

**Statement of Congressman Jeff Flake
To the House Committee on the Judiciary Subcommittee on Immigration,
Citizenship, Refugees, Border Security, and International Law**

**Hearing Examining H.R. 1645, the “Security Through Regularized Immigration
and a Vibrant Economy Act of 2007 (STRIVE Act)”**

September 6, 2007

Thank you, Madam Chairwoman, for holding this important hearing to examine The Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act), introduced by Congressman Gutierrez and myself. I am pleased that the Immigration Subcommittee has turned its attention to both this important bill and the important issue of comprehensive immigration reform.

Earlier this year, it was with great disappointment that I watched the negotiations on a bipartisan and comprehensive approach to immigration reform in the Senate take crucial steps forward only to be ground to a halt in June. However, the sentiment that I expressed at the time remains all the more valid today – inaction is a victory for no one on this issue. When it comes to reforming our broken federal immigration system, Congress failing to act is simply not an option.

This subcommittee is integrally familiar with the many facets of the problems caused by our broken immigration system. Our current immigration laws are not realistic and there are insurmountable obstacles to their enforcement. Among other consequences, our approach to immigration policy has yielded a steady stream of immigrants crossing the border without inspection or overstaying their visas, an estimated 12 million undocumented immigrants within the U.S., a bureaucratic and ineffective temporary worker program that is little help to a consistent worker shortage, and embarrassing visa processing backlogs. While many agree on the problems, Congress has been unable to agree upon a solution. With state and local governments stepping up and the Administration’s upcoming pressure on employers, Congress’ prolonged inaction is making a bad situation worse.

State and Local Officials Stepping in Due to Congressional Inaction

According to a recent analysis, the first half of 2007 saw more than 1,400 bills dealing with immigration introduced in state legislatures, with 170 laws enacted in 41 states. While the Immigration Reform and Control Act of 1986 made it illegal for employers to knowingly hire, recruit, or refer for a fee, or continue to employ an alien who is not authorized to be so employed, enforcing this prohibition has been all but impossible due to the prevalence of fraudulent documents and the ease with which undocumented workers could obtain them. Tired of waiting for Congress to act, states are trying to take matters into their own hands, including my home state of Arizona.

State laws dealing with immigration issues have generally followed a strategy of attempting to encourage immigrants, particularly those without proper documentation, to leave the state by making life for them untenable. Additionally, state immigration laws also often seek to target employers that are suspected of hiring workers that are not authorized to work in the U.S. or those providing housing to illegal immigrants with strict penalties and sanctions.

These state immigration laws are being consistently challenged, however, with opponents charging violations of the separation of powers, federal commerce clause, or due process. Along with court challenges, many that are dealing with strict state immigration laws, attempting to do what Congress should, have fears that they will lead to widespread discrimination by employers. It is unfortunate that an increase in penalties for hiring undocumented workers is often not coupled with the appropriate tools that employers could use to accurately identify those that are authorized to work in the U.S.

There is no disputing that the responsibility of crafting immigration policy falls on the shoulders of Congress, not the states. When Congress fails to act, we run the risk of what we are seeing currently: a patchwork of differing state laws that will be ineffective at providing a comprehensive solution. Rather than encouraging them to leave the country, this inconsistent and segmented approach simply provides those in the country illegally a long menu of options from which to choose instead of complying with federal immigration law. Rather than fifty attempts to handle the problem, Congress should move forward with a national approach to immigration reform.

The Administration's Reforms Are an Incomplete Step

Not to be outdone by state and local governments stepping into the immigration fray due to Congressional inaction, the Administration has also announced an aggressive plan to increase border security and immigration law enforcement. On August 9th, the Administration announced twenty-six specific policy reforms in a number of areas, including: border security, interior enforcement, worksite enforcement, the guest worker programs, existing immigration, and assimilation. While the Administration is to be commended for doing what they can with the immigration problem and for attacking the issue in as comprehensive manner as possible, these reforms are severely limited in scope because they all fall within the bounds of the existing immigration laws. One of the new provisions in particular, while an aggressive measure intended to enforce the law prohibiting the employment of unauthorized workers, could have significant and negative unintended consequences as well.

While still attempting to clear legal hurdles, the Administration has finalized regulations proposed in 2006 and held until Congress faltered on moving ahead with comprehensive immigration reform. The Department of Homeland Security is planning on sending some 140,000 employers so-called social security "no match letters." These "no match letters" are generated by the Social Security Administration when an employee's name and social security number are not consistent. Under the finalized regulations, employers will have ninety days to resolve any discrepancies that have resulted in the "no match letter" or

terminate the employee. Otherwise, they will be considered to have knowingly hired an unauthorized worker. With an estimated seven million unauthorized workers making up roughly five percent of the civilian workforce and consistent reports of worker shortages, the business community is rightfully wary of stepped up worksite enforcement that is not part of a comprehensive solution to our broken immigration system.

While having to operate within the bounds of existing law, the Administration is arguably using the wrong tool for the right problem. Outside of questions regarding whether the Department of Homeland Security has the necessary authority to require employers to deal with “no match letters,” the Social Security Administration’s “no match letters” were never intended to play a primary role in worksite enforcement of immigration laws. As such, there is considerable concern about whether the Social Security Administration’s database and information is up to the challenge, given what is at stake for both workers and employers.

Even if the Social Security Administration’s databases and information could be used for worksite enforcement with some degree of confidence, “no match letters” would remain a dubious policy option for immigration law enforcement. The “no match letter” approach targets so-called “good actor” employers – employers that are doing their paperwork and paying their taxes. An approach to worksite enforcement such as this makes trying to follow the rules and obey the law a disincentive for employers, who would have a reduced risk of being snared in immigration violations or discrimination lawsuits if they simply filed no paperwork at all. In addition, this approach is too far into the hiring process to be effective for either the employee or the employer. Rather than providing a workable and accurate employee verification system for employers to use, this approach relies on the employee being hired and paperwork being submitted to the Social Security Administration before a problem could be detected.

I would submit that these are the kinds of problems one would expect when the agencies are tasked with bootstrapping existing and ineffective regulatory tools to fix a problem that demands a Congressional solution. More troubling are the persistent rumors that the “no match letter” approach has been pursued as a likely approach that will put U.S. industry in the worst situation possible and thus make the immigration issue one that Congress simply cannot ignore. For those of us that live near the border, it is hard to believe there are still those within the U.S. that believe the situation could get any worse.

Comprehensive Immigration Reform is the Only Viable Solution

Rather than fifty individual and inconsistent approaches to immigration reform muddying the waters or ineffective regulatory tools that run the risk of ineffectively addressing only one piece of a complex problem, Congress must act. I wholly support enforcing our existing laws, but we simply have to face the fact that our existing immigration policies have insurmountable obstacles that individual state laws or selective regulatory approaches cannot fix and that demand Congressional action. The legislation introduced by Congressman Gutierrez and myself is a comprehensive approach to fixing our immigration system and includes provisions dealing with border security, interior

enforcement, worker verification, a new worker program, visa backlogs, and legalizing the undocumented population.

The Gutierrez-Flake bill would increase border enforcement through increasing enforcement personnel on the border and requiring a thorough evaluation of information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives to ensure that we are doing everything possible to bolster border security. The STRIVE Act would strengthen interior enforcement by increasing penalties for crimes committed by immigrants, including those related to smuggling and gang activities. The bill also sets up an employment verification system whereby employers would be required to confirm each potential employee's eligibility to work.

The STRIVE Act would also set up a new worker program for low-skilled workers, when a U.S. worker cannot be found to fill a needed job. It addresses the failures and problems with past worker programs and charts a new course that better protects workers, while more effectively and efficiently meeting the needs of employers. The STRIVE Act also would overhaul the family-based and employment-based immigration system to reduce backlogs and inefficiencies. Finally, under this legislation, undocumented workers who pay a fine and pass extensive and thorough background examinations would be eligible for conditional status with work and travel authorization for six years, with the conditional ability to adjust their status if they leave the country and re-enter legally.

Madam Chairwoman, I appreciate the opportunity to testify on the need for comprehensive immigration reform. I hope that I have made clear that whether Congress acts or not, the immigration issue continues to progress. For Congress, it is as simple as asking whether we want to fix the problem...or continue to allow it to get worse.