

Testimony of
Congressman Luis V. Gutierrez

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TESTIMONY OF
CONGRESSMAN LUIS V. GUTIERREZ
BEFORE THE

Senate Committee on the Judiciary
Subcommittee on Immigration, Refugees and Border Security

on

"Ensuring a Legal Workforce: What Changes Should be Made to Our Current Employment Verification System?"

Tuesday, July 21, 2009
Dirksen Senate Office Building Room 226
2:00 p.m.

Chairman Schumer, Ranking Member Cornyn and other Members of the Subcommittee, thank you for this opportunity to testify on employment verification systems. As you may be aware, I have worked on a mandatory employment verification system as part of the comprehensive immigration reform bills I introduced in the past with Senators Kennedy and McCain, Congressman Jeff Flake and former Congressman Jim Kolbe. I commend Chairman Schumer for holding this hearing, his steadfast leadership on this issue and his creative approach in working to develop a biometric-based employment verification system as a means to reduce future waves of illegal immigration.

I want to begin my comments with what I think is the most essential element in mandating an employment verification system that works. That is, the system must be part of comprehensive immigration reform. To ensure a legal workforce, the system must be implemented with smart border security, a future flow of workers our economy truly needs, family-based immigration that better ensures family unity and a mandatory program wherein the estimated 12 million unauthorized individuals currently living and working in the U.S. are required to register and fully integrate into society.

I know some in Congress believe that a mandatory employment verification system alone would actually fix our broken immigration system by encouraging undocumented immigrants to "self-deport." However, those who believe this do not fully understand (1) how much undocumented workers are already an integral part of our country, economy, communities and families; (2) the extent to which bad-apple employers are willing to go to exploit this source of vulnerable and cheap labor; and (3), the significant shortfalls of the current E-Verify system.

On the first point, like it or not, we have come to depend on the contributions of these hard-working immigrants, and any effort to rid the economy of five percent of our productive workforce will result in greater economic disaster for our nation. In addition, an across-the-board crackdown on the undocumented will surely result in the dissolution of the institution our country holds most dear: the institution of the American family. One or both parents of an estimated four million U.S. citizen children are currently undocumented. To force these children to choose between their country and their parents is both immoral and unnecessary. The use of enforcement measures alone, like mandating E-Verify absent of comprehensive immigration reform, is useless political theater. The deportation of hardworking, undocumented immigrants and the separation of their families are not needed to build support of comprehensive immigration reform; polls have shown again and again that the vast majority of Americans already do.

On the second and third points, the current E-Verify system falls short of being as effective as we need it to be, because it does not prevent discrimination or misuse by employers, such as pre-screening job applicants and circumventing the system altogether. The current system also has a serious security flaw, in that it is incapable of preventing or determining fraud or identity theft.

However, the American people do want Congress and Washington to lead and develop workable solutions within comprehensive immigration reform that will end illegal immigration; and our ability to ensure a legal workforce through effective employment verification is essential to this goal.

I would like to share with the Subcommittee what I regard to be important elements of any employment verification system, followed by my assessment of Chairman Schumer's proposal for a biometric-based employment verification system.

An Employment Verification System Must Maintain and Provide Accurate Data

Establishing an employment verification system that depends on information about the work eligibility of approximately 163 million workers must be approached prudently, under a realistic timeline and with a roll-out plan for the entire workforce that is contingent upon the system's accuracy. An error rate of even one percent will result in 1.63 million workers being wrongfully denied work. This is no small number, especially in this economy where so many workers already face extraordinary obstacles to finding a job.

In addition, workers should be allowed to check their own employment eligibility record in any database on which the system depends for accuracy. If the system wrongfully determines that someone is ineligible to work, workers should have access to administrative and judicial review, including compensation from the government for attorneys' fees and lost wages.

The System Must Protect the Privacy and Security of Information

The mandatory expansion of such a system also raises legitimate privacy concerns. The Department of Homeland Security, in consultation with the Social Security Administration, would have to design and operate the system so that privacy is safeguarded by available technology, including use of encryption, regular testing of the system and implementing regular

security updates. Information to be stored in the databases should be limited and only used for employment verification purposes; violations should result in stiff penalties. The system's rollout should also be contingent on its ability to keep records private.

Protection of Individuals from Discrimination

Any mandatory system should forbid employers from discriminating against job applicants or employees on the basis of nationality; terminating employment due to a tentative nonconfirmation; using the system to screen employees prior to offering employment; re-verifying the employment status of an individual in violation of the law; or using the system selectively. Civil fines for unfair immigration-related employment practices should also be increased and additional funding authorized for the dissemination of information to employers, employees and the general public about the rights and remedies of these protections.

The Need for Robust Enforcement

Of course, we cannot have a robust employment verification system without equally robust enforcement. To prevent employers from abusing or circumventing the system, random audits should be part of any new employment enforcement regime. Rooting out misuse through oversight will require adequate funding that we have been reticent to commit under the current system. We should also create significant criminal penalties for individuals who falsely attest to being authorized to work, civil penalties for employers who do not comply with the new system's requirements and criminal penalties for those who knowingly hire unauthorized workers.

A Biometric-based Employment Verification System

Incorporating the smart use of biometrics in an employment verification system has the potential to address shortfalls in the current E-Verify system. In my last comprehensive immigration reform bill, coauthored with Congressman Jeff Flake, we included a requirement to better secure the social security card by making it a tamper-proof, biometric card. What I understand as Chairman Schumer's proposal, to actually make the entire system biometric-based, is a creative proposal that takes the system one step further.

The advantages of such a proposal, in my view, are the following:

? It provides workers access to and greater power over their employment records. Rather than waiting to find out about errors in databases through an employer, workers would apply for their biometric social security card outside of the hiring context, allowing them to address questions of eligibility on their own.

? It would prevent pre-screening and other misuses of the system on the part of the employer. Without a worker's consent, an employer would have no ability to submit a query about the worker. The use of such a card would also eliminate employer error in submitting a query to the system.

? Requiring the swipe of a card along with the verification of a biometric indicator, like a fingerprint, would significantly reduce fraud and misrepresentations of individuals looking for work, as they would be unable to assume or borrow another's identity in the hiring process.

As Congress examines creating a new and better system, we also need to be prepared to work through potential challenges. For one, a system that depends on a biometric card rather than a database query would require every American and legal foreign worker to obtain a card. This would place the bulk of the changes necessary at the front end of rolling out such a system, and one for which Congress would need to commit sufficient resources and to a workable timeline.

It would also require employers to have access to the machines that swipe the card and collect biometric information to determine a recent hire's work eligibility. I think Congress and the American people will want to have a clear understanding of how such technology works, how their privacy will be protected, the process and cost of rolling out access to employers and how it will be paid for. Although these challenges are not to be taken lightly, I look forward to addressing them with my colleagues to create an employment verification system that inspires confidence in the American people, is accepted by employers and U.S. and immigrant workers and better secures our workforce.

Thank you, once again, Mr. Chairman, for inviting me to testify on this important issue before your Subcommittee. I appreciate your commitment to comprehensive immigration reform, your work to launch the debate in earnest this year and your desire to have the Senate act on legislation this fall. The American people want thoughtful and responsible action on this issue this year, and I am confident that you and your colleagues in the Senate are ready to deliver such action. Please know that I am eager to work with Members of Congress on both sides of the aisle to reach our shared goal of ending illegal immigration and delivering comprehensive immigration reform to the American people.