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"Priorities Enforcing Immigration Law"

Testimony of Michael Aytes, Acting Deputy Director

Introduction

Chairman Price, Ranking Member Rogers, 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 be before Congress to discuss our shared goal of effective employment eligibility verification. I also want to thank the Subcommittee for its continued support of the program with the \$100 million appropriation for E-Verify for Fiscal Year (FY) 2009.

The Department of Homeland Security (DHS) believes E-Verify is an essential tool for employers 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 I-9) with more than 449 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.

E-Verify has grown exponentially in the past several years. Much of this increase is due to a growing number of States that have passed laws requiring all or some of the employers in their State to use E-Verify. Currently over 117,000 employers are enrolled, representing over 456,000 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 3.6 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 fact today, according to an analysis of Bureau of Labor Statistics data, over 14 percent of all nonagricultural new hires in the U.S are run through E-Verify.

The current independent evaluation of E-Verify, conducted by the Westat Corporation, (which can be found on www.uscis.gov) found that approximately 96.1 percent of all cases queried through E-Verify were automatically verified as work authorized. The 96.1 percent figure represents a significant improvement over the figures from earlier evaluations, which found that the automatic verification rate improved from 83 percent (in 2002) to 94.7 percent (in 2007). In a recent American Customer Satisfaction Index Survey, E-Verify scored 83 out of a possible 100 on the Customer Satisfaction Index, which is well above the latest Federal Government satisfaction index of 69 percent. More than half of the respondents (51 percent) self-identified as small business owners or employers.

Of all the cases verified through E-Verify, only 3.9 percent of queries resulted in a mismatch, or a Tentative Nonconfirmation (TNC), which is issued when the information queried through E-Verify does not match the information in SSA or DHS databases and requires further action on behalf of the employees to resolve their cases with SSA or DHS.

Of that 3.9 percent who were not immediately authorized, 0.4 percent of queries are those who were issued a TNC and successfully contested the case. The remaining 3.5 percent of queries that are not found work authorized by the system either did not contest the TNC, were unsuccessful in contesting or were found unauthorized to work at the secondary verification stage. Our goal is to continue to improve E-Verify's ability to instantly verify new hires, improve the accuracy of our data systems, and strengthen training and monitoring of employers to ensure that they understand the program's requirements and are complying with them.

The Current E-Verify System: Past Program Enhancements

Under USCIS management and in cooperation with SSA, E-Verify is continuing to work to improve processes to decrease mismatch rates, ensure that E-Verify is fast and easy to use, and protects employees' rights. FY 2008 improvements to the E-Verify program included instituting a system change to reduce typographical errors, incorporating a photo screening tool for DHS documents in order to combat certain instances of document fraud, establishing a Monitoring and Compliance Branch to oversee 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, E-Verify established a new process for employees to call a USCIS toll-free number to address citizenship mismatches as an alternative to

visiting SSA. All these efforts are targeted at establishing efficient and effective verification.

E-Verify is the most accurate and efficient way to verify employment authorization.

In September 2007, E-Verify instituted an additional automatic flag to the user 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 Corporation independent evaluation found that a large portion of the employees who successfully contest an SSA TNC are recently naturalized citizens. As of May 2008, the number of these citizenship mismatches has been reduced by approximately 39 percent, a considerable reduction, as we have reworked the system so that it now automatically checks USCIS naturalization data before issuing a citizenship status mismatch. In addition, employees who receive a mismatch with SSA due to citizenship are now able to contact USCIS via a toll-free number to contest the finding, address the discrepancy, and verify their work authorization. This process has reduced walk-ins to SSA field offices for E-Verify citizenship mismatches by 56 percent. 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 exploring further enhancements, including a direct data share initiative that would update SSA's database with naturalized citizen information.

E-Verify also added the Integrated Border Inspection System (IBIS) real time arrival and departure information for non-citizens to its databases as of May 2008, which reduced E-Verify mismatches that had resulted from delays in data entry into the system that E-Verify also uses for non-citizen arrival information. The addition of this data to 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 and photographs from the DOS' records. In February 2009, USCIS began incorporating passport data into E-Verify in order to check citizenship status information in the event of a mismatch with SSA. Passport data is reducing the number of mismatches issued to naturalized and derivative citizens (citizens who did not personally complete the naturalization process, but derived citizenship from their parents) who present a U.S. passport during the Form I-9 process, which involves the new hire filling out a form attesting to their work authorization eligibility and presenting the requisite documents. To date, over 295 queries that would have received TNCs under the previous procedures have been automatically verified as employment authorized as a result of this enhancement.

Although not every mismatch can be prevented by adding additional data sources, we continue to improve the system to ensure that every mismatch that can be prevented through government data processes will be avoided.

We believe E-Verify is an efficient and easy system for employers to use and we continually strive to understand the needs of our stakeholders.

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 and development relies on increased awareness and public use of the program and more education of US citizens and work authorized immigrants about their rights when using the system. In an effort to better understand the needs of those using the program, USCIS substantially increased customer service and outreach staff over the past two years to ensure that questions and issue are addressed quickly and professionally.

In FY 2008, an outreach campaign was launched aimed at educating millions of 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 metro DC area, and conducted 239 outreach events in 24 states. Most of these events were held at the request of both employer and employee associations. E-Verify also has a toll-free 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, given that the majority of businesses in America are small businesses, USCIS collaborated with the Small Business Administration (SBA) to include E-Verify information on the SBA's website and we are identifying additional ways E-Verify information can be incorporated into SBA program activities.

Employees are also key stakeholders of E-Verify. USCIS has bilingual English and Spanish advertising and has online materials in nine languages to inform employees of their rights. E-Verify 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.

E-Verify is committed to maintaining the integrity of the system and effectively preventing discrimination and

misuse through monitoring and compliance.

A successful and effective electronic work 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. To be effective, however, the program also must include robust tools to detect and deter employer and employee fraud and misuse. USCIS first contracted an independent review of E-Verify in June 1998 with the first 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" non-compliance by employers 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 result in discrimination and 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 measured expansion of the program can only occur after we address the critical issue of employer misuse.

USCIS established a Monitoring and Compliance Branch dedicated to monitoring the use of the E-Verify system and providing compliance assistance. The Monitoring and Compliance Branch aims to safeguard personal privacy information, prevent the fraudulent use of counterfeit documents, and refer instances of fraud, discrimination, misuse and illegal or unauthorized use of the system to enforcement authorities. The Branch currently reviews 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 will be further supported by data analysis and case management provided by a Case Tracking and Management System (CTMS) that will be launched later this spring. E-Verify has instituted procedures to refer cases of non-compliance to Immigration and Customs Enforcement (ICE) and the Department of Justice's (DOJ) Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). USCIS recently signed a Memorandum of Agreement with ICE establishing guidelines for referrals and sharing of information.

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

E-Verify prevents certain types of document fraud from being used in E-Verify

Some aliens 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 card) 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.

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. However, the addition of databases for photo tool verification could lead to increased TNCs because there will be more data to verify and additional government agencies will be involved in the resolution process. An increase in TNC could affect authorized workers, but is also indicative of the photo tool's success in detecting document fraud.

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.

E-Verify 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 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.

E-Verify also plans to provide automated system updates for any new hire with Temporary Protected Status (TPS) who has an expired EAD but is within an auto-extension time period. This system enhancement will decrease the number of new-hires of TPS recipients that 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 example is a current effort to improve the date of birth entry field to avoid data entry errors such as reversing the day and month as is done in many other countries outside of the United States. This mismatch reduction initiative includes improving the data matching algorithm and improving usability to reduce data entry errors.

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

To build on the photo tool's success, the E-Verify program is actively working 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 becomes effective tomorrow on April 3, 2009.

USCIS is also working to initiate 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.

USCIS is aware 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 accomplish this goal. USCIS has also begun examining other ways to detect and deter such fraud, such as enabling individuals to choose to "lock" and "unlock" Social Security Numbers (SSNs) for E-Verify purposes.

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

USCIS is re-engineering the E-Verify registration process to improve it and make the registration more effective. USCIS 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 ensure that E-Verify has accurate and complete information on those employers using the program.

E-Verify is also working on implementing 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.

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 providing this service to employers and continuing to make improvements to the system to address issues such as usability, fraud, discrimination, and further to improve the system's automatic verification rate. On balance, E-Verify will continue to be a key element of our ability to deter illegal immigration.

Thank you for the opportunity to testify before this Subcommittee and we appreciate this Subcommittee's continued support of the E-Verify program.

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