

Testimony of
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WRITTEN TESTIMONY

OF

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"INTERIOR ENFORCEMENT OF IMMIGRATION LAWS:
ELIMINATING EMPLOYER DEMAND FOR ILLEGAL IMMIGRANTS
AS PART OF COMPREHENSIVE IMMIGRATION REFORM"

BEFORE
THE SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEE AND BORDER SECURITY

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Introduction

Chairman Schumer, Ranking Member Cornyn, and Members of the Subcommittee, I am Mike Aytes, Acting Deputy Director of U.S. Citizenship and Immigration Services (USCIS). I am grateful for the opportunity to appear before you to discuss our shared goal of effective employment eligibility verification.

The Department of Homeland Security (DHS) believes E-Verify is an essential and valuable tool for employers who are committed to maintaining a legal workforce. E-Verify works by

addressing illegal immigration from the demand side. Any participating company in the United States can access E-Verify through a user-friendly government website that compares employee information taken from the Employment Eligibility Verification Form (Form I-9) with more than 455 million records in the Social Security Administration's (SSA) database, our partner in the program, and more than 80 million records in DHS immigration databases.

The E-Verify Program has grown exponentially in the past several years. Some of this increase is due to a growing number of States that have enacted laws requiring all or some of the employers in their State to use E-Verify. In addition, more employers are recognizing the value of this straightforward process by which they can assure their compliance with the law. As of July 18, over 137,000 employers are enrolled, representing over 517,000 locations. An average of 1,000 employers enroll each week and participation has more than doubled each fiscal year since 2007. Employers have run over 6.4 million queries thus far in FY 2009. The volume of queries doubled from FY 2007 to FY 2008 from 3.27 million to 6.6 million, and in the first quarter of this fiscal year, based on an analysis of Bureau of Labor Statistics data, up to 14 percent of all nonagricultural new hires in the U.S were run through E-Verify.

Not only does the E-Verify Program continue to grow, but it also continues to improve. The most recent analysis of E-Verify by Westat, our independent evaluator, found that approximately 96.9 percent of all cases queried through E-Verify were automatically verified as work authorized. The 96.9 percent figure is based on statistics from October through December 2008 and represents a significant improvement over earlier evaluations. In addition, in a recent American Customer Satisfaction Index Survey, the E-Verify Program scored 83 out of a possible 100 on the Customer Satisfaction Index--well above the latest Federal Government satisfaction index of 69 percent. More than half (51 percent) of the respondents self-identified themselves as small business owners or employers.

Of all the cases verified through E-Verify, 3.1 percent of queries resulted in a mismatch, or a Tentative Nonconfirmation (TNC). A TNC is issued when the information queried through E-Verify does not match the information in SSA or DHS databases and requires further action by employers and then by employees to resolve their cases with SSA or DHS, which is a process that we--in partnership with SSA--continually strive to improve.

Of all queries being run, 0.3 percent are related to new hires who were issued a TNC and successfully contested the case. The remaining 2.8 percent of queries were found not work-authorized either because the employee was in fact not work-authorized, chose not to contest, did not follow the necessary procedures to successfully contest, or was unaware of the TNC or the opportunity to contest because the employer did not follow proper procedures.

The Current E-Verify System: Past Program Enhancements

Under USCIS management and in cooperation with SSA, the E-Verify Program continues to increase accuracy rates, ensure that E-Verify is fast, easy to use correctly, and protect employees' rights. Recent improvements to the E-Verify Program included instituting a system change to reduce typographical errors, incorporating a photo screening tool for certain DHS documents to combat certain instances of document fraud, establishing a Monitoring and Compliance Branch to help ensure that employers are using E-Verify correctly, and adding new databases that are automatically checked by the system to further reduce initial mismatches. In addition, the E-

Verify Program established a new process for naturalized U.S. citizens to call a USCIS toll-free number to address citizenship status mismatches as an alternative to visiting SSA. All these efforts were targeted to establish efficient and effective verification.

E-Verify is an increasingly accurate and efficient procedure to verify employment authorization. In September 2007, the E-Verify Program instituted an additional automatic flag notice that allows employers to double-check the data they entered into the system for those queries that are about to result in a mismatch. This has reduced data entry errors and thus initial mismatches by approximately 30 percent.

The 2007 Westat independent evaluation found that many of the employees who are found to be work authorized after they contest the TNC were recently naturalized citizens. In May 2008, USCIS added an automatic check with USCIS naturalization data to E-Verify before issuing a citizenship-related mismatch, which reduced the number of these mismatches by nearly 40 percent. In addition, employees who receive a mismatch with SSA related to their citizenship status are now able to contact USCIS via a toll-free number to contest the finding, address the discrepancy, and verify their work authorization. Over 50 percent of employees who received a TNC for a citizenship mismatch since May 2008 have chosen to call USCIS. This process change has helped to reduce walk-ins to SSA field offices for E-Verify citizenship mismatches. Of those individuals who call USCIS to address a mismatch based on citizenship status, over 90 percent are successfully resolved by USCIS as work authorized. USCIS and SSA are also discussing further enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information. In addition, USCIS has invested in a dedicated pipeline from E-Verify to SSA to handle increased growth in query volume. The development for this pipeline is ongoing and is expected to be completed in early FY10.

The E-Verify Program also added the Integrated Border Inspection System (IBIS) that provides real time arrival and departure information for non-citizens to its databases as of May 2008, which is preventing E-Verify mismatches that previously resulted from delays in data entry for persons entering the country through ports-of-entry. The addition of this information into the E-Verify system is reducing hundreds of mismatches that occur for newly arriving workers who enter the country legally and start working immediately.

In December 2008, DHS signed a Memorandum of Agreement with the Department of State (DOS) to share passport data from the DOS's records. In February 2009, USCIS began incorporating passport data into E-Verify to help verify citizenship status information in the event of a mismatch with SSA for citizens who present a U.S. passport during the Form I-9 process. To date, over 5,200 queries that would have received TNCs under the previous procedures have been automatically verified as employment authorized as a result of this enhancement.

We continue to work to improve the system with the goal of being able to automatically verify every work-authorized person accurately and expeditiously, with a minimal number of false nonconfirmations. While there is still work to do to achieve this goal, we continue to make improvements and are committed to further investments to increase further the system's accuracy rate. Of course, non work-authorized persons will continue to receive non-confirmations, which demonstrates that the system is working as intended.

We believe E-Verify continues to grow in efficiency and ease of use for employers, and we continually strive to understand the needs of our stakeholders.

The E-Verify program is routinely reviewed by an independent evaluator in an effort to better respond to the needs of stakeholders and ensure ongoing improvement. We anticipate that the next independent evaluation will be submitted to USCIS by the end of this calendar year.

According to the 2007 independent Westat evaluation of E-Verify, "[m]ost employers found the Web Basic Pilot (E-Verify) to be an effective and reliable tool for employment verification" and 96 percent strongly disagreed that E-Verify was a burden.

Ultimately, E-Verify's continuing success relies not only on increasing its automatic verification rate, but also on increased awareness and public use of the program as well as more education of U.S. citizens and work-authorized immigrants about their rights when using the system. In an effort to better understand the needs of those employers using the program, USCIS substantially increased customer service and outreach staff over the past two years to ensure that questions and issues are addressed quickly and professionally.

In FY 2008, we launched an outreach campaign aimed at educating employers about their responsibilities in using E-Verify. In addition to conducting hundreds of presentations, demonstrations, and webinars, we also held informational seminars for the public in Arizona, Georgia, Mississippi, and the metropolitan D.C. area, and conducted 239 outreach events in 24 states. E-Verify also has a toll-free informational call center that handles approximately 2,000 calls per week.

The program launched radio, print, billboard, and internet advertisements aimed at increasing awareness about E-Verify. In addition, USCIS is collaborating with the Small Business Administration (SBA) to include E-Verify information on SBA's website and to identify additional ways E-Verify information can be incorporated into SBA program activities. USCIS has also collaborated with the Office of Special Counsel for Immigration-Related Unfair Employment Practices in the Civil Rights Division of the Department of Justice to develop guidance for employers about how to avoid discrimination when using E-Verify. This guidance is available on the website of the Office of Special Counsel and, with USCIS' assistance, has been translated into nine foreign languages (Chinese, Haitian Creole, French, Japanese, Korean, Tagalog, Vietnamese, Russian, and Spanish).

Employees are also key stakeholders of E-Verify. USCIS has bilingual English and Spanish advertising and has online materials in eight foreign languages (Chinese, Haitian Creole, French, Korean, Tagalog, Vietnamese, Russian, and Spanish) to inform employees of their rights. The E-Verify Program has collaborated with the DHS Office for Civil Rights and Civil Liberties to prepare bilingual English and Spanish videos for employers and employees to teach them about E-Verify and their rights, roles, and responsibilities.

Through monitoring and compliance, the E-Verify Program is committed to maintaining the integrity of the authorization system and effectively detecting and preventing discrimination and misuse.

A successful and effective electronic employment authorization verification program is critical to ensuring that employers have the necessary tools to ensure their work force is authorized to work in the United States. However, to be effective, the program must also include robust tools to

detect and deter employer and employee fraud and misuse. USCIS first contracted for an independent review of E-Verify in June 1998 with the initial evaluation of the program published on January 29, 2002 by Temple University and Westat. USCIS has continued this process to ensure third-party review of ongoing operations as well as evaluation of new capabilities and improvements.

The 2007 independent Westat evaluation found "substantial" employer non-compliance with program rules. While the evaluation found that employer compliance with program procedures is improving, it also identified methods by which some E-Verify employers may be using the program incorrectly. Failure to follow E-Verify procedures can potentially result in discrimination and can lead to job loss for U.S. citizens and work authorized immigrants and could ultimately reduce the effectiveness of the program. USCIS is dedicated to reducing E-Verify misuse through employer training, educational outreach, print and electronic resources, and our monitoring and compliance program. Indeed, we believe that a strong monitoring and compliance program is essential to the success and acceptance of the system.

USCIS established a Monitoring and Compliance Branch dedicated to monitoring E-Verify use and providing compliance assistance. The Monitoring and Compliance Branch aims to detect and deter system misuse; prevent the fraudulent use of counterfeit documents; safeguard personally identifiable information; and refer instances of fraud, discrimination, misuse and illegal or unauthorized use of the system to enforcement authorities. The Branch has begun systematically reviewing E-Verify transaction data to detect and deter employer misuse, fraud and discriminatory practices, and offers compliance assistance to help employers use the system correctly. This approach is supported by the Case Tracking and Management System (CTMS), which was launched on June 22, 2009. The E-Verify Program has instituted procedures to refer cases of non-compliance to Immigration and Customs Enforcement (ICE) and instances of potential discrimination under the anti-discrimination provision of the Immigration and Nationality Act to the Office of Special Counsel for Immigration-Related Unfair Employment Practices. In December 2008, USCIS signed a Memorandum of Agreement with ICE establishing guidelines for referrals and sharing of information. USCIS and the Office of Special Counsel have established mechanisms for the cross-referral of matters and the sharing of E-Verify information, and they are working to memorialize these procedures in an agreement.

To safeguard employee privacy, the E-Verify Program has established an internal Privacy Branch to ensure that program policies, practices, and procedures comply with the Privacy Act; promote transparency within the program; and to conduct Privacy Threshold Analyses (PTAs), Privacy Impact Assessments (PIAs), and develop System of Records Notices (SORNs) for system and programmatic enhancements. The Privacy Branch's mission is to protect employees' civil rights and personal information.

In addition to detecting fraud that occurs when workers provide counterfeit documents containing information about nonexistent persons, E-Verify prevents certain types of identity fraud from passing successfully through E-Verify. Some noncitizens without work authorization use stolen identities to obtain employment. To help address this problem, the E-Verify Program introduced a photograph screening capability into the verification process in September 2007. The tool allows a participating employer to check the

photos on Employment Authorization Documents (EAD) or Permanent Resident Cards (green cards) against images stored in USCIS databases, thus allowing employers to determine if the document presented by the employee as a DHS document is a complete fabrication or has been subject to photo-substitution. Through use of the photo tool, hundreds of cases of document and identity fraud have been identified, and unauthorized workers have been prevented from illegally obtaining employment.

Upcoming Enhancements to E-Verify: Fiscal Year 2010

USCIS continues to improve the system's automatic confirmation rate by incorporating additional data sources into E-Verify. Other key efforts include assisting employers in using the program correctly, continuing to conduct outreach focusing on employee as well as employer stakeholder groups, and expanding relationships with all stakeholders in an effort to further improve the program.

The E-Verify Program will continue to add new data sources to the automated initial check to reduce the number of mismatches issued by the system.

In fiscal year 2010, USCIS plans to improve the system's ability to automatically verify international students and exchange visitors through the incorporation of ICE's Student and Exchange Visitors Information System (SEVIS) data. By incorporating SEVIS nonimmigrant student visa data into the automatic initial E-Verify check, the number of students and exchange visitors who receive initial mismatches and then have to contest the initial result should be reduced. In FY2010, ICE will be launching a new version of SEVIS - SEVIS II - which will include employment eligibility information that E-Verify will be able to access electronically. Currently, the SEVIS database is checked manually by immigration status verifiers after an initial mismatch is issued.

The E-Verify Program also plans to provide automated system updates for any new hire with Temporary Protected Status (TPS) who has an expired EAD but who is within an auto-extension time period. This system enhancement will decrease the number of TPS recipients who receive an initial mismatch or TNC.

Additionally, E-Verify continues to develop other ways to reduce the number of initial mismatches and improve system performance by analyzing system data. One such effort will improve the date of birth entry field to avoid data entry errors such as reversing the day and month as is the practice in many countries outside of the United States. This mismatch reduction initiative includes improving the data-matching algorithm and improving usability to reduce data entry errors.

The E-Verify Program will continue to combat identity fraud and expand the photo screening tool.

USCIS is working to expand the types of documents available to the E-Verify system to provide photo confirmation. Currently, only DHS-issued identity documents are displayed in the photo tool, but the E-Verify Program is actively seeking to expand the types of photos available in this functionality. This would prevent one possible avenue of identity theft currently used to "game" the system. This effort will be combined with a reduction in the number of documents acceptable for Form I-9 purposes, such as those listed in the Interim Final Rule, which became effective on April 3, 2009.

USCIS is also assessing the feasibility of a state-based department of motor vehicles (DMV) data exchange that would incorporate driver's license photos into the photo tool. This would represent a significant enhancement to the system, since new hires most often present a driver's license for Form I-9 purposes. To date, no state has yet agreed to add its driver's license data to the photo tool. If launched, this functionality would be available to any state that chooses to participate.

USCIS is aware that identity fraud is a serious concern in the U.S. and is especially concerned with how this practice affects E-Verify. While USCIS cannot detect all forms of identity fraud used by an employee who is run through E-Verify, we are working to find ways to detect and deter fraud to the extent possible. Incorporating driver's license information and photos would strongly support this effort. Further, USCIS is in the final stages of developing an initiative that would enable individuals who are victims of identity theft and who have filed both a police report and a report with the Federal Trade Commission (FTC) to choose to "lock" and "unlock" their records in E-Verify.

The E-Verify Program will continue to implement enhancements to improve usability and program efficiency.

USCIS is evaluating the E-Verify registration process and is currently examining the best ways to validate the legitimacy of employers using the system, the individual registrants signing up to use the system, and those using the system after the enrollment phase. Improving the registration portion of the E-Verify Program will help ensure that E-Verify has accurate and complete information on those employers using the program.

The E-Verify Program is also working to provide an electronic Form I-9. The first phase of this enhancement includes developing a stand-alone Form I-9 in portable format that will allow employers to electronically create, sign, and store the completed forms. In a future enhancement, the electronic Form I-9 will pre-fill the fields in E-Verify, eliminating the need for employers to input the data into the system after it was already recorded on the Form I-9. Once available, this function will decrease workload on employers and should help reduce employer input errors.

Conclusion

The E-Verify Program has made great strides in becoming a fast, easy, and more accurate tool to help employers maintain a legal workforce and comply with immigration law. The Administration is dedicated to continuing to make improvements to address issues such as usability, fraud, discrimination, and to further improve the system's automatic verification rate. On balance, E-Verify will continue to be a key element of our Nation's ability to safeguard U.S. jobs for citizens and authorized workers by combating illegal immigration.

Thank you for the opportunity to testify before the Subcommittee and we appreciate your continued support of the E-Verify Program.