to electronically verify the work authorization of their employees.

That sentiment exists whether the discussion is about a comprehensive approach, as is being worked on by the Gang of Eight in the Senate, or more methodical approach, as preferred by many other Members of Congress.

Even President Obama has stated his support for a mandatory electronic employment verification system. In fact, one of the titles of the White House immigration reform bill that was leaked to the press recently included just that—a mandatory electronic employment verification system.

Of course there is already such a system in place. It is called E-Verify and was created by this Committee in the "Illegal immigration Reform and Immigrant Responsibility Act of 1996."

At this point, the system is voluntary for the vast majority of U.S. employers. However some states and localities do require certain employers to use it.

Over 433,000 employers are currently signed up to use E-Verify. It is easy for employers to use and is effective. In fact in a January 2013 Customer Satisfaction Survey by U.S. Citizenship and Immigration Services (USCIS), E-Verify received an 86 out of 100 on the American Customer Satisfaction Index Scale.

But the system is not perfect. For instance, in cases of identity theft, when an individual submits stolen identity documents and information, E-Verify may confirm the work eligibility of that individual.

This happens because E-Verify uses a Social Security Number (SSN) or alien identification number and certain other corresponding identifying information such as the name and date of birth of an individual, to determine if the SSN or alien identification number associated with that corresponding information is work eligible. Thus if an individual uses a stolen SSN and the real name corresponding with that SSN, a false positive result could occur.

It is my understanding that the percentage of cases in which this identity theft loophole is a factor is relatively small. The witness from USCIS will discuss this issue and what USCIS is doing to help prevent it.

There are other improvements that may need to be made to E-Verify in the event that the system is made mandatory for all U.S. employers. And I look forward to hearing the witnesses' views on any such improvements today.

Each one of our witnesses has a distinct perspective on E-Verify.

The USCIS witness will give us an overview of the system, how it works and its accuracy. The employer witness will tell us how E-Verify works as a practical matter in the business setting. And The U.S. Chamber of Commerce witness will discuss why the vast majority of the business community supports mandatory E-Verify.

Employers must have an effective way to determine the work eligibility of their employees. Expanding and improving the already in place E-Verify system is the most cost-effective and sensible way to ensure just that.

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

Mr. GOWDY. I thank the Chairman.

I will introduce you, and then we will have a demonstration of E-Verify, and then we will recognize you for your opening statements.

First, and I am just going to apologize in advance for pronunciations that are a function of my inability to phonetically do things very well, so I will apologize.

Ms. Soraya Correa—is that close? All right. Perfect it probably is not, but maybe close. Currently serves as the associate director

for the U.S. Citizenship and Immigration Services Enterprises Services Directorate, and is responsible for delivering identity immigration status and employment authorization information in support of the USCIS mission. She also oversees the Biometrics Division, National Records Center, Records Division, and Verification Division.

She has an undergraduate certification in acquisitions management from the American University in Washington, D.C. and a BA in management from National Louis University.

Mr. Chris Gamvroulas is president of Ivory Development, the land acquisition and development affiliate of Ivory Homes headquartered in Salt Lake City, Utah. Chris joined Ivory Homes in 1993 and was appointed president of Ivory Development in 1996. Since that time he has overseen the land acquisition, planning, and titlement construction of over 14,000 home sites and hundreds of acres of retail, industrial, and commercial properties totaling nearly $1 billion in real estate assets.

He attended Harvard Business School Advanced Management Program and holds a bachelor of science degree in political science from the University of Utah.

Mr. Randel K. Johnson is the senior vice president of the United States Chamber of Commerce for Labor, Immigration, and Employment Benefits Issues pending before Congress and the Federal agencies. Before joining the U.S. Chamber, he served as counsel to the U.S. House of Representatives Committee on Education and the Workforce.

Mr. Johnson is a graduate of Denison University and the University of Maryland School of Law and earned his master of laws in labor relations from Georgetown.

And finally, Ms. Emily Tulli is policy attorney for the National Immigration Law Center. Her advocacy focuses on maintaining and expanding the rights of low-wage immigration workers, and she monitors and analyzes Federal legislative developments affecting immigrants in the workplace.

She holds a JD from the College of William and Mary in the Chairman's home State.

With that I believe we have a demonstration of E-Verify, and you are welcome to take it away.

Ms. LOTSPEICH. All right. We are going to bring this up on the screen here. Kathy Lotspeich. I am the deputy chief for the verification division at U.S. Citizenship and Immigration Services, and I am going to run for you this afternoon 2 cases, one case that goes through automatically and one case that gets a tentative nonconfirmation response.

So just a note, I am using test data today on our test system.

So this is what the log-in looks like. I am going to click "new case," and it asks you what the individual attested to on their Form I-9. I am going to, for this demonstration, select "citizen of the United States." It then asks what documents they presented on the Form I-9, and for this demonstration I am going to select "list B and C documents." Then it asks which list B and C documents did you present, so here I am selecting "driver's license" and "Social Security card."

Then we go down to the next here. Hit "continue." It is going to ask you what State the driver's license was issued, selecting "Kansas." And then it asks you to fill out the name of the individual, the date of birth. It is going to ask for the Social Security number. The system also wants to make sure the document shown for the Form I-9 is still valid, so it asks you for the date in which the document expires. And then you have to put in the higher date, which has to be within 3 days of the current date, and then you hit "continue."

So here you will see the responses. This individual's employment is authorized. It has a little summary of the information that was submitted with this case, and then up here at the top is the case verification number, which the employer is asked to record on the Form I-9.

Now, I am going to demonstrate a case where an individual is not automatically employment authorized, again using the same profile, driver's license, Social Security, the State in which the card was issued. And all of this information is what the employer can find on the Form I-9. Expiration date and date of hire. Select "continue."

So here the system understands that it is about to issue a tentative non-confirmation or sort of a yellow light response in which the individual may need to follow up with the government. And it does remind the employer one more time to look at the case, so as you saw previously it went automatically through. But here we are trying to give them a second chance to avoid any typos.

I am going to go ahead and click "continue." And here it says that the individual has received a tentative non-confirmation. Underneath it states that the name or date of birth entered for this employee did not match Social Security Administration records. It clarifies that this does not mean that the employee is not authorized to work in the United States. However, additional action is required.

So the employer would click "continue." And here they can select a notice to give to the employee to tell them about the tentative non-confirmation, ask if they want to test or follow up with that tentative non-confirmation. We have this letter pre-populated in English and in Spanish, and we also have it translated in 17 other languages in our resource section.

I will show what you what the notice looks like. So the notice has the information about the employee, the reason for the tentative non-confirmation. It gives information on what they are supposed to do. It reminds the employer that this information can be found in 17 other languages. And it asks the employee to sign that letter. The employer must give it to the employee.

Also there are special instructions for the employee on the next page telling them what they must do and what their rights are.

The employer must confirm that they have notified the employee of this tentative non-confirmation. It does not have to happen on the spot. The employer has the ability to save the case and exit if the employee is in their immediate view. It could happen over a day or so. Click "continue."

And if the individual decides to contest their tentative non-confirmation, then the employer has to refer this to the government

so we know to expect that person to contact us. If they do not choose to contest, they may be terminated.

I am going to click "continue," and here refer the case. And that case will then to go to either the Social Security Administration or the Department Homeland Security, and will wait for the employee to contact them within 8 days.

And that is the conclusion of this demonstration. Thank you.

Mr. GOWDY. Thank you very much for doing that. I will now recognize our witnesses for their opening statements. We will begin with Ms. Correa. And the lights mean what they traditionally mean in life. A red light means do your best to wrap up that thought.

And with that, Ms. Correa.

TESTIMONY OF SORAYA CORREA, ASSOCIATE DIRECTOR, ENTERPRISES SERVICES DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Ms. CORREA. Thank you. Chairman Goodlatte, Chairman Gowdy, and Ranking Member Lofgren, and Members of the Subcommittee. I appreciate this opportunity to discuss with you our shared goal of effective employment eligibility verification through the E-Verify program.

USCIS has made significant progress and improvements in the E-Verify program since we last appeared before this Subcommittee in February 2011. Our focus remains on ensuring the accuracy, efficiency, and integrity of the system while increasing awareness, knowledge, and understanding of the program for both the employers and the employees.

I am pleased to report that use of E-Verify continues to grow and the system continues to score high marks in customer satisfaction.

Since 2007, the number of employee has grown from 24,000 to over 430,000. Last Fiscal Year, E-Verify processed over 21 million queries, a more than five-fold increase since Fiscal Year 2007.

E-Verify received a customer satisfaction score of 86 out of 100 on the 2012 American Customer Satisfaction Index. The vast majority of users surveyed were likely to recommend E-Verify to other employers, were confident in its accuracy, and were likely to continue using the system.

Improving the accuracy of the E-Verify system remains our primary goal. When examining E-Verify accuracy, it is important to look at 2 rates: accuracy for authorized workers and accuracy for unauthorized workers. I want to first talk about accuracy for authorized workers.

A common misperception of E-Verify's accuracy rate is that the underlying government data is wrong whenever a mismatch or a tentative non-confirmation or TNC is returned. However, TNC is only an indication of a discrepancy between the information provided to E-Verify and the information in the government databases.

For example, the employee must notify the Social Security Administration of a name change following marriage or other legal proceeding. The employer needs to ensure that it enters the name exactly as it appears on the Form I-9, and the U.S. government needs to update its records in a timely fashion. Thus, the accuracy

of E-Verify requires the action of 3 parties: the employer, the employee, and the U.S. government.

Independent evaluations of E-Verify conducted by Westat Corporation found that the TNC rate for authorized employees—those employees who had to resolve a TNC based on a data discrepancy, declined from .7 percent to .3 percent, resulting in an accuracy rate of 99.7 percent. With respect to unauthorized workers, the accuracy rate is based on the system issuing a TNC that ultimately results in a final non-confirmation or FN, because the unauthorized worker is accurately identified as not being eligible to work. The Westat study found that 94 percent of FNCs were accurately issued by E-Verify.

We also are working to improve the identify verification aspect of E-Verify. Detecting identity fraud in employment verification requires a multi-level approach which I laid out in my written testimony.

In November 2010, USCIS expanded E-Verify's photographic matching tool to include U.S. passports and U.S. passport cards. In the customer satisfaction survey, users rate the photo tool very highly as a method for reducing fraud.

USCIS is developing other methods for reducing fraud, such as monitoring repeated use of Social Security numbers and a system enhancement that allows employees to lock their Social Security numbers in E-Verify.

Our monitoring and compliance branch actively monitors E-Verify to ensure employers use the system properly. USCIS is also working closely with the Department of Justice's Office of Special Counsel to effectively prevent discrimination and misuse that adversely affects employees.

To guard against avoidable TNCs and protect employee rights, USCIS launched Self-Check, a service of E-Verify. Self-Check empowers individuals by allowing them to verify their work authorization status online and proactively resolve records mismatches before formally seeking employment. Over 180,000 individuals nationwide have used the Self-Check service.

To inform the public about E-Verify, USCIS has robust outreach initiatives that include radio, print, and online ads in English and in Spanish, as well as public events and live webinars. USCIS maintains a toll free employer customer line and employee hotline for E-Verify users. In addition, a new multimedia employee rights toolkit is available online in English and in Spanish to help employees understand the program.

USCIS is committed to continue the expansion of the E-Verify program while ensuring the accuracy, efficiency, and integrity of the system. We are equally committed to increasing compliance, knowledge, and understanding of the program and how it benefits the American workforce.

On behalf of all of my colleagues at USCIS, we appreciate Congress' continued strong support of the E-Verify program. I again thank you for this opportunity to testify before the Subcommittee, and I look forward to answering your questions.

[The prepared statement of Ms. Correa follows:]

Prepared Statement of Soraya Correa, Associate Director, Enterprises Services Directorate, U.S. Citizenship and Immigration Services

SUMMARY OF ADVANCEMENTS FOR TESTIMONY

Introduction

Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee, I appreciate the opportunity to discuss our shared goal of providing effective mechanisms for verifying employment eligibility. My name is Soraya Correa, and, as the Associate Director for the Enterprise Services Directorate of U.S. Citizenship and Immigration Services (USCIS), I am responsible for overseeing the E-Verify program. I appreciate this opportunity to share information on USCIS's continuing efforts to increase E-Verify's accuracy and efficiency, maintain its integrity, and expand its use. I also want to use this opportunity to update the Subcommittee on progress that has been made with the E-Verify program since the previous Associate Director appeared before this Subcommittee on February 10, 2011. The work that we have completed to improve the program and the additional steps that we plan to take will ensure that we have an accurate and accessible System that meets the needs of employers and workers.

Continued Program Growth

I am pleased to report that the E-Verify program continues to grow. The number of employers registered to use the E-Verify Program has grown rapidly to more than 432,000 as of February 2013 compared to only 24,000 in fiscal year (FY) 2007, with the number of new employer registrations averaging between 1–2,000 per week in FY 2012. More than 50,000 federal contractors are enrolled in E-Verify.

We have seen a steady increase in the volume of queries. Last fiscal year, E-Verify processed 21.1 million queries, a more than five-fold increase from the 4.0 million queries processed in FY 2007. In FY 2012, almost 92 percent of those queries were on U.S. citizen workers. In FY 2013 to date, employers have run over 7.1 million queries. Also, USCIS has continued to expand the number of databases queried and has deployed other enhancements to help minimize employer data entry errors to reduce E-Verify initial mismatches.

Customer Satisfaction Increases as the Program Grows

E-Verify continues to score high marks in employer customer satisfaction. E-Verify was given a customer satisfaction score of 86 out of 100 on the American Customer Satisfaction Index (ACSI) survey performed in 2012. This is a one point improvement over the prior year score of 85, and our score has remained exceptionally high compared to the average score for a government program, which is 67.

ACSI surveyed E-Verify users and evaluated key aspects of the program such as registration, the online tutorial, ease of use, technical assistance and customer service. Key findings of the survey revealed that the vast majority of users were likely to recommend E-Verify to other employers (score of 86), were confident in E-Verify's accuracy (score of 87), and were likely to continue using the program (score of 94).

One of the aspects of E-Verify that respondents liked the most was customer service. Of those surveyed, 13 percent had contacted E-Verify customer service representatives within the past six months. The index found that the majority of these respondents (score of 94) were satisfied with the customer service support they received from E-Verify.

Increasing E-Verify Accuracy and Efficiency

Improvements in Accuracy for Authorized Employees

A common misperception of E-Verify's accuracy rate is that the underlying government data is wrong whenever a mismatch—or tentative nonconfirmation (TNC)—is returned. However, a TNC only indicates that there is a discrepancy between the information provided to E-Verify and the information in one of the checked databases. This discrepancy can occur for several reasons: 1) an employee did not to update his or her information with the Social Security Administration (SSA) or the Department of Homeland Security (DHS), or made an error when completing the Form I–9; 2) the employer made an error when entering information into E-Verify; 3) there was a data error in the employee's government record; or 4) an unauthorized worker provided fraudulent information. In the latter situation, the TNC is not based on error but from E-Verify doing exactly what it is designed to do: detect and prevent unauthorized employment in the United States.

In all cases, E-Verify provides the employee with the option to contest the TNC and instructs employers to continue the employee's employment while he or she works to resolve the issue as appropriate. *Thus, the accuracy of E-Verify requires the action of three parties: the employer, the employee, and the U.S. government.* For example, the employee needs to keep his or her records updated with the appropriate government agency, such as with a name change update at SSA following marriage. The employer needs to ensure that it enters the data as it appears on the Form I–9, gives prompt notice of the TNC to the employee, and allows the employee to work if the employee contests the TNC; and the U.S. government needs to update its records in a timely fashion when an employee adjusts status or updates information.

USCIS continues to improve E-Verify's accuracy by increasing the number of databases checked by the system and making enhancements to reduce the likelihood of employer typos and other data entry errors. The addition of naturalization and U.S. passport data has reduced mismatches for naturalized and derivative citizens by 30 percent on average. In October 2012, access to DHS's Arrival and Departure Information System (ADIS) database was added to E-Verify, which helps to improve match rates for recent arrivals.

As a result of these efforts, a review of FY 2012 data found that approximately 98.7 percent of all employees were confirmed as work authorized either automatically, or within 24 hours. The remaining 1.3 percent contained a mix of TNCs based on errors (whether employer, employee or government error) and TNCs where the person was not authorized to work in the United States.

In 2011, we reported that another independent evaluation of E-Verify was underway. Although the report is currently under review, the Westat Corporation reports that the TNC rate for authorized employees—those employees who had to resolve a TNC based on a data discrepancy as explained above—continues to decrease. Using model-based estimates, the report concluded that the rate of authorized employees who need to follow up with SSA or DHS has declined from 0.7 percent to 0.3 percent when comparing data from similar time periods in 2005 and 2010. This report will be released later this year.

Maintaining the Accuracy and Integrity of E-Verify

Strengthening E-Verify and Combating Identity Fraud

Detecting identity fraud in employment verification requires a multilevel approach. First, the employer is required to verify identity of the new employee when inspecting his or her documents by ensuring that they reasonably appear to be genuine and to relate to that employee. However, if an unauthorized employee provides the employer with biographic data such as a name, date of birth, or Social Security number of an authorized individual backed up with documentation that appears valid—either by borrowing employment eligibility documents or presenting fake documents with valid biographic information—then E-Verify very well may indicate the employee is work authorized. In such cases, E-Verify is authorizing the person whose biographic data is submitted, and not the unauthorized worker who is fraudulently providing that data.

USCIS takes extremely seriously the threat posed by identity fraud in this context and has taken a number of significant steps to enhance program safeguards.

In November 2010, USCIS expanded E-Verify's photographic matching tool to include U.S. passports and U.S. passport cards. The addition of U.S. passport photos allows the employer to match the photo displayed in E-Verify to the photo on the employee's U.S. passport or U.S. passport card to determine whether the card was fraudulently produced. In FY 2012, approximately 15 percent of all E-Verify cases used the photo tool.

E-Verify users rate the photo tool very highly as a method for reducing fraud. The 2012 ACSI rating of E-Verify found that the photo tool scored 95 points on a scale of 1 to 100. Employers found the photo tool to be easy to use (score of 95) and thought it was helpful in preventing fraud (score of 94). The photo tool was the highest rated feature of E-Verify in the ACSI survey.

Since our last testimony in February 2011, we further strengthened E-Verify's anti-fraud capabilities by launching a pilot program in June 2011 that allows E-Verify to match the information on a driver's license presented by an employee with a participating states' Departments of Motor Vehicles database. USCIS is piloting this effort with the states of Mississippi and Florida.

These fraud-prevention efforts are proving successful. The recent Westat evaluation found that 94 percent of Final Nonconfirmations (FNCs) were issued correctly to employees not authorized for work. USCIS is developing other methods for reducing fraud in E-Verify, such as monitoring Social Security numbers (SSNs) that are

used repeatedly, evaluating other identity assurance techniques like those used in E-Verify's Self Check, and developing an enhancement to allow employees to lock their SSNs in E-Verify so they cannot be used by others.

USCIS Continues to Improve Monitoring of E-Verify for Misuse

E-Verify's Monitoring and Compliance Branch (M&C) continues to increase monitoring of E-Verify to identify potential instances of repeated and egregious misuse by employers. M&C uses and is updating and expanding behavioral algorithms to detect patterns of potential program misuse in E-Verify transactional data. M&C also uses different compliance assistance tools to assist employers with the proper use of E-Verify, such as emails, telephone calls, desk reviews, and site visits. In FY 2012, M&C issued more than 65,000 compliance assistance actions (telephone calls, letters, and emails) and completed 35 site visits to provide assistance to employers and gain a better understanding of their use of the E-Verify program. Another example of M&C's compliance assistance efforts is the *E-Verify Self Assessment Guide,* a publication launched in FY 2012 that employers can use to help detect and deter noncompliant activities and resolve them quickly.

M&C also refers instances of suspected egregious noncompliance to U.S. Immigration and Customs Enforcement (ICE) or the Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (DOJ/OSC). In FY 2012, USCIS referred three cases to ICE for suspected egregious noncompliance, 21 cases to ICE for fraudulent documents, and 51 cases to OSC for suspected unfair immigration-related employment practices.

Protecting Employee's Rights

USCIS works closely with DOJ/OSC to educate employers, prevent discrimination, and refer possible misuse that adversely affects employees. We provide E-Verify data to DOJ/OSC in response to law enforcement requests. DOJ/OSC also refers to USCIS those instances of employer E-Verify misuse brought to DOJ/OSC's attention through charges filed with DOJ or through DOJ's hotline that fall outside of DOJ/OSC's jurisdiction. USCIS also has co-produced with DHS's Office for Civil Rights and Civil Liberties (CRCL) two videos in English and Spanish on employee rights and employer responsibilities that are posted to the USCIS YouTube web page and the USCIS and CRCL websites, and regularly conducts joint webinars with USCIS/OSC on these subjects. Employees also can report complaints about E-Verify system misuse by calling the E-Verify Hotline and/or the DOJ/OSC Hotline. In our commitment to provide multilingual materials for employees, all TNC and referral letters, which instruct employees on how to resolve a TNC, are currently available in 17 foreign languages.

To further protect employee rights, in March 2011 USCIS launched Self Check, a service of E-Verify, in five states and Washington, D.C. Self Check is an innovative service that empowers individuals to check online whether government databases used by E-Verify correctly match the information they enter into the systems and to proactively resolve records mismatches before formally seeking employment. Since 2011, we have expanded Self Check nationwide (including to U.S. territories) in both English and Spanish. Over 180,000 individuals nationwide have availed themselves of the Self Check service. The number of individuals using Self Check continues to grow due to outreach materials on Self Check available online in a new Employee Rights Toolkit. Self-Check also uses identity assurance techniques to prevent an individual from checking the work authorization of another person and to prevent unfettered access to E-Verify from other entities, such as employers who would use Self Check to prescreen for other purposes.

USCIS is continuing to develop initiatives that protect employee rights. Another major effort under development is the ability for employees to receive an email alerting them that they have received a TNC and to check with their employer. This initiative is contingent upon the employee providing an email address during the Form I–9 employment verification process for the employer to enter into E–Verify. This feature will provide the added benefit to employees of a secondary notification of the TNC. USCIS, in collaboration with SSA and DOJ/OSC is also developing a formal process for employees to request a review of FNCs that they believe were received in error.

Increasing the Use of E-Verify

USCIS has developed a robust outreach program to increase public awareness of E-Verify's significant benefits. USCIS informed millions of people about E-Verify in FY 2012 through radio, print, and online ads in English and Spanish, and thousands more through 186 public events, 355 live webinars, and distribution of infor-

mational materials. In FY 2012, USCIS handled more than 217,000 calls from E-Verify employers through its toll-free customer line and more than 116,000 calls from employees through its employee hotline.

E-Verify users can get the latest information on E-Verify from the *E-Verify Connection* newsletter. The newsletter has an estimated 1 million readers. *E-Verify Connection* provides employers and employees with information and updates about employment eligibility, verification Form I–9, E-Verify and Self Check, plus a schedule of upcoming events, such as webinars and local presentations.

Other public education accomplishments include the release of *E-Verify User Guides* for both the employee and the employer, in English and Spanish, and an updated and redesigned E-Verify *Questions and Answers* web site. The Employee Rights Toolkit is available online, also in English and Spanish, with multimedia materials to help assist employees with the employment-eligibility verification process and other important topics (e.g., upcoming releases).

To help the public learn about the employers enrolled in E-Verify, USCIS updated the E-Verify website in FY 2012 by adding a brand new online search tool. The E-Verify Employer Search Tool gives the public the ability to search and view E-Verify employers. Individuals can now search, filter, sort, and view employer information by name, state, city, zip code, and workforce size.

Future outreach communications will be aimed at emphasizing the exceptional customer satisfaction level of E-Verify employers and the program's continued and successful attempts to improve year after year based on customer feedback.

Conclusion

USCIS is committed to continue the expansion of the E-Verify program while ensuring the accuracy, efficiency, and integrity of the system and simultaneously increasing compliance, knowledge, and understanding of the program and how it benefits the American workforce.

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

Mr. GOWDY. Thank you, ma'am.

Mr. Gamvroulas.

TESTIMONY OF CHRISTOPHER P. GAMVROULAS, PRESIDENT, IVORY DEVELOPMENT, ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS

Mr. GAMVROULAS. Chairman Gowdy, Ranking Member Lofgren, Members of the Subcommittee on Immigration and Border Security, thank you for this opportunity to testify.

My name is Chris Gamvroulas. I am the president of Ivory Development based in Salt Lake City. Ivory Homes is one of the more than 140,000 members of the National Association of Home Builders. To ensure Ivory Homes only employs individuals authorized to work in the United States, we use the E-Verify employment verification system.

In 2010, the State of Utah imposed a requirement that all employers with 15 or more employees must use E-Verify. Ivory Homes worked closely with the Utah legislature to craft a reasoned approach to balance compliance with the law with the needs of employers, particularly small businesses. Once the State enacted the law, Ivory Homes immediately came into compliance with E-Verify. We trained our human resource staff to act in accordance with the law. On the whole, we have found E-Verify to be an efficient and effective system.

Generally speaking, the system is easy to use and has the potential for quick turnaround. Since 2010, Ivory Homes has processed approximately 320 employees through E-Verify. In all that time we

have only had 4 hires receive a tentative non-confirmation, none of whom to date have protested the mismatch.

Anecdotally, we suspect non-employable applicants refrain from pursuing jobs once they learn their identification will be processed in E-Verify. We believe that E-Verify is working as intended, and it is possible the potential hires who might be undocumented are self-policing.

The implementation of the system has not been without its problem. However, none of them has proven to be impossible to overcome. For example, there is no notification of when the system is updated and new training requirements have to be passed. That has caused confusion and delays within our human resources staff. There must be a process to inform and educate business about the requirements of and changes to the program beyond what is in the Federal Register. These are simple improvements that would enhance the system and make it more user friendly for all businesses, large and small.

As an employer, it would be preferable for our company to begin the E-Verify process when a worker accepts a position rather than be required to wait until after the worker's start date. This cannot be understated. If a newly-hired employee eventually receives a final non-confirmation confirming that they are ineligible to work, we lose time and resources dedicated to training that individual only to have to start the hiring process all over again. Allowing us to verify worker status the day they accept the job offer will give us more lead time to handle tentative non-confirmations.

Last Congress, NAHB, of which Ivory Homes is a proud member, supported the Legal Workforce Act introduced by former Chairman Lamar Smith. This legislation was an important first step in creating a system that is workable, and we hope to see similar elements in any new legislation you consider. The Legal Workforce Act provided a strong safe harbor to ensure that those of us who use the system in good faith will not be held liable by the government or by the employer's workers for errors in the system.

The legislation also maintains current law with regard to the verification of an employer's direct employees. Under current law, Ivory Homes, like all employers, are responsible for verification of the identity and work authorization status of their direct employees only. While we do not verify the employees of subcontractors, we are precluded from knowingly using unauthorized subcontracted workers as a means of circumventing the law.

E-Verify can only confirm work authorization based on those documents presented. It cannot confirm whether the person presenting those documents is, in fact, the same person represented in those documents. The government also must be able to improve the E-Verify system by seeking ways to limit or eliminate identify fraud.

This is also another reason why it is vital to have an effective safe harbor in any legislation. Until E-Verify can detect cases of fraud, employers who use E-Verify should not be held accountable for unauthorized workers who have cleared the system because of identity theft. If E-Verify is federally mandated, it must work for the smallest employer as well as the largest. The reality is that many small businesses cannot access the Internet from a job site. Providing a telephonic option for employers is, thus, important.

Finally, if employers are going to be required to use the Federal E-Verify program, they must be assured that there are only one set of rules needed for compliance. A strong Federal preemption clause is critical.

In conclusion, my experience with E-Verify in Utah has been positive. The system has been proven to be easy to use, protects employees' privacy and rights, and we generally find it to be an efficient and effective system.

I and my association support comprehensive immigration reform. Last Congress, NHB supported the Legal Workforce Act. We look forward to working with you on this key element of immigration reform. Thank you again.

[The prepared statement of Mr. Gamvroulas follows:]

Testimony of Christopher P. Gamvroulas

President, Ivory Development

On Behalf of the

National Association of Home Builders

Before the

House Judiciary Committee

Subcommittee on Immigration and Border Security

Hearing on

How E-Verify Works and How It Benefits American Employers and Workers

Wednesday, February 27, 2013

Testimony of Chris Gamvroulas
On Behalf of the National Association of Home Builders
February 27, 2013

Introduction

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I want to thank you for this opportunity to testify today on the E-Verify program. My name is Chris Gamvroulas, and I am the President of Ivory Development, the development affiliate of Ivory Homes based in Salt Lake City, Utah. The Ivory family of companies includes Ivory Homes, Ivory Development, and ICO Commercial Management. We are the largest homebuilder, land developer, and multi-family builder in Utah. Since 1996, I have overseen the land acquisition, planning, entitlement and construction of over 14,000 home sites, and hundreds of acres of retail, industrial and commercial properties.

To ensure Ivory Homes only employs individuals authorized to work in the United States, we use the E-Verify employment verification system. We also contract with a third-party who performs background checks on prospective employees to help ensure workplace safety and integrity. We dedicate our best efforts to complete our due diligence and to comply with the law.

In 2010, the state of Utah imposed a requirement that all employers with 15 or more employees must register with and use E-Verify. There are no financial penalties, but employers who are noncompliant cannot hire any new employees until they come into compliance with the law.

Ivory Homes was skeptical when the state of Utah first proposed these new verification requirements. However, once the state enacted the law, we thought it was very important to embrace the new requirements. Thus, Ivory Homes immediately came into compliance with the new E-Verify requirements, and we quickly trained our human resources personnel to act in accordance with the law. On the whole, we have found E-Verify to be an efficient and effective system.

Generally speaking, the system is easy to use and has the potential for very quick turn-around. The law itself simply requires an employer to input an employee's identification data online, which is then matched with U.S. Department of Homeland Security and Social Security Administration's records. If there is a mismatch, E-Verify immediately notifies the employer, and the employer is then required by law to provide particular information about the employee's rights to resolve the mismatch. It is then incumbent upon the employee to choose whether to contest the mismatch with the federal government within the next ten work days.

Since 2010, Ivory Homes has processed approximately 320 employees through E-Verify. In all that time, we have only had two hires who received tentative non-confirmations, neither of whom protested the mismatches. We have seen an uptick in applicants refrain from pursuing our jobs once they learn their identification will be processed in E-Verify. We believe this is evidence that E-Verify is working as intended, as it is possible that potential hires who might be undocumented are self-policing.

The implementation of the system has not been without its problems; however, none of them has proven to be impossible to overcome. For example, there is no notification of when the system is updated and training requirements have to be passed, and that has caused some confusion and

delays with our human resources personnel. There must also be a better way to inform and educate small businesses about the requirements of and changes to the program beyond what is in the *Federal Register*. These are simple improvements that would enhance the system and make it more user friendly for all businesses, large and small.

As an employer, it would be preferable for our company to begin the E-Verify process when a worker accepts a position, rather than be required to wait until after the worker's start date. If a newly hired employee eventually receives a final non-confirmation confirming that they are ineligible to work, we would lose time and resources dedicated to training that employee, only to have to start the process all over again. Allowing us to verify our workers' status the day they accept the job offer will give us more lead time to handle tentative non-confirmations.

Prior Support for E-Verify Legislation

Last Congress, NAHB, of which Ivory Homes is a member, supported the Legal Workforce Act (H.R. 2885), introduced by then-Chairman of the House Judiciary Committee, Rep. Lamar Smith (R-TX). This legislation was an important first step in creating a system that is workable. All of the following elements were included in H.R. 2885, and we hope to see them again in any new legislation.

Under current law, Ivory Homes, like all employers, are responsible for verification of the identity and work authorization status of their direct employees only. The program must continue to focus on the direct employer-employee relationship, holding every U.S. employer accountable only for the identity and work authorization status of their direct employees. While we do not verify the employees of subcontractors, we are precluded from knowingly using unauthorized subcontracted workers as a means of circumventing the law. Any new legislation contemplated should maintain current law.

Second, it is of the utmost importance that any mandatory E-Verify program contains a safe harbor to ensure those who use the system in good faith will not be held liable by the U.S. Department of Homeland Security, or by the employer's workers, for errors in the E-Verify system. While the agencies have worked diligently to reduce error rates, the nationwide use of the system could lead to an increase in errors as more workers are run through the program. Whether the system falsely identifies an unauthorized worker as authorized, or vice versa, employers who rely in good faith on the information in the mandatory system should not be penalized for taking action based on the system's responses.

A related and significant concern is the issue of identity theft. Under current law, employers are required to use the "reasonable person test" when reviewing identity and work authorization documents. When a new hire presents documents that would to a reasonable person appear to be genuine, an employer must accept them, and the employer may not demand additional documents to test their validity.

E-Verify can only confirm work authorization based on those documents that are presented. It cannot confirm whether the person presenting those documents is in fact the same person

represented in those documents. For this reason, the issue of identity fraud must be better addressed by Congress to ensure that a national E-Verify system is not rendered useless by a resultant upswing in the utilization of false documents. This is also another reason why it is vital to have an effective safe harbor in any legislation. Until E-Verify can detect cases of fraud, employers who use E-Verify should not be held accountable for unauthorized workers who have cleared the system because of identity theft.

Third, a national program must include provisions to ensure that the system is workable for all U.S. employers, including our nation's small businesses. Approximately 80% of NAHB's members have less than 10 employees, many of which do not have a human resources department, a legal department, or even conduct business or hiring in an office setting. This is true for the vast majority of our most important resource: our trade partners, subcontractors, and suppliers.

If E-Verify is mandated, it must work for the smallest employer, as well as the largest. It is therefore very important that telephonic access to the system be available. The reality is that many businesses around the country, despite leaps in the technology sector, do not have access to high-speed internet or the technology to access the internet from a jobsite. There must also be a better way to inform and educate small businesses about the requirements of and changes to the program beyond what is in the *Federal Register*. Small businesses, for the most part, do not have access to this document, and in fact, many have never even heard of it.

Finally, any legislation which mandates the use of E-Verify nationwide must include a strong pre-emption clause, preventing state and local governments from creating and enforcing their own versions of verification requirements for employers. If employers are going to be required to use the federal E-Verify program, they must be assured there are only one set of rules needed for compliance.

Conclusion

In conclusion, my experience with E-Verify in Utah has been positive. The system has proven to be easy to use, and we generally find it to be an efficient and effective system.

I and my association support comprehensive immigration reform. Last Congress, NAHB supported the Legal Workforce Act, and we look forward to working with you on this key element of immigration reform.

While contemplation of mandatory E-Verify is a step toward addressing the illegal immigration issue, it should not be the only step. The protection and security of our nation's borders is of the utmost concern. Congress must also improve the nation's broken immigration and visa systems to find a better way for workers to legally enter the United States for employment when our economy needs them. Finally, Congress must address the concerns created by the growing illegal immigrant population and create a system whereby they can achieve legal status.

Thank you again for the opportunity to testify today.

Mr. GOWDY. Thank you, sir.
Mr. Johnson.

TESTIMONY OF RANDEL K. JOHNSON, SENIOR VICE PRESIDENT, LABOR, IMMIGRATION, AND EMPLOYEE BENEFITS, U.S. CHAMBER OF COMMERCE

Mr. JOHNSON. Chairman Goodlatte, Chairman Gowdy, Ranking Member Lofgren, Members of the Immigration Subcommittee. I was going to say good evening, but I moved it back up to good afternoon.

I welcome this opportunity to talk about the U.S. Chamber of Commerce's views on E-Verify. In past testimony before this Subcommittee and others, our view was that the reform, as Mr. Smith will remember we used to call it Basic Pilot. We took the view that really it was not ripe for prime time and should not be imposed on employers for a variety of reasons.

However, times and circumstances do change, and sometimes it becomes necessary to reevaluate one's assumptions and position. Obviously we at the Chamber move very slowly and carefully before we consider whether or not to support a new mandate on our members.

To this end, and frankly because I do value my job, we created a task force to the Chamber comprised of a broad section of our membership in January of 2011 to assess whether E-Verify should be expanded and changed into a mandate on employers for verification obligations. That task force comprises a good section of our members, small to large, trade associations and companies. And ultimately after a lot of analysis, we concluded that the Chamber should support a mandatory E-Verify system, provided certain critical conditions are met.

My written testimony goes through these, but let me summarize. First, I think as the government testimony has already indicated, there has been a lot of numerous technical improvements to the system. Is any wrong tentative non-confirmation acceptable? Well, no. No, it is a problem if any U.S. citizen gets denied a job, but it is reassuring to know that the correction process is now a lot easier. And that, look, I think this is one situation where we cannot let the perfect be the enemy of the good.

Secondly with regard to cost, I know there is some information in the record with regard to various numbers ranging from $2.7 billion to less. All I can say is our economist has looked at the studies. I believe those studies have overestimated the impact on some of the Chamber members.

I think the bottom line, though, and where the rubber meets the road, Mr. Chairman, is that our members report that they have adapted to the system well, and I hear very, very little in terms of adverse impact and cost on their operations.

Third, I think most importantly, and our prior witness already talked about, we need a strong preemption clause with regard to State and local E-Verify laws. Various kinds of balances have to be struck when you are talking about preemption, and we are well aware of that. But certainly our members' view is that we need one law across the country, setting one standard for employment verification.

Fourth, and I want to emphasize this, we cannot support an E-Verify law that required a re-verification of an entire workforce. I will not beat a dead horse on this, except for to state the obvious that if you have 100,000 employees in a company, it is extremely burdensome to all of a sudden run everybody through a new re-verification process, particularly when you have already done that under the I-9 process. Furthermore, I think it is quite clear that eventually, given the turnover in our workforce, most workers will be run through E-Verify eventually in any case. So we are past the days when an employee stayed with one company forever, let us face it.

Fifth, with regard to safe harbors, I just want to make clear that if an employer is going to comply with the system, he or should have some sort of safe harbor from litigation, either from enforcement procedures by the Federal Government or by an employee who may be wronged because of some adverse information provided to the system.

Sixth, and kind of on a more technical basis, but very important to our members, is trying to change the statutes such that the I-0 process, which is largely now a written document, can be changed so that an employer can populate the information on the I-9 directly into E-Verify, skipping sort of this paperwork step.

And seventh, and Mrs. Lofgren talked about this, I think any new mandate needs to be rolled out relatively slowly. Perhaps we could relate it to border security or some other criteria that seems to be popular these days. But we are bringing a lot more people into the system, so it should be rolled out slowly and hopefully tested as it was rolled out so we see some kind of—we get the kinks out of the system before it applies to new hires.

And lastly, I think it is quite clear we all know about the problems with agriculture. It is sort of the 800-pound elephant in the room that we used to not talk about, but we do. They have a lot of unauthorized workers in their workforce. Our country depends on that industry. We need to recognize that a new E-Verify system simply imposed on that industry would be a disaster. I certainly do not have a solution, but we need to try and find one with regard to the application of E-Verify to agriculture.

And lastly, I just want to note that we do support, unlike the President's bill, the advocation of E-Verify to the entire workforce. His bill, in fact, exempted something like 60 percent of all employers.

And lastly in my 6 seconds, I just want to note that we have strongly supported E-Verify as part of comprehensive immigration reform. We will continue to do so. Our 4 planks have been border security, more visas for the high-skilled, lesser-skilled agriculture, a reliable employment verification system, and a means to bring the undocumented out of the shadows and give them some kind of legal status in this country, and not blocking a pathway to citizenship.

Thank you for your consideration, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

Statement of the U.S. Chamber of Commerce

ON: **"HOW E-VERIFY WORKS AND HOW IT BENEFITS AMERICAN EMPLOYERS AND WORKERS"**

TO: **HOUSE SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY OF THE COMMITTEE ON THE JUDICIARY**

BY: **RANDEL K. JOHNSON**
SENIOR VICE PRESIDENT, LABOR, IMMIGRATION AND EMPLOYEE BENEFITS

DATE: **FEBRUARY 27, 2013**

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Testimony before
House Subcommittee on Immigration and Border Security
United States House of Representatives Committee on the Judiciary
Wednesday, February 27, 2013

Hearing on
How E-Verify Works and How it Benefits American Employers and Workers

Statement of
Randel K. Johnson
Senior Vice President for Labor, Immigration and Employee Benefits
U.S. Chamber of Commerce

Good afternoon, Chairman Gowdy, Ranking Member Lofgren, and distinguished members of the Subcommittee. Thank you for inviting the U.S. Chamber of Commerce to testify on the subject of E-Verify and the nation's employment verification system, a key component of immigration reform. My name is Randy Johnson, and I am the Chamber's Senior Vice President for Labor, Immigration and Employee Benefits policy.

The Chamber has been asked to testify before House Subcommittees concerning the expansion of E-Verify on at least five prior occasions, during the period 2006 to 2009, once before your Subcommittee and also before Subcommittees of the Ways & Means Committee, Small Business Committee, and Government Oversight Committee. On each occasion, the Chamber, while supporting broad reforms to our legal immigration system, expressed opposition to the mandatory expansion of E-Verify without extensive improvements to the workability and reliability of what we saw as a burdensome system.

Today, however, after input from our members, the U.S. Chamber supports E-Verify and the primary purpose of my testimony today is to explain why and under what conditions.

WHY DOES THE CHAMBER SUPPORT E-VERIFY?

The Chamber is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region in the United States. There are currently about 6.05 million active businesses across the country.[1] Of these, about 1% employ more than 10,000 employees, yet these employers account for more than 27% of the American workforce.[2] On the other hand, about 60% of all businesses in America employ less than five workers, although these employers account for just 5% of employed persons in our economy.[3] In total, about 98% of all U.S. businesses employ less than 100 staff, comprising nearly 50% of the workforce.[4] The Chamber membership follows similar contours. Thus, the Chamber takes

[1] U.S. Economic Census.
[2] Id.
[3] Id.
[4] Id.

seriously its responsibility to represent the interests of both large and small employers and can only support an E-Verify mandate that addresses the concerns of both.

The U.S. Chamber created an E-Verify Task Force in January 2011 to assess the Chamber's position on whether or how E-Verify should be expanded. What we learned from our members was that the E-Verify system is greatly improved and, while not perfect, could be workable with continued technical improvements accompanied by specific, important legislative changes.

In particular, we learned the following in our assessment of E-Verify:

Technical Improvements and Costs
First and foremost, many of the technical issues underlying E-Verify have been or are in the process of being addressed. For example, Intel famously experienced Tentative Non Confirmation (TNC) rates in excess of 12%[5], even though TNCs were eventually cleared. It is cumbersome for employers, as well as employees, when employees are incorrectly issued TNCs despite being authorized for employment. In the E-Verify system, the employer must notify the employee of the TNC but it is the employee who must take action to contest the TNC. It turned out that Intel had such a high rate of TNCs because E-Verify did not link to SEVIS (the Student and Exchange Visitor Information System) and Intel hires many trainees and interns including foreign students and exchange visitors. Once E-Verify was linked with SEVIS, this problem virtually disappeared and Intel's annual TNC rate is now between 2% and 3%.

Another example of responsive technical fixes within E-Verify relates to name mismatches, some of which can result in issuance of TNCs to authorized workers, a particular concern for American citizens and especially naturalized citizens. The Government Accountability Office has reported that about 10% of TNCs are for name mismatches and that nearly 76% of these name mismatches relate to American citizens.[6] To begin to address this concern, E-Verify has now been linked to the Department of State's Passport Agency so that any American citizen with a passport can be verified even if there are name mismatches in other government records.

Some have claimed that expanding E-Verify nationwide would cost in excess of $2.7 billion, most of which would be costs borne by small businesses,[7] but our in-house economist has advised that economic commonsense suggests otherwise. The cost estimates appear to be based solely on the cost information in the 2008 Westat data.[8] This information is dated, however, and with technical improvements to E-Verify and statutory changes, average costs would be expected to decline as the system improved and provided employers certainty. Significantly, the 2008 Westat study reveals that 76% of responding employers stated that the cost of using E-Verify was zero ($0).[9] Extrapolating to the full economy the costs that 24% of respondents identified

[5] See Intel's April 2008 comments http://www.weareoneamerica.org/sites/weareoneamerica.org/files/intel-ltr-re-e-verify.pdf as part the FAR rulemaking imposing E-Verify on federal government contractors, consistent with the December 2009 Westat study evaluating E-Verify, "Findings of the E-Verify Program Evaluation," based on a review of April to June 2008 data.
[6] December 2010, GAO study evaluating E-Verify, "Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain."
[7] Bloomberg Government, Jason Arvelo, "Assessing E-Verify Costs for Employers and Taxpayers," (January 2011 Brief) and "Free E-Verify Hits Small Business Hardest" (January 27, 2011 article).
[8] December 2009 Westat study evaluating E-Verify, "Findings of the E-Verify Program Evaluation," based on a review of April to June 2008 data
[9] Id. at p. 184.

has limited value. Lastly, the $2.7 billion estimate incorrectly applies data from the Bureau of Labor Statistics' Job Opening and Labor Turnover Survey (JOLTS) to calculate the expected annual number of new hires, leading to overstatement of costs. It has been variously estimated by economists that JOLTS amplifies hire numbers by at least 25% because it includes internal promotions and transfers between establishments that are part of the same employing business.

Preemption
The patchwork of state laws and policies that relate to employment verification and E-Verify is a hindrance to the business community, which always places a premium on the certainty of governing rules. This concern was not only from large multistate employers but also expressed by small employers in part because many small employers do business in more than one jurisdiction. In fact, the number one concern expressed by Chamber members regarding expansion of E-Verify was to ensure there was a uniform national policy and that no states or localities had companion laws or their own enforcement. As part of the Task Force conversations in 2011, the Chamber reviewed state laws relating to employment verification and E-Verify and found at that time: 14 states mandated the use of E-Verify for private employers, 2 states made E-Verify optional, 21 states required E-Verify be used by state government contractors, 4 states imposed separate obligations on independent contractors, 13 states imposed sanctions relating to the employment verification obligation, and 11 states had business licensing sanctions.[10]

Reverification
Chamber members were adamant that any expansion of E-Verify could not include running E-Verify queries on each employer's current workforce – since each E-Verify query requires updated I-9 data. In addition to being burdensome, such "reverification" seems unnecessary since employers have already gone through a process required under law (Form I-9) to verify employment authorization, and such reverification presents particular burdens for federal contractors, who have already completed a process under the Federal Acquisition Regulation relating to some but not all current workers. Reverification of the 143 million Americans currently working is a stumbling block to every employer in America, except those that work solely without permanent staff like temporary staffing agencies and seasonal businesses, among others.

Reverification of current workforce will largely be unnecessary because over time most workers will be verified in E-Verify at some point as new hires. There are approximately 60 million new hires annually in the U.S. economy and while that does not capture all workers, and many of the new hires annually are the same workers turning over to new jobs, there is a relatively small percentage of workers that ultimately won't be verified through E-Verify after several years, so after a few years a large majority of the workforce being confirmed through E-Verify.

Safe Harbors

[10] For current and updated information about state action regarding E-Verify, the National Conference of State Legislators http://www.ncsl.org/issues-research/immig/state-laws-related-to-immigration-and-immigrants.aspx follows the issue closely.

Much of the conversation of our members in assessing E-Verify related to the need for safe harbors. It was and remains very important to our members that businesses using subcontractors are not liable for their subcontractors, as under current law, unless the employer knew about the subcontractors' actions. A general contractor is often precluded from taking steps to obtain more knowledge about subcontractors in order to ensure joint employer status is not created. Employers were also concerned about the creation of any new private rights of action, which our members strongly oppose. Some of our members reported that they have avoided E-Verify because they did not see any added protections against enforcement, even when the employer has not knowingly hired an unauthorized alien. All agreed that for employers using E-Verify, there should be a good faith standard to establish employment verification compliance, with the burden of proof shifting to the government. It was a top priority of our members to exempt any employer using E-Verify in good faith from any liability, civil or criminal.

Integrating I-9 With E-Verify
Importantly, almost all Task Force members spoke about the value in eliminating the I-9 employment verification form as a separate requirement, and suggested that there be one, single employer obligation regarding employment eligibility verification.[11] The key component of the I-9 process is the employer attestation that an employer representative has reviewed original identity and work authorization document(s); this is the attestation that should be integrated into E-Verify. Presently, employers who use E-Verify have to separately complete the I-9 form and then transfer data from the I-9 into E-Verify. Congress would have to amend the governing statute in order to integrate the I-9 into E-Verify. Significantly, in order to accommodate all sizes and types of employers, E-Verify would need to be provided in a fully electronic version, integrating the I-9, and also be available by phone for small employers who don't have separate human resources functions and for those employers making hires remotely. Ensuring the ability to run E-Verify queries after an offer of employment but before the first day of work was also mentioned by some Task Force members, who weren't clear if E-Verify permitted this even though I-9 forms can be completed after an offer but prior to the first day of work.

Phase-in
Our Task Force discussed various options for rolling out an expansion of E-Verify across the country, and the key area of agreement is that there should be a phased process over several years so that not all companies begin using the program at the same time. Critical infrastructure, carefully defined, should go first, and small businesses last.

Agriculture
Because of the impact to and importance of national food supply and distribution, it is important to ensure agricultural production employers have meaningful access to a program to sponsor lawful workers before being subject to E-Verify.

CHAMBER RECOMMENDATIONS CONCERNING E-VERIFY

[11] Interestingly, this position mirrored a finding from the December 2010 Westat study on why employers do not use E-Verify, "The Practices and Opinions of Employers who do Not Participate in E-Verify," where 77% of respondents not using E-Verify said using E-Verify would be beneficial if the I-9 was eliminated.

The U.S. Chamber recognizes that an enhanced employment verification system with obligations by employers must be part of any immigration reform package. We accept that there must be adequate penalties for an employer's failure to complete the employment verification process, but we insist that there be one, single national policy and uniform enforcement with safe harbors for good faith employers and an integrated, single employment verification system.

The Chamber's top tier concerns around expansion of E-Verify, and the issues we think need to be addressed prior to any mandatory expansion of E-Verify, are:

1. **Preemption** – Statutory expansion of E-Verify should immediately bar the effect of any state and local laws mandating the use of E-Verify or establishing state or local employment verification schemes. The Chamber understands that federal legislation mandating the use of E-Verify will allow states to pass laws focused solely on state licensing authority that can be a penalty for employers who do not use the electronic verification system when mandated to do so by federal law.

2. **Reverification** – Employers have already verified their current workforce through the I-9 employment verification process and, therefore, "reverification" should be unnecessary. The E-Verify mandate should be prospective on new hires. The U.S. Chamber will oppose an obligation for private sector employers to be subject to mandatory reverification of their entire current workforce. Mandatory use of E-Verify on current workforce should apply to staff assigned to critical infrastructure sites. With respect to federal contractors, any mandatory E-Verify legislation should establish that current workforce assigned to such contracts be verified in E-Verify, except that individuals exempted by the FAR provisions must likewise be exempted under any proposed legislation. Provisions may allow the voluntary use of E-Verify on current workforce but, in order to provide clarity to employers and to better protect from inadvertent discrimination or the appearance of discrimination, any employer that voluntarily chooses to use E-Verify must do so on its full workforce and it must be clear that no government agency can use the employer's choice on whether or not to use E-Verify voluntarily on previously hired staff to either target companies for investigation or as part of any enforcement matter.

3. **Safe harbor** – It is critical that there be new, very strong safe harbor language, protecting employers who act in good faith, starting with a presumption that those that use E-Verify are good faith actors. As under current law, employers must continue to be obligated for compliance relating solely to their own direct employees. There are two good faith defenses: employers who act in good faith cannot be liable under any state or federal civil or criminal law for any employment-related action taken in reliance on information provided through E-Verify, and, in addition, the burden of proof shifts when employers act in good faith such that DHS may not proceed in any enforcement matter unless it shows by clear and convincing evidence that the employer had knowledge that an employee is an unauthorized alien. Further, employers who act in good faith may have penalties waived or reduced and good faith employers may not be penalized for *de minimus* violations. It would be ideal for there also to be recognition of business disruption avoidance during the transition period to a new mandatory E-Verify system.

4. **Integrated single employment verification system, integrating I-9 requirements into E-Verify** – Such integration should be required before any mandatory use by employers, so that both a fully electronic option and telephonic option will be available to employers. Current law requires employers to both complete the I-9 employment verification process and, where the employer uses E-Verify, to separately input data from the I-9 into E-Verify. The key component of the I-9 employment verification process, an employer attestation regarding review of original documents

5. **Phase-in** – Employers should be phased-in to any E-Verify mandate and once phased-in obligated to use E-Verify on all new hires. The phase-in should take at least three years after the establishment of an integrated employment verification system. E-Verify queries should be permitted as of the date of job offer, and must be done no later than the third day of employment, for each new hire.

6. **Agriculture** – We have made it clear that we believe production agriculture should be treated differently in that a new, workable agricultural worker visa program should be established before that industry is mandated to use E-Verify.

CONCLUSION

In the past, the U.S. Chamber has opposed the expansion of E-Verify. However, in light of improvements in E-Verify, its use by federal contractors, and the focus on a more reliable employment verification system as a necessity, as well as a logical prerequisite to further immigration reform, the U.S. Chamber reassessed its position. Consulting with our members as to whether or how E-Verify should be expanded, we have concluded that the time has come to establish a single, national policy regarding employment verification and the use of E-Verify.

If Congress wants the business community to "turn off the jobs magnet," however, it is vital Congress make the employment verification system and E-Verify work for employers. The Chamber conditions support of E-Verify expansion upon making the system workable for the businesses obligated to verify employment authorization of hires, to include the above six issues.

The U.S. Chamber remains committed to advocating for reform to fix our broken immigration system, and believes that a workable and reliable employment verification system is only one part of necessary immigration reforms.

In the immigration realm, we have attempted to work with groups that are not our natural allies, such as the AFL-CIO,[12] to show we are serious about putting politics aside and finding solutions regarding immigration reform. We stand ready to work with this Subcommittee in the same vein.

Thank you for this opportunity to share the views of the Chamber, and I look forward to your questions.

[12] On February 21, 2013 the U.S. Chamber of Commerce and AFL-CIO issued a joint statement of principles regarding reforms for a visa program for lesser-skilled workers.

Mr. GOWDY. Thank you, sir.
Ms. Tulli.

TESTIMONY OF EMILY TULLI, POLICY ATTORNEY, NATIONAL IMMIGRATION LAW CENTER

Ms. TULLI. Chairman Gowdy, Ranking Member Lofgren, and Members of the Subcommittee, thank you for this opportunity to share the National Immigration Law Center's perspective on E-Verify. The National Immigration Law Center has advocated for changes to E-Verify since the program's inception, and continues to have grave concerns about the program. E-Verify makes all workers, citizens and immigrants alike, more vulnerable in the workplace.

Across the country, labor law violations are rampant, and workers are regularly denied their basic rights, like minimum wage and overtime. And too often when they try and assert these rights, they face retaliation.

E-Verify actually makes this problem worse because it encourages bad behavior by employers. E-Verify encourages employers to misclassify workers as independent contractors and move them off the books. It also gives employers one more tool to retaliate against workers, so if a worker complains about mistreatment, the employer can decide to use E-Verify against the worker. When employers can easily abuse some workers, all American workplaces suffer.

E-Verify employers routinely violate the program rules, and that hurts workers. The only way a worker knows that he has an E-Verify error is if an employer tells him. E-Verify is a program that is based on an agreement between the employer and the government, and workers are really just stuck on the sidelines, even though they have the most to lose from an error.

For instance, 42 percent of workers say that they are not notified by their employer of an E-Verify error. And if a worker does not know that an error exists, they have on way to correct it. It is vitally important that the worker know about errors in their records because errors can lead to workers getting fired through a final non-confirmation.

Because the livelihood of U.S. citizens is at risk, even seemingly small error rates really matter. Using USCIS' own statistics, at least 50,000 U.S. workers experienced an E-Verify error last year, and that is with 93 percent of employers not using the program.

I will give you two examples of E-Verify errors. A U.S. citizen in Tennessee actually received an error notice from her employer. She went to the Social Security Administration office to fix it. She thinks she fixes it at Social Security, but E-Verify generates another error, an FNC, and she gets fired.

Another example, a U.S. citizen experienced an error because an employer made a simple mistake when they were typing the employee's Social Security number into the system. Again, that worker went to a Social Security office, could not resolve the error there. E-Verify generated an FNC, a final non-confirmation, and the worker got fired.

The most disturbing piece of all of this is that for workers who lose their job because of an E-Verify error, there is no formal proc-

ess in place for them to get their jobs back. And that is a problem for thousands of workers who experience these errors. As you can imagine, these problems are only going to grow exponentially if we mandate the program.

Given these concerns, NILC has recommendations about how to move forward. First, Congress needs to pass immigration reform legislation that protects employee rights and has a road to citizenship for the millions of unauthorized workers in our communities. Protecting workers is the best way to put unscrupulous employers out of business and raise standards at the workplace.

Second, we have got to make sure that E-Verify is not misused. Employers should not be able to use E-Verify as a way to avoid their obligations. If they participate in the program, they should have to follow the program rules, and violations of those rules should come with penalties. There are currently no meaningful penalties for employers who do not follow the rules.

Third, make sure that the thousands of citizens and legally authorized immigrants who experience errors have a way to correct errors and keep their jobs. Government errors should not stand between citizens and their jobs.

Last, if mandatory E-Verify is part of an immigration reform proposal, you need to phase it in. Like Mr. Johnson was referring to, you need to phase it in gradually with benchmarks for performance. After each phase-in, we need to evaluate what is happening during the phase-in, the number of American workers losing their jobs, the number of employers misusing the program, and the program's accuracy rate before moving forward.

Thank you.

[The prepared statement of Ms. Tulli follows:]

Statement of Emily Tulli
Policy Attorney, National Immigration Law Center

House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing "How E-Verify Works and How it Benefits American Employers and Workers"

February 27, 2013

Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee, thank you for the opportunity to share the National Immigration Law Center's perspectives on E-Verify.

The National Immigration Law Center (NILC) is a nonpartisan organization exclusively dedicated to defending and advancing the rights of low-income immigrants and their families. We conduct policy analysis, advocacy, and impact litigation, as well as provide training, publications, and technical assistance for a broad range of groups throughout the U.S.

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 and labor laws is an important resource for immigrant rights coalitions, and faith and community-based organizations, as well as policymakers, legal aid 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. Throughout the years, we have worked closely with the Department of Homeland Security (DHS), Social Security Administration (SSA), and the Department of Justice's Office of Special Counsel for Immigration-related Unfair Employment Practices (OSC) on issues related to E-Verify and its adverse impact on workers.

As Congress considers reforming our nation's broken immigration policies, we remain strongly opposed to a federal requirement that all employers use E-Verify because of the program's database error rates, lack of worker protections, lack of due process, insufficient privacy protections, and the significant amount of employer misuse of the program. Any mandatory electronic employment eligibility verification regime should, at a minimum, address these concerns, and must be coupled with a broad legalization program.

NILC advocates for passage of broad and humane immigration reform legislation that provides a clear roadmap to full citizenship for the 11 million aspiring citizens. This would make it possible

for immigrants to fully integrate into the nation's social and economic fabric, with all the rights and responsibilities entailed in full integration. Full citizenship should ensure that everyone living in the U.S. has access to economic supports, affordable health care, workers' rights, and the freedom to live free from fear of detention and deportation.

Overview

Now is the time for Congress to pass an expansive immigration reform bill that creates a road to citizenship for unauthorized immigrants and ensures robust protections of all workers' rights so that abusive employers cannot undercut employers who comply with our employment and labor laws. For years, this committee has discussed E-Verify, debated its merits, questioned its efficacy, and lauded its successes, while immigration reform proposals introduced in Congress languished. And while the problems associated with E-Verify are worthy of discussion, its use does not prevent employers from hiring unauthorized workers effectively. E-Verify does nothing to address the underlying economic realities that drive the employment of unauthorized workers and will actually serve to make matters worse.

Mandatory E-Verify has been part of every immigration reform bill since 2005 and NILC has worked on a bipartisan basis to craft proposals as part of immigration reform that ensures due process, worker protections, and privacy safeguards for all workers. The starting point for any mandatory E-Verify proposal, however, is a road to citizenship for the 11 million immigrants who are currently unauthorized.

However, mandating E-Verify without creating a fully work-authorized labor force will set the program up for failure and exacerbate our current economic challenges. With 8 million unauthorized workers living and laboring the United States, a worksite enforcement-only approach has resulted in more workers being pushed into the underground economy and has robbed state and federal governments of much-needed tax revenue. Unscrupulous employers have had more tools to coerce and control their employees, driving down working conditions for all workers—immigrant and citizen alike. Employers in certain industries, like agriculture, have struggled to fill positions. And because of E-Verify's error rate and lack of due process, mandatory E-Verify will require hundreds of thousands of U.S. citizens and work-authorized immigrants to visit a government office or lose their jobs.

E-Verify will not succeed unless it is paired with a broad and inclusive legalization package and substantial reforms to ensure due process and worker protections.

I. E-Verify makes workers more vulnerable.

Without a fully authorized workforce, E-Verify makes workers more vulnerable. In workplaces across the country, workers are routinely mistreated, experiencing violations of basic labor rights, like nonpayment of minimum wage or overtime and retaliation. The U.S. Department of Labor estimates that nearly *half* of the businesses they investigate have labor law violations.[1] These problems are even worse for workers in low wage employment. According to one study,

[1] Interfaith Worker Justice Toolkit, available at http://www.wagetheft.org/resources/resources.html.

26 percent of workers were paid less than minimum wage for their previous week's work and nearly 76 percent did not receive the legal wage for overtime hours.[2] Workers even face retaliation for merely asserting their legal right to work in the U.S.[3] E-Verify compounds workers' vulnerability and undermines labor and employment laws and standards. Worksite enforcement efforts, like E-Verify, weaken the ability of federal and state agencies to effectively enforce labor and employment laws. In addition, employers readily use immigration compliance tools, such as verification and reverification of employees' work authorization, to retaliate against workers who complain about mistreatment and to undercut workers' efforts to improve their working conditions.[4]

Instead of strengthening the enforcement of labor laws in the workplace, without immigration reform, use of E-Verify does just the opposite. In fact, worksite immigration enforcement actually incentivizes worker mistreatment, including misclassification of workers as independent contractors, subjecting them to sham subcontracting arrangements,[5] or retaliating against them if they complain about their boss' illegal activity.[6] Making E-Verify mandatory would only exacerbate that problem. In addition to hurting workers, a nationwide E-Verify mandate would create a competitive advantage for bad employers. Almost everyone, including U.S. Immigration and Customs Enforcement (ICE),[7] agrees that mistreatment of unauthorized workers provides bad employers with a competitive advantage over good employers.

II. Employers routinely misuse E-Verify and workers suffer.

Although E-Verify has employer rules governing the treatment of workers, employer noncompliance with these rules is very high. For instance, the United States Citizenship and Immigration Service (USCIS) requires employers to notify a worker of an E-Verify Tentative Nonconfirmation (TNC) and prohibits adverse treatment of the worker.[8] However, employers often do not notify workers of a TNC. This is particularly problematic because workers must contest a TNC, *or risk losing their jobs*. In fiscal year 2009, 42 percent of workers reported that they were not informed by their employer of a TNC, resulting in the denial of their right to

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[2] National Employment Law Project, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* at http://nelp.3cdn.net/59719b5a36109ab7d8_5xm6bc9ap.pdf.

[3] Department of Justice, Office of Public Affairs, Press Release "Justice Department Settles with Florida Janitorial Services Company Over Immigration and Nationality Act Violations," available at http://www.justice.gov/opa/pr/2012/September/12-crt-1169.html.

[4] Written Statement of Emily Tulli, Worker Rights Policy Attorney, National Immigration Law Center, submitted to the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Hearing on ICE Worksite Enforcement: Up to the Job?, Jan. 26, 2011, www.nilc.org/document.html?id=360, p. 5.

[5] See Jim McTague, "The Underground Economy: Illegal Immigrants and Others Working Off the Books Cost the U.S. Hundreds of Billions of Dollars in Unpaid Taxes," THE WALL STREET JOURNAL CLASS ROOM EDITION, April 2005, available at http://wsjclassroom.com/archive/05apr/econ_underground.htm; Lora Jo Foo, "The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation," YALE LAW JOURNAL, 103 Yale L.J. 2179, May 1994, available at www.wiego.org/papers/FooImmigrantWorkers.pdf.

[6] Broken Laws, *supra* note 2, at 3

[7] "Responsible employers who seek to conduct their business lawfully are put at an unfair disadvantage as they try to compete with unscrupulous businesses. Such businesses gain a competitive edge by paying illegal alien workers low wages." *Immigration and Customs Enforcement Worksite Enforcement Factsheet* available at http://www.ice.gov/news/library/factsheets/worksite.htm.

[8] E-Verify User Manual for Employers, September 2012, at p. 10

contest the finding.[9] In fact, a survey of 376 immigrant workers in Arizona found that 33.5 percent had been fired, apparently after receiving an E-Verify TNC, but that *none* had been notified by employers that they had received a TNC or given information to appeal the finding.[10] Moreover, some employers use E-Verify to illegally prescreen workers. Under the current E-Verify rules, 33 percent of these workers prescreened are not offered a job and 47 percent of these workers could not find a new job for two months or longer.[11] Often, employers likely do not offer workers who receive TNCs a job because of the amount of time and resources it costs to fix the errors, and because many employers falsely assume that foreign-born workers who receive a TNC are undocumented.[12]

In a mandatory system, employer misuse of E-Verify will likely rise. Current E-Verify users are disproportionately large businesses who use the program voluntarily. Size and the voluntary use of the program make them more likely than an "average" U.S. employer to use the system properly. Noncompliance with program rules would almost certainly increase if all employers were required to use the system. For example, in Arizona, the first state to make E-Verify mandatory, employers are less compliant with E-Verify procedures than E-Verify employers outside of Arizona.[13]

III. <u>E-Verify does not prevent the hiring of unauthorized workers.</u>

Based on the experiences of Arizona and Alabama after passage of their mandatory E-Verify laws, it is clear that E-Verify does not prevent unauthorized workers from getting hired. In 2008, the Arizona legislature passed the Legal Arizona Workers Act (LAWA), a bill mandating E-Verify's use for all employers in the state.[14] LAWA contains severe penalties and fines for failure to use E-Verify, including revocation or suspension of a business license. However, 5 years after the bill's enactment, one out of three employers are using E-Verify and only 43 percent of businesses had enrolled in the program.[15] In 2011, Alabama's legislature passed the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, an anti-immigrant law containing an E-Verify mandate. In the months after enactment, between 79 and 96 percent of employers had not even signed up to use E-Verify, despite the law's penalties.[16]

In this economic environment, employers are desperate to keep their workforces and most do not comply with E-Verify mandates, despite stiff penalties imposed by states. When employers do comply with an E-Verify mandate, ICE agents report that some unscrupulous employers coach

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[9] *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 154, 199

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

[11] Westat, *supra* note 9, p. 140.

[12] *Findings of the Web-Based Basic Pilot Evaluation* (Westat, Sept. 2007), http://tinyurl.com/2tddqs, p. 77.

[13] Westat, *supra* note 9, p. 237.

[14] Legal Arizona Workers Act (LAWA), Ariz. Rev. Stat. §§ 23-211 to -216 (2009)

[15] Joe Henke, "Arizona's E-Verify employment checks are spotty," *Cronkite News Service*, available at http://www.yumasun.com/news/verify-84245-businesses-arizona.html

[16] *See* Jay Reeves, "Most Alabama Firms Miss Immigration Goals," *The Associated Press*, April 4, 2012. The percentage range cited was calculated by dividing the stated number of AL registered companies (provided by USCIS equaling 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).

workers whom they suspect are not work-authorized, helping them get around the system. They do this by asking the workers to provide an identity document that E-Verify's photo-matching tool (which is used to confirm workers' identities through a photo comparison) cannot verify (e.g., driver's license pictures, which are not in the databases E-Verify uses).[17]

In addition to employer noncompliance with E-Verify mandates, the program does not effectively identify unauthorized workers. Westat researchers found that in 2008, 54 percent of unauthorized workers for whom E-Verify checks were run were erroneously confirmed as being work-authorized.[18]

IV. E-Verify is costly.

E-Verify currently costs the federal government about $100 million per year.[19] If made mandatory nationwide, these costs would rise dramatically. Mandatory E-Verify would cost the government and employers billions in lost revenue and implementation costs without ridding U.S. workplaces of unauthorized workers. After reviewing a mandatory E-Verify proposal in 2008, the Congressional Budget Office (CBO) found that implementation of mandatory E-Verify would decrease federal revenue by more than $17.3 billion over ten years because it would increase the number of employers who pay workers under the table, outside of the tax system.[20] The reality is that unauthorized workers will continue to work for employers, despite the existence of an electronic verification system. Many abusive employers will recruit unauthorized workers as part of their workforce knowing they can get away with violating state and federal employment laws because they can threaten workers with deportation. These employers often move unauthorized workers into the underground economy, misclassifying them as independent contractors, and simply not running them through any employment eligibility verification system.[21] As workers move off the books, revenue is drained from federal and state governments' dwindling coffers.

In addition to robbing the federal and state governments of revenue, an E-Verify mandate would threaten the solvency of the Social Security trust fund. When employers move workers into the underground economy, the trust fund loses those workers' contributions. This is particularly troubling given the needs of America's aging baby boomers.[22] Over the next 20 years, the number of senior citizens relative to the number of working-age Americans will increase by 67 percent, which means that they will "transition from being net taxpayers to net recipients." They

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[17] Richard M. Stana, *Report to the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives: Employment Verification, Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Dec. 2010, GAO-11-146), www.gao.gov/new.items/d11146.pdf, p. 22.
[18] Westat,supra note 9, p. 118.
[19] *DHS Budget in Brief 2012*, p. 154, available at: *www.dhs.gov/xlibrary/assets/budget-bib-fy2012.pdf*
[20] Letter to Rep. John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.
[21] McTague, *supra* note 5.
[22] Baby boomers gobbling up Social Security surplus, *The Associated Press*, available at: http://www.oregonlive.com/today/index.ssf/2012/08/baby_boomers_gobbling_social_s.html

will be "supported by a smaller workforce that is struggling to meet its own needs."[23] It is estimated that two-thirds of undocumented immigrants currently pay payroll taxes, which added $12 billion to the Social Security trust fund in 2007.[24] In fact, the trust fund had received a net benefit of somewhere between $120 billion and $240 billion from unauthorized immigrants by 2007, which represents 5.4 to 10.7 percent of the trust fund's total assets. The chief actuary of SSA has stated that without undocumented immigrants' contributions to the trust fund, there would have been a "shortfall of tax revenue to cover [payouts] starting [in] 2009, or six years earlier than estimated under the 2010 Trustees Report."[25] Mandatory E-Verify would drive unauthorized workers in the underground economy, robbing the trust fund of their contributions and threatening the entire system's solvency.

Mandatory E-Verify would cost business billions as well. Based on 2010 data, if E-Verify was made mandatory, it would cost 2.7 billion dollars, with America's small businesses paying 2.6 billion dollars of that cost.[26] Small businesses have noted that mandatory E-Verify would be a "direct threat" to businesses and local economies.[27] Realizing that mandatory E-Verify forces small businesses "to act as immigration agents," they have urged Congress to "do better" and comprehensively reform the immigration system.[28]

V. E-Verify errors cause U.S. citizens and work authorized immigrants to lose their jobs.

DHS has significantly improved the program's error rate since its initial implementation. But with E-Verify, program errors that threaten the economic livelihood of U.S. citizens and work-authorized immigrants are a cause of great concern. According the USCIS's statistics, E-Verify immediately confirms 98.3 percent of workers.[29] Using the agency's most recent estimate of errors, in fiscal year 2011 between .28 and 1.65 percent of all workers run through E-Verify receive a TNC.[30] That means that for fiscal year 2011, between 46,515 and 274,103 U.S. citizens

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[23] Dowell Myers, *Thinking Ahead About Our Immigrant Future: New Trends and Mutual Benefits in Our Aging Society* (Immigration Policy Center, Jan. 2008), http://www.immigrationpolicy.org/sites/default/files/docs/Thinking%20Ahead%201-08.pdf.

[24] Edward Schumatcher-Matos, "How illegal immigrants are helping Social Security," *The Washington Post*, Sept. 3, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/02/AR2010090202673.html.

[25] *Id.*

[26] Jason Arvello, "'Free' E-Verify May Cost Small Businesses $2.6 billion: Insight," *Bloomberg*, Jan. 28, 2011.

[27] Letter to Rep. Lamar Smith, Chair, Committee on the Judiciary, U.S. House of Representatives, Sept 14, 2011, available at: https://salsa.democracyinaction.org/o/371/images/MSA-letter-to-House-Judiciary-Committee-on-HR-2885%20-Sept-2011.pdf

[28] J.Kelly Conklin, "E-Verify program would be costly to small businesses, *Houston Chronicle*, July 14, 2011, available at: http://www.chron.com/opinion/outlook/article/E-Verify-program-would-be-costly-to-small-2078257.php.

[29] *Statistics and Reports*, (USCIS, Fiscal Year 2011), available at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD.

[30] USCIS states that for fiscal year 2011, .28 percent of employees were confirmed as work authorized after contesting and resolving a TNC. The agency reports that 1.13 percent of employees received TNCs and did not contest the TNC because they did not choose to or were unaware of the opportunity to contest the TNC. USCIS does not provide estimates for the percentage of these workers who actually have work authorization, but were unaware of their opportunity to contest the TNC. The agency reports that 0.24 percent of employees received a TNC which remained unresolved at the end FY 2011. USCIS also does not provide estimates for the percentage of these workers

and work-authorized immigrants experienced an E-Verify error that required them to contact a government agency to fix a database error or risk losing their jobs.[31]

Westat, an independent evaluator of the E-Verify program, states that approximately 0.8 percent of TNCs are issued in error.[32] Since there were 20 million E-Verify queries by employers in fiscal year 2012, 160,000 workers had to contact a government agency to fix a database error or risk losing their jobs.[33]

More startling, the Westat model can be used to evaluate the number of individuals who likely received a final nonconfirmation (FNC). An FNC requires an employer to fire the worker or incur liability for violations of immigration law.[34] Of the 0.8 percent of workers who received a TNC in error, 0.3 percent[35] were able to correct the error and keep their job—meaning 0.5 percent of all workers receive a final nonconfirmation in error. In fiscal year 2012, approximately 100,000 workers likely received erroneous findings from the system and may have lost their jobs as a result.[36]

Examples of job loss include:

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who likely have work authorization, but were unaware of their opportunity to contest the TNC. Given the lack of data specifying number of work-authorized individuals within the 1.13 percent and .24 percent, the error rate and estimate of workers experiencing a TNC error is stated as a range. *See* United States Citizenship and Immigration Services, Statistics and Reports, Fiscal Year 2011, available at: http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD

[31] In FY 2011, there were 16,612,333 E-Verify cases. Of those cases, .28 percent of employees were confirmed as work authorized after contesting and resolving a TNC (meaning the employee was work authorized); 1.13 percent of employees received TNCs and did not contest the TNC (meaning the employees were possibly work authorized); and .24 percent of employees received a TNC which remained unresolved (meaning the employees were possibly work authorized). In total 1.65 percent of all E-Verify cases resulted in a TNC. The 46,514 figure was arrived at by multiplying 16,612,333 by .28 percent. The 274,103 figure was arrived at by multiplying 16,612,333 by 1.65 percent.

[32] Employers receive a TNC from either SSA or DHS when the agencies are unable to automatically confirm a worker's employment eligibility. A "tentative nonconfirmation" notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency. For erroneous TNC rate, *see* Westat, supra note 9, p. 117.

[33] There were approximately 20 million E-Verify queries in fiscal year 2012. See *E-Verify Receives High Ratings in Customer Survey* (U.S. Citizenship and Immigration Services, Feb. 21, 2013), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1671ed7ebecfc310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. Approximately 0.8 percent of work-authorized individuals receive a TNC in error. See Westat, *supra* note 19. The 160,000 figure was arrived at by multiplying these two numbers.

[34] 8 USC §1324a

[35] *Statistics and Reports* (U.S. Citizenship and Immigration Services, Feb. 4, 2011), http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD.

[36] There were approximately 20 million E-Verify queries in fiscal year 2012. See U.S. Citizenship and Immigration Services *supra* note 40. Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. (0.8 percent receive an *erroneous* TNC, and 0.3 percent are able to correct their TNC. This results in 0.5 percent of individuals receiving an erroneous TNC that could not be corrected and therefore became an erroneous final nonconfirmation.) The 100,000 figure was arrived at by multiplying these two numbers.

- U.S. citizen in Tennessee was fired in October 2012 despite properly resolving her TNC. Although the worker visited an SSA office to resolve the issue in a timely fashion, E-Verify issued an final nonconfirmation (FNC) and the worker was fired. After advocacy by the Department of Justice Office of Special Counsel, the worker was reinstated. [37]
- A U.S. citizen received a TNC notice from an employer based on a mistyped Social Security number. However, when the worker showed up at an SSA office to resolve the TNC, SSA personnel were unable to assist her because the referral letter was not signed by the employer and the worker eventually received an FNC and was fired. After advocacy by the Department of Justice Office of Special Counsel, the worker was reinstated.[38]
- A U.S. citizen from Florida was hired for a well-paying telecommunications position in October 2010. After she was hired, her employer ran her information through E-Verify and received a TNC. Her employer did not explain to her what a TNC meant, nor did he explain any of her rights. The worker went to an SSA office to resolve the situation, but she could not resolve the issues. She tried to communicate this to the employer, but she ultimately received an FNC and was fired. After her termination, she went to great lengths to correct the error, but was unable to do so. She was unemployed for over 3 months, including over the Christmas holiday, but accepted a new lower-paid position.[39]
- A U.S. citizen and former captain in the U.S. Navy with 34 years of service and a history of having maintained high security clearance was flagged by E-Verify as not eligible for employment. It took him and his wife, an attorney, two months to resolve the discrepancy.[40]

If E-Verify is made mandatory, the number of workers experiencing errors, and possibly losing their job, would be dramatic. Currently, E-Verify is used by only 7 percent of employers.[41] However, if E-Verify were to become mandatory, using Westat's statistical model, ***about 1.2 million workers would have to contact a government agency or risk losing their jobs and about 770,000 workers would likely lose their jobs.***[42] These numbers are likely underestimates. Employers that audit their own E-Verify data report higher error rates than federal government estimates. For example, when Los Angeles County audited its use of E-Verify for county

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[37] Department of Justice, Office of Special Counsel, Hotline Interventions, available at: http://www.justice.gov/crt/about/osc/htm/telephone_interventions/index.php

[38] *Id.*

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

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

[41] See *E-Verify Receives High Ratings in Customer Survey* (U.S. Citizenship and Immigration Services, Feb. 21, 2013), http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1671ed7ebecfc310VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD. There are 6,049,655 employers in the United States. See *Statistics about Business Size (including Small Business)* (U.S. Census Bureau) available at http://www.census.gov/econ/smallbus.html

[42] About 0.8 percent of workers receive an *erroneous* tentative nonconfirmation, or "TNC." Westat, *supra* note 9, p. 117. There are currently about 154,794,000 million workers in the U.S. The 1,234,296 figure was arrived at by multiplying these two numbers. Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error. The 773, 970 figure was arrived at by multiplying 154,794,000 million by the 0.5 erroneous final nonconfirmation rate.

workers, it found that 2.0 to 2.7 percent of its E-Verify findings from the SSA were erroneous in 2008-09. [43]

Perhaps most disturbing about these statistics is the fact that workers who experience an erroneous FNC ***have no formal way to resolve it***. Mandatory E-Verify would mean that ***770,000 workers would likely lose their job with no formal way to correct errors or be reinstated***.

VI. Citizens and work authorized immigrants face tremendous challenges correcting E-Verify errors.

When workers receive a notice of a TNC, they often have to take unpaid time off from work to correct an error at an SSA office, which may take more than one trip. In fiscal year 2009, 22 percent of workers spent more than $50 to correct database errors and 13 percent spent more than $100.[44] Challenging a TNC at a local SSA office may take more than one trip, and in 2009, the waiting times for SSA office visits were 61 percent longer than they were in 2002.[45] During the period March 1, 2009 through April 30, 2010, about 3.1 million visitors waited more than 1 hour for service, and of those visitors, over 330,000 waited more than 2 hours.[46] Further, in fiscal year 2009, about 3.3 million visitors left a field office without receiving service.[47] American Council on International Personnel members report that corrections at SSA usually take in excess of 90 days, and that employees must wait four or more hours per trip, with repeated trips to SSA frequently required to get their records corrected.[48] ***If E-Verify was made mandatory, these wait times are likely to increase significantly.***

VII. Recommendations

1) Enact immigration reform that protects workers' labor and employment rights.

Instead of focusing on ineffective "solutions," Congress should pass commonsense legislation that overhauls our nation's immigration system and protects all workers' rights. Unlike E-Verify, which would decrease contributions to state and federal tax revenue, passage of immigration reform would provide an estimated $1.5 trillion dollar benefit to the gross domestic product over 10 years in addition to $66 billion boost in federal tax collection.[49] If implemented as part of broad and inclusive immigration reform, protections for workers' labor and employment rights can "help rid the system of bottom-feeding employers who hire and underpay and otherwise

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

[54] Westat *supra* note 9, pp. 203-204

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

[45] *Id.*

[46] *Id.*

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

[48] *Customer Waiting Times in the Social Security Administration's Field Offices, supra* note 44

[49] The Financialist, *The Cost of Partisan Politics* (Immigration Reform) http://www.thefinancialist.com/the-cost-of-partisan-politics/

exploit cheap immigrant labor, dragging down wages and workplace standards for everyone."[50] In addition to creating E-Verify worker protections, immigration reform should include the Protect Our Workers from Exploitation and Retaliation Act (POWER Act, H.R. 2169, S.1195) and other essential safeguards to ensure that workers can enforce their workplace rights.[51]

2) ***Ensure that E-Verify is not used to undermine workers' rights under labor and employment law.***

Too often, workers experience egregious violations of their most basic workplace rights. When these workers complain about the unlawful treatment, they face retaliation, in the form of firing, suspension, or even physical abuse. Some workers face retaliation for merely asserting their right to work in the U.S.[52] Because E-Verify compounds workers' vulnerability and undermines labor law, the program should explicitly prohibit the use of E-Verify to undermine workers' rights under labor and employment law. This prohibition should come with meaningful penalties. Because worksite enforcement undermines the enforcement of labor law, the Department of Labor should be given additional resources that allow them to expand labor law enforcement in states mandating E-Verify's use.

3) ***Create a review process that would allow citizens and work authorized individuals to correct errors in their records and maintain their jobs.***

Using USCIS's minimum estimates, nearly 56,000 U.S. citizens and work authorized immigrants would experience an E-Verify TNC.[53] Using Westat's statistical model, approximately 100,000 U.S. citizens and work authorized individuals experienced an FNC, meaning that they were likely terminated. Workers experiencing an FNC had no formal way to resolve this error, get their job back, or get compensation for the time they were out a job due to the government's mistake. USCIS should create a process to allow U.S. citizens and work authorized individuals to correct TNCs and FNCs easily, remain on the job while they correct these government errors, and receive compensation for any time they are out of a job.

4) ***Prohibit employer misuse of E-Verify.***

There continues to be significant employer misuse of E-Verify—including prescreening of workers and adverse action against workers who receive TNCs. Workers who report mistreatment should be treated as whistleblowers. Without significant penalties for employer mistreatment, and strong worker protections, employer misuse flourishes. We should learn from the failure of employer sanctions created by the Immigration Reform and Control Act of 1986 (IRCA),[54]and ensure that the penalties do not result in *employee sanctions*, as has been the case

[50] *Immigration Reform and Workers' Rights*, The New York Times, February 20, 2013, available at: http://www.nytimes.com/2013/02/21/opinion/immigration-reform-and-workers-rights.html?_r=0
[51] More information about worker protections and immigration reform is available at "Strengthening Our Country and Promoting Shared Prosperity: Workers' Rights Priorities for Immigration Reform 2013" available at https://nilc.org/workerpriorities2013.html
[52] Department of Justice, *supra* note 3.
[53] USCIS's minimum error rate estimate is 0.28 was for FY 2011. The 56,000 was reached at by multiplying USCIS's error rate to the to the 20 million E-Verify queries by employers in FY 2012.
[54] 8 U.S.C. §§ 1324a-1324b

with IRCA. As a result of IRCA, employees who speak up in the face of abusive treatment are often fired or detained and deported while the employer simply turns around to hire another unauthorized worker without any penalties.

5) ***Before any expansion of E-Verify as part of immigration reform, ensure that the program meets specified requirements regarding database accuracy, low error rates, privacy, and measurable employer compliance before implementation.***

Mandatory employment verification would represent an enormous increase in utilization of the program, from only 20 million name checks—only 7% of employers—in fiscal year 2012 to over 60 million name checks if applied only to new hires. Moving forward without addressing problems within the system will result in harm to all workers and businesses. In Georgia, the implementation of state E-Verify mandate resulted over 1,000 doctors and other medical practitioners temporarily losing work eligibility because of insufficient staffing at local licensing offices.[55] Performance evaluations should address, at a minimum: wrongful terminations due to system errors, employer compliance with program rules, and the impact of the system on workers' privacy. The best way to ensure that implementation of mandatory E-Verify is accurate is to set standards for system performance upfront, clear benchmarks that need to be met, and timelines for meeting those metrics. These metrics should be met *before* any expansion of E-Verify is implemented.

Conclusion

E-Verify is a costly, ineffective program that does not prevent employers from hiring unauthorized workers, but does threaten all workers' rights. With annual price tag of $100 million, U.S. taxpayers should expect more. A wide variety of organizations, including privacy advocates and business associations, oppose the program's mandatory use and have called on Congress to reform the program.[56] And with immigration reform on the horizon, before any expansion of E-Verify is considered, significant problems must be addressed. As a voluntary program, nearly one third of all E-Verify employers use the program to prescreen workers and over 40 percent of workers are robbed of their ability to contest a possible program error. Last year alone, nearly 50,000 workers experienced an E-Verify error that required them to contact the government or risk losing their jobs. And if E-Verify were made mandatory, about 1.2 million workers would have to contact a government agency or risk losing their jobs. 770,000 workers would likely lose their jobs. It is time for Congress to stop focusing on ineffectual worksite enforcement and instead focus on passing commonsense immigration reform. It is clear that the public is ready for the 11 million Americans at heart to become Americans on paper, as diverse constituencies are expressing their support for immigration reform. For example, the AFL-CIO and the Chamber of Commerce support immigration reform,[57] as do faith leaders,[58]

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[55] Jim Burress, *Georgia Immigration Law Trips up Doctors and Nurses*, NPR, November 13, 2012.
[56] Coalition Letter Against Mandatory E-Verify, February 20, 2013, available at: http://www.aclu.org/files/assets/everify_coalition_letter_final_short_-_signatories.pdf.
[57] Joint Statement of Shared Principles by U.S. Chamber of Commerce President and CEO Thomas J. Donohue & AFL-CIO President Richard Trumka, February 21, 2013, available at: http://www.aflcio.org/Press-Room/Press-Releases/Joint-Statement-of-Shared-Principles-by-U.S.-Chamber-of-Commerce-President-and-CEO-Thomas-J.-Donohue-AFL-CIO-President-Richard-Trumka

small business owners,[59] and educators.[60] The time has come for Congress to respond to the country's growing consensus, and pass commonsense immigration reform.

[58] 1000 Faith Leaders Call for Immigration Reform, January 23, 2012, New America Media, http://newamericamedia.org/2013/01/1000-faith-leaders-call-for-immigration-reform.php
[59] Commonsense Immigration Reform Will Boost the Economy, Battle Creek Enquirer, http://www.battlecreekenquirer.com/article/20130222/OPINION02/302220028/Mark-Anthony-Common-sense-immigration-reform-will-boost-economy
[60] National Education Association, Wisconsin Teacher Fights for His Students and Immigration Reform, available at: http://educationvotes.nea.org/2013/02/19/wisconsin-teacher-fights-for-his-students-and-immigration-reform/

Mr. GOWDY. Thank you, ma'am. I thank all of our witnesses.

At this point I would recognize the Chairman of the full Committee, the gentleman from Virginia, Mr. Goodlatte?

Mr. GOODLATTE. Thank you, Mr. Chairman, and I want to thank all the witnesses for their testimony.

Ms. Correa, I wanted to start with you. I appreciated the demonstration of how the program works well in most instances, and I wanted to ask you to step back in time a couple of years. Your predecessor testified in this Subcommittee on the same issue 2 years ago, and her written testimony indicated that the USCIS was exploring ways to lock identities for Social Security numbers.

Your testimony today says essentially the same thing, that you are developing that capability. And so I am wondering what progress you have made on the SSN lock ability since 2011, and when will you expect to see that capability implemented?

Ms. CORREA. Thank you for your question, Chairman. Excuse me.

We have been working on the features to lock the Social Security. We are working with the Social Security Administration and, of course, the Department of Homeland Security Office of Civil Rights and Civil Liberties, as well as the privacy officers, to make sure that we develop a locking capability in the system that protects the rights of the employees, ensures that the Social Security number is properly locked in the system, and that works.

We expect the enhancement to be completed later this year, and we would be able to come back and brief you a little bit more on exactly how that would work. We are still exploring how to do that.

Mr. GOODLATTE. Thank you. Mr. Gamvroulas, you mentioned in your testimony that you were skeptical of Utah's E-Verify requirement when it was first enacted in 2012. What concerns did you have prior to actually using E-Verify, and after you began using it, did those concerns become a reality or have your concerns been allayed?

Mr. GAMVROULAS. Thank you for the question, Mr. Chair.

Well, we were concerned about the accuracy and the timeliness because we had not been using it previously. Once we were able to train our human resources people, we found it to be, as you saw in the demonstration, fairly easy to use, although it did take some time initially to train our human resources people.

We were concerned, candidly, more about the impact on Utah businesses because we were concerned. One of the reasons we were skeptical about it was that Utah would be one of only a few States that would have enacted a mandatory E-Verify system. We were concerned about what that would do employers and employees and to the business culture and climate in Utah.

We have found that that has not happened. For the most part, those that use the system that we are aware of have also had similar experiences as we have that it is an efficient and effective system.

Mr. GOODLATTE. Do you and your HR staff prefer using the I-9 form or E-Verify?

Mr. GAMVROULAS. We prefer to use the E-Verify. And the reason is that it gives, as I mentioned in my testimony, the idea of safe harbor. And that is not just for the company, but for the individual. If you are the human resources person for a company and you are checking off the boxes that the information you have been given, that you have verified that those documents are real. The I-9 process, you are simply taking the documents, stapling them to an application. They go in a file, and you might be audited, you might not be audited.

In the case of the E-Verify, we can print out the confirmation letter. We can put it in the file with the information. And if we are ever audited or if we are ever investigated, we can demonstrate that we have gone through the process and verified the information. And so our human resources people have told me unequivocally that they prefer the E-Verify system.

Mr. GOODLATTE. Let me give Mr. Johnson an opportunity to tell us what he is hearing from his members who currently use E-Verify as to whether or not the system is easy to use or too burdensome and too costly.

Mr. JOHNSON. No, they have found it quite easy to use. Obviously any time you got a new technology, there is a little ramp-up costs at the beginning, but once you get used to it, it is working very well.

Ironically, Congressman, one comment I have gotten is sometimes a concern that it does not catch everyone who is undocumented, and then sometimes when the government shows up for a raid, that results in, even though the employer has not knowingly hired anyone who is undocumented, it results in rating that a destabilization of the workforce.

Mr. GOODLATTE. So if they have acted in good faith, we need to find a better way to handle that. If there is evidence that they have not—let me give Ms. Tulli an opportunity to respond and ask you a particular question.

You make a valid point in your written testimony when you note that even in states that have E-Verify mandates for all employers, not every employer has signed up for the program. So what kind of enforcement mechanism do you support in order to help ensure that employers sign up for the program?

Ms. TULLI. Thank you for the question. Exactly to your point, Mr. Goodlatte, what we note in my written testimony is that there is widespread employer non-compliance. In Alabama, 8 out of 10 employers are not using the program. Arizona, 5 years after enactment, 1 out of 3 are not.

We think that the best enforcement measure is actually a broad and robust legalization plan. That plan should include comprehensive immigration reform with employee protections and a road to citizenship for the unauthorized workers who are currently in our country.

Mr. GOODLATTE. Okay. But to get back to this piece of that entire process, do you have specific suggestions that would encourage employers to use it more than they do, other than mandating it, which we certainly are obviously considering because I think any type of immigration reform that you just outlined would have to include a piece that assured us that we were not going to have a repeat of the 1986 experience where we did not have enforcement, and employer sanctions were not pursued aggressively. And quite frankly, employers have had legitimate complaints about forged documents.

E-Verify is at least a partial answer to that, and so we think it is a partial answer to the big puzzle of where you would like to get in terms of some kind of legalization. This hearing today is not about all of those aspects of the matter, but we would welcome any input you want to give us later on about ways you can make this system work better.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Virginia.

The Chair would now recognize the gentlelady from California, the Ranking Member, Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. Before asking my question, I would like to ask unanimous consent to place statements in the record from the Service Employees International Union, the American Civil Liberties Union, the Coalition for Humane Immigration, Immigrant Rights of Los Angeles, the Hispanic Federation, and a letter from a broad coalition consisting of organized labor, faith, civil rights, and immigrant rights organizations.

Mr. GOWDY. Without objection.

[The information referred to follows:]

MARY KAY HENRY
International President

ELISEO MEDINA
International Secretary-Treasurer

KIRK ADAMS
Executive Vice President

MICHAEL P. FISHMAN
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Statement of Eliseo Medina
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House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement

Hearing "How E-Verify Works and How it Benefits American Employers and Workers"

February 27, 2013

Thank you, Chairman Gowdy, Ranking Member Lofgren, and members of the Subcommittee, for holding hearings to gather information on E-Verify. I write today on behalf of the 2.2 members of the Service Employees International Union ("SEIU") who work in health care, state and local governments, and in building services.

SEIU has long advocated for common sense immigration reform that comports with our national values; provides a clear roadmap to citizenship for hardworking, taxpaying immigrants; builds the strength and unity of working people; keeps families together; and guarantees the same rights, obligations, and basic fairness for all workers, no matter where they come from.

At the same time, we have consistently opposed expansion of the E-Verify program—or making the program mandatory—outside the context of comprehensive immigration reform. Although E-Verify is often portrayed as an easy way to curtail the employment of unauthorized workers in the U.S. , many of our members have experienced the downsides of the program, including its database error rates, lack of worker protections, lack of privacy protections, and employer misuse.

We believe that it makes no sense to implement any expansion of such a flawed program in the absence of complete commonsense immigration reform that includes legalization of individuals now in the United States, a path to citizenship for those individuals, and a workable plan for the future flow of foreign workers to the extent they are needed here in the United States. Immigrants come to the United States to seek work, and in certain industries, U.S. employers want to hire these workers, because they cannot find enough American workers. As long as some employers need undocumented workers to conduct their businesses, they will find a way to hire those workers and mandatory E-Verify by itself will not work. Implementing mandatory E-Verify while there still is a demand for undocumented workers will only drive

employers underground so as to avoid E-Verify. The resulting vast expansion of the underground economy, cash payments, work off of the books, and misclassified independent contractors would not be good for workers, taxpayers, or law-abiding businesses.

SEIU therefore supports the expansion of E-Verify *only* if it is part of a complete commonsense immigration reform bill that significantly reduces the pool of undocumented workers and those employers who have an incentive to bypass and subvert the system. Even in the context of comprehensive reform, Congress should remember that it is putting in place a program that will be mandatory for every business and every worker in the country, not just for immigrants or those who employ them. If mishandled, hundreds of thousands of workers each year could face bureaucratic hurdles before starting new jobs. Our entire economy could suffer. As a result, its implementation must be undertaken with great care. Certain features and critical improvements must be incorporated to E-Verify to ensure that it works properly and sufficiently protects the privacy and due process of all workers.

For this reason, labor and business are in agreement that any expansion of E-Verify must be done in a measured manner. According to the Chamber of Commerce, "the best approach for a broad E-Verify mandate would be to move from one phase to the next as the system is being improved to take care of inaccuracies and other inefficiencies ascertained through the earlier phase. This would also allow DHS to properly prepare for the new influx of participants. In addition, the needs of the different types of firms and establishments need to be considered during the roll out."

Failing to address ongoing problems within the system would not help to achieve its stated goals and would result in harm to all workers and businesses. For example, in Georgia, implementation of a mandatory system has resulted in at least 1300 doctors and other medical practitioners temporarily losing work eligibility because of insufficient staffing at local licensing offices. These are the kinds of losses we need to prevent, and can only do so by a measured roll out of the E-Verify expansion. An unrealistic timeframe would likely delay implementation of the new system because it leads to inadequate and unrealistic planning, and misallocation of resources and taxpayer monies, and lead to other experiences such as Georgia's.

Each time a system grows substantially larger, serious new technical issues often arise that were not previously a significant problem. Mandatory employment verification would represent an enormous increase in utilization of the program, from 16.4 million queries in FY 2010 to over 51 million if applied only to new hires. The tried and true method of ensuring that a program works as it is taken to scale is to ensure that the system works at an acceptable level at each stage before it is expanded. Congress should include such a best practice in any legislation, requiring certification that database accuracy standards have been met and that the system is operating smoothly and correctly at each stage of expansion before further expansion is permitted.

We urge Congress to implement any such phased-in expansion of mandatory E-Verify by region rather than by size of employer. This is preferable because in many industries large employers compete with much smaller employers. Requiring larger employers to implement E-Verify while their smaller

competitors are not required to do so would put those larger employers at a competitive disadvantage. A phase-in by region would be fairer and should begin with states that currently mandate E-Verify's use for most or all employers (Alabama, Arizona, Georgia, Utah, Louisiana, Mississippi, Tennessee, North Carolina, South Carolina). Starting the phase-in with these states will permit a faster evaluation of database accuracy and operation of E-Verify from states that have had significant experience with E-Verify before it is extended to other states. By rolling out E-Verify based on regions of the country, with those states that already have mandatory E-Verify in their laws implementing the mandate first, Congress would put employers who compete with each other on equal footing.

Any such expansion of mandatory E-Verify should continue the current practice of reserving its use to new hires, except where re-verification is permitted under current law (e.g. when work authorization expires). There are two important reasons why this is preferable. First, requiring employers to re-verify their existing workforce would cause much greater confusion and disruption of the workplace than just applying it to new hires. It would add more bureaucracy to the process; it would be extremely expensive; and it would be burdensome for employers as well as the workers who would have to work with their employers to address the errors. Second, limiting use of mandatory E-Verify to new hires would require approximately 51.7 million queries per year, whereas expanding its use to include the entire workforce would nearly triple that amount, generating 155 million queries. The total number of errors generated by the system would substantially increase, as would the costs associated with correcting those errors. Given the strain that expanding E-Verify will put on the system, the prudent thing to do would be to limit its application to new hires.

For the same reasons, Congress should not require re-verification where the workforce stays in place after an employer buys another employer or where service contracts turn over from one employer to another. Many times when one employer buys another employer or where a service contract is lost by one employer and picked up by another, the workers remain at the same workplace performing essentially the same work. It makes no sense for employers to run E-Verify on these employees when the previous employer already has verified the workers status. Such a requirement simply adds costs to the business change and inconveniences to both the new employer and the workers while doing nothing additionally to ensure that the particular workforce is authorized to work in the United States.

Beyond phase-in, it is essential for Congress to put protections in place to avoid employer misuse of the system as well as mechanisms for workers to contest erroneous nonconfirmations. Among other improvements in the current program, there should be:

- Penalties for misuse of the program to undermine enforcement of labor rights;
- Protection against use of the program to retaliate against workers; and
- Safeguards such as permitting workers to remain on the job throughout the process of contesting an erroneous nonconfirmation as well as compensation for lost work due to government errors

Thank you for considering our thoughts on this matter.

WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"How E-Verify Works and How It Benefits American Employers and Workers"

Submitted to the House Judiciary Committee

February 27, 2013

ACLU Washington Legislative Office
Laura W. Murphy, Director
Christopher Calabrese, Legislative Counsel

The American Civil Liberties Union (ACLU) submits this statement to the House Judiciary Committee on the occasion of its hearing addressing "How E-Verify Works and How it Benefits American Employers and Workers."[1] This statement aims to provide the Committee with an appraisal of the privacy and civil liberties implications of a mandatory employment verification system ("mandatory E-Verify").[2]

Several immigration reform proposals have called for mandatory E-Verify in some form.[3] For example, the Senate Gang of Eight proposal describes a "tough, fair, effective and mandatory employment verification system."[4] Unfortunately, E-Verify is a flawed electronic employment-eligibility screening system that imposes unacceptable burdens on America's workers, businesses and society at large. **For example a mandatory E-Verify system with a mere 1% error rate would affect approximately 1.5 million American workers.** Nationwide, E-Verify would create a virtual national ID and would lay the groundwork for a possible biometric national ID system, thereby imposing significant privacy and civil liberties costs on all Americans, including lawful workers, businesses, and taxpayers.

I. Privacy Concerns

A. National ID

E-Verify is an internet-based system that contains identifying information on almost every American. It includes names, photos from passports and DHS documents, some drivers' license information, social security numbers, phone numbers, email addresses, workers' employer, industry, and immigration information like country of birth.[5] The internet-enabled process operates by allowing employers to check the system to see if a newly hired employee is work authorized. Right now, it is largely voluntary except where it is required for federal contractors and by some states.

This vast collection of personal information is already well on its way to becoming a national identity system. When E-Verify began, it was used essentially for document

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[1] The ACLU is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal of protecting the privacy rights of every American and protecting the rights of immigrants', including supporting a roadmap to citizenship for aspiring Americans.

[2] For a statement regarding the ACLU's broader position on immigration reform, please see: http://www.aclu.org/immigrants-rights/aclu-statement-senate-judiciary-committee-hearing-comprehensive-immigration-reform

[3] *See* "FACT SHEET: Fixing our Broken Immigration System so Everyone Plays by the Rules," The White House, January 29, 2013, available at http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules. The document notes the mandatory electronic employment verification program will ensure "the privacy and confidentiality of all workers' personal information" and will "include(s) important procedural protections."

[4] Brad Plumer, READ: Senators release bipartisan plan for immigration reform, Washington Post, January 28, 2013. Available at: http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/28/read-senators-release-their-plan-for-immigration-reform/.

[5] *Privacy Impact Assessment for the E-Verify Program*, USCIS Verification Division, May 4, 2010.

verification. Workers would present Social Security cards and other information and the system would assure that number or other record was legitimate and belonged to an individual who was work authorized. With the addition of more information to the system, especially photographs, the nature of E-Verify has changed. It is rapidly becoming a system for identifying workers – by entering identifying information and receiving a photograph. Recently some lawmakers have called for this system to be further supplemented by a physical card which would contain identifiers such as fingerprints or other biometrics which could be used to verify identity as part of the E-Verify process.[6]

These two proposals – biometric national ID and mandatory E-Verify – could easily become a wide-ranging government permission slip necessary to access basic rights and services. Social Security numbers, originally intended to be used for distribution of benefits, were never meant to be used for identification. Now it is almost impossible to function in America without one. If it becomes mandatory, E-Verify could expand in much the same way. An internet connection and access to the system could lead to unwarranted harassment and denial of access to TSA checkpoints, voting booths, and gun permits, or other harmful uses not yet envisioned. Further, as described below, E-Verify is plagued by errors and bureaucratic hurdles to work. If Congress expands the system to become a national ID system, these problems would quickly become not only employment issues, but also problems with travel and other fundamental freedoms.

Such a national identity system could also enable other types of data surveillance. If combined with other databases, including data on travel, financial information or communications, E-Verify would be a gold mine for intelligence agencies, law enforcement, licensing boards, and anyone who wanted to spy on American workers. Because of its scope, it could form the basis for surveillance profiles of every American.

While the bipartisan Senate plan calls for "procedural safeguards to protect American workers, prevent identity theft, and provide due process protections," no safeguards can change the fact that creating a biometric national ID would irreparably damage the fabric of American life.[7] Our society is built on the presumption of privacy: as long as we obey the law, we are all free to go where we want and do what we want – embrace any type of political, social or economic behavior we choose—without the government (or the private sector) looking over our shoulders or monitoring our behavior. This presumption of personal freedom is one of the keys to America's success as a nation. It encourages us to be creative, motivates us to pursue our entrepreneurial interests, and validates our democratic instincts to challenge any authority that may be unjust. A national ID system would turn those assumptions upside down by making every person's ability to participate in a fundamental aspect of American life – the right to work – contingent upon government approval.

B. Identity Theft

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[6] Danny Yadron, *Senators in Immigration Talks Mull Federal IDs for All Workers*, Wall Street Journal, Feb. 21, 2013.
[7] Plumer at 1.

The system is vulnerable to another privacy harm: data breaches and attacks by identity thieves. Since the first data breach notification law went into effect in California at the beginning of 2004, more than 607 million records have been hacked, lost or disclosed improperly including those related to E-Verify.[8] As just one example, in October and December 2009, Minnesota officials learned that the company hired to process the state's E-Verify forms had accidentally allowed unauthorized individuals to gain access to the personal information of over 37,000 individuals due to authentication practices and web application vulnerabilities in their system.[9]

Currently, the Department of Homeland Security (DHS) is not doing all that it can to protect the E-Verify system. A software industry best practice is to have a third party security professional audit systems in order to look for information security flaws in the software code or the configuration of servers. These so-called "red teams" are used by the military, the National Security Agency, the Department of Energy, as well as by private industry.[10] However currently it appears that DHS has only taken piecemeal steps taken to improve the security of the E-Verify system, none of which suggest the presence of a comprehensive information security program.[11]

Regardless of whether or not Congress makes the use of E-Verify by employers mandatory, it is absolutely vital that E-Verify receive a thorough audit by independent security experts, that all flaws are fixed, and that DHS commit to re-auditing the system each year. The E-Verify system contains sensitive personally identifying information on millions of Americans, is connected to the internet, and it should be assumed that it will be a target for hackers.

II. Existing Problems with the System

A. Error Prone Databases

Implementing E-Verify nationwide would require reliance on massive and inaccurate databases, and the room for error is enormous. Currently, E-Verify has been implemented in only a fraction of the country's workplaces. **If applied to the entire workforce and with a**

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[8] Privacy Rights Clearinghouse Chronology of Data Breaches, http://www.privacyrights.org/ar/ChronDataBreaches.htm.

[9] John Fay, *FTC Settlement Highlights the Importance of Protecting Sensitive I-9 Data in an Electronic World*, Guardian I-9 And E-Verify Blog, May 4, 2011.

[10] *See* Robin Mejia, Red Team Versus Blue Team: How to Run an Effective Simulation, CSO Online, March 28, 2008, available at http://www.csoonline.com/article/221695/red-team-versus-blue-team-how-to-run-an-effective-simulation. See also Google, Google's Approach to IT Security, 2012, available at https://cloud.google.com/files/Google-CommonSecurity-WhitePaper-v1.4.pdf (Google "Engages outside security experts to conduct periodic security assessments of Google's infrastructure and applications").

[11] Westat Corporation, Findings of The E-Verify Program Evaluation, 2009, at page 36 ("USCIS staff report that they have undertaken a number of efforts to improve E-Verify ... including exploring ways to make E-Verify more secure.") and page 108 ("Other future changes expected are ... Improvements in the registration process to make it more secure"). See also Claire Stapleton, Privacy Branch Chief, USCIS, Privacy Impact Assessment for the E-Verify Program, May 4, 2010 ("E-Verify has implemented a broad range of technical, operational, and physical security measures to protect the system and its information. These security measures include access controls for both internal and external users...E-Verify has an automated mechanism to ensure that users change their passwords at a specified interval. User accounts are locked after several failed attempts to log on... Password data is encrypted within the system. E-Verify is located within a multi-layered firewall architecture...").

conservative 1 percent error rate (as a recent Migration Policy Institute paper estimates[12]), 1.5 million work-authorized employees could be terminated if they are unable to fix their records. If applied only to new hires, 517,000 workers could lose their jobs.[13]

Correcting a record or contesting a determination is a difficult and in some cases impossible task. Sometimes workers don't have the time or never learn they have the right to contest their determinations. Studies from cities and states where E-Verify is in place have shown this, with disastrous consequences. A survey of 376 immigrant workers in Arizona (where use of E-Verify is required) found that 33.5% were fired immediately after receiving a tentative denial in the system and were never given a chance to correct potential errors. Furthermore, not one of those workers was notified by the employer that he or she had the right to appeal the E-Verify finding, despite such a requirement in the memorandum of understanding (MOU) that all employers sign with DHS before using the program.[14]

Some workers are never able to resolve an error. For example, Jessica St. Pierre, a U.S. citizen telecommunications worker in Florida, was initially hired for a position. However she was unable to start work due to an E-Verify error. Despite her pleas to government officials, she was unemployed for several months and eventually had to take a lower paying job.[15] The error was eventually traced to the employer incorrectly entering her name.

These error rates are caused by a variety of factors. Women or men who changed their names at marriage, divorce, or re-marriage may have inconsistent files or may have never informed either the Social Security Administration or DHS of name changes. Simple key stroke or misspelling errors also contribute to the volume of erroneous data. Individuals with naming conventions that differ from those in the Western world may have had their names anglicized, transcribed improperly, or inverted. The GAO predicted that if E-Verify were made mandatory for new hires nationwide, approximately 164,000 citizens per year would receive a tentative non-confirmation (TNC – a system output saying the individual does not have a match in the system) just for name-change related issues.[16] It would be even more damaging if applied not just to new hires, but to existing workers as well.

The high number of error rates occurring among certain cultural groups can lead to an appearance of discrimination in the employment process. Five out of 25 employers acknowledged to GAO that TNCs were more likely to occur with Hispanic employees having hyphenated or multiple surnames.[17] Additionally the TNC rate for employees who were eventually authorized to work was approximately 20 times higher for foreign-born employees than for U.S.-born employees from April through June of 2008.[18] These striking disparities

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[12] Doris Meissner and Marc Rosenblum, *The Next Generation of E-Verify: Getting Employment Verification Right* (Migration Policy Institute, July 2009), http://www.migrationpolicy.org/pubs/Verification_paper-071709.pdf.
[13] *Id.*
[14] Caroline Isaacs, Sanctioning Arizona: The Hidden Impacts of Arizona's Employer Sanctions Law (American Friends Service Committee, 2009), www.afsc.org/tucson/hl/a/GetDocumentAction/i/74700.
[15] Written Statement of Jessica St. Pierre, *"E-Verify Preserving Jobs for American Workers" House Committee on the Judiciary Subcommittee on Immigration Policy and Enforcement Hearing*, February 10, 2011.
[16] GAO, *Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain,* p.19.
[17] *Id.* p. 20.
[18] *Id.* p. 40

could easily lead employees to believe they were being judged on more than just their credentials. Moreover, employers may shy away from hiring non-native-born individuals or those with foreign names because of a fear they would be harder to clear through the system.

B. Process for Discovering Errors in the System

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

In order to alert workers to errors in their record we recommend two approaches. The first is to allow workers to check their own records and the second is to provide direct notice to workers whenever they are the subject of an E-Verify search.

Self-Check

We commend U.S. Citizenship and Immigration Service for beginning this process by creating a self-check system that allows workers to check on their E-Verify data. It is a fundamental privacy principle that individuals should have access to their own information in order to assure its completeness and correctness.

We have some specific concerns about how the self-check program will be implemented. First of all, self-check is a tool for allowing workers to correct their records. It must not be used as a pre-screening tool. If employers imposed a self-check requirement – effectively serving as an E-Verify pre-screening tool – they would shift the cost from the employer to the employee. In keeping with the statistics cited above, such costs would fall disproportionately on immigrants, minorities, and women. This would undermine the anti-discrimination provisions built into the system to ensure that authorized workers are able to contest TNCs and document their eligibility to work.

Second, the system must protect the privacy of both employers and employees. Considering high rates of identity fraud associated with the E-Verify system, it is no surprise that individuals are very concerned about the retention of their personal information in a database to which more and more people are gaining access. There must be clearly defined limits in regard to potential sharing of personal information.

Third, there must be an option for self-check access to people without credit histories. If self-check relies on background check information, then it will be unavailable to populations of foreign nationals who have only recently arrived in the U.S. and have not yet developed a credit history. This would include some of those with the most complicated immigration situations such as refugees, asylum seekers, and people with temporary protected status.[19]

Worker Notice

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

Currently the only mechanism allowing individuals to learn when their records have been checked in the E-Verify system is through notification by an employer. The practical result of this policy is that the person best positioned to identify and report misuse of E-Verify checks – the worker – never learns about them. The problem is particularly acute in cases of identity theft. In many cases, workers could provide a wealth of valuable information about misuse of the system if they were notified when verification checks occurred, given a place to report misuse of their information, and provided with a minimum amount of education. On the last point, it would be helpful to provide as part of this notice information such as, "Have you started a new job in the last few days? If not, your personal information may have been improperly accessed in a government database."

For example, if a worker learns of multiple improper checks, it may indicate his or her personal information has been sold for use by undocumented workers seeking employment. Alternately, a single improper check may be evidence that a worker's personal information has been stolen from another source (such through a data breach) and thieves are using a hacked E-Verify account to validate the accuracy of the information before using it for purposes such as credit card fraud. Finally, a notification that comes when a worker has only applied for a job may be evidence of improper prescreening.

System notification and reporting could be implemented easily. The Social Security Administration already has address information for beneficiaries (it performs an annual mailing of benefit information) and notice could include a link that allows individuals to directly report back on problems. The conditions when verification typically occurs are fairly straightforward (the beginning of employment), so an individual could reasonably understand when a verification is improper and report it. Such a notice would also provide a timely reminder to a worker's right to appeal and educate the worker about the E-Verify system.

C. Due Process Protections

Once workers learn of errors in E-Verify, they need a robust system for contesting those mistakes. Absent such a system, mandatory E-Verify could render a worker unemployable because they cannot get work clearance from the system. Meaningful due process under E-Verify should:

- Create an administrative review process for erroneous final non-confirmations (FNCs) with worker protections, including a stay of the FNC while the worker pursues the appeal;

- Create an appeal process for the administrative review, including a stay of the FNC while the worker pursues the appeal;

- Create a judicial review process for the administrative appeal with remedies for wrongly terminated workers, including damages and reinstatement;

- Establish a 24-hour hotline, with interpretation available in multiple languages, which will receive inquiries from workers and employers concerning determinations made by E-Verify; and

- Prohibit employers from misusing E-Verify and create penalties for misuse.

Currently, there is no formal redress for workers who receive an erroneous FNC resulting in a bar from employment. In some cases USCIS or the Office of Special Council for Immigration-Related Unfair Employment Practices (OSC), has intervened to correct erroneous FNCs, but this cannot be a meaningful substitute for a formal process. While there is currently a DHS employee hotline, it is only available 8:00 a.m. to 5:00 p.m. and has representatives who speak English and Spanish. Because many low wage workers often work long hours at multiple jobs and speak languages other than English or Spanish, the hotline must be more accessible.

Ultimately without a formal process, E-Verify errors place an enormous financial burden on workers, particularly those who are low-income. Without redress, and with job loss, low wage workers face challenges including eviction and loss of health care benefits. It is unacceptable that work-authorized citizens and immigrants lose their jobs and suffer economic hardship due to errors in the verification system, and when that does happen they should be compensated.

III. Conclusion

For all of the above reasons, the ACLU believes that E-Verify is a fatally flawed system. It should not be mandated nor should it be part of any comprehensive immigration reform update.

COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

February 26, 2013

The Honorable Trey Gowdy
Subcommittee on Immigration and Border Security, Chairman
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member of Subcommittee on Immigration and Border Security
1401 Longworth House Office Building
Washington, DC 20515

Re: U.S. House of Representatives Judiciary Subcommittee on Immigration and Border Security: "How E-Verify Works and How it Benefits American Employers and Workers"

Dear Chairman Gowdy,

The Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) is a regional organization whose mission is to advance the human and civil rights of immigrants and refugees in Los Angeles. CHIRLA advocates on behalf of this community through policy and advocacy, organizing, education and community building. On behalf of CHIRLA, I am writing to express our views on the upcoming subcommittee hearing on E-Verify to be held February 27th in the House Subcommittee on Immigration and Borders.

CHIRLA is committed to working with you to ensure that immigration reform becomes a reality this year. However, we believe that E-Verify is a fundamentally flawed program, and accordingly we have strong reservations regarding any plans for its expansion. In our state most localities, from Los Angeles County to San Diego, refrained from introducing it. In 2011, Governor Jerry Brown signed a law prohibiting any local jurisdiction from mandating the program, thereby helping businesses and government avoid the documented risks detailed below.

Use of E-Verify has expanded dramatically since 2004 The primary impulse behind the adoption of E-Verify has been both state and federal government mandates that government contractors, and, in some cases, all businesses, enroll in the program. E-Verify mandates are often coupled with employer sanctions laws, which penalize employers for hiring and retaining undocumented workers. Despite the current 'popularity' of E-Verify mandates, this program is detrimental to our domestic workforce. While the E-Verify program is lauded by the US Department of Homeland Security (DHS) and

enforcement agencies, the program has had a number of negative effects on business owners, authorized and native workers, as well as undocumented workers.

E-Verify has an unacceptably high error rate, and this disproportionately impacts work-eligible immigrants, legal permanent residents (LPRs), and naturalized citizens. These errors are often attributable to mistakes in federal records or inaccurate input by the employer. It's crucial to note that even at 99% accuracy, over 1.5 million workers could be impacted if E-Verify was implemented In today's delicate economy, where finding and maintaining a job can be difficult, any error that would prevent a person from doing so is one too many. In addition to the stress that a "non confirmation" error can produce for the individual in question, there is also the question of how much extra administrative work is needed to clear up these mistakes by federal agencies already carrying heavy caseloads.

Employers also face a number of issues if they choose, or were to be required to use E-Verify. In states where E-Verify is required, employers who might otherwise not participate in the system, whether due to user difficulty, internet access, , the aforementioned accuracy issue or liability issues, are forced to do so lest they face state penalties. These difficulties are amplified for small businesses, which have fewer resources to devote to compliance. While the E-Verify program is theoretically free to businesses, it requires both infrastructure and an investment of employee expertise. A 2011 Bloomberg Government study estimated that mandatory use of E-Verify would cost small businesses (500 employees and under) about $2.6 billion dollars a year.

Substantial evidence of employer misuse of the program has also been documented. Unauthorized practices include the unlawful pre-screening of job applicants, the inappropriate penalization of non-confirmed employees (employees whose information does not match the SSA database) and retaliation against workers. Although employers are theoretically accountable to Immigration and Customs Enforcement (ICE) and US Citizen and Immigration Services (USCIS) for misuse of the system, genuine enforcement of the prohibitions embedded in E-Verify appears to be scant. Workers who are mistakenly classified as non-confirmed bear the burden of proof. They may face an arduous, uncompensated, and time-consuming experience as they endeavor to correct their erroneous non-confirmed status. There are few systems of accountability for rectifying discriminatory misuse of E-Verify, and workers who have been discriminated against have a difficult time having their complaints rectified.

The Congressional Budget Office stated that a nationwide expansion of E-Verify would have the likely consequence of decreasing federal revenues by $17.3 billion from years 2009-2018. This reduction would come from the fact that employers would no longer be withholding income and employment taxes from undocumented immigrants, but would rather either choose not to employ these individuals or would transition them to a different pay system in which their pay is not reported to the federal government.

An experimental program like E-Verify is simply not a good fit for America's economy that draws from a large variation of workers. In summary, nationally mandating E-Verify, would have disastrous effects on the U.S. economy, transferring the costs of the program to employers and tax payers while creating

COALITION FOR HUMANE IMMIGRANT RIGHTS OF LOS ANGELES

deep holes in the already fragile workforce. As we labor together on legalizing important segments of our working population, it would be unwise to simultaneously subject the entire US population to this type of sweeping verification scheme. We urge the committee to consider the totality of this prospect, and examine E-Verify's true impact on America.

If you have any questions, please contact Joseph Villela at jvillela@chirla.org or Rita Medina at rmedina@chirla.org.

Sincerely,

Joseph Villela
CHIRLA, Policy Director

Hispanic Federation
Statement for the Record
House Committee on the Judiciary
Subcommittee on Immigration and Border Security
Hearing on: "How E-Verify Works and How it Benefits American Employers and Workers"
February 27, 2013

The Hispanic Federation respectfully submits this statement for the record of today's hearing before the Subcommittee on Immigration and Border Security of the House Committee on the Judiciary on "How E-Verify Works and How it Benefits American Employers and Workers."

The Hispanic Federation (HF) is a social service and advocacy membership organization that represents and works with nearly 100 Latino non-profit community-based agencies to promote the social, political and economic well being of Hispanic Americans. Since its inception in 1990, the Federation has empowered and advanced the aspirations and needs of the Hispanic community by improving education achievement, increasing financial stability, strengthening Latino nonprofits, promoting healthy communities, and giving voice to our community.

Overview

The Latino community now represents 17 percent of the population—or 51.9 million residents in the United States and 15 percent of the country's labor force.[1] The Hispanic Federation has serious concerns over proposals that mandate the use of E-Verify and the deleterious impact these proposals have on Latino workers and small business owners.

An enforcement-only approach will not fix our broken immigration system. Eight million undocumented workers are not going to leave the country because of mandatory E-Verify.[2] Instead the mandatory use of E-Verify will impose new costs on employers,

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[1] Seth Motel and Eileen Pattern, *Statistical Portrait of Hispanics in the United States, 2011* (Pew Hispanic Center, Feb. 15, 2013), http://www.pewhispanic.org/2013/02/15/statistical-portrait-of-hispanics-in-the-united-states-2011/

[2] Passel, Jeffrey S., and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010.* (Pew Hispanic Center, Feb. 1, 2011) http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/

drive jobs into the underground economy, increase unemployment, and deprive the government of federal, state and local tax revenues.[3]

Instead of layering E-Verify on top of a broken immigration system, we need to fix the system. A workable solution is broad reform of our immigration system that includes a path to legal status, which includes citizenship, for undocumented immigrants. This would result in a large economic benefit—a cumulative $1.5 trillion in added U.S. gross domestic product over 10 years and ensure that all workers and jobs are protected.[4]

Concerns with mandatory E-Verify

The Hispanic Federation has serious concerns on the impact of a mandatory employment verification program on Latino workers and small business owners including, but not limited to:

Requiring the use of E-Verify will disproportionately affect naturalized citizens, foreign-born and Latino workers.

Although E-Verify error rates have improved, the system is still not foolproof. If E-Verify were to be made mandatory more than three-quarters of a million legal workers—including U.S. citizens—would stand to lose their jobs because of the system's error rate.[5] Of particular concern is the system's disproportionate impact on Latino workers. E-Verify error rates are 30 times higher for naturalized U.S. citizens and 50 times higher for legal nonimmigrants than for native-born U.S. citizens. Mandatory use of E-Verify will create a new set of employment challenges for the more than 18.7 million foreign-born Latinos in the country.[6] At a time when Latinos are already facing higher unemployment rates than the general population, a mandate to implement an error ridden system is simply unacceptable.[7]

Requiring employers to use E-Verify will place burdeus on all businesses, especially Latiuo small businesses.

Latino businesses are the single fastest growing segment of small businesses in the country, expanding at nearly twice the rate of the national average between 2002 and

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[3] *Expanding E-Verify will Undermine Job Growth and Cripple Small Business,* (NILC, Jan.2011), www.nilc.org/document.html?id=327

[4] Dr. Raúl Hinojosa-Ojeda, *Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform* (Center for American Progress, Jan. 7, 2010), http://www.americanprogress.org/issues/immigration/report/2010/01/07/7187/raising-the-floor-for-american-workers/

[5] Tyler Moran, Testimony before the House Committee on Ways and Means, Subcommittee on Social Security, Hearing on the Social Security Administration's Role in Verifying Employment Eligibility, April 14, 2011, available at http://www.nilc.org/testimony-eevs.html

[6] Seth Motel and Eileen Pattern, *Statistical Portrait of Hispanics in the United States, 2011* (Pew Hispanic Center, Feb. 15, 2013), http://www.pewhispanic.org/2013/02/15/statistical-portrait-of-hispanics-in-the-united-states-2011/

[7] In February 2013, the Latino unemployment rate was 9.7 percent, *Employment Situation Summary* (Department of Labor Statistics, Feb. 1, 2013), http://www.bls.gov/news.release/empsit.nr0.htm

2007.[8] Approximately 2.3 million businesses are owned by Latinos. These businesses generate $271 billion in sales each year.[9] Mandating the use of E-Verify will hurt Latino small business owners by adding another government regulation. According to a Bloomberg Government study, small businesses will spend $2.6 billion every year to implement E-Verify. With an unemployment rate of 9.7 percent for Latinos and the economic recovery of small businesses still precarious, it does not make sense to burden job creators with an additional $2.6 billion per year.

Given these realities, the Hispanic Federation remains opposed to the mandatory expansion of E-Verify in immigration reform. However, should Congress insists on enacting a mandatory employment verification system, at the very minimum it should:

- Phase the system incrementally with vigorous performance evaluations and ensure data accuracy;
- Protect workers from unreasonable burdens and misuse of the system; and
- Contain strong anti-discrimination protections, due process and privacy safeguards.

Conclusion

Unless the current unauthorized workforce is provided a path to legalization, requiring the use of E-Verify is destined to fail. The time to modernize our immigration laws is long overdue, and the Hispanic Federation stands ready to work with this Committee and Congress to achieve this important goal for our country, the American people, and all those seeking to contribute their talents and energy to our great nation.

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[8] *The Latino Labor Force in the Recovery,* (Department of Labor Statistics), http://www.dol.gov/_sec/media/reports/hispaniclaborforce/

[9] *The Impact of E-Verify on Latinos* (NLCR, Sep. 2011), http://www.nclr.org/images/uploads/pages/NCLRimpactofeverifyonLatinosfactsheet.pdf

February 26, 2013

The Honorable Trey Gowdy
Subcommittee on Immigration and Border Security, Chairman
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member of Subcommittee on Immigration and Border Security
1401 Longworth House Office Building
Washington, DC 20515

Re: U.S. House of Representatives Judiciary Subcommittee on Immigration and Border Security: "How E-Verify Works and How it Benefits American Employers and Workers"

Dear Chairman Gowdy:

The undersigned organizations representing organized labor, faith, civil and immigrant rights organizations are committed to working with you to ensure that immigration reform becomes a reality this year. However, we believe that E-Verify is a fundamentally flawed program, and accordingly we have strong reservations regarding any plans for its expansion. In our state most localities, from Los Angeles County to San Diego, refrained from introducing it. In 2011, Governor Jerry Brown signed a law prohibiting any local jurisdiction from mandating the program, thereby helping businesses and government avoid the documented risks detailed below.

Use of E-Verify has expanded dramatically since 2004 The primary impulse behind the adoption of E-Verify has been both state and federal government mandates that government contractors, and, in some cases, all businesses, enroll in the program. E-Verify mandates are often coupled with employer sanctions laws, which penalize employers for hiring and retaining undocumented workers. Despite the current 'popularity' of E-Verify mandates, this program is detrimental to our domestic workforce. While the E-Verify program is lauded by the US Department of Homeland Security (DHS) and enforcement agencies, the program has had a number of negative effects on business owners, authorized and native workers, as well as undocumented workers.

E-Verify has an unacceptably high error rate, and this disproportionately impacts work-eligible immigrants, legal permanent residents (LPRs), and naturalized citizens. These errors are often attributable to mistakes in federal records or inaccurate input by the employer. It's crucial to note that even at 99% accuracy, over 1.5 million workers could be impacted if E-Verify was implemented In today's delicate economy, where finding and maintaining a job can be difficult, any error that would prevent a person from doing so is one too many. In addition to the stress that a "non confirmation" error can produce for the individual in question, there is also the question of how much extra administrative work is needed to clear up these mistakes by federal agencies already carrying heavy caseloads.

Employers also face a number of issues if they choose, or were to be required to use E-Verify. In states where E-Verify is required, employers who might otherwise not participate in the system, whether due to user difficulty, internet access, , the aforementioned accuracy issue or liability issues, are forced to do so lest they face state penalties. These difficulties are amplified for small businesses, which have fewer resources to devote to compliance. While the E-Verify program is theoretically free to businesses, it requires both infrastructure and an investment of employee expertise. A 2011 Bloomberg Government study estimated that mandatory use of E-Verify would cost small businesses (500 employees and under) about $2.6 billion dollars a year.

Substantial evidence of employer misuse of the program has also been documented. Unauthorized practices include the unlawful pre-screening of job applicants, the inappropriate penalization of non-confirmed employees (employees whose information does not match the SSA database) and retaliation against workers. Although employers are theoretically accountable to Immigration and Customs Enforcement (ICE) and US Citizen and Immigration Services (USCIS) for misuse of the system, genuine enforcement of the prohibitions embedded in E-Verify appears to be scant. Workers who are mistakenly classified as non-confirmed bear the burden of proof. They may face an arduous, uncompensated, and time-consuming experience as they endeavor to correct their erroneous non-confirmed status. There are few systems of accountability for rectifying discriminatory misuse of E-Verify, and workers who have been discriminated against have a difficult time having their complaints rectified.

The Congressional Budget Office stated that a nationwide expansion of E-Verify would have the likely consequence of decreasing federal revenues by $17.3 billion from years 2009-2018. This reduction would come from the fact that employers would no longer be withholding income and employment taxes from undocumented immigrants, but would rather either choose not to employ these individuals or would transition them to a different pay system in which their pay is not reported to the federal government.

An experimental program like E-Verify is simply not a good fit for America's economy that draws from a large variation of workers. In summary, nationally mandating E-Verify, would have disastrous effects on the U.S. economy, transferring the costs of the program to employers and tax payers while creating deep holes in the already fragile workforce. As we labor together on legalizing important segments of our working population, it would be unwise to simultaneously subject the entire US population to this type of sweeping verification scheme. We urge the committee to consider the totality of this prospect, and examine E-Verify's true impact on America.

If you have any questions, please contact Joseph Villela at jvillela@chirla.org or Rita Medina at rmedina@chirla.org.

Sincerely,

Amistad Covenant Church
Asian South East Asian Societies
Border Network for Human Rights (BNHR)
CACIA

Central Coast Alliance United for Sustainable Economy (CAUSE)
Central American Resource Center, Los Angeles (CARECEN)
Centro Hispano de Estudios Teologicos (CHET)
City of Refuge Community Church, UCC, San Francisco
Clergy and Laity United for Economic Justice-CA - Interfaith Coalition for Immigration Rights
CLUE Santa Barbara
Coalition For Humane Immigrant Rights of Los Angeles (CHIRLA)
Consejo de Federaciones Mexicanas en Norteamérica (COFEM)
Desis Rising Up & Moving (DRUM)
Dolores Street Community Services
Fr. Donald MacKinnon, CSsR
Full Rights for Immigrants Coalition
Interfaith Coalition
Interfaith Committee for Worker Justice
Jessica Dominguez, Esq.
John Watkins, Office for Life and Justice, Roman Catholic Diocese of Oakland
Justice For Immigrants, San Jose
Sister Kathleen Healy
Rev. Walter Contreras, LA RED
The Lantern Center for Hospitality and Education
Sister Maire Sullivan, PBVM
National Immigration Law Center (NILC)
North Bay Organizing Project
Oakland Catholic Worker
Dr. Patricia Davis-Wick, Pomona Economic Opportunity Center
PRESENTE.ORG
Pueblo de Fe United for Workers Justice-Inland Valleys
Rights Working Group
Street Level Health Project
Silicon Valley Alliance for Immigration Reform (SVAIR)Unitarian Universalist Legislative Ministry, CA
Temple Hashem
UCLA Labor Center
Witness for Peace-Southwest

CC: Members of Immigration and Border Security Committee

Ms. LOFGREN. Thank you. As I mentioned in my few statements at the beginning of the hearing, I think it is obvious that any E-Verify system that it is going to be mandated for all employers cannot precede reform of the immigration system, and I think for obvious reasons.

I mean, the most glaring example is in the ag sector, as has been referenced. We know that American agriculture is heavily dependent on undocumented migrant workers, and we could do E-Verify and prove that is true, but we already know it is true. And the net

result would just be damage to the economy, and to the farmers, and to the workers. So I just think any E-Verify system, if we are going to consider it, would have to be concurrent with reform of the system.

But even with that, I have not supported this program in the past, but I am trying to keep an open mind that if we were to reform the immigration system and this were part of it, how would we deal with the issues that we have looked at over the years? And, you know, there are lies, darn lies, and statistics.

Bloomberg did a study, and I think you referenced it, Mr. Johnson, although you did not mention Bloomberg, estimating a very high cost for small businesses to implement that. I do not know if the figure of $2.6 billion for small businesses is correct or not. But we do understand that in a December 2010 survey of employers who currently do not use E-Verify, 25 percent of the small employers said they were not enrolled because they do not have a computer. I mean, they are not online. So this is going to be problematic for them. And the last thing we want to do in a tough economy is put more costs, especially on the small business sector.

So I am asking—I do not know, Ms. Correa or Ms. Tulli or any of you—whether you have ideas on how we might accommodate those small businesses that are not in a position to utilize the system that you have—I could not really see it because of the lights. But, you know, it is not accessible to them in the same way it is to people who are online.

Further, question about, and it has been referenced by Ms. Tulli. We have had situations where people who are authorized to work were dinged, and some of the statistics—and we are making improvements, I mean, which is great. But if you scale it up to the entire workforce, it is hundreds of thousands of people potentially if you just extrapolate out the error rate, who would be American citizens who would be told, you know, you are not legal.

And I was just telling the Chairman when I chaired the Subcommittee, I had a lawyer who worked for me, Traci Hong, who was an immigration lawyer, and I was Chair of the Immigration Subcommittee, and she was an American citizen. And when she went down to the House office employment center, she got dinged as not authorized to work, and she was an American citizen. I mean, it took her a long time, even though she was a really good immigration lawyer and I was Chair of the Subcommittee, to actually straighten it out. So I know firsthand that it can be a real pain for people.

And so I am looking for how do we put something in place to prevent trauma to people who are legally here, even if it is not—I am not going to say it is every case. But if it is 150,000 Americans, that is a big deal, and we need to think through how to protect those people.

So those are 2 questions among many others, but I only have a short period of time. Ms. Correa, or Ms. Tulli, or any of you, can you address those two main issues?

Ms. CORREA. If I may, Chair—excuse me, Congresswoman Lofgren—I apologize. First of all, I will talk about the accessibility by the small companies, the companies that do not always have web access. We certainly recognize that issue. We understand it.

And so some of the things that we have been doing recently here, we have upgraded all of our web browsers so that companies and employees can actually access E-Verify and Self-Check, which is a service of E-Verify, for the employees. They can actually access it using their smart phones.

We are also working on developing an actual downloadable application for smart phones because what we are finding is that many in that community out there do have that capability, and we recognize that there are a lot of the smaller——

Ms. LOFGREN. That would be a big help.

Ms. CORREA. Yeah. There are smaller companies out there that actually hire onsite. They hire temporary workers. So we want to make it as accessible as possible.

We also continue our outreach efforts, going out and talking to these communities and gaining a better understanding of their needs, their concerns, so that we can build that into the enhancements that we are working on for the system.

Last, but not least, Self-Check. I think it is important to recognize that Self-Check is out there as a tool so that individuals can go in and validate—in other words, go in, enter their data. They literally are going into E-Verify, and it gives them information in advance as to whether or not they might encounter a mismatch or tentative non-confirmation when their employer runs it. And that gives them the ability to address that potential mismatch before they actually seek employment.

So those are 3 of the things: the outreach, of course, the accessibility by smart phones, and then also the Self-Check service. But certainly we continue talking to the community out there. We continue our outreach efforts because we certainly want to understand and address the needs of all the businesses out there.

I also would like to point out that in looking at our statistics in E-Verify, 81 percent of the companies in the system today are actually companies with 100 or less employees. So the small business community is actively registered in the system, and we continue to monitor the progress to make sure that they are not encountering any problems.

Ms. LOFGREN. Thank you.

Ms. TULLI. If I could have an opportunity to respond as well?

Mr. GOWDY. Certainly. If you would, to the extent you can, make it as——

Ms. TULLI. Brief.

Mr. GOWDY. Concise. Okay, thank you.

Ms. TULLI. Yeah, gotcha. So, Representative Lofgren, to your question about what can be done in the context of a legalization to make the program better, I outlined this in more depth in my testimony.

First, we need to get that error rate as low as possible. When American jobs are on the line, we need to make sure the system is as accurate as possible.

Second, we need to create a formal process for folks to contest errors, particularly those final non-confirmations, an easy way to do that so a government error does not stand between you and your job.

Third, we need to create penalties for employers who misuse the program. It is a real problem. The employer has to tell you if there is an error, and if the employer does not tell you, then you have on way to contest it or even know about it.

And lastly, like Mr. Johnson mentioned, I think we need gradual phase-in where after each phase-in, we check benchmarks, see how many workers have lost their job, and check the accuracy rates.

Thank you.

Ms. LOFGREN. Thanks, Mr. Chairman.

Mr. GOWDY. Yes, ma'am. Thank you both.

Before I recognize the gentleman from Texas, I just want to quickly ask unanimous consent to enter into the record a letter from the Associated Builders and Contractors, the Associated General Contractors, the Leading Builders of America, the Mason Contractors Association of America, the National Roofing Contractors Association, the National Electrical Contractors Association, supporting a nationwide mandatory electronic employment verification system containing certain provisions, such as a Federal preemption clause and certain debarment provisions.

Without objection.

[The information referred to follows:]

February 27, 2013

The Honorable Trey Gowdy
United States House of Representatives
2409 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gowdy:

As leading associations in the construction industry, we write to share our thoughts on the House Judiciary Subcommittee on Immigration and Border Security hearing entitled, "How E-Verify Works and How it Benefits American Employers and Workers". The undersigned construction associations represent thousands of employers and hundreds of thousands of workers in all facets of construction—from home building, to road construction, to heavy industrial production, to specialty trade contractors and material suppliers.

The construction community supports the implementation of an efficient, practical and accurate employment verification system that provides ample protection from liability for employers who comply with the system in good faith. This system should be phased in according to company size, and should not burden employers either financially or functionally. Importantly, like other employers in other sectors, the construction industry firmly believes that any employment verification system should hold all U.S. employers accountable for the work authorization status of their direct employees, and not create vicarious liability by holding employers accountable for the hiring decisions made by entities with whom they have a contract, subcontract, or exchange.

In the 112th Congress, our organizations supported the Legal Workforce Act (H.R. 2885), introduced by then-Chairman of the House Judiciary Committee, Rep. Lamar Smith (R-TX). We believed that this legislation was the first step in creating an employment eligibility verification system that is workable for both employers and employees. We particularly appreciated this legislation's efforts to address our concerns and provide strong safe harbor protections for employers against liability and penalties when acting in good faith, along with providing protection from any vicarious cross-liability that could be imposed on employers.

We believe that any new mandatory verification system needs to include certain provisions. Such items include:

- Federal Preemption to help address the patchwork of conflicting and confusing state and local laws;
- A "knowing" intent standard for liability for both employers and contractors that have subcontractor relationships;
- A telephonic option for using the system;
- Reasonable documentation and response times;
- A safe harbor for employers who use the system;
- The verification process should apply to new hires only and should provide an option for employers to begin verification once an offer has been made to the employee; and,
- Any debarment provisions follow the process outlined in the Federal Acquisitions Regulations.

We urge you to continue working together to craft a reasonable and balanced approach on an employment verification system that is workable for both employers and employees.

Respectfully,

Associated Builders & Contractors
Associated General Contractors
Leading Builders of America
Mason Contractors Association of America
National Roofing Contractors Association
National Electrical Contractors Association

Mr. GOWDY. I would now recognize the immediate past Chairman of the full Judiciary Committee, the gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I would like to make a brief statement, make a couple of points, and then ask a few questions.

Twenty-three million Americans are unemployed or under employed. Meanwhile, 7 million people are working in the United States illegally. These jobs should go to legal workers.

We could open up millions of jobs for unemployed Americans by requiring all employers to use E-Verify. E-Verify immediately confirms 99.7 percent of work eligible employees. I do not know of any government agency that has that kind of efficiency, and quite frankly, that is probably as close to perfection as we are going to get on this human earth.

Over 400,000 employers across the United States voluntary use E-Verify to check the employment eligibility of their employees, and 1,700 new businesses voluntarily sign up every week.

In 2008, the House passed a stand-alone 5-year extension of E-Verify by a vote of 407 to 2. And in 2009, the Senate passed a permanent E-Verify extension by voice vote. So it has overwhelming congressional support.

And the public also supports E-Verify. February 2012, Pulse Opinion Research poll found that 78 percent of likely voters favor mandating that all employers electronically verify the immigration status of their workers. That included 81 percent of the Democrats, 81 percent of Black Americans, and 76 percent of other minorities, primarily Hispanics.

The Westat study has been mentioned a couple of times. I do not want to spend much time on it because it is old and frankly out of date, and I think at this point it had been discredited. But its estimate when it came to the error rate or the cost was based entirely on speculation. And the study actually says, "It is important to recognize that without direct evidence of the true employment authorization status of the workers with cases submitted to E-Verify, any estimate of the level of identity theft"—that was their concern about the error rate—would be very imprecise. And, in fact, the Legal Workforce Act that I introduced last year contains a number of provisions aimed at preventing the use of stolen identities in E-Verify. So we have addressed that problem in a number of ways.

Also in regard to the cost, I wanted to point out that another study reveals that three-quarters of the employers stated that the cost of using E-Verify was zero. And I think, Ms. Correa, you mentioned a while ago that we can now access E-Verify on smart phones. I mean, this is something that has become a lot easier to process.

Well, let me address a couple—maybe they are more comments than questions. And I actually hand out a lot of thank yous here. Ms. Correa, I would like to, first of all, say I do not think I have ever enjoyed an Administration official's testimony more than I enjoyed yours today. I want to thank the Administration personally for being a strong advocate for E-Verify and for looking for ways to both expand it and improve it.

And actually your 99.7 percent figure of approving work-eligible employees is actually an increase from a few months ago when it was 99.5 percent. So it is even better as we go along.

Mr. Johnson, I wanted to thank you for the Chamber's reevaluation of E-Verify. And may I ask you to comment briefly on the cost and error rate that some people say are disadvantages of E-Verify? You mentioned it briefly in your oral statement. You went into more detail in your written statement. I wonder if you would reemphasize that.

Mr. JOHNSON. Well, the $2.7 billion cost study, yeah, obviously that is an alarming figure. It is a still a billion, not an "M." And we had our economist look at it, and I think there are a couple of points.

One is that it was based on old data, and the reality of it is once people get accustomed to new technology, the cost of compliance goes down. Secondly, more technically, it relied on the so-called JOLTS study to estimate how many new hires there are going to be in the economy, and, therefore, how many people get run through E-Verify. But the JOLTS study, which DLS does, includes also people who transfer within companies and are not necessarily new hires. And it includes people who are not going through E-Verify. I think the big part of it, though, is that there is an initial cost, and then after the cost diminishes radically.

Mr. SMITH. Right.

Mr. JOHNSON. Now, look, the fact is that small business, the unit cost for an employee, and I do not care if you are talking about this law or a labor law, unit cost per employee typically under regulations is more of a small business. There is just less way to spread it around, that is just the reality. But it is not particularized of this program. That is true generally.

Mr. SMITH. Okay, thank you, Mr. Johnson And, Mr. Gamvroulas, I just wanted to thank you for your favorable comments about the Legal Workforce Act from last year. And also I think in your written testimony, you may not have mentioned it in your oral testimony, and I do not have time for a question. Let me just make a statement.

I think you checked 320 employees. You got 2 red flags who were not confirmed, and both of them decided not to contest it. So it sounded to me like you were at about 100 percent effectiveness for the E-Verify program. And thank you for being a witness than can talk to us about the practical impact and that it works so well. So thank you.

Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Texas.

The Chair would now recognize the gentleman from Puerto Rico, former Attorney General, Mr. Pierluisi.

Mr. PIERLUISI. Thank you, Mr. Chairman. And I thank the witnesses.

The first thing that I would like to comment is that I believe that all of you support the concept of comprehensive immigration reform, and I commend you for that.

Now, as I see it, an expanded E-Verify system should be part of a new immigration system in our country because we all realize that having 11 million undocumented immigrants around or underground makes no sense. It just shows that the system has not been working.

Having said that, I have a couple of questions for Ms. Tulli, but any of you could comment further. The first thing is, how can we ensure that any expansion of E-Verify addresses the concerns you have raised in your testimony, such as database errors and employer compliance?

Ms. TULLI. There are a couple of key things that need to happen. As you stated, Mr. Pierluisi, E-Verify should only be considered in

the context of a broad immigration reform that has a road to citizenship for the unauthorized workers currently living and laboring in our communities.

A couple of quick things. First, get the error rate down as much as possible. We want it as close to perfect as possible when American jobs are at risk. We want to create penalties for misuse because, again, it is the employer who has to tell the employee about the tentative non-confirmation. So if the employee does not know, they do not how to contest it. They are completely powerless.

We also need to think about the phase-in, and the phase-in needs to be gradual to make sure that we are getting it right. It is better to do it correctly than it is to do it quickly. And so after each phase-in, we need to step back, look and see how the performance is happening in the field, and evaluate from there.

And lastly, we need to make sure that there is a process for folks who receive those final non-confirmations in error to correct those effectively.

Mr. PIERLUISI. I believe you stated that 42 percent of workers were not informed by their employer of a tentative non-confirmation in 2009. Is that right roughly?

Ms. TULLI. That is correct.

Mr. PIERLUISI. Now, are employers not required to do so? Why do they not?

Ms. TULLI. Under E-Verify's program rules, employers are required to tell employees about non-confirmation. The problem is that there are no penalties if they do not do that. So we need to create penalties so that employers will actually comply with the program rules.

Mr. PIERLUISI. And am I right by interpreting something you said that it sounds like employers are selectively using E-Verify. Is that right?

Ms. TULLI. Based on the same study, 33 percent of employers pre-screened workers, and that is particularly problematic because, again, if you are a U.S. citizen who has an error in the system and an employer pre-screens you, you have no way to know that. You will just continue not to get hired, particularly in a mandatory system. You will go from job to job being pre-screened, not being hired, but not be aware of the error.

Mr. PIERLUISI. Ms. Correa—I say "Correa" because my Spanish gets in the way. But I see that you want to comment. Go ahead.

Ms. CORREA. Thank you, and "Correa" is the right way to say it.

Mr. PIERLUISI. Okay.

Ms. CORREA. Yes, sir. Yes, if I could comment. First of all, on misuse of the system, as I indicated in my testimony, we do have a robust monitoring and compliance section that is monitoring the use of the system. We actually look at tentative non-confirmation notices. We look at whether employers are printing those out because they are supposed to print them out, sit down, and talk to employees. If we see or encounter any instances where it does not appear that an employer is properly using the system, we do make immediate contact with the employer.

If there is any follow-up instance where we see that the behavior has not been corrected, we take further action. We conduct site visits. We provide training. And if all of that fails, we actually refer

cases to the Office of Special Counsel at the Department of Justice if we believe there is discrimination, or even to ICE if we see any misuse or improper use of the system.

I also would like to comment on the fact that employers are told specifically in all the guidelines, the memorandum of understanding, and all the materials that they are not to pre-screen employees. And if we become aware of any such behavior, we immediately refer those cases.

Last, but not least, I did want to comment a little bit on the review process. When a TNC comes through and the employer sits down with the employee to discuss the TNC, the employee can contest the TNC. If they decide to contest, they have 8 days to contact the Federal Government, provide whatever information, because I do want to point out what that generates a TNC is a mismatch between the data that was entered into E-Verify and the data that we are checking against other databases. So an employee does have 8 days to come to the agency, to DHS or Social Security, depending on what the case is, to correct that data. If it takes longer for us to make that correction, we hold that case as pending, and we notify the employer.

The other thing I would like to add is that while we do not have a formal process for the final non-confirmation review, we do review final non-confirmations if an employee contacts us. In Fiscal Year 2012, we reviewed a little over 1,400 final non-confirmations, and an interesting statistic that came out of that was that in 83 percent of the final non-confirmations that we reviewed, the employee had actually abandoned the TNC. In other words, they did not follow up, or contest it, or, if they indicated they were going to contest, they did not follow through.

So I do want to point that out and mention that we are going to formalize this final notification process, this final non-confirmation process, to make it a more formal process so that an employee could come to us for a formal review of any final non-confirmation. Thank you.

Mr. PIERLUISI. Thank you. My time is up I see.

Mr. GOWDY. I thank the gentleman from Puerto Rico.

The Chair would now recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I would start with you, Ms. Correa, and ask you, if one were going to try to improve upon this 99.7 percent number, and I support everything I heard Mr. Smith say and complimentary, especially to you for working so intensively on improving E-Verify. But if the remaining three-tenths of 1 percent, most of that, I think you I understood you to say, has to do with married names that did not get changed. And is that how you get it fixed now? If we are going to get it better, if it could be gotten better, is that what is required is to use E-Verify?

Ms. CORREA. Well, let me clarify. The name change was an example of a potential mismatch. But the answer is to get those errors down, what we have got to make sure is the tentative non-confirmation is properly being returned for a mismatch, and that the employee reaches out to us or to the Social Security, whichever agency it is, to make sure that that data gets fixed in the system. But we certainly continue to try to find ways to get that error rate

down to make sure that we are getting to the employees and making them aware of what they can do to fix that information.

Mr. KING. This is so much better than it was predicted to be just a few years ago. Thank you.

And then, Mr. Gamvroulas, in the business that you are in, I heard you say that you believe that you should be able to use E-Verify, I would use the language, with a bona fide job offer rather than having to hire someone and find out that they are unlawfully working in the United States.

Mr. GAMVROULAS. Thank you. That is an important distinction. And in my comments, the point that I was trying to make was that, and this runs a little bit counter to the other testimony, is that we cannot run E-Verify until we have actually hired the person, the person who has actually been hired has accepted the employment, and they are on the payroll. And that is when we are able to input them into the E-Verify system.

And so that is problematic because they are now in the system.

Mr. KING. And you have actually hired someone who cannot legally work in the United States, and under a different interpretation, might have actually been in violation of law.

Mr. GAMVROULAS. It might be tentative non-confirmation, and it might be something that they can go to the Social Security Administration and get cleared up, and that is great. But in the meantime, they are on the payroll, and until that is cleared, they are an employee and we are investing time——

Mr. KING. So you would like to be able to offer here is a conditional job offer. I will have to run you through E-Verify. If you clear that, you can go to work for our company.

Mr. GAMVROULAS. Yes.

Mr. KING. That is what I wanted to clarify, and I think that is an important piece. I think Mr. Johnson agrees with that piece. But I want to come back to you. I will come back to you, Mr. Johnson, in a moment.

On current employees, and you have contractors that would like to use E-Verify to make sure that they could clean up their workforce on their current or legacy employees?

Mr. GAMVROULAS. The subcontractor base that we use, the vast majority of them are small businesses. And in the State of Utah, currently the vast majority of them are not required to use E-Verify because they have fewer than 15 employees.

Mr. KING. But would you support the elective for an employee to do so at their discretion on current employees?

Mr. GAMVROULAS. Johnson. We would not support that. We would take the same position as the Chamber that legacy employees should not be post-screened.

Mr. KING. And I have read the position of the Chamber on this, and I am curious from you, if you can tell me the concern that has been voiced is that an employer might step into some type of liability if they utilize the E-Verify on current employees. Why would one object to allowing an employer to use their discretion on using E-Verify?

Mr. GAMVROULAS. Mr. Johnson. I can only speak for my company, and why we would be concerned about that. But we would

be concerned and we would not that because we believe that it would open us up to complaints of discrimination.

Mr. KING. But would you object to other companies utilizing it at their discretion?

Mr. GAMVROULAS. Our company, we would maintain our position and concur with the Chamber to——

Mr. KING. And if we wrote into a bill a safe harbor for those who legitimately use E-Verify for current employees, that would also resolve the concern, would it not?

Mr. GAMVROULAS. I am sorry. I do not think I understood your question.

Mr. KING. If we wrote into the bill a safe harbor for employers to utilize E-Verify on current employees——

Mr. GAMVROULAS. On current employees.

Mr. KING. Maybe I misstated it, but would that not resolve your concern as well?

Mr. GAMVROULAS. I still think I would be concerned as an employer that that would open us to——

Mr. KING. But as an employer, do you not have an independent attitude about making your own decisions? See, I am thinking that I as an employer for all the years that I have met payroll, and there are great many of them, I wanted to make my own decisions, and I did not want government to tell me that I could not. And I did not like it when government said to me that I could not use E-Verify unless I had actually put the person on my payroll.

And so this is the same principle in my mind. If an employer wants to clean up his workforce and we have got a tool to do it that is 99.7 percent accurate, if some people are concerned about that liability, why would we not want them to make that decision themselves because they are responsible people in this country, too?

Mr. GAMVROULAS. Mr. King, I would be concerned about E-Verify being used as a tool to do that. If somebody wants to clean up their workforce, there are many other ways that they can do that.

Mr. KING. Thank you, Mr. Gamvroulos, and I really regret the clock has run down.

I appreciate it, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentleman from Iowa.

The Chair would now recognize the gentleman from Illinois, Mr. Gutierrez.

Mr. GUTIERREZ. Thank you so much, Chairman. Thank you again for calling this hearing. I would like to ask Ms. Tulli, why is the error rate for a naturalized U.S. citizen—what is it for naturalized U.S. citizens in the E-Verify system? What is the error rate?

Ms. TULLI. So the error rates, there are a lot of facts and figures, and you can see more in my testimony. What we know is that naturalized U.S. citizens are 30 times more likely to experience an error, and we estimate based on the statistical model included in Westat that if this were to go to scale, 1.2 million Americans and legally authorized workers are going to experience an error.

Mr. GUTIERREZ. And why do you think that is so? That is pretty high.

Ms. TULLI. That is a lot of workers.

Mr. GUTIERREZ. That is a lot of people.

Ms. TULLI. That is why we are here today suggesting that the error needs to be as close to perfect as possible. When a government error can stand between an American citizen and their ability to work, that is a problem. So as we consider taking this program mandatory as part of immigration reform, we need to make sure that we have protections in place for exactly this sort of situation.

I elaborated earlier on the idea of creating a formal process for these final non-confirmations. Workers' jobs should not be on the line, and, again, we are talking about citizens and legally authorized immigrants. Those jobs should not be on the line because there is an error in a government database.

Mr. GUTIERREZ. So you extrapolate it is 30 times higher for naturalized citizens. Interesting.

I was shocked by the example in your written testimony of a veteran, a former captain in the United States Navy with 34 years of service who was flagged by E-Verify as not eligible. It took an attorney 2 months to resolve the problem. Why would it take 2 months to resolve it for a 34-year veteran of the Navy?

Ms. TULLI. Exactly. This is precisely the problem. When people experience errors, U.S. citizens experience errors, particularly this final non-confirmation, it can be incredibly difficult to correct those errors. When a worker receives a tentative non-confirmation, they have 8 Federal working days to correct that tentative non-confirmation, but they have to take time off of work, and they have to go to a Social Security office.

So if you live in a large State where there is one Social Security office, you might be driving 100 miles to get there. Then once you are there, you are going to have to stand in line. You are going to have to pay for gas to get there. You may have to pay for babysitting.

With the final non-confirmation there is no formal process in place to contest these errors. And again, when we are thinking about taking this program to scale, based on Westat's statistical model, we estimate that 770,000 people could be in a similar position to the example you referenced, the U.S. Navy captain. And that is a problem as we think about making this program mandatory within immigration reform.

Mr. GUTIERREZ. Do you support E-Verify as part of comprehensive immigration reform or as independent?

Ms. TULLI. We think that the first step is immigration reform to bring people out of the shadows, and to make them part of our democracy.

Mr. GUTIERREZ. Would you see E-Verify as an essential part of comprehensive immigration reform?

Ms. TULLI. If E-Verify is part of the package. I mean, first you have to see what the legalization program looks like and how many workers are actually going to qualify to be on that road to citizenship. If it is part of the package we have outlined, specific changes that need to be made to the program.

Mr. GUTIERREZ. But you support E-Verify as part of comprehensive immigration reform.

Ms. TULLI. As part of comprehensive immigration reform, we have to know what the legalization package looks like. So I am happy to talk to your office about what the thinking is around the

legalization piece, because for us, if you legalize a small portion of the workforce, that does not get it done. We need an entirely legal workforce, or else, as we have heard earlier today, it is a problem.

Mr. GUTIERREZ. Oh, I get it. So you have read some excerpts, and there might just be a small group of people.

Ms. TULLI. I am not making any assumptions.

Mr. GUTIERREZ. Okay. That is good not to do that. So let me ask, Ms. Correa, so why is the error rate so high? What do you think?

Ms. CORREA. I am sorry?

Mr. GUTIERREZ. Why is the error rate so high, 30 percent? Why do you think it is so high? For naturalized citizens.

Ms. CORREA. So let me talk a little bit about error rates. I apologize because it is very confusing. There are numbers flying around.

So when we talk about the 99.7 percent accuracy rate, that is the accuracy rate where the system is properly returning a response back that an authorized worker is authorized to work. In other words, that the system recognizes when we check out the databases, based on the Form I-9 data, that this individual is properly authorized to work. That is what that accuracy rate represents.

The second accuracy rate that I talk about in my testimony is the 94 percent accuracy rate for unauthorized workers. That rate means that the system accurately returned a TNC that ultimately became an FNC, a final non-confirmation, for individuals that were not authorized to work. So an unauthorized worker was properly identified as not being authorized to work.

On the 30 percent figure——

Mr. GUTIERREZ. I am out of time.

Ms. CORREA. I am sorry.

Mr. GUTIERREZ. It is just we did——

Mr. GOWDY. You are welcome to finish your answer as far as I am concerned.

Mr. GUTIERREZ. Thank you. Please.

Ms. CORREA. Okay.

Mr. GUTIERREZ. Yeah. I just thank you so much since, you know——

Mr. GOWDY. I am not used to people limiting themselves. That is what took me off guard. But you are welcome to finish your answer.

Ms. CORREA. Thank you, sir. So the 30 percent, there are many reasons that could happen. It could have to do with how the name was inputted into the system, these appear to be issues from before because these are old statistics that we are talking about when you talk about the 30 percent, how people hyphenated their names, spaces, those kinds of things.

We have actually, and you may have seen in it in the demo, we have actually added features in the system to provide for quality assurance to remind employers to double check how they entered the names into the system to guide them on how to enter dates and those kinds of information.

So we are working at addressing that kind of issue. We believe that a lot of what you saw in that 30 percent figure, which I believe came from the Westat study from 2009, were based on those kinds of issues, and those are corrections that we have made to the system since then.

I do not have the figure in front of me now, but I certainly could check to see if we have an updated number in that area.

Mr. GUTIERREZ. Thank you. We need you comprehensive immigration reform. We cannot do it without E-Verify, and we need it to work. Thank you.

Ms. CORREA. Thank you.

Mr. GOWDY. Thank the gentleman from Illinois.

And the Chair would now recognize the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman. And thanks for holding this important hearing.

Mr. Tulli, I am a little bit confused by your testimony. You give the example of the U.S. Navy captain, and I understand how frustrating that can be. But I was an immigration attorney, and I had the experience of helping people who had false hits on E-Verify. And it is pretty simple. You just go to the Social Security office, you show that you are the person you said you were going to do. You show that you have a Social Security number. And most of the time the mistakes are because you transposed a number or something like that.

So I know you are using the extreme example, but is it not true that the majority is just simple cases that I am referring to, the great majority of them?

Ms. TULLI. For TNCs, Representative Labrador, specifically?

Mr. LABRADOR. Uh-huh.

Ms. TULLI. So you are correct that for TNCs, typically a worker has to go to a Social Security office and try and correct the error. But that really varies worker to worker.

And as I mentioned before, how easy it is to get a Social Security office, particularly if you are working a low-wage job or 2 jobs, and trying to correct that error can be incredibly difficult.

Mr. LABRADOR. But they are trying to work. I mean, I am having a hard time with your testimony because we want to get something done here in Congress. We want to get immigration reform done. I want to have a bipartisan solution. And all you are throwing out is reasons why we should not have E-Verify, reasons why we have a problem with E-Verify.

You are saying that it has to be—you are not even sure that E-Verify should be part of a comprehensive immigration reform. And I think if advocates for immigration reform keep coming here and having problems with the enforcement mechanisms that we need to have in order to have a viable immigration system, I think you are going to spoil any chance that we have right now to have comprehensive immigration reform. And I am really concerned about that.

Ms. TULLI. If I may respond. I am glad to hear that you are interested in working toward a solution, a comprehensive solution, on immigration reform.

Mr. LABRADOR. I have been interested for 15 years, so thank you.

Ms. TULLI. That is great to hear.

Mr. LABRADOR. Yeah.

Ms. TULLI. In terms of the enforcement measures that you are referring to outlined, and I know my written testimony is long. It

is about 12 pages. But we outline the exact tweaks in the program that we see are problematic now.

Mr. LABRADOR. But somebody just asked you specifically if you believed that E-Verify is part of a solution, you know, it is a part of the comprehensive needs that we have in Congress for us to solve this problem, and you could not answer that question.

Ms. TULLI. Well, as I answered it, we have to know what the legalization portion——

Mr. LABRADOR. No, the question is, do you think E-Verify is part of a comprehensive solution.

Ms. TULLI. And my answer is, we know that there are problems with E-Verify now, and I have outlined what they are.

Mr. LABRADOR. Okay. You are not going to answer the question.

Mr. Johnson, do you think E-Verify is a necessary part of a comprehensive solution?

Mr. JOHNSON. Yeah, we do.

Mr. LABRADOR. Okay. Ms. Correa, do you think E-Verify helps us in having a comprehensive solution?

Ms. CORREA. Sir, I believe that E-Verify is an effective tool for enabling employers to verify the employment eligibility of the individuals that they are hiring.

Mr. LABRADOR. Okay. Now, Ms. Tulli, when you say we needed to create penalties for people who misuse E-Verify, what kind of penalties are you talking about?

Ms. TULLI. We are open to discussing what penalties. Right now there is absolutely no meaningful penalty, so we would love to work with your office in thinking through what those penalties could look like.

Mr. LABRADOR. But can you give me an example? What do you think would be a meaningful penalty?

Ms. TULLI. Right now there are no penalties, so any step in that direction is a good step. I do not have specific suggestions on exactly what those penalties should look like.

Mr. LABRADOR. Now, you used the example of pre-screening. You said that 30 percent of employers are currently pre-screening using E-Verify. Where do you get that data from?

Ms. TULLI. The Westat study, 2009.

Mr. LABRADOR. Okay. Now there have been some problems with that Westat study, is that not true?

Ms. TULLI. What problems are you referring to, sir?

Mr. LABRADOR. It says that it was done in 2009. That that number is based on studies from 2009, and that study has been questioned by some groups, is that correct?

Ms. TULLI. I am not aware of significant questioning of the study. It is an independent evaluation of the program.

Mr. LABRADOR. And one of the questions that I have is, how are people using E-Verify for pre-screening when they did not have people's Social Security numbers?

Ms. TULLI. How are they using it for pre-screening?

Mr. LABRADOR. Pre-screening, yes.

Ms. TULLI. Well, presumably in the job application process, employers were asking for the relevant data that would be——

Mr. LABRADOR. Is that not a violation of the law?

Ms. TULLI. It likely is.

Mr. LABRADOR. So they are already violating the law. So if they are already violating the law, there should be something already in place.

If I require somebody's Social Security number when I am employing them, before I employ them in the pre-screening process, I have violated the law, is that not correct?

Ms. TULLI. What violation of the law are you referring to, Representative Labrador?

Mr. LABRADOR. You cannot ask for a Social Security number when you are asking for an application.

Ms. TULLI. I do not know if you are referring to a labor law or exactly which law you are referring to. It is not a violation of the Fair Labor Standards Act or any labor law that I am familiar with. What we do now is that Westat is an independent evaluation of the program functioning, and 33 percent of employers were running workers through the program before they were ever hired.

Mr. LABRADOR. Okay. Thank you very much, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Idaho.

And I will recognize myself. I am not as good as Raúl on this kind of law, and I am really bad with numbers. I went the liberal arts route. But I am going to try a number.

Forty-two percent apparently it has been alleged today, 42 percent of punitive employees who receive a TNC are not notified. Have you heard that statistic today?

Ms. CORREA. I heard that statistic today, yes, sir.

Mr. GOWDY. How would they know that?

Ms. CORREA. Sir, today the way the process works is the employer is required to notify the employee and sit down and review the——

Mr. GOWDY. But where would the 42 percent come from? It strikes me that that would only come from people self-reporting that they did not receive something. And that is not historically a really valid way of determining things.

Ms. CORREA. I believe that that 42 percent is possibly coming from the Westat study. I am not sure. And that Westat study, it is important to point out, it is based on modeling. It is based on statistical modeling. So it is not an accurate look, or I should not say "an accurate," but it is not looking at the data contained in the system.

What I can share with you is that, first of all, we are not seeing that pattern. We are not seeing that kind of number. Our monitoring and compliance branch is watching the system. They are watching how employers use the system. One of the indicators that we have out there is when the employer prints the TNC because they are required to print the TNC to discuss it with the employee. The other indicator is the referral letter that is generated by the system. So I do not believe that 42 percent exists today.

Mr. GOWDY. Me either. That was kind of my point.

Ms. CORREA. In fact, I know that it does not exist today.

Mr. GOWDY. Historically, people do not always, at least in my previous job, historically people do not always self-identify correctly; hence, Ms. Tulli, we have hearsay rules where people cannot say certain things because it is not inherently reliable. So let us do away with the 42 percent.

To the extent it does happen, what tools can we give you to make sure it happens less? Whether it is 42 or 14, how can we help you make sure it happens less frequently?

Ms. CORREA. Well, thank you for that question, sir.

I want to clarify something. In our monitoring and compliance activities, what we are seeing is that the first step in monitoring and compliance, if we see any kind of behavior that is inappropriate, we immediately send an e-mail to the employer. We contact them. Typically within 90 days, we will follow up if we see that behavior again. We are not seeing that. We are seeing that the employers are taking corrective action.

But if the employer does not take corrective action, then we follow up with things such as site visits, desk audits, et cetera, because we certainly want to make sure that people are properly using the system.

I also want to talk, if I may, address the issue of penalties because I do not want folks to think that we are not monitoring the system and that we are not referring cases. That is not true. In Fiscal Year 2012, we referred 24 cases to ICE for further investigation and 51 cases to the Office of Special Counsel for unfair employment practices. So if we see behavior that is inappropriate on the part of any employer, we are referring the cases.

The tools that we use, again, is monitoring the system. We have a very robust staff that follows through. We want to make sure that we continue to train people, that we provide the right tools, and that we inform the employees.

So one of the things that we are working on is an enhancement to the system where the employee, if they provide their e-mail address on the I-9 form and the employer inputs it in the system, we will e-mail the employee so that they are aware of a TNC to minimize the likelihood that an employee would not know about a TNC.

And I also would like to add one more fact that an employee, addressing the issue of, you know, getting to Social Security offices, et cetera. An employee has 8 days to address the issue. But if they need more than 8 days, if they contact us, we put the case in a pending status and notify the employer, because our goal is to make sure that we address a mismatch. And if there is truly a mismatch in the system, we want to make sure that that problem is corrected.

Our goal is to make sure that people are properly authorized to work. Thank you, sir.

Mr. GOWDY. Well, I will just say this kind of in conclusion before I ask Mr. Johnson a question. Anyone who wants a job and is eligible and qualified to have one, I mean, we all want a zero percent error rate. And I know you do, too.

But we had a hearing this morning in this very same room on drones, and they do not have 100 percent get it right rate. And I am not minimizing the consequences of your .03 error rate. I just think that is pretty doggone good. And like I say, another one of your sister agencies does not get it 100 percent right when it comes to drones.

Mr. Johnson, 76 percent of the employers say there is no cost to implementing E-Verify. Is that right?

Mr. JOHNSON. The 76 percent, that is not my figure. I will say that I have a labor relations committee and an immigration subcommittee, and I had a special task force on this issue. And the feedback from our employers was that, and I am not saying it was a mathematical stamp across the entire country, which the system works quite well with very little hassle.

Mr. GOWDY. No, I was talking about startup costs. It struck me. I saw a statistic somewhere, 76 percent say zero in terms of startup costs.

Mr. JOHNSON. Right.

Mr. GOWDY. Which——

Mr. JOHNSON. That is where the Westat study, and as I understand, we had our economist look at this, extrapolated from the 24 percent of businesses that reported some costs, and then made a national calculation, but ignored the fact that 76 percent of the businesses reported zero costs.

So obviously when you have some number of businesses reporting X costs and other ones reporting zero, Congressman, there is something odd going on there in the reporting. I cannot really identify what exactly it was in the Westat study. All I can tell you is where the rubber meets the road, my membership, they see this as a very sustainable burden and part of, I think, their deal in trying to move the country forward on immigration reform frankly.

Mr. GOWDY. And to use E-Verify is free.

Ms. CORREA. Yes.

Mr. GOWDY. So you need a smart phone or a computer and Internet access

Ms. CORREA. Access, uh-uh.

Mr. GOWDY. And the dues I think to join your organization are what per year?

Mr. JOHNSON. Well, that is a——

Mr. GOWDY. Is that confidential? Would you be willing to give some kind of voucher in exchange for buying a smart phone?

Mr. JOHNSON. I can tell you, for small businesses, they get a great deal.

Mr. GOWDY. I am kidding with you. You do not have to answer that. But it is free, and it is accessible, the smart phone, Internet access.

Ms. CORREA. Yes, sir.

Mr. GOWDY. I am curious where that $2 billion figure came from. But with that, my time has expired.

On behalf of Chairman Goodlatte and everyone, thank you. We apologize again for the delay with votes, but you have been very helpful, very informative. We appreciate your collegiality both with the Subcommittee and with each other.

And with that, we are adjourned.

Ms. CORREA. Thank you.

[Whereupon, at 5:38 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security

ASIAN AMERICAN JUSTICE CENTER

MEMBER OF ASIAN AMERICAN CENTER FOR ADVANCING JUSTICE

February 26, 2013

The Honorable Trey Gowdy
Chair
House Committee on the Judiciary
Subcommittee on Immigration & Border Security
U.S. House of Representatives
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member
House Committee on the Judiciary
Subcommittee on Immigration & Border Security
U.S. House of Representatives
Washington, DC 20515

Re: The Subcommittee on Immigration & Border Security hearing on "How E-Verify Works and How It Benefits American Employers and Workers"

Dear Chair Gowdy and Ranking Member Lofgren:

On behalf of the Asian American Justice Center (AAJC) and the other affiliate members[1] of the Asian American Center for Advancing Justice, a non-profit, non-partisan affiliation representing the Asian American and Pacific Islander (AAPI) community on civil and human rights issues, we write concerning today's Subcommittee on Immigration Policy and Enforcement's hearing: "How E-Verify Works and How It Benefits American Employers and Workers." We commend the Subcommittee for holding this important hearing and would like to express our deep concern and opposition to the implementation of a mandatory E-Verify program nationwide. Mandating E-verify will have a destructive impact on workers, employers and our economy as a whole.

Mandatory E-Verify Harms All Workers – And Will Disproportionately Hurt AAPI Workers

Asian American authorized workers – including citizens and green card holders – face a higher risk of being flagged as undocumented by E-Verify than U.S-born workers. In 2009, a study commissioned by the Department of Homeland Security (DHS) found the error rate for foreign-born workers was *20 times higher* than that of U.S.-born workers.[2] This is particularly troubling to the more than 8 million foreign born AAPIs who live in the U.S.[3] If E-Verify is made mandatory, a disproportionate number of AAPIs will be wrongly identified and have their jobs jeopardized.

E-Verify also promotes discrimination against AAPIs. The same DHS-commissioned study found that many employers unlawfully use E-Verify to prescreen employees, unlawfully took adverse employment actions based on tentative non-confirmation notices, and failed to inform

[1] In addition to AAJC, the other members of the Asian American Center for Advancing Justice are Asian American Institute in Chicago, Asian Law Caucus in San Francisco, and Asian Pacific American Legal Center in Los Angeles.
[2] Westat, Findings of the E-Verify Program Evaluation (December 2009), 210 available at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf.
[3] U.S. Census Bureau, We the People: Asians in the United States: Census 2000 Special Reports, 20 available at http://www.census.gov/prod/2004pubs/censr-17.pdf.

employees of their rights.[4] In addition, the U.S. General Accountability Office reports that USCIS is limited in its ability to identify and prevent the misuse of E-Verify, with little or no authority to impose penalties.[5]

Moreover, E-Verify depresses working conditions for all workers. E-Verify builds on the flawed employer sanctions framework and incentivizes employers to pay workers "off the books," resulting in increased labor abuses. A mandatory system will drive existing vulnerable undocumented immigrant workers – as well as those who will inevitably continue to come into the country to find work to support their families unless the root causes of migration are addressed – further underground and subject to exploitation. Such conditions are ripe for wage theft, indentured servitude, unsafe working conditions, debt-bondage, and other workplace abuses. These workplace abuses encourage a race to the bottom by employers that hurts all workers, disadvantages law-abiding employers, and cripples consumer spending that holds back the whole economy.

Procedural safeguards and other protections – while important to implement – do not erase E-Verify's harms. E-Verify proponents claim that the system will be crafted with procedural safeguards to protect American workers, prevent identity theft, and provide due process protections. These assurances are dubious; procedural safeguards do not eliminate the lost productivity and time needed to correct inaccuracies in the system. They will also be difficult to navigate for the nearly one-third of AAPIs who face language barriers.[6] Further, proposed limits on DHS enforcement actions and U-Visa expansions suggested by some E-Verify proponents do not address the vast majority of workers who, faced with the threat of potential deportation, will be unwilling to come forward or file claims to enforce their workplace rights.

E-Verify also increases regulatory burdens on employers, particularly small business owners.

AAPIs own more than 1.5 million small businesses in the U.S., with receipts of $507.6 billion.[7] E-Verify will require compliance training and infrastructure for electronic submission and subsequent work verification. These compliance costs will disproportionately affect small businesses. Resolving tentative and false non-confirmations expends additional time and resources that small businesses can ill afford to lose. Workers with errors in their records often have to take unpaid time off to resolve the issues with the Social Security Administration (SSA) or the DHS. Members of the American Council on International Personnel reported that corrections at SSA usually take in excess of 90 days, a wait of four (4) or more hours per trip,

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[4] *See* Westat, *supra* note 2.

[5] Richard M. Stana, U.S. Government Accountability Office, Testimony: Employment Verification: Federal Agencies Have Improved E-Verify, but Significant Challenges Remain, 6 available at http://www.gao.gov/new.items/d11330t.pdf.

[6] Limited English proficiency ranges from 18% (Japanese Americans) to 51% (Vietnamese Americans) among the different AAPI ethnic groups. *See* U.S. Census Bureau, 2007-2009 American Community Survey, 3-Year Estimates.

[7] U.S. Census Bureau, Facts for Features: Asian/Pacific American Heritage Month (May 2011), available at http://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff06.html.

with frequent trips to SSA to get a record corrected.[8] This decreases the productivity of the workers and employers alike.

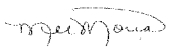
The U.S. cannot afford to divert scarce governmental and financial resources towards funding this deeply flawed program.

According to the U.S. Congressional Budget Office, implementing a mandatory E-Verify program (without legalizing the current undocumented population) would force employers and workers to resort to the black market, outside of the tax system. This would decrease federal revenue by more than $17.3 billion over ten years.[9] In a time of slowed economic growth and limited resources, the federal government cannot afford to expand E-Verify.

Instead of expanding E-Verify – a system that hurts the economy and promotes workplace exploitation – we should establish full labor and workplace rights and protections for all workers regardless of immigration status, repeal employer sanctions, and fix our broken immigration system through broad reform that includes a clear and fair roadmap to citizenship for all 11 million undocumented immigrants. This would result in a large economic benefit—a cumulative $1.5 trillion in added U.S. gross domestic product over 10 years.[10]

For all of these reasons, we oppose an expansion of the E-Verify program.

Sincerely,



Mee Moua
President & Executive Director
Asian American Justice Center

On behalf of:
Asian Pacific American Legal Center
Asian Law Caucus
Asian American Institute

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[8] Tyler Moran, National Immigration Law Center, Written Statement to House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Hearing on: "E-Verify: Preserving Jobs for American Workers" (February 11, 2011), available at http://www.nilc.org /immsemplymnt/ircaempverif/e-verify-testimonynilc-2011-02-10.pdf (citing American Council on International Personnel, "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," August 11, 2008).

[9] Peter R. Orszag, Director, Congressional Budget Office, Letter to Rep. John Conyers (April 4, 2008), available at http://www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

[10] Raul Hinojosa-Ojeda, University of California Los Angeles, Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform (January 2010), 10 available at http://www.immigrationpolicy.org/sites/default/files/docs/Hinojosa%20-%20Raising%20the%20Floor%20for%20American%20Workers%20010710.pdf.

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