

**TESTIMONY OF**

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**ON BEHALF OF  
SERVICE EMPLOYEES INTERNATIONAL UNION**

**BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER  
SECURITY AND INTERNATIONAL LAW  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.**

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**Madam Chairwoman and members of the subcommittee:**

**I am Robert H. Gibbs, representing the Service Employees International Union. Prior to the passage of the Immigration Reform and Control Act in 1986, I worked with individuals, unions and employers concerning issues on the interface between employment and immigration. Significantly, for this hearing, my work has covered issues relating to employment authorization documentation, employer sanctions, and inaccuracy in government record keeping systems.**

The Service Employees International Union (SEIU) has over 1.6 million members in the United States (and 200,000 additional members in Canada). SEIU members work in the property services, health care and in the public sector. Many are immigrant workers who work in low wage occupations such as janitors, security guards, home care aids and nursing home workers. SEIU has been a leading advocate for improving the lives of low-wage workers and for comprehensive immigration reform.

SEIU has extensive experience assisting its members in responding to employer actions following non-confirmations from U.S. Customs and Immigration Service (USCIS), or Social Security Administration (SSA) under the Basic Pilot Program. Because of our experience with these problems over the past several years, we have substantial concerns about how an Electronic Employment Verification System (EEVS) regimen would be structured to avoid injurious inaccuracies, as well as employer discrimination and harassment of immigrant workers.

## **I. INTRODUCTION**

It is critical that Congress “get it right” if an EEVS program is enacted. A poorly thought-out, poorly funded program will create more problems for workers and American employers than it will solve. For a verification program to work, it must accurately identify those qualified for employment, while providing a workable means for needed workers to timely obtain legal authorization.

Such a program will dramatically change the nature of the government’s role in the employment relationship. For the first time, the ***government would have the power to order employers to terminate employees***, if the employee data provided in the system does not match government databases. Such new power can only be accepted if there are adequate systems in place to remedy inaccurate records, and remedies for unfair terminations.

The impact of the EEVS proposals will not merely impact undocumented workers, but will have serious consequences for millions of citizens, lawfully employed immigrants and their families if database inaccuracies are not fixed. The most recent research on the

Basic Pilot Program shows 8% of all queries were the subject of a tentative non-confirmation (TNC) by the system.<sup>1</sup> That is an unacceptably high figure.

***Unless database errors are cured, 24,000 of the estimated 300,000 workers in each congressional district would be required to spend several hours attempting to straighten out SSA or USCIS records in order to continue their employment. Many of these constituents will contact your offices for assistance.***

Proposals to require employers to electronically utilize a government employment verification program will only succeed if they are part of a broader package of reform to expeditiously legalize the status of the estimated twelve million workers who are here without authorization, as well as to provide a fair mechanism for future immigrant workers

Without these necessary components, there will be little incentive for employers and employees to comply. There must be effective and fair ways to fulfill the future needs of employers and immigrant workers in a timely, cost-effective manner. As we saw with the 1986 employer sanctions program efforts to ensure that employers only hire documented workers are bound to fail. When there is a large pool of unauthorized workers, and when the immigration laws provide inadequate mechanisms for legal, working visas for thousands of low wage workers in service, construction, agriculture, garment and light manufacturing industries.

IRCA demonstrated that when the law required all employees to present certain documents, the employees did so. The demand for documents merely generated a new industry in counterfeit documents. Likewise, the creation of an EEVS will merely generate more fees for document purveyors, who will have an incentive to obtain documents that relate to a real person, thereby expanding the growth of the use of purchased, borrowed or stolen identities. Once hundreds of such document purveyors develop the capacity to obtain thousands of such documents, there is nothing to insure that they will not broaden their market to include users who seek to use them to defraud banks and merchants.

For an EEVS program to work it is essential that it be part of comprehensive reform.

## **II. ANY EEVS PROGRAM MUST PROVIDE FLEXIBILITY IN THE TYPES OF ACCEPTABLE DOCUMENTATION.**

Some EEVS proposals, such as S. 2611 and the STRIVE Act, drastically reduce the list of acceptable documents that the employee may present to a U.S. passport, a REAL ID compliant drivers license, or a DHS-issued resident alien card or work authorization card. While the employer sanctions program was often criticized for having too many documentation options, these proposals suffer by going to the other extreme. Moreover,

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<sup>1</sup> Testimony of Marc Rosenbaum Fellow, Migration Policy Institute, for the House Committee on the Judiciary, Subcommittee on Immigration, Citizenship, REfugeess, Border Security, and International Law, April 24, 2007, relying on recent USCIS data.

for immigrants the only documents that are acceptable are those issued by DHS. There should be appropriate, flexible, and cost-effective options available to workers to establish that they are authorized for employment. These excessively-limited lists of documents need flexibility to allow states to phase in upgraded ID's gradually, and to insure that immigrants are not limited to expensive DHS documents, where others would suffice.

There are several problems with the limited options of these proposals:

- 1) **U.S. Passport:** at present only about 20% of American citizens have a U.S. passport. The cost is excessive for many American workers--\$98. There are months-long delays in obtaining a passport (or replacing a lost or stolen one) due to increased requirements for travel to Canada or Mexico.
- 2) **REAL ID-compliant drivers license/identification card:** Five states to date have already determined that they will not implement REAL ID, given the excessive cost imposed on the state by the unfunded mandates. More are expected to join this list. Employees in these states will have to obtain an expensive U.S. passport. Reports have been made of states refusing to issue licenses where the applicant data does not match erroneous data at SSA, e.g. maiden/married name problems. See e.g., the *Anchorage Daily News* story at (see attached) <http://www.adn.com/life/lende/story/8709601p-8611871c.html> . Under this regimen, even native-born U.S. citizens will have to spend time traveling to SSA offices to try to get their records to match up. Many will seek the assistance of congressional staff, especially to the extent the problem lies in SSA records systems.
- 3) **DHS-issued documents for permanent residents, asylees and others lawfully authorized to work:** Immigrants are limited to DHS-issued identity documents. Under the current law, immigrants can present a valid, unrestricted SSA card, as can asylees, rather than a DHS-issued document. SSA will only issue unrestricted SSA cards after clearing the eligibility of the applicant with CIS. (Asylees are persons whose asylum status has been approved by USCIS). With proposals to increase the security measures on SSA cards, there is little reason to limit legal permanent residents and asylees solely to DHS-issued cards. These limitations have several problems: 1) Cost: DHS is proposing to increase the cost of a replacement permanent resident card to \$290, for a replacement work card to \$340; 2) Delays: a replacement permanent resident card is currently taking a *minimum* of 9-10 months (assuming no problems), and a renewal work card is taking at least four months. Over 100,000 adjustment and citizenship applications have been delayed beyond six months (some for years) because of FBI delays in CIS required background checks. CIS is planning to impose name check requirements on all work card applications, inevitably causing further delay for persons who are legally entitled to the documentation.

At present, your congressional district staff are well aware of the high number of problems with the processing of immigration documentation by USCIS. Given the geographic dispersal of immigrants, these problems surface in every district. Agency delays and mistakes are all too common, and agency responsiveness, even to Congressional staff is often poor. Imposing a poorly thought-out, and inadequately funded and tested electronic system, will substantially increase the demand on your staffs. Since the EEVS proposals would require employers to terminate non-confirmed employees, the stakes will be dramatically higher for your constituents, and significantly add to your district office caseload.

### III. **EFFECTIVE ANTI-DISCRIMINATION FEATURES MUST BE AN INTEGRAL PART OF ANY EEVS.**

One of the significant problems identified by major studies with both the 1986 employer sanctions program, as well as by the Basic Pilot Program, is employer discrimination against immigrant workers who are lawfully seeking employment. Despite several GAO studies, no serious reforms have been implemented to reduce the incidence of anti-immigrant discrimination. Instead, Congress is now considering a substantial expansion of a program that has failed to operate properly, without discrimination. Failure to remedy these problems will doom the EEVS program to failure in limiting undocumented employment, just as the prior programs failed. Constructing programs that allow, indeed encourage discrimination, only provides incentives to those employers who seek competitive advantage against employers who are making good-faith efforts to comply with workplace laws and standards.

Discrimination in employer sanctions programs occurs in several ways:

1. **Illegal prescreening of employees:** the EEVS proposals, like the Basic Pilot Program, all proscribe use of the system to prescreen employees. But it is not surprising that employers seek to limit their hiring and training costs by screening applicants, rather than hiring and then terminating employees. Since legal immigrant workers are disproportionately impacted by database inaccuracies, they are particularly harmed. GAO and Westat studies have all found this abuse to be rampant. EEVS programs must provide sufficient remedies and enforcement funding to dissuade this conduct.
2. **Discrimination in terms of employment to employees with a Tentative Non-confirmation:** studies have shown a high level of discrimination against those employees who are subject to a Tentative Non-confirmation. This includes termination, reduced pay, training, benefits, poor scheduling, etc. Because database errors are more common in the USCIS databases as to immigrant workers, than for the SSA databases, the effect of the TNC-related discrimination is more pronounced for immigrant workers.

3. **Defensive hiring:** employers may respond to the potential costs of the EEVS by avoiding hiring applicants that “look” or “sound” foreign in appearance or language. GAO studies found this a consistent problem as a result of the 1986 employer sanctions regimen. A slightly different version of this practice is requiring more or different documentation from Latinos which violates the law.
4. **Discrimination against citizen workers:** some employers will prefer hiring undocumented workers knowing that they will be afraid of complaining about poor working conditions or rates of pay.

Effective remedies must be provided to insure against these different types of discrimination. Protections against discrimination must include governmental oversight of employer use of the program, worker education, timely/cost effective procedures, and sufficient remedies for deterrent and remedial impact.

#### IV. **EEVS PROGRAMS MUST PROVIDE PROMPT, SIMPLE METHODS FOR WORKERS TO CORRECT DATABASE ERRORS AND AGENCY DELAYS.**

EEVS proposals shift the burden to the employee to demonstrate his/her authorization for employment despite the high error incidence in SSA and DHS databases. Notably, although the agencies merely state that they cannot confirm the employee’s work authorization, rather than that the employee is not authorized to work, the employer *must terminate* a non-confirmed employee.

GAO and Westat studies of the prototype Basic Pilot show that employees must take many hours off from work, usually at their own expense, in an effort to straighten out erroneous agency databases. Employers have reported that the agencies often fail to respond, or respond late to their inquiries. GAO studies have reported that CIS often is unable to locate the paper files that must be reviewed in order to remedy CIS data problems, caused by tardy data entry, or poor communication between different DHS or DOJ components as to actions taken on a casefile.

Additionally, applications for CIS approval, extensions or replacement of documents are frequently long-delayed, or erroneously denied. When the application is pending, or if it is wrongly denied, CIS will not confirm work authorization, even if the applicant should have been approved. In the interim, a TNC or final nonconfirmation will issue, through no fault of the individual, and thereby cause employment termination.

EEVS must provide for an effective, timely means for individuals to obtain correction of their records before they lose employment. Such mechanisms must include fully staffed customer service lines to enable remedy without extensive travel and endless waits at agency offices with hundreds of others. USCIS may have only one office in any given state, unlike the SSA. Termination should only be required where the

system has conclusively determined that the employee is not authorized for employment. Employees must be provided a timely, workable mechanism to challenge such agency determinations. Remedies should also provide full backpay and attorney's fees for employees that are wrongly terminated by government error or delay. GAO and Westat studies have found a high degree of employer failure to provide employees guidance about their rights to contest improper terminations. EEVS must correct this failure by insuring that employees are fully advised of their rights to contest improper terminations. Congress should also ensure that CIS has sufficient funding to provide prompt, accurate adjudication of applications to help prevent improper employment termination.

**V. ENACTMENT OF AN EEVS SYSTEM WITHOUT IMMIGRATION REFORM WILL FURTHER EXPAND THE UNDERGROUND ECONOMY, AND DEPRESS WORKING CONDITIONS FOR ALL WORKERS.**

Enforcement of an EEVS without comprehensive immigration reform to provide legal status to the existing 12 million undocumented workforce, and providing workable mechanisms for future needs is doomed to failure. Labor market growth in the coming decades is predicted to be in the lower wage positions in the service sector, including health care, hotel/restaurant, and in construction. These needs cannot not be sufficiently met solely with American born workers.

Failing to legalize existing workers and create legal channels for new workers to meet future workforce needs will provide a strong incentive to employers to continue to hire undocumented workers. There will be the demand for workers, as well as the supply of undocumented workers. Employers will have greater incentives to employ workers off the books, pay cash, or misclassify workers as "independent contractors" and therefore not subject to EEVS.

Such employers will likewise not pay Social Security or unemployment taxes, provide medical insurance or workers compensation, nor will they withhold income tax. Knowing that their workers will fear to complain, and lack protections from labor protection agencies, the unscrupulous employers will have little to fear from not paying the minimum wage or overtime, or failing to provide safe and healthy working conditions.

EEVS without comprehensive reform will fuel the underground economy, while putting law-abiding employers in the sights of DHS. This system will ensure that unscrupulous employers gain a competitive advantage at the expense of workers, and their communities and disadvantage good employers. Local, state and federal government will lose tax revenue to pay for essential services. We need to encourage all employers to play by the rules, and not create incentives to pay off the books.

The creation of an underground economy has been fostered by the limitations of the 1986 IRCA employer sanctions regime, which though it provided a legalization program, failed to accommodate future flows needed by the labor market. The commensurate failure to increase visa quotas to allow the legal entry of spouses and children of legalized aliens, exacerbated the numbers of undocumented as legalized immigrants brought their families here in advance of visa availability.

To the extent an EEVS program creates an unnecessary burden for legitimate, taxpaying employers it will encourage further growth of the underground economy. Such an expansion hurts all American workers, both immigrant and native born as well as the majority of responsible employers who will be forced to compete with employers who pay cash under the table fail to pay the minimum wage ignore fundamental labor protections.

## **V. CONCLUSION**

Any enforcement-only approach is doomed to fail, as it will merely provide further justification for employers to discriminate against immigrant workers in hiring, or compensation. To the extent broad measures are not taken to provide effective, timely processes for workers to immigrate legally to fill workplace needs, enforcement alone will fail in its goal of limiting undocumented immigration. Without such measures, enforcement alone in 2007 will be no more effective than it has been in the past twenty years of more border fences and tougher immigration laws.



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## **What is in a name? Social insecurity**

HEATHER LENDE  
AROUND ALASKA

*(Published: March 15, 2007)*

HAINES -- I'm not sure what my name is. I didn't get hit on the head and lose my memory. I tried to renew my driver's license and was informed that the name I have been using for 25 years is not legal.

Apparently, I didn't change it from the name I was born with, Heather Vuillet, after I married Chip Lende. I thought I had, since Heather Lende is printed on my passport, license, income tax forms, property deeds, insurance policies and the nameplate in front of my chair at Haines Borough School Board meetings.

Not so, said the Social Security computer, which cross-checked my license renewal application at the office of the Alaska Department of Motor Vehicles here and blocked it.

Alarmed, I called the Social Security Administration and spoke with a woman, who, I believe, was in Oklahoma. She said I needed to bring my passport and marriage certificate to the nearest Social Security office, which is in Juneau, 90 miles by ferry or plane.

At the Federal Building door in Juneau, I took off my boots, walked through a metal detector and was wanded by a guard in a police-style uniform. He also asked to see my ID.

The driver's license still worked.

At the door of the Social Security office, there was another armed guard, in a brown, military-style uniform. It was just us in the windowless waiting room. After 15 minutes, a Social Security officer called me to the counter.

I cheerfully explained the situation and showed him my passport and marriage license. I also had my driver's license, voter registration card, birth certificate, baptismal record and all five of our children's birth certificates, just in case. He looked at them and at his computer screen and said he was sorry but I wasn't legally Heather Lende.

He said that my license would not be renewed and the same thing would happen when my passport expired if I didn't match my name to my Social Security number.

I wished I had the presence of mind to ask why my income tax was still being collected.

Instead, I started to say that without ID I couldn't leave Haines by plane, ferry or road through Canada. (This is also true of all Alaskans.) But we don't have a hospital. What if I was sick or injured? What if my dad in New York got sick and I couldn't go? I must have looked like I was going to cry, because the officer said he would help me.

All I had to do was to fill out a name-change form and provide two pieces of ID, a passport or driver's license in my maiden name, and a marriage certificate -- the original or a certified copy -- from the agency that issued it.

But my passport and license already had the name that would be my new name, Heather Lende, on them.

I did have my birth certificate and my marriage license. I asked if they could be the two IDs. He said birth certificates aren't allowed.

I heard the "Twilight Zone" music and then saw Laurel trying to explain this one to Hardy in their screwball comedy way:

"Let me get this straight" Laurel would say " I need an ID with a name on it that I don't have and can't get in order to change it to the name that I already have that is on all of my IDs?"

The Social Security officer agreed it was nutty, but it was the law. He could, however, use the marriage license as one of the two required documents, and a certified copy of a medical record in my maiden name could substitute for the license or passport as the other.

I am 47 years old. I was married in New York when I was 22 and have been in Alaska ever since. I was a healthy child. I got stitches once, when I was 10, visiting the Pennsylvania grandparents.

My parents left the town I grew up in 15 years ago to move to a farm upstate. My mother didn't save much in the transition except my Middlebury College diploma.

That is not a legal ID. But the record of a minor knee surgery I had in a Vermont hospital when I was in school there would be if I could find it.

It was easy. I did it by phone and fax with a credit card -- same with the agency-certified copy of my marriage license.

Once I had the documents in hand, the Social Security officer in Juneau -- who has been very kind -- called to say I might not need the medical record after all. Since I had it, I mailed it to him anyway, and in a few weeks I should have my old name back.

In the meantime, I think the lesson in all of this is best summed up by a faded bumper sticker on 80-something-year-old Haines pioneer John Schnabel's truck: "I Love My Country But Fear My Government."

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