

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

**Hearing on Proposals for Improving the Electronic Employment
Verification and Worksite Enforcement System**

April 26, 2007

Thank you, Madam Chairwoman, for holding this important series of hearings on various aspects of immigration policy, and for inviting me to testify. The ability of employers to quickly and accurately verify the authorization of their employees to work in the United States will be a crucial component of getting a handle on our broken immigration system.

Employment Verification Is Crucial to Comprehensive Reform

We have heard various estimates – and, of course, no one can know the true number for sure – of how many people are illegally present in the United States. The number most consistently used is 12 million. Of those 12 million, the Congressional Research Service estimates that 7.2 million people are unauthorized workers in the civilian labor force. That figure represents five percent of the U.S. labor force. These workers have either fooled their employers with false documents and identity fraud, or are working for an employer aware of their status. I believe that most workers fall into the former category, rather than the latter.

Simply put: many of those that are here in our country illegally are here for employment. However, they did not all risk an illicit border crossing to get here. According to a Pew Hispanic Center survey published last year, nearly half of those who are here illegally didn't sneak across the border. Rather, they entered the country legally through a port of entry like an airport or a border crossing checkpoint and overstayed their visas. Over the past 15 years, we have tripled the size of the Border Patrol and increased its budget tenfold. Congress has gone so far as to mandate the construction of a wall on our southern border. And still they come.

Border enforcement alone won't solve our illegal immigration problem. Border enforcement is a crucial component of a comprehensive solution to solving the problem of illegal immigration, along with resolving the status of the millions of undocumented aliens, fixing backlogs in legal immigration, and ensuring interior enforcement of our immigration laws. A guest worker program that provides employers with the legal workforce of essential workers they so desperately need is essential to ensuring that our immigration laws are enforced. Clearly, as is the focus of this hearing, fixing our broken immigration program will also require a workable and fraud-proof employment verification system.

As I am sure many of you are aware, measures to ensure that those that are unauthorized to work in the U.S. are prohibited from doing so are not new to the immigration reform debate.

1986 Attempt at Employment Verification

The Immigration Reform and Control Act of 1986 (IRCA) 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. IRCA's employer sanctions also included penalties, both civil and criminal, for those violating the prohibition on unauthorized employment. However, under the 1986 law, employers were deemed to have met their obligation if the document presented to verify work authorization "reasonably appeared on its face to be genuine." This approach was almost universally derided as fruitless, due to the prevalence of fraudulent documents and the ease with which undocumented workers could obtain them. Unauthorized workers could easily find employment, either by presenting counterfeit documents or stealing another's identify.

1996 Attempt at Employment Verification

A decade later, Congress again sought to solve the problem of unauthorized employment when it included the Basic Pilot program in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. As many of you are aware, Basic Pilot is a voluntary, online verification system that allows employers to confirm the eligibility of new hires by checking the personal information they provide against federal databases. Originally started in 1997 with limited geographic availability, the system is currently available nationwide, but suffers from severe limitations including the fact that it is still voluntary and prone to fraud.

The raids of the Swift meat packing plants in December illustrated more clearly than anything else the limitation of the Basic Pilot program. The company had been trying for years to comply with our inept and broken immigration system. They were actually sued for overzealously inquiring into the backgrounds of job applicants suspected of presenting fraudulent documents—this became the basis for a discrimination lawsuit by the Department of Justice. Swift has participated in the Basic Pilot Program since its inception in 1997, but was well aware of its shortcomings—namely, the program does not catch identity theft by workers. Employers can check whether an applicant has presented a valid Social Security number, but Basic Pilot will not note the fact if the number has been used 500 times in the past year. In the end, it was this shortcoming of Basic Pilot that permitted the company to utilize the system and still hire hundreds of illegal workers. This is the kind of charade that, unfortunately, characterizes much of our current immigration policy.

The STRIVE Act of 2007 Employment Verification Approach

More than two decades since IRCA, the song remains the same: the true key to enforcing our immigration laws will involve worksite enforcement. As trite as it sounds, those who

forget the past are doomed to repeat it. As part of a comprehensive approach to immigration reform, the STRIVE Act of 2007 takes note of the lessons learned through past attempts and would provide the crucial employment verification system that is enforceable and prevents against ID fraud.

The legislation introduced by Congressman Gutierrez and I would create a mandatory system for employers to electronically verify workers' employment authorization. It also establishes criminal penalties for employers and workers who operate outside the system and implements strong enforcement mechanisms.

The Employment Eligibility Verification System, or EEVS, mandates the Homeland Security Department and Social Security Administration to develop a mandatory system for employers to verify the employment authorization of all new workers electronically or telephonically and establishes an interim verification regime for employers to use while the system is under development. The system would be gradually phased in over time, starting with critical infrastructure employers, followed by other employers based on size: largest employers would be required to use the system first, with smaller employers following in successive years.

Importantly, the legislation limits the number of documents that an employer can accept in order to verify a worker's eligibility to work. It follows the lead of legislation introduced by Congressman Dreier, in mandating an improved, biometric, tamper-resistant and machine-readable Social Security card. It is important to note that these provisions will not create a new secure National ID, but rather will prevent identify fraud exclusively in an employment verification setting.

In addition to the secure Social Security card, other documents that could be presented to prove work authorization include a United States passport, a REAL ID-compliant driver's license, a permanent resident card, and a secure card that the Secretary of Homeland Security could create to indicate work authorization. This is a vast improvement over the vast alphabet soup of documents that employers must currently accept from workers and try to verify as authentic.

The mandatory EEVS system would establish a secure and responsive system that would provide a safe harbor for employers to ensure that the workers they are hiring are legally present in the U.S. The new System will use a cross-agency, cross-platform system to share immigration and Social Security information necessary to verify an individual's work authorization. The System will not only determine if an individual's name matches a Social Security number on file, but also whether the person standing before the employer does, in fact, bear the name and number that they've presented to the employer.

A key component of the EEVS system is the creation of new and significant penalties for those workers and employers operating outside of the system. Scofflaw employers would be fined on a sliding scale for hiring unauthorized workers. This would entail fines of between \$500 and \$4,000 for each unauthorized worker for first-time wrongdoers, but quickly escalate to \$20,000 for each unauthorized worker for repeat offenders.

Concurrently, employers who do not follow the rules for record-keeping or verification practices would face fines of up to \$6,000 for repeat offenders. These employers could also face prison sentences of up to three years. Repeat violators would also be barred from federal contracts for five years.

Madam Chairwoman, in conclusion, I would like to emphasize how crucial I believe the issue of employment eligibility verification is to the success of the broader comprehensive immigration reform. Giving employers the tools they need to determine if their workforce is legal will eliminate any excuse they currently have to fall foul of the law. Ensuring that those employers who choose to disobey the law will be held accountable will give the American people confidence that the days of lax enforcement are over and a new temporary worker program can be competently implemented and enforced.