U.S. Citizenship
and Immigration
Services

STATEMENT

OF

JOCK SCHARFEN
DEPUTY DIRECTOR
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

**"Problems in the Current Employment Verification
and Worksite Enforcement System"**

BEFORE THE

HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION

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I.   Introduction

I am grateful for this opportunity before the Subcommittee to discuss the Employment Eligibility Verification (EEV) Program administered by United States Citizenship and Immigration Services (USCIS). Previously known as the Basic Pilot Program, this unique program provides employment eligibility information on newly hired employees to more than 16,000 participating American employers.

Any company anywhere in America can try the Employment Eligibility Verification System (EEVS) and use it for free over an easy-to-use government website. Currently, over 92% of queries from employers receive an instantaneous employment authorized response within three seconds. EEVS is a valuable tool that helps employers comply with immigration law while also strengthening worksite enforcement. In FY 2007, USCIS has been making progress to further improve and expand the program.

In his speech at the U.S.-Mexico border in Yuma, Arizona, President Bush laid out five elements of a comprehensive immigration policy. One of these elements is the need to hold employers accountable for the workers they hire. The President emphasized that an accurate and secure Employment Eligibility Verification Program is a critical component of efforts to comprehensively reform our immigration laws. Today, USCIS is actively taking steps to improve the overall performance of the system, add new capabilities, and continuing to simplify the process for employers.

II.   The Current Employment Eligibility Verification Program

USCIS received $114 million in FY2007 for the expansion and improvement of EEVS to better support an increasing amount of employers who are choosing to electronically verify the employment eligibility of workers.

In FY2007, USCIS continues to improve the Employment Eligibility Verification Program by:

- Improving our ability to help identify instances of document fraud and identity theft by pilot-testing a photo screening tool.

- Reducing the percentage rate of Department of Homeland Security (DHS) and Social Security Administration (SSA) mismatches by incorporating additional data sources on immigrants and nonimmigrants into the program and implementing a new capability to query by DHS card number.

- Streamlining the enrollment process for employers by making it completely electronic.

- Beginning to monitor EEVS data for patterns to detect identification fraud, verification-related discrimination, and employer misuse of the program.

- Conducting outreach with effective force multipliers such as human resource and employer associations to educate employers about the program.

USCIS is also improving the program in many other ways, including updating training materials, creating more user-friendly web pages, providing better customer support, and exploring additional query access methods that could be used by employers who do not have web access. We are also continuing to conduct independent evaluations to provide additional input for improving the program.

Additionally, USCIS and ICE are working collaboratively on worksite enforcement and all employers enrolled in the ICE Mutual Agreement between Government and Employers (IMAGE) are required to participate in the EEV Program. IMAGE is a joint government and private sector voluntary initiative designed to build cooperative relationships that strengthen overall hiring practices.

III.   History of the Basic Pilot Program

With that brief overview of the accomplishments we've made so far in FY2007, I'd like to take this opportunity to outline the history of the Basic Pilot, how it works, and how USCIS plans to expand and improve the program.

Congress established the Basic Pilot as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), creating a program for verifying the employment eligibility, at no charge to the employer, of both U.S. citizens and noncitizens. The Basic Pilot program began in 1997 as a voluntary program for employers in the five states with the largest immigrant populations -- California, Florida, Illinois, New York, and Texas. In 1999, based on the needs of the meat-packing industry as identified through a cooperative program called Operation Vanguard, Nebraska was added to the list. Basic Pilot was originally set to sunset in 2001, but Congress has twice extended it, most recently in 2003, extending its duration to 2008 and also ordering that it be made available in all 50 States. Although only a small percentage of U.S. employers participate, we have seen a large increase in users over the last two years. In 2006, the number of employers doubled. This year the program is growing by over 1,000 employers every month. We project that the 16,000 participating employers will verify over 3 million new hires this fiscal year at more than 71,000 work sites. Chairwoman Lofgren, California has 2,104 participating employers in the program, representing 12,174 sites. In the state of Iowa, Ranking Member King, there are 148 participating employers, representing 659 sites.

IV.   How the Employment Eligibility Verification Program Works

After hiring a new employee, an employer takes information from the Form I-9 (Employment Eligibility Verification form) and submits a query, including the employee's name, date of birth, Social Security number (SSN), and whether the person claims to be a U.S. citizen, lawful permanent resident, or other work-authorized noncitizen. For noncitizens, a DHS issued identifying number is also submitted. Within seconds, the employer receives an initial verification response.

For an employee claiming to be a U.S. citizen, the system transmits the new hire's SSN, name, and date of birth to SSA to match that data, and SSA will confirm citizenship status on the basis of its NUMIDENT database. For those employees whose status can be immediately verified electronically, the process terminates here; in the remaining minority of cases, the system issues a tentative nonconfirmation to the employer.

The employer must notify the employee of the tentative nonconfirmation and give the employee the opportunity to contest that finding. If the employee contests the tentative nonconfirmation, he or she has eight business days to visit an SSA office with the required documents to correct the SSA record. The employee must be allowed to keep working while the case is being resolved with SSA and cannot be fired or have any other employment-related action taken because of the tentative nonconfirmation.

When a noncitizen's SSN information does not match in the NUMIDENT database, the individual is referred to a local SSA field office to resolve the mismatch. If information does match with SSA or the issue is resolved, then a noncitizen employee's name, date of birth, DHS ID number, and work authorization is matched against a USCIS database. If the system cannot electronically verify the information, the system automatically forwards the information to a USCIS Immigration Status Verifier who researches the case and usually provides an electronic response within one business day, either verifying work authorization or issuing a DHS tentative nonconfirmation.

If the employer receives a tentative nonconfirmation, the employer must notify the employee and provide an opportunity to contest that finding. An employee has eight business days to call a toll-free number to contest the finding and cannot be fired or have any other adverse employment-related action taken during that time because of the tentative nonconfirmation. Once the necessary information from the employee has been received, usually by phone or fax, USCIS generally resolves the case within three business days, by issuing either a verification of the employee's work authorization status or a DHS final nonconfirmation.

V.   Program Improvements

As previously noted, in FY2007, the program received $114 million in appropriations which is being used to expand and improve the EEV through the incorporation of improved data sources into the program, launching initiatives to help combat identity fraud, streamlining employer registration, working with SSA to address mismatch issues, and beginning to monitor system usage. A recent independent evaluation revealed that in 2006, nearly 92% of initial queries were found to be employment-authorized instantaneously.

A June 2006 study by the Government Accountability Office (GAO) stated that Basic Pilot, "shows promise to enhance the current employment verification process, help reduce document fraud, and assist ICE in better targeting its worksite enforcement efforts." However, the GAO report also identified a number of weaknesses including Basic Pilot's inability to detect identity fraud and delays within DHS to timely update

information. This report, along with feedback from employers, has been helpful in targeting our improvements to EEVS. We are directly addressing these issues and others as part of our effort to improve the performance of EEVS.

Photo Tool Incorporation

In March 2007, USCIS began testing a pilot program to enhance the EEV system by allowing an employer to make a query using the new hire's USCIS-issued card number, when that worker uses a secure I-551 ("green card") or secure Employment Authorization Document, both of which include photographs of card recipients. When available, the system displays the photo that DHS has on file for the given card number, allowing the employer to make a visual match of identical photos. This prevents employees from successfully using a fraudulent or photo-substituted document for verification purposes. The initiative is currently being tested by 40 participating employers in the program and is expected to be expanded to all EEV employers this summer. To date, over 200 queries have been processed using this new tool.

The current EEV system is not fraud-proof and was not designed to detect identity fraud. However, the photo tool functionality helps detect identity fraud from a fraudulent document or photo-substituted card because the system-issued photo should be the identical photo shown on the document presented to the employer. Employers noticing any variation between the photo in the system to the photo on the card presented to them are instructed by the system to issue a DHS tentative nonconfirmation and send the case to DHS for further review. In this test phase, we have already encountered a case where an employer detected a fraudulent green card presented by a new hire.

Additional Data Sources

USCIS has also been working to decrease DHS and SSA data mismatches (for example, changes in immigration status or name changes that are not reflected in SSA's database) in the program by incorporating additional data sources into the EEV program. Evaluation of the program reveals that less than one percent of initial system nonconfirmation responses are a result of data mismatches in DHS systems. Earlier this year, the Verification Division incorporated two important data sources into the system: the Custom and Border Protection's real-time arrival and departure information for nonimmigrants, and USCIS information about immigrants who have had their status adjusted or extended. Although these data sources have been available for only a short time, they appear to be increasing the number of cases verified instantaneously.

As mentioned earlier, data mismatches found to exist within the SSA's NUMIDENT database require a contesting employee to visit an SSA office with the required documents to correct their SSA record. Many of the individuals receiving SSA tentative nonconfirmations include naturalized citizens whose citizenship data have not been updated in the NUMIDENT database. To address these issues, DHS and SSA are working to develop a streamlined, automated process to reduce the need for individuals to visit SSA offices.

Automated Registration

Earlier this year, USCIS simplified and completely automated the EEV registration process for interested employers voluntarily choosing to sign up to use the program. This significant programmatic improvement decreases the time burden on employers desiring to participate in EEV and positions the program well for timely registration of all seven million U.S. employers if the program becomes mandatory.

Monitoring & Compliance

No electronic verification system is foolproof or can fully eliminate document fraud, identity theft, or intentional violation of the required procedures. Likewise, no system can fully prevent employers from intentionally circumventing the law by hiring or continuing to employ unauthorized persons. USCIS is developing a monitoring and compliance unit to help detect unauthorized employment, to prevent verification-related discrimination or employer misuse of the program, and to detect identity and document fraud.

The new USCIS unit will monitor employers' use of the system and conduct trend analysis to detect potential fraud and discrimination. Findings that are not likely to lead to enforcement action (e.g., a user has not completed training) will be referred to USCIS compliance officers for follow-up. Findings concerning potential fraud (e.g., SSNs being run multiple times in improbable patterns; employers not indicating what action they took after receiving a final nonconfirmation) may be referred to ICE worksite enforcement investigators. A memorandum of understanding (MOU) with ICE will be developed to implement this process.

With the ability to of the Employment Eligibility Verification Program to help identity fraud and system misuse, it is also important that the system contain security and other protections to guard personal information from inappropriate disclosure or use and to discourage use of the system to discriminate unlawfully or otherwise violate the civil rights of U.S. citizens or work-authorized noncitizens.

VI.   Conclusion – The Future of an EEV

An accurate and secure Employment Eligibility Verification Program is a critical component of efforts to improve worksite enforcement. Better worksite enforcement is a key component of any proposal to create a Temporary Worker Program (TWP). The success of a TWP will be essential in reducing the pressure on our border. A secure border will allow us to free up much needed resources, enforce our laws, and protect our homeland against foreign threats. It's all connected. Each link in this chain is critical to its overall integrity. This is why we must take a comprehensive approach to reforming our immigration laws.

Legislative proposals phasing in an EEV program recognize the challenges of implementing a mandatory national system and seek to minimize the burdens placed on employers. A gradual approach to mandatory verification could be based either on

employer size or by industry, starting with the most vulnerable critical infrastructure sectors, to first help ensure homeland security. We favor having the discretion to phase in certain industry employers ahead of others, as a phased-in implementation schedule on a carefully drawn timeframe will allow employers to begin using the system in an orderly and efficient way.

USCIS is also committed to constructing a system that responds quickly and accurately. In order for this system to work, it must be carefully implemented and cannot be burdened with extensive administrative and judicial review provisions that could effectively tie up the system, and DHS, in litigation for years.

Our ultimate success with future implementation of an Electronic Employment Eligibility Verification program will rely on public-private cooperation and active employer participation in government partnerships to secure our workforce. With a bipartisan, cooperative effort we can set a positive tone. Our work is critically important to the future of our Nation and directly impacts national security, our economy, and individual lives. We all share in the responsibility to make our Nation greater, and I look forward to working with you to advance our mutual interests and assist those who come here seeking freedom, prosperity, and the hope for a better future.

Thank you; I look forward to answering your questions.